

## SENATE—Thursday, February 11, 1982

(Legislative day of Monday, January 25, 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.

Lord God of Heaven, Sovereign Ruler of history and the nations, we thank Thee for the memory of two great Presidents for whom God was a reality and in whose providence they placed their trust. We thank Thee for their faith which anchored their lives and hopes in the Rock of Ages. We hear the father of our country testify: " \* \* \* of all the dispositions \* \* \* which lead to political prosperity, religion and morality are indispensable \* \* \* a necessary spring of popular government."

We hear the Great Emancipator as he called the people to a day of national humiliation and prayer: " \* \* \* Intoxicated with unbroken success, we have become too self-sufficient to feel the necessity of redeeming and preserving grace, too proud to pray to the God that made us. We have grown in numbers, wealth, and power as no other nation has grown but we have forgotten God. We have forgotten the gracious hand that preserved us in peace, and multiplied and enriched and strengthened us \* \* \*. We have vainly imagined that all these blessings were produced by some superior virtue and wisdom of our own. It behooves us, then, to humble ourselves, to confess our national sins, and to pray for clemency and forgiveness."

As we celebrate the memory of these two extraordinary leaders, may we emulate their humility and faith. So help us God. 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.

## ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, is there an order for morning business following the special orders of Senators QUAYLE, JACKSON, and PRYOR?

The PRESIDENT pro tempore. It has not been ordered.

Mr. STEVENS. Mr. President, I ask unanimous consent that, following the special orders for those three Senators, there be a period for the transaction of routine morning business not to extend beyond 20 minutes in length, with Senators being permitted to speak therein for not to exceed 5 minutes each.

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

## ORDER OF PROCEDURE ON MONDAY, FEBRUARY 22, 1982

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate reconvenes on Monday, February 22, the reading of the Journal be dispensed with, no resolutions come over under the rule, the call of the calendar be dispensed with and, following the time allotted for the two leaders under the standing order, Washington's Farewell Address be read to the Senate, and that immediately thereafter the Senate stand in recess until the hour of 11:30 a.m. on Tuesday, February 23.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, I do not believe that request has been cleared on this side, I say most respectfully to my friend.

Mr. STEVENS. Mr. President, I temporarily withdraw that request. (Later the following occurred:)

Mr. STEVENS. Mr. President, I now renew my request and ask unanimous consent that when the Senate reconvenes on Monday, February 22, 1982, that the reading of the Journal be dispensed with, that no resolutions come over under the rule, that the call of the calendar be dispensed with, and following the time allotted to the two leaders under the standing order, that Washington's Farewell Address be read to the Senate, and that immediately thereafter the Senate stand in recess until 11:30 a.m. on Tuesday, February 23.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, this request has been cleared with Mr. JOHNSTON, who is on the

floor and can therefore speak for himself. I therefore remove my earlier reservation of objection, and I have no objection.

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

## ORDER FOR CERTAIN ACTION DURING THE ADJOURNMENT OF THE SENATE

Mr. STEVENS. Mr. President, I ask unanimous consent that, during the adjournment of the Senate until February 22, messages from the President of the United States and the House of Representatives may be received by the Secretary of the Senate and appropriately referred, and that the Vice President, President pro tempore, and the Acting President pro tempore be authorized to sign duly-enrolled bills and joint resolutions.

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

## AUTHORITY FOR COMMITTEES TO FILE REPORTS ON FEBRUARY 17, 1982

Mr. STEVENS. Mr. President, I ask unanimous consent that, on Wednesday, February 17, from 9 a.m. until 3 p.m., committees be authorized to file reports with the Senate.

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

Mr. STEVENS. Mr. President, I reserve the remainder of our time.

## RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The minority leader is recognized.

## REQUEST THAT THE PRESIDENT WITHDRAW 1983 BUDGET AND RESUBMIT REALISTIC PROPOSAL

Mr. ROBERT C. BYRD. Mr. President, yesterday I took the very serious step of writing the President to request that he withdraw the administration's 1983 budget proposal and resubmit one with lower deficits, more accurate forecasts—I am talking about lower real deficits—fairer domestic spending cuts, and more temperate defense spending increases.

This is not the first time I have taken such action. Once before, in 1980, I advised a President of my own

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

party, at a time when I was the majority leader, that his budget had to be significantly revised. In both cases I acted because the budget as originally submitted was so unacceptable to Members of Congress of both parties and to the financial community that it had little chance of passage in its original form and, in fact, because of the lack of confidence it generated, it represented a serious threat to the economic well-being of our Nation.

The budget is the economic blueprint of our Nation. If we are to have economic stability and confidence the budget must be a reasonable, responsible, fair and credible document. This administration's 1983 budget fails every single one of these tests. Many of my Republican colleagues are saying the same thing. So are Wall Street financial analysts.

The financial analysts have told the Wall Street Journal that the deficit for 1983 is likely to be \$120 to \$130 billion instead of the \$91 billion projected by the administration.

Where do we go from here? We are presented with a budget that is not believable nor enactable. The administration's posture has been to resort to rhetoric and tell the Congress of the United States to "put up or shut up." We must not draw lines in the dirt. Clearly, serious and responsible action is needed on the part of the Congress and the administration.

Mr. President, I submit that two actions must be taken if we are to avoid a dangerous impasse.

First, as I requested yesterday, the President should rework and resubmit his 1983 budget.

He should reconsider his total commitment to the unwise Kemp-Roth plan, reduce the increase in Pentagon spending—it would seem to me that there is certainly appropriate reasons to believe that there can be found waste and mismanagement in the spending at the Pentagon, and so I think it is not an unreasonable request to suggest that the increase in Pentagon spending be carefully scrutinized further—reduce some of the more unfair and unwise domestic spending cuts, revise the unrealistic economic forecasts, and bring the deficit down—bring the real deficit down—to more acceptable levels.

The deficit set forth in the budget is shockingly high, yet it is an understatement of what the real deficit is going to be in fiscal year 1983. I do not say this lightly nor in a partisan vein. It is the most appropriate and best way out of the difficult and dangerous situation in which we and our Nation now find ourselves.

Second, whether or not the President is willing to rework his budget, we in the Congress, Democrats and Republicans, must begin to come forward with workable and sensible alternatives to this budget.

Senator FRITZ HOLLINGS' proposal for example, is a very thoughtful and provocative one, and it has added to the serious dialog over the budget problem.

Yesterday I revealed publicly for the first time that I have been working closely with 17 members of my party in a committee that will develop initiatives to spur economic recovery. These and other efforts—on both sides of the aisle—must continue and be expedited.

Perhaps most importantly, we must proceed in a bipartisan fashion. The economy is an American economy—not a Democratic or Republican economy. The problems are American problems. The out-of-work autoworker does not care if he get a job because of a Democratic plan or a Republican plan. He is not interested in seeing his national leaders telling one another to "put up or shut up." He wants a job. Period.

It is time for the administration and the Congress to have a dialog. It is not a matter of put up or shut up. It is a matter of having a dialog about the problems, and it is time for us all to take action to see that the American worker who is out of a job gets one, and the economy gets moving again.

Mr. President, I ask unanimous consent that my letter to the President, dated February 10, 1982, be printed at this point in the RECORD.

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

U.S. SENATE,  
OFFICE OF THE DEMOCRATIC LEADER,  
Washington, D.C., February 10, 1982.

THE PRESIDENT,  
The White House,  
Washington, D.C.

DEAR MR. PRESIDENT: I am writing to you with a most sobering request. I believe you should withdraw the Administration's proposed fiscal 1983 budget, and re-submit a budget that provides for much lower deficits, and makes use of more realistic assumptions.

There has been bipartisan concern in Congress, and among state officials, about the size of the deficits projected in your budget. Economists of all political stripes believe that it contains economic assumptions which are overly optimistic.

The lesson of last year's budget and tax bills should be clear. Inaccurate economic forecasts do not help the nation. In fact, the ability of investors to trust government predictions is crucial to the economic recovery we all earnestly desire.

Mr. President, I am looking for a document we in Congress can work with; one based on realistic assumptions; one which shows a much clearer trend toward a balanced budget. In 1980, under similar circumstances, President Carter took the bold step of substantially revising his fiscal year 1981 budget.

It is my hope you will take the same kind of courageous step, as a necessary start to true economic recovery.

Sincerely,

ROBERT C. BYRD.

#### ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, how much time have I remaining?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. ROBERT C. BYRD. Mr. President, I yield my 5 remaining minutes to Senator STENNIS, who will follow Senator JACKSON.

Mr. STENNIS. I thank the distinguished minority leader.

The PRESIDING OFFICER. The Senator from Indiana (Mr. QUAYLE) is to be recognized at this time for not to exceed 15 minutes.

Mr. STEVENS. Mr. President, there is no objection to recognizing the Senator from Washington (Mr. JACKSON) ahead of the Senator from Indiana under the present circumstances.

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

#### RECOGNITION OF SENATOR JACKSON

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

#### TECHNOLOGY TRANSFER POLICY—THE HIGH STAKES

Mr. JACKSON. Mr. President, as my colleagues are aware, my concern for the flow of security-sensitive technology to the Soviet Union and its allies is of long standing. For several years, the Senate Permanent Subcommittee on Investigations, which I chaired, demonstrated through its studies and hearings that our policies in this area have been seriously flawed. Moscow and its associates have acquired the West's latest technology and thereby significantly enhanced their military-industrial capabilities. I and several others have repeatedly pressed for tighter controls on technology transfer.

#### NEED FOR A CLEAR, COHERENT POLICY

On November 14, 1980, I wrote President-elect Reagan calling his attention to this problem and suggesting several measures that merited his prompt consideration. I noted the lack of a clear and comprehensive policy regarding technology transfers which had led to inadequate technical analysis, weaknesses in export controls, serious imbalances in East-West exchange programs, inconsistent governmental decisions, uncertainty for U.S. exporters, and a weakening of Cocom. I urged that he act quickly to strengthen the Government's work on critical technologies, foreign availability assessments, national security safeguards in exchange programs, cooperation with allies, and enforcement.

In the 15 months since that letter was sent, events have reinforced my earlier conclusion: There is much we

can do, if only we will. But we have a long way to go.

There is no longer doubt that our technology has materially aided Soviet expansion. It has improved Soviet weapons, intelligence devices, and economic leverage. We are still much too far away from a vigorous program to effectively meet the danger.

#### MOSCOW'S GAS PIPELINE TO EUROPE

As proof, Mr. President, we need only consider the administration's handling of the Siberian gas pipeline project.

In my November 14, 1980, letter to President-elect Reagan, and my enclosed letter of October 1, 1980, to Secretary of Defense Harold Brown, I questioned the policy of excluding the oil and gas industry from the list of strategic defense industries, and the policy of presuming that licenses would be granted for the export of oil and gas equipment. I urged the new administration to reassess this position as part of an overall national security assessment of the world energy situation.

Yet the administration started off by approving a first shipment of Caterpillar pipelayers to the Soviet Union. It is claimed that these pipelayers will not be used on the West Siberian pipeline, a generous supposition given Soviet practice of violating end-use representations. More importantly, in licensing this equipment, the administration sent the signal that in principle the export of technology and products relating to oil and gas production and shipment are not considered strategic items.

President Reagan at Ottawa made known U.S. concerns with the West Siberian pipeline, but the administration did not get itself together for an effective followup. It took the crackdown in Poland to energize the Government. And even now high officials are talking about the decision regarding U.S. technology and the pipeline in terms of "weighing the damage to the Soviet Union against the damage to the alliance."

What accounts for the confusion and the footdragging?

Because this pipeline project is supposed to be a strictly economic arrangement? Nonsense. If it is, why have the Germans so steadfastly rejected serious consideration of any alternatives to dealing with the Soviets? The United States has offered some alternatives, and a pipeline to exploit Norwegian gas was also proposed. The price of Siberian gas promises to be quite high. Furthermore, the deal requires an enormous amount of Western credit, at a time when the German Government is joining many others in complaining about the price of money.

Only on the surface is this deal an economic one, whereby the Western

Allies provide funding and technology in exchange for Soviet natural gas. Both sides, in fact, are fully aware of the significant political relationships involved. The pipeline deal will provide Moscow with a substantially increased flow of hard currency and political leverage for years to come, and we would be reckless to gamble that these resources will not be used against us and our European allies. For one thing, Moscow's revenues from the pipeline will facilitate acquisition in the West of sophisticated technology useful in strengthening the Soviet military. Even without direct Soviet action, the project creates the possibility that significant portions of allied economies and societies could fundamentally shift away from the West toward the Soviet Union. There would be massive diversion of energy-related capital, talent, and effort away from Western economic development.

What we should be doing is quite plain.

First, we should recognize the strategic importance of energy supplies and treat technologies and end-products related to them accordingly. Procedurally, this means giving the Secretary of Defense the same review over exports of oil and gas equipment that he now has over strictly military exports.

Second, we should recognize that in talking about energy self-sufficiency for the industrialized West we are talking about protecting the alliance, not damaging it. The administration should immediately prohibit the use of any American technology in connection with the pipeline. It should promptly convene meetings at the highest allied level to develop alternatives for Western European energy. It should provide substantial assistance in developing such alternatives, including technological and financial measures. And it should provide strong incentives for our allies to develop Western energy supplies rather than Soviet ones.

#### RECENT IMPROVEMENTS

Mr. President, certain developments of the past months encourage me to hope that some effective steps will be taken, both on the Siberian pipeline and for broader issues of technology transfer.

Most importantly, key assumptions about the importance of trade to détente are now critically questioned. During the past decade, three administrations acted on the assumption that increasing economic ties with the Soviet Union would moderate Soviet behavior in ways that would improve our security and build a peaceful world order. With this assumption came a consistent effort to relax controls on strategic trade with the East

and to define quite narrowly what we meant by strategic trade.

Today, we can view those years as a costly experiment. The results included an increasingly adverse military balance, both strategic and conventional; renewed Soviet military expansionism; increased Soviet subversion in the Third World; a sharp escalation in the anti-U.S. Soviet political offensive around the globe; and a dramatic increase in Soviet espionage and clandestine operations against the West. Our technology, acquired and exploited by Moscow, contributed to each of these developments. There is now a growing awareness that our technology in Soviet hands is a threat to our security.

Also of importance, there is a broader appreciation that the Kremlin is determined to try to get our technology by any means available. The public press, as well as Government reports and defense estimates, have reported how Western developments in design, materials, components, and production have been acquired by our adversaries. The techniques have included classical espionage as well as the evasion of export controls through diversion, retransfer, and the use of foreign-owned but U.S.-chartered front corporations. The result has been weapons aimed at us that are higher in quality, greater in quantity, more lethal in effect, and quicker in the field than would likely have been the case if Moscow had to rely solely on its own technical/industrial base.

The present administration has begun some remedial action. The Department of Defense is taking the export control problem more seriously than before and is beginning to improve its ability to evaluate and control critical technologies. There seems to be more awareness in licensing decisions about the need to safeguard national security as well as to advance commercial interests abroad. And the intelligence community has sharpened its awareness of this threat and has begun implementing new procedures to monitor, evaluate, and report on technology transfers and developments.

#### CONTINUING SHORTCOMINGS

Mr. President, these new beginnings are a fragmentary start. What is needed is a clear, comprehensive Government-wide policy that frontally addresses the hard, central issues of technology transfer and loss. To date, the administration has lacked the top-level conviction and participation needed to shape such an overall policy.

#### TIME PERSPECTIVE

For one, it is not yet clear that the administration's efforts have deeper roots than a concern to impose sanctions. They should. Technology trans-

fers involve vital long-term issues of our national security, and they should not be turned on and off for foreign policy considerations of the moment. It may be appropriate to use normal commercial exchanges of butter and grain to reward and punish Soviet behavior. But national security concerns must be protected in times of cooperation as well as strain, and judgments about the wisdom of transferring certain technologies should be separate from the prevailing winds of foreign policy advantage. I am not sure that we yet have a firm national conviction on this matter, and I am worried that our recent efforts will not outlast the current sanctions resulting from events in Poland.

#### NATIONAL SECURITY PERSPECTIVE

In this regard, it is important to emphasize that national security involves more than strictly military considerations. The notion of strategic trade needs a much broader interpretation than it received in the past 10 years.

The Siberian gas pipeline is a salient example.

Even purely civilian/commercial transfers can indirectly help increase the Soviet threat to our security. By acquiring and exploiting Western technology, Moscow has been able to fill selectively gaps in its industrial base and to profit from the modernizing effects of, for example, Western microelectronic and computer technologies. It has been able to concentrate funding and manpower on other priority projects, and to alleviate consumer dissatisfaction. By taking Western proven designs as road maps, Soviet research and development activities have saved funds and important developmental time.

The point is not that all trade should be stopped on national security grounds. Many of our exchanges with the Soviets are only remotely linked with security threats, and the level and quality of such exchanges are the appropriate province of commercial and foreign policy considerations. But the fact that a particular exchange involves nominally commercial/civilian technologies does not ipso facto mean that national security is unaffected. The key here is informed judgment—the United States needs to examine carefully the possible effects of each proposed transfer.

#### DUAL-USE TECHNOLOGIES

This is particularly true for transfers involving dual-use technologies, items proposed for sale for civilian/economic purposes but which could readily find military applications as well. There is now a clear pattern of such diversions once Western technologies are in Moscow's hands. The U.S. Government allowed American busi-

ness to build the Soviets a truck plant at Kama River, somehow assuming that only civilian trucks would be built there. As we all know, that plant builds military vehicles as well some of which carried Red Army units into Afghanistan.

Our experience with several other cases is similar. For example, American bearing grinders licensed for sale to the Soviet Union contributed greatly to various Soviet military programs. In other cases, we have seen that there is no real control over the use to which a computer is put once it is under Kremlin control; that another truck plant supported by American technology produces missile launchers; and that Soviet plants to produce farm machinery also produce weapons.

But requests for U.S. export licenses are still processed under a system that is biased against protecting national security. The political pressure exerted by commercial interests together with our Government's structure and system for processing such licenses effectively create a presumption of license approval. The onus of disapproval then falls on small, underfunded governmental units that are asked in effect to prove that such transfers will be diverted to military ends—definitive proof that is often only available once our security has in fact been breached. Experience suggests reversing this approach—the risks of diversion are high, and great caution is necessary.

#### ALLIED COOPERATION

I am also concerned that we have not achieved more progress toward effective controls with our allies in Cocom. Recent discussions led to several agreements in principle which appear to promise more vigorous cooperation in the future. But it is particularly true of these matters that the Devil is in the details. Alliance-level mechanisms for oversight and harmonization of national efforts on technology transfers are still inadequate. National-level procedures are also still quite weak; among our allies, only France has a national approach to export licensing similar to ours in providing formally for military advice and review.

At the same time, the inadequacy of Cocom measures has helped corrupt our national control systems. Arguments based on the foreign availability of even dual-use technologies are repeatedly and successfully pressed within our Government to permit transfers. There is little sense in permitting transfers that could threaten our security merely because the items could be obtained elsewhere; logic like this would have parents supplying heroin to their children. A punitive unilateral approach, however, risks creating a system of penalties that

would have the effect of driving high-technology firms abroad. Dealing effectively with this type of problem requires strong allied cooperation, which the administration should do much more to encourage.

#### OTHER MEASURES

Furthermore, there is too little recognition of the fact that problems of technology transfer and loss require more than effective export controls. Moscow's campaign to acquire our technology is sophisticated, diverse, and well-coordinated. Opportunities are fully exploited: Visits and exchanges, exploratory contract discussions, academic meetings and programs, public information services, and applications under the Freedom of Information Act. Covert and clandestine methods, however, have virtually become the method of preference for the Kremlin, apparently because they are so effective. A host of espionage techniques are involved, including intercepting communications, suborning or otherwise recruiting personnel, and theft and black-market operations. And all of these techniques are in addition to the methods I noted earlier to avoid and evade our export controls—illegal diversions, front and dummy corporations, and foreign retransfers.

#### ACTION NEEDED

Specifically, Mr. President, I urge the following improvements and innovations in Government programs:

First. The role of the Defense Department needs to be considerably strengthened. Responsibility for defense concerns with technology transfer should be centralized in a policy level office with adequate resources to discharge DOD's responsibilities regarding license applications as well as intelligence monitoring and cooperation with our allies. In previous years, DOD failed to fund its technology transfer offices adequately to perform its statutory role. Congress should consider this need specifically in reviewing the fiscal year 1983 budget and earmark funds for it, preferably by establishing a separate line item.

Second. The role of the intelligence community should also be strengthened. The Senate Select Committee on Intelligence, of which I am a member, has been particularly interested in problems of technology transfer and loss. Initiatives to improve our intelligence process in this area have recently been undertaken by the administration, and we will look carefully at their budget requests and performance. Here again, earmarked funds might prove helpful. Particularly important is the structuring of the policy process so that coordinated, current intelligence from the community as a whole

can be brought to bear on policy judgments about technology transfer and loss. Sound information and analysis cannot alone insure prudent policy decisions, but it will help considerably.

Third. All United States-Soviet exchanges and agreements need to be carefully reviewed for full reciprocity—not just on paper, but in practice. Academic exchanges, for example, should involve people of comparable professional level and interests as well as simply equal numbers. It is particularly important that we keep in mind the difficulties posed by such exchanges and agreements for our foreign counterintelligence programs, and that we strive to reduce the exploitation of our political freedoms by hostile intelligence services. Here, too, Congress should investigate how legislation could help to accomplish genuine reciprocity in our dealings with the Soviet Union and its allies. An important part of full reciprocity would be requiring the disclosure of ownership for Communist-owned U.S.-chartered commercial entities.

Fourth. More far-reaching public awareness programs need to be implemented. The FBI and Defense Department have begun awareness programs of the hostile intelligence threat for U.S. defense contractors, and various concerned officials have been cooperating with the press in bringing this story to the public. Much more needs to be done, however, particularly to make the academic community aware of the threat from hostile intelligence agencies. Information and awareness are more secure safeguards than censorship.

Fifth. Consistent and determined U.S. leadership is required to forge an effective consensus on these matters within Cocom. Sustained evidence of a serious U.S. conviction to control transfer and losses is the key to effective allied cooperation. Both our Government and the governments of our allies can be victims of union-busting pressure from large commercial interests. Congress should undertake hearings and investigations aimed at reducing this and other obstacles to improving Cocom's effectiveness.

Sixth. Strategic trade policy should include credit controls. The Soviet lack of hard currency means that a great deal of the hemorrhage of our technology might be restricted if the Soviets and their allies had to pay for their acquisitions in cash at time of purchase. Today the debt of the Warsaw Pact countries to the West is about \$80 billion. Poland is unable to service its \$26 billion share of that debt, and there are increasing signs that Moscow's hard currency shortages are mounting. The export of Western capital through extensions of credit permits the Soviets to fortify their military-industrial system every

bit as much as the transfer of technology. The United States, in concert with its allies, should begin now to develop a multilateral approach to comprehensive controls on credit to the Soviet Union and its allies. This might be done under the aegis of Cocom.

Seventh. Technology transfer control considerations should be incorporated into the design and production of sensitive advanced products. For years, the U.S. Government and others have struggled with the problems of controlling loss of selected technologies by political and diplomatic means. Many of these problems could be obviated at the engineering stage. Semiconductors and integrated circuits, for example, could be coated with commercially available substances that would preclude reverse engineering of the products, thereby improving both national and proprietary security. Counterintelligence considerations should be incorporated more systematically at the earliest stages of product development.

Eighth. The contribution of business to effective export controls should be strengthened. The export business community has long played an important role in the formulation of export control policy. Their advice is sought on technological advances and types of controls. In the course of the critical technologies studies conducted by the Department of Defense, representatives of our Nation's leading aerospace, electronics, and other high technology have made a substantial contribution.

In at least two other ways, business can make a broader contribution.

One is in the area of foreign availability. I urge business to aid our Government's efforts in developing effective allied controls. In effect, I am inviting American businessmen to "blow the whistle" on companies that put greed above Western security.

Second, I urge exporters to develop voluntary procedures to further the aim of national export controls. Recent Soviet practices in this country make it especially desirable now that American businesses know their customers and the ultimate use and destination of their products. Perhaps Congress can help here by legislation requiring some form of identity and end-use certification for purchasing agents of foreign nations.

Mr. President, what I said on April 30, 1980, about the post-Afghan strategic trade policy of the Carter administration is still applicable:

The flaws in our export controls are due to an absence of conviction, not of resources; it is within our capacity and that of our allies to remedy them. It is still possible to improve our export controls. But the time is long overdue to translate rhetoric about our tough new policy into effective action.

I ask unanimous consent that the text of my November 14, 1980, letter to President-elect Reagan, and my enclosed letter of October 1, 1980, to Secretary of Defense Harold Brown, be printed in the RECORD.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS, SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,  
Washington, D.C., November 14, 1980.

HON. RONALD REAGAN,  
President-elect of the United States,  
Arlington, Va.

DEAR MR. REAGAN: For several years now, the Senate Permanent Subcommittee on Investigations has been concerned with the transfer of technology, directly and through third parties, to the Soviet Union and other Warsaw Pact members. Evidence adduced in the Subcommittee's studies and hearings has demonstrated that our policies in this area have been seriously flawed and have enabled the Soviets and their allies to acquire technology which has contributed significantly to their military-industrial capabilities.

The protection of our technological lead times is crucial to the maintenance of strategic parity with the Soviets. To achieve this objective it is necessary that the U.S. develop a coherent, consistent and effective policy to prevent the transfer of security-sensitive technology to our adversaries.

During the past two years, some steps have been taken in the right direction. In 1979, Congress adopted certain amendments to the Export Administration Act which are designed to strengthen national security controls. Also, subsequent to the Soviet invasion of Afghanistan, the Carter Administration took some long overdue actions to restrict exports of high technology to the Soviets. However, these efforts are only in their early stages. Much work remains to be done before years of mismanagement and neglect can be corrected. In the following I have outlined my major concerns.

#### 1. A CLEAR AND COMPREHENSIVE POLICY

During the past decade, our strategic trade policy has been made on an ad hoc, license-by-license basis, generally at a fairly low level in government. Top level policy guidance has consisted largely of short-sighted notions of détente or trade promotion which were not grounded in a thorough national security assessment of technologies and their relative importance in the military balance between the U.S. and the Soviet Union and other adversary nations. Indeed, the government has lacked an adequate ongoing assessment capability. As a consequence, evaluations of technical criteria such as the military significance of the technology and foreign availability were shaded in order to justify license approvals or were otherwise inaccurate. The quality of analysis has also suffered due to chronic shortages of qualified personnel who must process over 70,000 license applications annually within statutory deadlines.

The lack of a clear and effective policy has resulted in other problems such as U.S. government agencies working at cross-purposes, inconsistent decisions, uncertainty for U.S. exporters, and the weakening of Cocom as an effective multilateral control mechanism.

Deficiencies in controls on technology transfer have not been limited to the export licensing area. The U.S. has engaged in educational and other technical exchange programs in which the benefits have flowed almost exclusively to the Soviets and their East European allies. Moreover, there has been inadequate official review or control over the nature and extent of technology transfer in these arrangements.

In addition, the U.S. has not had an adequate program to enforce our export control laws, despite aggressive Soviet efforts to acquire controlled and classified technology through clandestine and illegal means both in the U.S. and abroad. For example, the Defense Intelligence Agency recently told the Senate Committee on Governmental Affairs that the Soviets and some of their allies have acquired interests in or have established businesses in the U.S. in order to acquire restricted technical data and equipment.

An important task for your Administration will be to develop a clear export control policy based upon a comprehensive technological assessment and to communicate that policy downward to the officials charged with its implementation. My views as to additional elements of this policy are discussed below.

#### 2. THE CRITICAL TECHNOLOGIES APPROACH AND THE DEPARTMENT OF DEFENSE

In response to the foregoing problems, a bi-partisan group of Senators co-sponsored my amendments to the Export Administration Act of 1979 which gave the Secretary of Defense the primary responsibility for identifying militarily critical technologies and goods and formulating controls to prevent their transfer to our adversaries. The critical technologies approach is intended to lead to tightened controls on know-how and to the relaxation or modification of controls on products which do not transfer technology or have significant intrinsic military capability. On October 1, 1980, the Department of Defense published its initial version of a critical technology list. On the same day, the Department of Energy separately published its significant input to the list. Significant additional technical analysis and regulatory work is necessary before the critical technology list can be fully integrated into the export control system, as contemplated by Congress.

This work should be completed on an expeditious basis so that we can have the kind of assessment capability necessary for an effective policy. To do so, DoD will require adequate funding and staffing as well as the active support of the Energy Department and other governmental agencies and the business community. In its fiscal year 1981 budget request, DoD asked for \$2.5 million to continue support work on this project. I am concerned by reports that DoD is planning to allocate only half the funds requested. I am also concerned by the failure of DoD to adequately staff its export control activity. In view of DoD's significant responsibilities in the strategic trade area, I believe it would be helpful if DoD established a separate budget line item for this activity.

My views concerning the critical technologies project are discussed in more detail in my letter of October 1, 1980, to the Secretary of Defense, a copy of which is enclosed.

#### 3. FOREIGN AVAILABILITY

An important factor in determining whether to export an item to an adversary

nation is whether the item would be available from foreign sources in sufficient quantity and quality that denial of export would be ineffective. My 1979 amendment to the Export Administration Act requires that any determination of foreign availability which is a basis of a decision to approve a license or remove a control on the export of a good or technology shall be made in writing and be supported by reliable evidence. This provision should be stringently enforced.

At the time of enactment, the Export Administration Act in September 1979, neither the Commerce Department nor any other agency of government had an adequate foreign availability assessment capability. Unfortunately, this continues to be the case today. Although the Commerce Department is assigned the primary responsibility for coordinating the collection and monitoring of information on foreign technology, this responsibility of necessity must be shared by DoD, the intelligence community, and other agencies with export responsibilities. In order to carry out Congress' mandate, the agencies need to be mobilized and adequately staffed and budgeted (including provision for travel funds to investigate allegedly competitive technology).

When a good or technology which would make a significant contribution to the military potential of an adversary is determined to be available from foreign sources, this should not lead to automatic approval of the export as has been the case too often in the past. Instead, negotiations to secure cooperation in restricting availability should be initiated immediately.

If the United States resumes its position of leadership, I believe that our allies and friends will be inclined to cooperate in multilateral control efforts. Should a nation refuse to cooperate with the United States in denying alternative sources it hardly enhances U.S. credibility to compete to sell the very item we had argued would be contrary to our security interests for the other nation to sell. If you determine that you need additional authority to encourage other nations to cooperate in multilateral controls, I would be happy to support appropriate legislation.

#### 4. EXCHANGE PROGRAMS

Since the invasion of Afghanistan, the Carter Administration has imposed more stringent control on a number of government-to-government technical exchange programs with the Soviet Union. There currently is an informal interagency body which reviews some aspects of certain exchange programs. The scope of the body's responsibilities needs to be expanded to assure that Soviets and other adversaries are not gaining access to critical technologies in private and commercial exchange programs, as well as in governmental arrangements. To achieve this objective, I believe the new Administration should formulate a policy to guide the decision-making of the review body. In this regard, the Soviet Union and other adversaries should be denied technologies, if the Secretary of Defense determines that such access would adversely affect national security, subject, of course, to the final decision of the President. This is consistent with the intent of Congress in the Export Administration Act which gives the Secretary of Defense such a veto in the licensing and control list area.

#### 5. ENFORCEMENT

During the past several months, the Carter Administration has been conducting

various interagency studies of problems in the enforcement of export control and other laws which protect controlled and classified technologies. Recently, the Department of Commerce announced that it has stepped up its enforcement of the Export Administration Act. However, that Department still does not have an adequate investigative and support staff to enable it to carry out an effective program. A thorough assessment of our government-wide enforcement program is required, including the adequacy of (a) resources, (b) coordination of the U.S. agencies internally and with foreign governments, and (c) existing legislation.

#### 6. POST-AFGHANISTAN DEVELOPMENTS IN EXPORT POLICY TOWARD THE SOVIET UNION

Since the invasion of Afghanistan, there have been a number of changes in U.S. strategic trade policy toward the Soviet Union. These changes are generally steps in the right direction, but I have had some reservations. One of my broader concerns is that the Carter Administration has suggested that these steps are intended as a short-term response to the invasion, rather than as part of the development of tighter control policy for the long-term. For example, President Carter stated that he hoped that, if the Soviets withdraw from Afghanistan, we can restore normal trade relationship with the Soviets.

A firm and consistent policy is essential if we want our friends and allies to take us seriously when we ask for their cooperation. The reluctance of our Cocom allies to give specific or formal support to some of the recent U.S. proposals may be attributable in important part to questions about the seriousness and steadiness of U.S. intentions. I think it would be helpful to the successful implementation of the new policy, if you would tell our allies that these new policy directions represent a long-term strengthening of U.S. controls on the transfer of security-sensitive technology.

I also have a number of concerns about the substance and implementation of the new policy.

(a) The Administration has stated that it will not approve exports to the Soviets of items which are under Cocom control and which require formal Cocom permission prior to export. But the policy provides for possible exceptions on a case-by-case basis for spare parts for computers and other previously exported items. A large number of spare parts cases have been held in abeyance. I see no persuasive basis for granting exceptions for spare parts for items which we would not presently export.

(b) The new policy provides for tightening criteria used in reviewing applications for the export of technology, including process know-how for plants in militarily relevant industrial sectors (e.g., trucks, aircraft, metallurgy). A large number of significant technology cases have not been decided because of delays in formulating specific criteria. Development of interim criteria should proceed as quickly as possible so that these cases can be decided. Long-term criteria should be developed in the critical technologies project.

(c) The new policy provides for careful review of proposed exports to Eastern European countries to assess the risk of diversion to the Soviet Union. The implementation of this policy should be carefully examined.

(d) The Carter Administration has established a presumption of denial for exports of technology for manufacturing oil and gas production and exploration equipment. However, I understand that no effort has been made to enlist the support of our allies for this policy. Although the U.S. has dominance in certain oil and gas technologies, a multilateral approach would make the policy more effective.

The Administration has also continued its policy of presuming approval of exports of oil and gas equipment. I believe that the equipment policy should be reassessed by your Administration as part of an overall national security assessment of the world energy situation.

I am gratified by your letter of October 24, 1980, expressing support for the Jackson-Vanik Amendment. I very much hope that you also share my basic point of view concerning our strategic trade policy and that your new Administration will accord this matter a high priority.

Sincerely yours,

HENRY M. JACKSON,  
Vice Chairman.

COMMITTEE ON GOVERNMENTAL AFFAIRS, SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,  
Washington, D.C., October 1, 1980.

Hon. HAROLD BROWN,  
Secretary of Defense,  
Washington, D.C.

DEAR MR. SECRETARY: As you know, I sponsored a number of amendments to the Export Administration Act of 1979 which gave the Department of Defense primary responsibility for identifying military critical technologies, and for assuring that these items are adequately controlled. (See in particular, Sections 5(a) (3), 5 (c) (2), and 5 (d).) I also initiated efforts which led to the earmarking of \$2.5 million of research and development funds to the critical technologies project.

The initial version of the critical technologies list was published in the Federal Register on October 1, 1980. This was a major undertaking and I commend the Department for its efforts. However, I believe that the work accomplished thus far falls short of what was contemplated by these amendments. For example, the Department has not yet completed:

- (1) The identification of the mechanisms through which critical technologies may be effectively transferred;
- (2) The formulation of specific revisions to the Commodity Control List and the particular forms of control which should apply to such goods and technologies and transfer mechanisms;
- (3) The identification of critical technologies and goods in the nuclear area;
- (4) An evaluation of several industry segments to obtain an understanding of technology elements and flows within an industry's infrastructure;
- (5) The identification of end-items of intrinsic military utility;
- (6) An analysis of items on the Munitions List to determine which critical dual-use technology may be employed to produce such items; and
- (7) An identification of specific process know-how areas that could contribute to key industries which support the Soviet military.

It is important that these tasks be completed as soon as possible if the critical technologies approach is to achieve its full promise.

Moreover, a major part of this work is important to the successful implementation of the Administration's more restrictive strategic trade policy toward the Soviet Union. In this regard, I wish to commend the Department for its role in helping to formulate this new policy. I was gratified by Under Secretary Perry's recent testimony that the Department views this new policy as an effort to improve our controls on a long-term basis. But the new policy must be long-term in its objective and execution—not in the process of its development.

A major commitment of DoD manpower and other resources will be required to complete the aforementioned tasks, as well as to review 4,000 license applications annually and to prepare technical justifications for U.S. positions in COCOM. At present the Office of Technology Trade which carries out the Department's responsibilities under the Export Administration Act has only four full-time professionals. I recognize that the Office of Technology Trade may draw upon the expertise of the services; however, adequate full-time staff is required to marshal these resources and assure continuity, coordination and compliance with applicable law and policy. Four professionals are clearly inadequate by any measure.

I urge that you establish as a high priority securing an increase in the permanent staff and support personnel of the Office of Technology Trade and any additional funds that will be required to carry out DoD responsibilities under the Export Administration Act. I will count on you to advise me what actions you will take. I also ask that you submit a specific timetable for completing the additional analytical and regulatory work necessary for full implementation of the critical technologies approach.

I further urge that the Department take immediate steps to impose adequate controls on the transfer of technical data identified on the critical technologies list. Present export regulations do not require a validated license for the export of many of these critical technologies to most non-Communist destinations. As a consequence, it is impossible to track, much less effectively control, these technologies. Most foreign nations, including several of our COCOM allies, do not have adequate license controls on exports of technical data or adequate enforcement of those controls. This loophole in our controls creates significant opportunities for leakage of this sensitive data to our adversaries.

I believe that the Department should use its existing authority to designate appropriate critical technologies as defense articles and place them under Munitions List license controls or, at least, seek adequate license controls under the Export Administration Act. I will appreciate being advised what action the Department will take.

Thus far, the critical technologies project has focused on technologies employed in weapons related systems and items on the Commodity Control List. I endorse the DoD and the Administration's view that process know-how can also enhance the Soviet military capabilities through contributions to key military support industries. I understand that the industries are: motor vehicles (trucks and diesel engines), chemicals, machine tool, computers, ship building, aerospace, and metallurgy. I do not understand why the oil and gas industry is not included in this list of strategic defense industries, despite the fact that the Administration's new policy establishes a presumption of denial for exports to the Soviets of tech-

nical data for the manufacture of oil and gas equipment. I ask the DoD to submit a report detailing its views on the advisability of including the oil and gas industry as a key military support industry for the purpose of the process know-how policy.

I have enclosed a copy of a letter Senator Nunn and I wrote to President Carter on March 12 and my speech of April 30. The letter and speech summarize a number of my concerns on export control issues in addition to those discussed in this letter.

Sincerely yours,

HENRY M. JACKSON,  
Vice Chairman.

#### STANDING WITH SOLIDARITY

Mr. JACKSON. Mr. President, I want to call the attention of my colleagues to Pope John Paul II's increased pressure on Poland's military junta to fully restore the nation's independent trade union, Solidarity.

Addressing 30 trade union leaders at the Vatican, including six Solidarity members in exile, the Pope said on February 9 that:

The restoration of an effective and complete respect for the rights of working men, and especially their right to a union which has already been established and legalized, is the only way out of this difficult situation.

The Pope further said that the harsh measures applied by the Polish Government "cannot force us to forget that this union acquired, and still possesses, the character of an authentic workers' organization, recognized and confirmed by the organs of the state."

Solidarity, the Pope said, "is and remains an autonomous and independent union, faithful to its initial aspirations, rejecting violence even in the difficult situation it faces today, and still hoping to be a constructive force for the nation."

Mr. President, I am encouraged at the Pope's firm position regarding the tragic developments in his native land.

In my own remarks at the International Solidarity Day rally in Washington, D.C. on January 30, 1982, I emphasized that "no solution to Poland's problems is possible without the full participation of Solidarity."

In this connection, I ask unanimous consent that the full text of my remarks be printed in the RECORD.

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

#### INTERNATIONAL SOLIDARITY DAY RALLY

We are here to protest. We are also here to pay tribute to a brave people whose struggle for freedom will be remembered throughout the world long after their puppet government has passed from the scene.

I am proud to be here among so many distinguished clergymen. The church in Poland is living proof that an institution which embodies the spiritual values, the historic roots, and the national aspirations of a people cannot be destroyed, even by the so-

phisticated weapons of the totalitarian state.

Though its leaders may be harassed, its activities restricted, its access to the media curtailed, the church endures, with quiet courage. It endures because for Poles, as for all people, there is a part of the human personality which will not surrender itself to the state. It is an inextinguishable force, a permanent threat to any communist system, and to all systems that identify society with the state.

I am proud to be here among so many trade unionists, whose counterparts in Poland created the magnificent movement of workers, which quickly became the vehicle for the expression, not only of workers' rights, but of human rights for all.

In the most difficult circumstances, a workers' movement arose, almost out of nowhere, to project the highest values of the trade union mission.

How appropriate that our activities today should begin in a house of worship and conclude in the house of labor, underscoring the role of the two most important people's institutions in Poland—the Catholic Church and the Solidarity trade union movement.

Poland offers a lesson that can be applied to other countries where basic human rights are violated. It is not enough to denounce such violations. Our goal must be to encourage and support the growth of free institutions, without which other rights are not likely to be secured or protected.

I want to commend Lane Kirkland and the AFL-CIO for all they have done, in so many practical ways, to assist and sustain Solidarity.

I am often asked whether Americans should encourage the Polish people to resist their Soviet-imposed government. Look at what we didn't do in Hungary, some people say.

They miss the point. The Poles are resisting—with or without our encouragement. They are resisting nonviolently. The question is: do we let them know, by means of demonstrations like this one, that we stand with them, or do we abandon them?

Make no mistake about it. There are people who propose that we turn our backs on the Poles. They don't use those words; instead, they say:

Solidarity went too far. Imagine, it asked for the right to associate. And why not? Can it be condemned for that? After all, it is only taking seriously the famous admonition of Lenin: "Workers of the World Unite!" Solidarity did just that!

And Solidarity asked for the right to strike, and to vote in genuine elections. What extremism!

Or we are told: the Jaruzelski junta is the best we could hope for. It is the only alternative to a Soviet invasion. We should view it as a force for moderation.

But let's be clear about the junta: what it represents, in fact, is the Soviet Union. It is the product of a Soviet invasion in a specific form, a Soviet putsch by proxy, the purpose of which is to destroy Solidarity as an independent institutional force and to secure the hold of the Kremlin on the Polish state.

To welcome the puppet junta, whatever the rationale, is to abandon the Polish people. It is to betray the thousands of Solidarity members interned in detention camps under harsh conditions. It is to betray the cause of internationally recognized human rights.

Meanwhile, the Jaruzelski regime is in deep trouble.

They have not succeeded in crushing Solidarity, nor in silencing the church. They

have not succeeded in stopping the disintegration of the Communist Party. They have not succeeded in restoring production in the factories, the offices, the farms.

They have not offered a program to solve the serious social and economic problems of Poland—because they cannot. No solution to Poland's problems is possible without the full participation of Solidarity.

This is what we are asking:  
Release Lech Walesa;  
Free all other detainees;  
Lift martial law altogether; and  
Resume negotiations between Solidarity and the government.

Poland poses a crucial test for the Atlantic Alliance.

We should spare no effort to persuade our allies to join us in strong pressures on the Soviet Union. But the United States has a role of leadership, and we do not meet our responsibility by reducing our response to the lowest common denominator acceptable to confused European opinion.

The President has told us that he is prepared to take stronger steps if the situation in Poland does not improve. It is not improving; it is getting worse. It is time for the President to act.

I urge the following immediate moves:

One. Call in a significant portion of the balance of the Polish government's debt to the West, thus requiring Moscow to assume more of the burden of bailing out the Polish economy.

Two. Ensure that any future transactions with the military junta in Warsaw be on a strictly cash basis, and that credits are no longer extended.

Three. Suspend all American participation in the Siberian Gas Pipeline, including the suspension of the export licenses of all American companies.

Four. Press for the strongest denunciations of the repressions in Poland in all available international forums.

Five. Step up private humanitarian relief to the Polish people, and enhance western radio transmission into Poland to offset the information and communication blackout.

One final word: Solidarity is not dead. It is the Polish junta whose days are numbered if it refuses to come to terms with Solidarity. It is the Kremlin that has more on its hands than it can handle.

My friends, our duty is to intensify the pressure—and to stand with Solidarity.

#### PRESIDENT REAGAN'S PROPOSED ENERGY BUDGET AND ORGANIZATION

Mr. JACKSON. Mr. President, the Congress was presented with President Reagan's budget on Monday. Most of the press attention so far has been paid to the plans for the New Federalism, holes in the "social safety net," and the awesome deficit projections. I wish to concentrate today on what the Reagan program means for this Nation's energy policy and energy security.

Taking a look at just four policy issues shows vividly why I believe we are in danger of losing what coherence and what progress we have made since the early 1970's in this Nation's energy policy. Those four issues are: First, dismantling the Department of Energy; second, our vulnerability to an oil supply interruption; third, the strate-

gic petroleum reserve program; and fourth, the budget for energy conservation programs.

Dismantling the Department of Energy became a "cause"—particularly in conservative circles—when the oil price control and allocation programs were in effect. Deciding to get rid of DOE because of oil controls ignores what DOE does. The entire Federal energy programs budget for this fiscal year 1982, includes \$88 million for regulatory programs. Energy regulation represents less than seven-tenths of 1 percent of the Federal energy programs budget, even according to the President's own numbers.

Ninety-two and a half percent of the energy programs budget for fiscal year 1982 goes for energy research, the strategic petroleum reserve, and for the nuclear weapons program and defense activities. DOE includes the national labs at Sandia, Los Alamos, and Livermore that are very important to the security of this country. No one disputes that these programs are of vital importance to this Nation's energy security, yet the very proposal to disperse them into cubbyholes in other departments will make them more cumbersome and less effective at best. One can just imagine the impact on staff morale and productivity of being assigned to four different agencies in 8 years.

Does anyone in this Chamber know who the Assistant Secretary of Commerce for Trade Administration is? I doubt it. I had to look it up. In the current Congressional Directory, the position is listed as "vacant." A phone call to that office revealed that Lawrence J. Brady is in charge. The Assistant Secretary of Commerce rank is the one that will be accorded the person in our Government who will be responsible for international energy issues under the latest "leaked" draft of the proposed Department of Commerce. Frankly, I doubt that the Saudis will be terribly impressed with the prospect of dealing with anyone of that rank.

Throwing international energy issues in with international trade issues at the Department of Commerce means that the energy issues will get short shrift. The Department of Commerce trade promotion program is a darling of the business community. It is inevitable that the trade issues will be the focus of the Department's attention. As a practical matter, the change in responsibility will mean that low-ranking officials at the Department of State will conduct the day-to-day business of our international energy policy. In my years of experience in Washington, having the State Department represent us on issues of this importance and complexity has not been very satisfactory.

In my view, abolishing the Department—and leaving this Nation without a Cabinet-level energy policymaker—will send the wrong signal at the wrong time to our allies, to our adversaries, and indeed to the entire world.

That gets to the next issue—our vulnerability to an oil supply interruption.

Few would dispute that the Middle East is still a cauldron of instability. I watch these things pretty closely as a member of the Energy Committee and as a member of the Intelligence Committee. I do not want to go into details right now, but I am particularly concerned about what is happening right now in Egypt. To me, Egypt is the key among the Arab States. They have welcomed the Russians back in with open arms. I have said publicly that I can see all sorts of opportunities for what we call mischief in Egypt, as well as in other areas of the Middle East.

Even though our own dependence on Persian Gulf oil is declining—due to conservation and the recession—our economy and those of our closest allies will for the foreseeable future be very much tied to Middle Eastern oil. Currently the United States alone is importing 3 million barrels per day from OPEC and about 2 million barrels per day of that is from Arab members of OPEC.

What does the administration want to do about this? Nothing. In fact, they want to do worse than that. The administration is opposing enactment of any type of energy emergency legislation. We have a bill now in conference—supported by a bipartisan majority in both the Senate and the House—to give the President authority to allocate oil to essential sectors of the economy in times of an emergency. And I have heard rumors that the President might veto it.

Adherence to a free market philosophy is laudable, but blind adherence—to the point of not providing the country with basic protection in time of a crisis—is shortsighted. That brings us to a third issue—the strategic petroleum reserve.

I applauded the Reagan administration's efforts on SPR for the first year they were in office. They averaged an SPR fill rate of 292,000 barrels per day in fiscal year 1981, a commendable achievement. Now I am concerned about what appears to be a change in direction.

All indications are that after a laudable acceleration of the strategic petroleum reserve program in the past year, the administration intends to throttle back substantially. Simply put, there is no more important energy security program than the rapid creation of a large strategic petroleum reserve.

The fiscal year 1983 budget request for oil procurement to fill the strategic petroleum reserve will be \$1.6 billion

less than last year's appropriation, a 44-percent cut. The budget request for storage facilities construction will be less than half what DOE wanted from OMB. Moreover, the administration wants to defer spending 28 percent of what was appropriated for facilities construction in fiscal year 1982. The result is that the administration concedes that completion of the SPR will slip 1 entire year. This rationale is akin to delaying production of B-1 bombers because of a lack of hanger space. The General Accounting Office just issued a report that criticizes the DOE for failing to examine temporary storage options which would permit continuing high procurement rates of oil for the reserve.

Equally important, the administration is proposing to dismantle the relatively balanced array of research programs aimed at new energy conservation technologies and alternative energy sources, including fossil fuels, which would reduce our dependence on imported oil. The new budget represents a 97-percent cut in funding energy conservation programs and an 89-percent cut in fossil energy research and construction funds. Those numbers compare the fiscal year 1983 request with fiscal year 1981 funding.

In 1980, budget authority for energy conservation programs was \$1 billion. Now President Reagan proposes to spend just \$18 million in fiscal year 1983. I think that is wrong.

Mr. President, energy analysis have recently noted that U.S. oil savings between 1979 and 1980 accounted for over half of the free world's reduction in oil consumption during those years. In fact, our oil savings in that period were as much as the total oil consumption in many industrialized nations in Western Europe and Asia.

No other oil importing nation can maintain that world oil glut as well as the United States, simply because of the magnitude of our oil imports and our potential for energy conservation.

What signal are we sending abroad if we phase out our programs to weatherize our buildings; and to perform research on more efficient furnaces, water heaters and appliances?

Notably, the Research and Development Panel of the Energy Research Advisory Board has just released its "Report on Federal Energy R. & D. Priorities," a report prepared at the Administration's request, which concludes that the budget cuts in energy conservation research are not warranted because the private sector will not do the research that is needed.

While I have supported nuclear power, I disagree with the administration's efforts to put all our Federal eggs into the nuclear basket. The Federal Government should be pursuing a balanced array of energy options.

In any event, I hope that in the coming debate over the dismantlement

of DOE and the energy budget, we do not lose sight of the real issue, whether we are maintaining a sufficient Federal effort in promoting our energy security. In my view, the proposals before us do not do so.

Mr. President, I yield the remainder of my allotted time to the Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. STENNIS. Mr. President, I thank the Senator from Washington. I listened to what he was saying, and I certainly shall followup in the context of the rest of his speech.

#### AGRICULTURE: PROBLEMS AND PROSPECTS

Mr. STENNIS. Mr. President, in 1981, we were repeatedly reminded of the plight of America's farmers as we struggled throughout the session to pass a farm bill which would be fair to farmers without causing an even greater deficit in our Federal budget. Before we adjourned in December, we passed a bill that we hope will accomplish this task. Although it appears that we have succeeded in being fair to farmers without increasing our deficit, it is obvious that the 1981 farm bill, by itself, will not bring the farmers of America out of the economic depression they are now experiencing.

The Department of Agriculture has reported that the estimated net farm income in America for 1980 was \$19.9 billion, a decrease from the \$32.7 billion net income of 1979. The estimated net income for 1981 ranges from \$20 to \$24 billion, still much less than 1979. In my own State of Mississippi, net farm income decreased from \$695.4 million in 1979 to \$271.4 million in 1980, a decrease of 61 percent, and the lowest net farm income in Mississippi since 1962.

In 1980, severe drought in the South caused farm income to be reduced drastically. This was compounded by President Carter's embargo of certain agricultural goods to the Soviet Union. In 1981, farmers produced record crops in almost every commodity, causing an oversupply and bringing prices way down. In 1980, Mississippi farmers received an average price of \$7.75 per bushel for their soybeans. In December of 1981, they were receiving only \$6.08 per bushel. Cotton farmers received almost 77 cents per pound in 1980, as compared to just over 51 cents per pound in December of 1981.

While the prices for soybeans, cotton, and almost every other commodity have been dropping, the cost of producing the commodities has continued to rise. The price of fertilizer is up 7.4 percent in 2 years and the price of fuel has doubled in that time. The price of diesel fuel alone has risen 370 percent since 1975.

In addition to these increases, dramatic increases in interest rates have placed extra stress upon the farmers. The cost of credit obtained at commercial lending institutions has risen as much for farmers as for any other business, making it almost impossible for farmers to borrow commercially. Interest rates charged by Federal land banks in the Fifth Farm Credit District, which comprises the States of Mississippi, Alabama, and Louisiana, increased from 8.5 percent in December 1975 to 11.75 percent in December 1981. As recently as 1978, Farmers Home Administration was charging 8 percent interest on their standard operating loans to farmers. Currently, this figure is 14 percent. Interest on their emergency production loans has increased from 8 percent in 1977 to the 16 percent now being charged. The Commodity Credit Corporation has increased the interest on its crop loans from 6 percent in 1970, to a current rate of 14 percent.

These and other factors over the past few years have caused the debt incurred by farmers to grow immensely. Total farm debt grew by an estimated \$20 billion during 1981, to \$194.5 billion, an increase of 11 percent for the year. This figure is astronomical when we consider that in 1976, the total debt was less than half of this amount, at \$90 billion.

I realize that I have painted a very grim picture thus far of the farming situation. I never like to dwell on negative thoughts but, in all truthfulness, the picture is grim for farmers at this time. In order to find the solution to the distress our farmers are experiencing, I felt it was necessary first to discuss the problems.

There are solutions to these problems I have mentioned and I am pleased that we have already taken some steps toward improvement. Because of the record crop production in 1981 and an oversupply of stock commodities, I, along with our Members of Congress and the farming community, urged Agriculture Secretary John Block to consider implementing some type of acreage reduction program. On January 29, 1982, Secretary Block announced such a program, calling for 10 to 15 percent reductions in the 1982 cotton, rice, wheat, and feed grain crops. Hopefully, this move will decrease our oversupply of these commodities, thus improving the market situation for farmers.

Another step to increase the demand for commodities and improve the market for farm productions is expanding our export markets. I have asked Secretary Block and U.S. Trade Representative Bill Brock to use every means available to them to increase our shipments of agricultural products to other countries. Already, agriculture sets a shining example among all exports of the United States, with a

1980 trade balance of plus \$24 billion. However, we are all well aware that there are still many countries with great needs for our farm products. By making more of our products available to them, or by making them more available to our products, we can help them and our farmers.

Of all the steps that could be taken to help this Nation's farmers, none would be more effective than making credit more available and making it available at lower interest rates. In 1981, I introduced legislation which would establish a national commission to study this problem and make recommendations for actions that Congress can take to provide stability in this area. Through the joint efforts of this commission, the President of the United States, and Congress, I know we can find an eventual solution to this grave problem.

These lower interest rates will take time to achieve, however, and our farmers need credit now, even at the higher rates they are having to pay. The Federal Government can continue to help sound farmers avoid bankruptcy by serving as a lender of last resort, through the Farmers Home Administration. However, there is a limit as to the amount of help the Farmers Home Administration can provide. At some point, it becomes the responsibility of the private sector to help provide credit for these farmers who are experiencing temporary difficulties.

I do not intend to say that lending institutions should make or extend loans for farmers who show no signs of ever improving their situation. However, those farmers who have done well in the past and continue to practice good farming techniques should not be abandoned because they have 1 or 2 poor years. It is especially important that the institutions of the Cooperative Farm Credit System, which have a long and proud history of service to farmers in Mississippi and throughout the Nation, bear with these farmers. I trust these institutions will continue to take a stand for helping farmers in even the roughest of times. It is my hope that these cooperative lending institutions, and all other commercial lenders, will use all the tools available to assist farmers who are experiencing temporary difficulties.

There are serious problems now facing America's farmers, but there are also solutions to the problems. Unfortunately, the solutions may not appear too pleasant, such as the acreage reduction program, which, in effect, cuts back on production in order to improve market conditions. However, to cure the economic ills of our farmers, we must take our medicine, regardless of how bad it tastes.

We cannot expect the farmers alone to bear up to these problems. Farming is still the "heartbeat of America" and

when farmers have problems, we all have problems. Let us start now to remedy this national concern.

Mr. President, we had a good debate yesterday with reference to the Commodity Credit Corporation, and the \$5 billion for the benefit of agricultural loans. I did not want to crowd in on the time yesterday to make these remarks that I have this morning.

Mr. President, I have recently completed a tour, a county-to-county, a courthouse-to-courthouse tour, of my State. I visited over 90 percent of the counties and came in contact with every segment of the economy, including the agricultural producers of the State. This is not a poor-mouth speech, it is not a poor-mouth plea from these people. I was looking for the facts. I refer now to our agricultural picture in the United States as a whole, but, of course, I know more about it in my own State.

In 1980, Mr. President, in our export-import balance of trade, agricultural products contributed a plus figure of \$24 billion—\$24 billion in favor of our side of this export-import problem balancing our foreign trade. That, within itself, just on the sheer merits, shows what an important, highly essential factor farming is with reference to our world trade, without which our economy would be drastically reduced in this country.

In my own State, Mr. President, we have had hard years recently, very difficult years out on the production line. I am amazed to see how the figures really do turn out. In my own State of Mississippi with reference to farm income, this was not due to any inaction on their part. They were not dilatory in any way. It was due to weather and other circumstances beyond their control. Investments were made in the way of labor and fertilizer and other expenses, expenses for machinery and other things that go to pay the cost of a normal crop.

Those are devastating facts, Mr. President, that show that this essential major segment of our entire economy must have some sustaining way of carrying on in the face of these adverse conditions. On top of that, we all are familiar with the load that they have to carry along with everyone else with reference to these excessive interest rates that are now climbing back up again.

I am not laying blame or trying to, but it is a condition of life where they are having to carry the extra load that comes along on top of all these other conditions with which they are faced. No wonder that we had almost a unanimous vote yesterday, as I recall—I do not have the figures in mind this morning—with reference to the Commodity Credit Corporation. I believe the Government will get all of its money back with reference to these

loans, but no wonder we had a near unanimous vote once the membership was apprised of the facts in reference to that rather limited field of financing that the resolution contained yesterday.

Mr. President, the lending institutions now in the agricultural world must give lenience for the time being to this delicate problem of high interest rates, and the willingness of the Federal Government to meet the situation and span the tide could not be more clearly spelled out than with the mere statement of these facts and figures. I know of my personal knowledge that a great many of these producers of farm products have already carried the load. They have already exhausted their own resources, their reserves, many of them their own reserves, their own life savings, you might say.

These savings have gradually been absorbed in these lean years by the terrific costs of planning and going through the processes of producing a buck, whether you produce one or not, whether the growth year is good or not. These lean years have gradually eliminated the savings, the reserves, the backlog of many of these farmers and agricultural producers. The security that they offer is still good to a great measure; their potential for future years is still there. Whatever is loaned to them or time allowed on the debts they already have is certainly not to be considered a loss now to the Government. Adjustments will be made in the future.

I am not just talking through my hat, Mr. President. I have seen these things come and go for decades. I live in a rural county. I live close to the land and the farmer. I know the problems they have. I have practiced law, I was a State representative, so I know how these things work and the job that the farmers are doing.

I am delighted at the chance to bring to the attention of my colleagues these facts. I was assisted in preparation of these remarks by one of the finest friends and advisers that I have in the State, who has been a monumental success in the field of agriculture, not just growing products, but being head of a nitrogenous fertilizer company that has been modern and pioneering and contributed so much, a very fine man of judgment. I know that he knows the problems and he has poured his heart and soul, in addition to his knowledge, into helping in the preparation of this statement. It is a privilege for me to give his name—Owen Cooper of Yazoo City, Miss. He is a lifelong associate and friend of mine, although not in a business way.

Mr. President, I will take advantage of other opportunities, in the Agriculture Committee and elsewhere, to present to the Senate the true facts in connection with this problem. I have

contributed what I can toward the solution of our problem with respect to fiscal affairs.

We must find our way back to a sound position in those affairs, where the outgo is more nearly the same as our income. We must stop the deficits that have overwhelmed us more and more in the last several years. I have been here during those years, and I have observed this as we have gone along. My vote has been somewhat in line with what would have been a nearly balanced budget, anyway.

There is nothing new about this problem. Any free government such as ours is going to have these problems. The only way to avoid them is to go to an autocratic government of some kind, which we do not want as a system.

So we will stay with these problems. We will live with them, and we will pull through. We will work them out.

Time is short. We made fine headway last year. We must make that gap a little closer this year, if at all possible, in balancing the budget. But we cannot avoid these special problems, one of which I have outlined.

I thank the Chair for the additional time, and I yield the floor.

#### RECOGNITION OF SENATOR PRYOR

The PRESIDING OFFICER. The Senator from Arkansas is recognized, under the previous order, for not to exceed 15 minutes.

#### CHEMICAL WARFARE

Mr. PRYOR. Mr. President, on January 22, I wrote a letter to the President of the United States urging him not to certify to Congress the need for this country to go back into the production of nerve gas and other chemical weapons.

This week I received my answer from the President relative to this administration's position on this critical issue.

That answer appeared in the Washington Post and New York Times and throughout the news media. The President responded by saying that this administration had made a decision to embark on a course of such magnitude that it could affect the entire future of this country and the world as greatly as the nuclear era.

The President of the United States has certified this week to Congress that the production of lethal binary chemical munitions is essential to the national interest and the Defense Department has requested budget authority to spend at least \$705 million next year to go back into the chemical weapons race.

We recall that just a few months ago, Mr. President, there was a great debate in the U.S. Senate over this

issue of whether or not to expend, as some said, "just a few million dollars" to construct a facility to produce nerve gas.

I remember well the argument espoused by some of the proponents of chemical weapons. During the course of that debate, one of the basic thrusts of their argument was, "Let's go ahead and appropriate this relatively small amount of money, \$23 million or \$26 million"—whatever the case was at that particular time—"to construct the facility."

That did not mean that this country was committing itself to the reversal of a 13-year-old policy of opposition to the production of chemical warfare. Basically, the proponents of nerve gas said, "Let us construct the facility and then, at the appropriate time, we will make a decision, based upon the President's certification or lack of certification, whether to go back into production of nerve gas and chemical weapons."

Once again, I express my opposition to this administration's reversal of a policy maintained by three Presidents for more than a decade.

As I indicated to the President in my January 22 letter, I oppose the beginning of a new multibillion dollar competition with the Soviet Union in chemical weapons, in which no one can win, for the following reasons:

First, this country today has an enormous existing stockpile of chemical weapons. Contrary to what some would have us believe, there is not a serious deterioration of this existing supply of chemical weapons and nerve gas that we have stored in 11 sites in this country and in other places around the world.

So, the question is, what are we going to do other than add to the stockpiles that we already have?

The second reason I oppose the production of nerve gas and entering once again into this chaotic and catastrophic arena of chemical warfare production is that only unprotected people, the civilian population, will be vulnerable to the use of chemical weapons, since the Soviet and the U.S. troops are today equipped with protective clothing.

In other words, nerve gas does not kill soldiers, Mr. President. It kills civilians. It kills unprotected men, women, and children who do not have the luxury of a gas mask or protective clothing.

The third reason why I oppose the production of nerve gas is very clear. I have stated it on several occasions on the floor of the Senate and in other places. We face the fact today that our European allies refuse to deploy, to store, new binary nerve gas or chemical weapons on their soil. They have stated this proposition in no uncertain terms. Therefore, where will we store

additional nerve gas and other chemical weapons other than on our own soil? That would be too far away from the specific battle zone in a chemical warfare environment.

Fourth, I oppose the production of chemical weapons because this program as outlined by the President, and supported by the Army and the Pentagon, diverts resources—vital resources, critical resources, precious resources—which could be better used to improve our conventional defense system.

I am concerned, further, about the possibility that this departure from previous policy will be approved by Congress without a full, open, and careful hearing on this issue.

If we look back the last 2 years and review the debate on this floor about the decision to go back into the production of chemical weapons, we will see that only on one and possibly two occasions have we had committee hearings. Those have been executive hearings on the issue of whether or not to reverse this 13-year-old policy of staying out of chemical weapons production.

I am also concerned that at a time of a \$100 billion deficit America is again committing itself to a multibillion dollar chemical weapons program of with very little attention to how it fits into our overall defense plan.

The problems we face when decisions of this magnitude are made on an ad hoc basis are well illustrated by this morning's Washington Post article. This describes the newest turnaround on the question of how and where to base the MX missile.

I contend that our lack of defense planning, not necessarily our lack of weaponry, is our real window of vulnerability. We may have a 5-year plan to spend defense dollars but today what we lack is a 5-year plan for protecting this Nation, a 5-year plan for our national defense.

During the last 2 years, and with little discussion this Senate has authorized, as I have mentioned previously, \$23 million for the preliminary phase of a chemical weapons program.

Before we go any further, before we commit any more money, before we make this drastic mistake, I believe that we owe it to this country and to the people of the United States to hold detailed, public hearings on the appropriate role chemical weaponry should play in our national defense posture.

I have today written the distinguished chairman of the Appropriations Committee to request such hearings of the full Committee on Appropriations of the Senate. I have made this request of Senator HATFIELD, the chairman of the distinguished Committee on Appropriations. I am very hopeful that Senator HATFIELD will hold full hearings of that committee on this issue before we plunge our

country into this unwinnable situation.

In conclusion, I know that the President is sincere in wanting our national defense posture to be as strong as possible. All of us in the Senate and in the Congress and across this country want a strong defense. But when we look at this decision in the full light of day, I think there is a distinct possibility the President and the Pentagon could well reverse themselves even after we have committed a multibillion dollar expenditure.

The MX missile is on our minds this morning because of the Washington Post article. There is a similarity between the MX and the production of nerve gas, and that similarity is this: Here is the MX missile system where we have spent from \$4 billion to \$5 billion and maybe even more in study, planning, and preparation; still we have no MX missile, and still, if it is produced, we do not know what to do with it. We do not know where to put it, we do not know whether to put it in existing silos or whether to put the MX missile in a place that will be a deceptive mode of deployment.

In the nerve gas situation there is a similarity to the MX because here we are appropriating \$23 million to construct a site to make it, another \$30 million or \$40 million to complete and equip that facility. Then, finally, we are considering \$700 million to \$800 million, in this appropriation and another billion dollars next year, and then another couple of billion dollars the year after to get into full-scale production of nerve gas. Still we have not defined the mission for chemical warfare, we have not defined the role for nerve gas, and we do not know what we will do with it once it is actually produced.

So, Mr. President, we find ourselves today embarking, I think, on a long road of insanity in a war that we cannot win, and the Soviets cannot win. It is one where we would find ourselves continuing to spend on the road to oblivion, spending ourselves into bankruptcy and trying to purchase the illusion of strength. We are committing dollars to a problem and we know in retrospect that the decisions we have made in the past, have been made in the wrong way because we have attempted to throw dollars at problems. I have a great fear that this is what we are doing once again.

Mr. President, I ask unanimous consent to have printed in the RECORD my letter to the Honorable MARK HATFIELD, chairman of the Appropriations Committee, asking that the full Committee on Appropriations hold open hearings and give us the opportunity to examine thoroughly this decision before it is finally made by the Congress.

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

U.S. SENATE,

Washington, D.C. February 11, 1982.

HON. MARK HATFIELD,  
Chairman, Senate Appropriations Committee,  
Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to request that the full Senate Appropriations Committee schedule early and extensive hearings on the President's request to fund the production of binary chemical weapons. This decision, reversing a policy maintained for more than a decade by three Presidents, has an importance that warrants full discussion by the Congress.

In a time of budget deficits, expansion of national defense expenditures, and sensitive discussions with our allies about defense and foreign policy commitments, I believe it is essential for Congress to make its decision about funding production of new nerve gas weapons only after full, open and careful consideration.

As you know, I have actively opposed our country's re-entering the nerve gas race. On January 22 I wrote the President urging him not to certify production of nerve gas as necessary to our national defense. This letter cites four specific areas which I believe must be addressed before a decision of this magnitude is made. A copy of this letter is enclosed.

Mr. Chairman, I would certainly welcome the opportunity to participate in these full committee hearings and share my concerns with the Committee.

Thank you for your consideration of this request.

Sincerely,

DAVID PRYOR.

#### ORDER VITIATING ORDER FOR THE RECOGNITION OF SENATOR QUAYLE

Mr. STEVENS. Mr. President, the special order for Senator QUAYLE will not be needed. I ask unanimous consent that the order setting aside 15 minutes for his use be vitiated.

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

Mr. STEVENS. Mr. President, I now yield back the remainder of our leadership time.

#### ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. There will now be a period for the transaction of routine morning business.

#### CENTER FOR NATIONAL POLICY STUDIES ON MILITARY POLICY PROVIDE THOUGHTFUL ALTERNATIVES

Mr. CRANSTON. Mr. President, two thoughtful papers presented by specialists of the Center for National Policy provide important arguments for revising U.S. strategic nuclear weapons policy.

These papers were authored by Paul Warnke, former Director of the Arms Control and Disarmament Agency and

chief U.S. negotiator for SALT II and James Woolsey, former Undersecretary of the Navy. The papers were specially commissioned by the Center for National Policy, a nonprofit public policy research organization committed to stimulating ideas and new approaches to the vital issues of the eighties. This is but one of a continuing series of thoughtful presentations made by the center; I wish to commend the center for this valuable work.

Because of the great importance of these issues, I recommend these insightful presentations to my colleagues and ask unanimous consent that they be printed in the RECORD following the conclusion of my remarks. I call particular attention to the concerns expressed by Mr. Warnke regarding the proposal to deploy sea-launched cruise missiles on general purpose submarines.

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

A STRATEGIC NUCLEAR WEAPONS POLICY FOR THE 1980's

(By Paul C. Warnke)

Formal decisions by the Reagan Administration and remarks by some of its officials over the past several months have stimulated renewed debate about America's strategic nuclear weapons policy. Despite the plethora of announcements and comments, however, there is reason to doubt whether there is, in fact, an American policy on strategic nuclear weapons.

The Reagan Strategic Program announced on October 2, 1981 did little to dispel this doubt. Although wisely abandoning the costly, cumbersome and unworkable proposal by the Carter Administration to shuttle MX missiles among multiple shelters, the announcement continued to refer to a "window of vulnerability" which is said to render our land-based intercontinental ballistic missiles (ICBMs) subject to destruction by a Soviet preemptive attack. But if it must be assumed that the "window" is indeed open, the decision to place the MX missiles in existing ICBM silos would do nothing to close it, whatever degree of hardening might be undertaken. And other features of the program, notably the deployment of hundreds of strategic-range cruise missiles on general purpose submarines, would serve largely to move the nuclear arms competition between the United States and the Soviet Union into a new and more dangerous area. The program as a whole reflects no coherent strategy.

United States and Soviet negotiators began meeting in Geneva on November 30, 1981 to discuss limitations on the intermediate-range nuclear forces that can strike European targets from the Soviet Union and, after the NATO deployment planned for late 1983, could hit the Russian homeland from American launchers in West Germany, the United Kingdom, Italy, and perhaps the Netherlands and Belgium. There have been preliminary discussions about the resumption of the Strategic Arms Limitation Talks (SALT), tentatively re-named START (for Strategic Arms Reduction Talks).

The relationship between the two sets of negotiations, if understood, is unexplained. They are of pivotal importance to world

peace and survival. But if there is to be a genuine chance of significant progress toward controlling nuclear arms, it is important that there be an underlying and rational strategic doctrine.

THE PURPOSES OF NUCLEAR WEAPONS

One threshold question must be asked. What purposes can strategic nuclear weapons serve in promoting national objectives? It is doubtful that a uniform answer would be given today or that officials in previous administrations would have found themselves in complete agreement. The differences in view even extend to the definition of strategic weaponry.

No clear line of demarcation can be drawn between strategic and tactical nuclear weapons. Even limited battlefield use carries a grave potential of escalation to an all-out strategic exchange. For purposes of analysis, however, it is helpful to classify as strategic nuclear weapons only those American warheads targeted against the Soviet Union and Warsaw Pact countries and those Soviet warheads that can strike the territory of the United States and its allies.

Tactical battlefield nuclear weapons are intended for use against enemy troops and armor. They would explode on friendly territory and any collateral damage would, in all likelihood, be incurred by West European countries. The decision to use them to ward off a Soviet conventional attack would be difficult and dangerous. But there is, at least in theory, a fire break.

For example, the so-called neutron bomb, more accurately described as an enhanced-radiation warhead, has provoked much controversy and has given the Soviet Union a chance to play on popular West European aversion to nuclear arms. But neither it nor the older tactical battlefield nuclear weapons can threaten the security and survival of the Soviet Union. These shells and short-range missiles can only destroy Soviet soldiers and tanks operating in Western Europe. The Soviets have a sure defense against battlefield nuclear weapons: all they need to do is stay home and not invade.

Strategic nuclear weapons, by contrast, can devastate even a non-aggressor with little warning. They are unrelated to any battlefield and they are indiscriminate in their toll on human lives and property.

The notion that these weapons can be used in a relatively clean counterforce strike to destroy enemy ICBM silos may fit in a war game but not in the real world. The nuclear war-fighting concept reflected in reports of Presidential Directive 59—finalized in the campaign heat of the summer of 1980—glosses over the numbers and destructive power of the warheads that would be needed to stand any chance of attriting even the land-based segment of the thousands of strategic nuclear warheads deployed by each side. The response to an attack that would leave millions dead and more millions dying could not be expected to be cool and calculated. Nor would the resulting war be a protracted exchange of limited strikes.

Because of the expense of nuclear arms and the enormous new dimension they give to destructive capacity, strategists have struggled since the dawn of the atomic age to find some way in which they might be used flexibly to achieve foreign policy objectives. At a time when we had a virtual nuclear monopoly, we could indulge such concepts as massive retaliation, whereby we could threaten nuclear catastrophe to an opponent who challenged American interests by the use of conventional military forces. Even today, when there is rough

equality in strategic nuclear striking power between the United States and the Soviet Union, there are voices urging the West to "devise ways in which it can employ strategic forces coercively, while minimizing the potentially paralyzing impact of self-deterrence." This argument, put forth perhaps most starkly in an article by Colin S. Gray and Keith Payne in the Summer 1980 issue of *Foreign Policy*, continues; "If American nuclear power is to support U.S. foreign policy objectives, the United States must possess the ability to wage nuclear war rationally."

The current Director of the U.S. Arms Control and Disarmament Agency (ACDA), Eugene D. Rostow, told the Council on Foreign Relations on October 20, 1981 that the United States must "be capable of responding with nuclear weapons if its vital interests are imperilled by attack from nuclear or conventional forces." The concept of extended deterrence, whereby the threat to use our strategic nuclear weapons may prevent or stop Soviet aggression or mischief anywhere in the world, seems still to be accorded intellectual respectability. There is a note of nostalgia, if not reproach, in comments such as that of George Will in the *Washington Post* of December 20, 1981: "The end of U.S. strategic nuclear superiority has meant an end to the ability to use threats of general war to enforce regional security." That ability, it should be noted, ended while we still had impressive quantitative and qualitative margins, but when the Soviets had acquired forces adequate for nuclear retaliation. Nothing we could have done, or can now do, would restore it.

Soviet intervention in unstable regional situations, even of an overt nature, won't be stopped by the brandishing of our nuclear arsenal. The prospect of reciprocal nuclear immolation commands credence only in the context of a nuclear threat from the other side. And the actual use of strategic nuclear weapons in response to conventional aggression would set in train an escalation for which nothing in history provides any experience on how it could be controlled or how it could be stopped.

Strategic nuclear weapons can serve only one rational purpose: They can prevent the Soviet Union from using its own strategic nuclear weapons or making a plausible threat of such use against the United States or its allies. They cannot be used as a substitute for conventional military capability or to shape a world order to our liking. They are not susceptible of being tamed to provide a flexible response or a sound strategy of nuclear war-fighting. A threat to nuke the Kremlin if the Soviet leaders don't behave would lack any credibility and would evoke comparable apocalyptic bluster.

Nor is it any longer credible, if indeed it ever were, that the United States would strike the Soviet Union with nuclear missiles and bombs if the Soviets were to march into Western Europe. We cannot be expected, by friend or by foe, deliberately to convert a conventional conflict into a strategic exchange that would mean our own nuclear obliteration, whether the American warheads come from the continental United States, from ballistic-missile submarines, or from launchers in Western Europe. It remains doctrine that, in case of Warsaw Pact attack, NATO has the option of utilizing some of its approximately 6,000 tactical battlefield weapons. Such use would present obvious problems, particularly for our allies in whose homelands these weapons would explode. But Soviet planners must recognize

the real risk that a massive conventional attack could elicit a battlefield nuclear response, not involving strikes on targets in the Soviet Union. Where this would lead in nuclear escalation can only be speculated.

To some degree, therefore, the existence of strategic nuclear weapons may inhibit the exercise of conventional force that could lead to U.S./U.S.S.R. conflict. This is, however, inherent serendipity and requires no tinkering with nuclear weaponry or with strategic doctrine.

The sole reasonable and legitimate purpose of our strategic nuclear arsenal remains that of deterring Soviet nuclear attacks on the United States and its allies. Our strategic nuclear weapons policy, both declaratory and operational, should therefore be one of no-first-use. Our military planners should be told, in unmistakable terms, to abandon any contingency plans that involve a preemptive strike against targets in the Soviet Union, whether military, industrial or urban.

The planned effect of this policy would be to restrict Soviet nuclear missiles and bombs to the same role, *i.e.*, deterring U.S. first use. If the Soviet leadership knows that its facilities and people are safe from nuclear destruction only so long as its strategic arsenal is unused, our own security is strengthened.

The policy constitutes, of course, an endorsement of the doctrine of deterrence of nuclear war by Mutual Assured Destruction (MAD). Some argue that the doctrine is discredited and must be discarded because the Soviets have never accepted it. Such critics argue for a more sophisticated, more complex approach to deterrence through acquisition of a greater nuclear war-fighting capability.

These arguments are demonstrably defective in at least two respects. First, there is no substantial evidence that the Soviet leaders believe that they can fight, survive and win a nuclear war with the United States. Some theorists on both sides of the oceans have, admittedly, advanced this proposition.

The usual Soviet references are to the superior cohesion of its socialist system which is said to create "objective possibilities" of coming out better than the United States. But bravado should not be misinterpreted as belief. The Soviet leaders are practical, experienced men who recognize that their uneasy empire could not survive if nuclear warheads start dropping on Moscow.

The other fallacy in the argument against MAD is that this is a theory that can be discarded and replaced. But Mutual Assured Destruction is not just theory. It is a fact of life and death. A strategic nuclear exchange between the two superpowers would mean their mutual destruction. Conceivably, we might come out of a nuclear war marginally better off than the Soviet Union, but we would be appreciably worse off than Bangladesh.

Rational debate is thus not possible on the question whether we should now move beyond deterrence as a nuclear strategy. No sci-fi scenarios about the application of nuclear forces for political purposes or about escalation dominance offer a respectable refinement leading to greater security.

#### SHORING-UP DETERRENCE

Rational debate can, however, take place on how best to shore up deterrence. Does this mean, as stated by some of the proponents of Presidential Directive 59, that the United States must have the capacity to fight a limited and protracted nuclear war? Is the risk of nuclear conflict lessened if we

develop a highly refined nuclear war-fighting capability? Will we be safer if, in response to the theoretical vulnerability of our ICBM silos attributable to growing accuracy of Soviet strategic warheads, we deploy a new American intercontinental ballistic missile (still known as the MX, for Missile Experimental) with the potential ability to destroy Soviet ICBM silos and command, control and communications (C<sup>3</sup>)? Should we instead try to preserve Soviet C<sup>3</sup> so that Soviet leadership has a means of stopping a war? Or does none of this matter because of the fundamental unlikelihood that the war could ever be kept limited?

Recognition that a strategy of no-first-use of nuclear weapons best serves our national security makes these questions for the most part academic. It avoids the futility of structuring strategic nuclear forces for any purpose other than the assured survival of a retaliatory capability that would devastate the attacker. By contrast, if forces are designed for the purpose of fighting and winning a limited and protracted nuclear war, the present situation of mutual deterrence could erode.

In explaining Presidential Directive 59, the then-Secretary of Defense, Harold Brown, said that he did not believe, and that President Carter did not believe, that limited nuclear war was possible. But, he continued, we cannot be sure that the Soviets recognize this fact, and thus prudence requires that we adapt our strategy accordingly.

To the extent that we do so, however, we should take account of the likelihood that the Soviet leaders may impute similar irrationality to us. Moreover, to the extent that the respective nuclear forces are optimized for counterforce potential, the perceived fragility of the retaliatory deterrent may push both sides toward a doctrine of launch on warning, and thus exponentially increase the risk that nuclear war may start from desperation and panic.

Instead, we should declare that under no circumstances will we be the first to use strategic nuclear weapons. We should make clear that we regard the entire concept of a protracted nuclear war in which both sides, at various intervals, lob a few missiles into the other's heartland as completely inconsistent with the facts of nuclear destructiveness and the impact that even a few hundred nuclear warheads would have on the functioning of society—its ability to heal the sick, bury the dead and meet the minimal needs of the unhappy survivors.

References to a surgical counterforce strike ignore the numbers of targets that must be destroyed and the numbers of warheads that, at a minimum, must be launched for that purpose. Today we have 1,052 hardened ICBM silos. A Soviet military planner intent on their incapacitation would, according to most calculations, have to deliver two Soviet Warheads to each ICBM site. The minimum attack, with no margin for error and directed just at the land-based segment of our strategic nuclear triad, would be in excess of 2,000 Soviet warheads.

Moreover, because the purpose of preemption is to prevent retaliation, at least hundreds more Soviet warheads would be directed at our strategic bomber bases, at our in-port ballistic missile submarines and, under the Soviet counterpart of Presidential Directive 59, at our command, control and communication facilities. The consequences for the United States would be neither neat

nor surgical. Our medical experts warn of the inability of our health care system to deal with the countless victims of burns and radiation—whether millions or tens of millions. Even if much of the population could be sheltered, they would emerge to a devastated land of radioactivity and epidemic. Our response would in all likelihood be intended to inflict the greatest possible damage to the perpetrator of the crime and to cripple his ability to do it again. The sensible strategy of flexible response thus loses its meaning once the strategic nuclear threshold is crossed.

Soviet President Leonid Brezhnev has strongly implied a willingness to declare a no-first-use policy. But whether or not the Soviet Union does so, and whether or not its statements can be believed, we can and must make sure that no Soviet first strike can rationally be contemplated. Just as clear as our policy against first use should be our determination to retaliate for any nuclear strikes on the United States or on the countries with which it is allied. The use of the Soviet intermediate-range SS-20 missile against Western Europe, in itself and as a portent of things to come, would produce an immediate nuclear response against Soviet targets. We would have to treat it as an act of criminal insanity. Even if our own society had been destroyed, nuclear retaliation would not be a mindless act of vengeance. The interests of the survivors, and our moral commitment, would require that the leaders who had perpetrated this enormity not be allowed to inherit the earth and bend its people to their will.

The greatest possible strategic stability and the lowest risk of nuclear war thus exist when the strategic nuclear weapons on both sides are the most survivable and the least provocative—those that are the most difficult to destroy and present the least potential for counterforce preemption. With such forces, neither side can expect to gain by initiating a nuclear strike, and neither can be panicked into striking first for fear that it may have been deprived of its ability to retaliate.

#### THE REAGAN STRATEGIC PROGRAM

It is against these criteria that the strategic weapons program announced by President Reagan on October 2, 1981 should be evaluated. It is against these criteria that we and our NATO allies should determine the positions to be taken in the current negotiations about intermediate-range missiles. It is to maximize survivability and minimize counterforce potential that we ought to pursue the expansion of effective measures of arms control.

The Reagan Administration's strategic modernization program is, in many respects, better than might have been expected given earlier comments about the therapeutic value of a nuclear arms race and the "fatally flawed" nature of the SALT II treaty. Some of the elements would increase the survivability of the deterrent triad. Moreover, nothing in the program goes beyond the restrictions of SALT I and SALT II, although the SALT I provisions limiting offensive nuclear arms expired four years earlier and SALT II has not been ratified by the U.S. Senate. The destabilizing systems included in the program require no irrevocable actions for a period of years. Accordingly, the arms control options remain open and the Geneva talks on intermediate-range nuclear missiles have not been undercut before they could get well underway.

The decisions announced in October involve all three elements of our present nuclear deterrent triad—land-based ICBMs, ballistic missile submarines and strategic bomber forces, as described below. In addition, the program stated an intent to utilize some general purpose submarines for new sea-launched cruise missiles and to improve our command, control and communications systems (C<sup>3</sup>). Some unsurprising, though a bit vague, proposals were also advanced for modernization of strategic defense.

Perhaps the most controversial of recent weapons systems is the MX intercontinental ballistic missile. The kind of MX system proposed by President Carter—200 missiles based on mobile launchers, each of which would move among 23 multiple protective shelters—ran into strong opposition from strategists, environmentalists, taxpayers and even the Mormon Church. The Reagan Administration has proposed a more modest force of 100 MX missiles, 30 of which would be deployed initially in existing ICBM silos.

It can be hoped that this decision (more accurately, a deferral of decision) is the beginning of the end of MX.

Neither the Carter Administration's elaborate shell game deployment nor the placing of MX missiles in superhardened silos can actually solve the inherent, though highly theoretical, vulnerability of land-based missile launchers. Recognition of this problem years ago inspired the ballistic missile submarine program which, because of the survivability of SLBMs, made attack on ICBMs reckless and unproductive.

The multiple protective shelter program would mean only more and softer fixed targets. No matter how profligate the defense budget, the cost of hardening 10 or 20 shelters per missile to withstand the same psi pressures as existing Minuteman silos would be prohibitive. In any event, no degree of hardening could protect against multi-megaton Soviet warheads. And, if the negotiated SALT II constraints on warheads per missile are not observed, further fractionation of the Soviet ICBMs would yield more than enough additional warheads to target any feasible number of additional shelters. Moreover, there is good reason to doubt that we could win for long the game of hide-and-seek with Soviet surveillance techniques.

Nor are the three MX basing options that the Reagan program reserves for decision by 1984 any more appealing. A Continuous Airborne Patrol Aircraft that could launch an MX can only be considered an awkward appendage to the air-based leg of the deterrent. It appears that most ICBMs would continue to be silo-based and any new bomber would be better used for cruise missiles and short range attack missiles. Ballistic Missile Defense of land-based MX missiles is, according to the Department of Defense briefing materials on the Reagan Strategic Program, not now technologically adequate and not a good bet for the future. Deep Underground Basing might protect the missile but interfere with its launch, since the long vertical tunnel could readily be choked by debris generated by nuclear explosions.

What will continue to protect the land-based portion of our nuclear triad are the ineradicable uncertainties that any attack could eliminate almost all of our 1,052 ICBM silos, plus the complete certainty that even successful attack would leave the Soviet Union vulnerable to our submarine-launched ballistic missiles, containing about 50 percent of our strategic nuclear war-

heads, as well as to the missiles and bombs on our strategic aircraft.

Soviet ICBMs have never been fired with nuclear warheads nor on a North-South trajectory. Effects of magnetic, gravitational and climatic conditions remain untested. The exquisite timing required of an attack on our ICBM fields—to avoid the fratricidal effect of earlier explosions on subsequently arriving warheads, and to prevent launch of the remaining ICBMs unless all are hit at the same time—can never be surely in hand. The Soviet leadership would have to expect that the United States would retain sufficient missiles and bombs in its land, sea and air forces to give the President a variety of options, not just the alternatives of surrender or the initiation of attacks on cities.

In short, under the criteria for strategic stability suggested above, our ICBM force will remain survivable because of the sound decisions taken many years ago to diversify our nuclear retaliatory capability.

From the standpoint of the other desideratum—i.e., nuclear weapons systems that present the minimum provocation—the MX missile is an unwise choice, however it is deployed. According to Secretary of Defense Weinberger's testimony before the Senate Foreign Relations Committee, the MX "will end the Soviet monopoly on prompt hard target kill capability and thus enhance deterrence." This is a contradiction in terms. To the extent that the MX presents a threat to Soviet ICBM silos, which now house over three-quarters of Soviet strategic retaliatory capability, it would detract from deterrence. In combination with other new weapons programs, such as American intermediate-range missiles in Europe, the Soviet Union might, at a time of major international crisis, fear itself faced with the desperate choice between using its nuclear missiles or losing them.

We do not need a new ICBM. We should continue to maintain our Minuteman II and Minuteman III missiles as a useful supplement to the sea-and-air based legs of our nuclear deterrent triad. Although these ICBMs may be vulnerable in theory and if alone, a synergism exists among them, the SLBMs and the bombs and missiles on our strategic aircraft that enhances the survivability of all three.

The demonstrated dangers and difficulties of the 52 obsolete, liquid-fueled, hard-to-maintain Titan missiles should lead to their dismantling and destruction. This would leave a land-based force of 1,000 ICBMs. The 52 Titans could be replaced, under the "freedom to mix" principle of the SALT II treaty, by additional launchers on ballistic missile submarines or more strategic bombers. If the SALT process is resumed and further reductions are agreed, the elimination of the 52 Titan silos could be used instead to meet lower ceilings on strategic nuclear delivery vehicles, generally, or on ICBM launchers in particular.

But continuing to struggle with the seemingly intractable problem of guaranteeing land-based ICBM invulnerability is destined to lead to inordinate expense and, if a new more accurate counterforce ICBM is part of the system, to less security.

In a Washington Post article on November 2, 1981, General Maxwell Taylor asked why we seem "committed to preparing for the least probable threats to the neglect of the most probable." The chance of conventional threats to needed resources in the Middle East and elsewhere, for example, should lead to reassessment of our conventional response capability. But a Soviet first strike

against our ICBM silos has to rank high among the least probable threats, provided that we maintain and modernize our submarine and bomber-based strategic nuclear forces as planned.

The Reagan Strategic Program includes sound modernization of these other two legs of the triad. In terms of strategic stability, there are both pluses and minuses in the decision to go ahead with the Trident II (or D-5) submarine-launched ballistic missile. The size, range, accuracy and virtual invulnerability of the D-5 to a considerable degree render the MX ICBM program as redundant as it unwise. With its ability to hit Soviet targets from a distance of 6,000 nautical miles, the D-5 enables our submarines to be on station in any ocean in any part of the world. It brilliantly meets the criterion of maximum survivability.

On the negative side, the Department of Defense briefing materials assert that:

The new D-5 missile will also have much better accuracy than current sea-based missiles. This will allow us to use sea-launched missiles to attack any target in the Soviet Union, including their missile silos.

As with any counterforce missile, greater accuracy in an SLBM detracts from the stability of the nuclear balance. Unlike a land-based ICBM, the D-5 will not present a more provocative target in time of crisis because the potential attacker cannot know where to aim. But, unless and until the Soviets can put a larger part of their strategic nuclear force on ballistic missile submarines, the counterforce capability of the D-5 at least incrementally tends to foster Soviet consideration of a launch on warning strategy.

The proposals for one or two new strategic bombers fully accord with criteria for strategic nuclear stability. Bombers are not first strike weapons. They provide a sound and survivable retaliatory deterrent. They can be launched to avoid attack and recalled if the attack fails to materialize.

Accordingly, the issue of whether a variant of the B-1 should now be built as an interim replacement for the B-25, pending development of the Advanced Technology Bomber (Stealth), is solely one of dollars and cents. Given the sound decision to equip our existing B-52s with over 3,000 cruise missiles, and given the need for improved conventional forces, there is a legitimate question whether we need go ahead with a bomber program that, according to Secretary of Defense Caspar Weinberger, may be incapable of penetrating Soviet air defenses for more than a few years at a cost of twenty to thirty billion dollars. Because of their small size and large numbers, the air-launched cruise missiles pose a virtually impossible problem for Soviet anti-aircraft radars.

Also consistent with an effective deterrent is the proposed upgrading of our command, control and communications systems. If our retaliatory forces could not be used after attack, their deterrent value would be lost. Without a survivable command and control network, there would be no alternative to a strategy of launch on warning, and thus a grave increase in the risk of nuclear war arising from desperation or miscalculation.

The suggestion in the Department of Defense briefing materials that a communication and control system can be developed "that would endure for an extended period beyond the first nuclear attack" appears, however, to be in part motivated by the myth that we might be able to fight, survive and win a limited, protracted strategic nu-

clear war. The same illusion is implicit in the justification for additional strategic defense measures. We should not lose sight, or permit our strategic planners to lose sight, of the fact that United States security and survival depend on nuclear war prevention, not nuclear war fighting capability. Nor should our rationale for C<sup>3</sup> improvements be allowed to give Soviet leaders a contrary impression.

Another key question in deciding to deploy new nuclear weapons system is how we in the United States would view Soviet deployment, in response, of similar systems. History shows us that the Soviets are sure to follow suit. When the United States deployed MIRVed missiles in 1969, it exploited a temporary technological advantage. But the matching Soviet action provides what factual basis exists for the highly exaggerated window of vulnerability. If two Soviet ICBMs were required to destroy one American silo, rather than two warheads on a single missile, this window could never have opened, even in theory. Perhaps the Soviets would have MIRVed if we had not. When we did, we guaranteed that they would too. Agreement on mutual abstention was not pursued.

The Reagan Administration's plan to "deploy several hundred nuclear armed sea-launched cruise missiles on the general purpose submarines beginning in 1984" raises a problem comparable to that of MIRV's. If we and the Soviets engage in sea-launched cruise missile development and deployment, it will be virtually impossible for us to know how many they have and on what type of craft they are deployed. At some future time, every Soviet trawler or fishing boat would have to be regarded as a possible strategic nuclear delivery vehicle. A total ban on sea-launched cruise missiles of strategic range poses some verification difficulties, but a reliable system would require extensive testing, and compliance with a zero limit seems capable of measurement.

In addition, the mission envisaged for the cruise missile, which the Department of Defense describes as "highly accurate warheads at sea," has troubling implications of preparations to fight a limited and protracted nuclear war.

It is also difficult to see how these sea-launched cruise missiles can, as advertised, "deter the use of nuclear weapons against our naval forces world-wide." Loaded into general purpose or attack submarines, they will compromise the important conventional missions these vessels are designed to perform. Little room would be left for shorter-range antiship missiles and antisubmarine weapons. Strategic cruise missiles would be pre-programmed instead to strike Soviet military and military industrial facilities, targets already covered redundantly by U.S. strategic nuclear warheads. They thus will degrade rather than improve our ability to defend the fleet and protect the sea lanes. Much further study and debate is required before this dangerous departure in strategic nuclear policy should be undertaken.

#### NUCLEAR FORCES IN EUROPE

The controversy about what are now called the intermediate-range nuclear forces in the European theatre also should be resolved in a fashion consistent with sound strategic nuclear policy. Instead, most of the current debate has raged around political rather than military considerations.

These weapons systems are, as noted above, involved in the talks that began in Geneva at the end of November, 1981. They include the Soviet SS-20s and the older SS-

4s and SS-5s, as well as the ground-launched cruise missiles (GLCMs) and Pershing II ballistic missiles proposed for deployment in Western Europe, but under exclusive American control. In evaluating these weapons, and in deciding on a reasonable negotiated settlement, we should keep our priorities straight.

A key component in our basic security policy since World War II has been the cohesiveness and stability of the North Atlantic Alliance. As against that consideration, the deployment in Europe of 572 additional nuclear warheads aimed at Soviet targets is a goal of monumental triviality. Already we have about 10,000 strategic warheads for that purpose and the number grows every day. The effect on deterrence of the so-called Euro-missiles is marginal, if it exists at all. They are not, as often described, NATO's missiles. They are simply more American strategic warheads with an American finger on the button.

Admittedly, the plan to deploy ground-launched cruise missiles and enhanced range Pershing missiles in Western Europe arose because of European concerns about the Soviet SS-20 missiles and Backfire bombers—theatre systems which were not under negotiation in SALT II. Apprehensions were voiced that without a Euro-strategic balance—missiles in Eastern Europe being offset by missiles in Western Europe—American strategic forces might be decoupled from NATO defense. When our friends are worried, we cannot remain indifferent. But now the deployment of U.S. missiles on NATO soil threatens to become an end in itself.

It has even been suggested by some Americans in and out of government that, if West Europeans decide not to accept these weapons, this refusal will jeopardize our 300,000 troops stationed in Europe and lead to inexorable pressures to bring them back home. Some such sources obviously confuse GLCMs and Pershing IIs with battlefield nuclear weapons.

It is hard to think of a more calamitous consequence of a difference of opinion over a secondary issue. This constitutes a quintessential example of our elevation of weapons systems over genuine strategic policy considerations. The 108 Pershing IIs and 464 ground-launched cruise missiles can't hit a single target not already covered by our ICBMs, SLBMs and strategic bombers. And if American warheads start striking the Soviet Union, Soviet retaliation is not apt to turn on where we launched them. The chance that it might, however—and obliterate our NATO allies—is what fans the anti-nuclear movement in Western Europe, particularly when American officials talk loosely of a limited nuclear war. This in turn gives the Soviets opportunities to sow division in the Western Alliance.

There is one obvious way out of the impasse. That is to make a good faith effort in the current talks to reach a prompt agreement with regard to the European land-based missiles. An acceptable solution obviously would have to come much closer to the so-called zero option approved by the NATO Defense Ministers and announced by President Reagan in his speech on November 18, 1981, than to President Brezhnev's going-in gambit. We should pick up one point of the Brezhnev offer and insist upon a freeze of SS-20 deployments while the talks continue. Indeed, since he started proposing a freeze over two years ago, an immediate roll-back to the number of SS-20s then in place would be appropriate. Inas-

much as no American intermediate-range missile deployments can begin until late 1983 at the earliest, a freeze now would not affect our programs.

But Brezhnev's proposal to deploy some part of the SS-20 force away from the European portion of the Soviet Union is worse than nothing. The missiles are on mobile launchers; a negotiation that adds to the number of SS-20s targeted against Japan and China is hardly a good way of keeping and winning friends; the possibility of redeployment westward during a crisis would be a dangerous new source of instability. The action required of the Soviets is SS-20 destruction, not redeployment.

Throughout the negotiations, it should be made clear to our NATO allies that no agreement will be made on European land-based missiles unless it meets with their approval. At the same time, we should make just as clear that an agreement that is good enough for them will be plenty good enough for us and that our negotiating aim is not to create an impasse and then insist that there is no alternative except to proceed with deployment of the Pershing IIs and ground-launched cruise missiles. That won't work. The December 1979 NATO decision to modernize the longer-range theatre nuclear forces was joined with a decision to pursue control over Soviet intermediate-range missiles as the preferred alternative. Unless we make a good faith try in negotiations, the so-called double decision won't survive.

There is, of course, a chance that the Soviets will be intransigent and refuse to depart much from their present unacceptable proposal. The Soviets may gamble that they can hang tough in the expectation that in no event can American missiles be land-based in Western Europe. If a Soviet refusal to negotiate in good faith becomes clear, however, the political climate in Europe for acceptance of the new American missiles could improve dramatically and rapidly.

It seems clear that the Russians remain very reluctant to see the deployment actually take place. The view that the Soviets are afraid of these missiles is not inconsistent with the contention that they add little if anything to our useful military capability. What the Soviets probably fear, and what we should also fear, is a decrease in nuclear stability. Both countries would be better off if no American and Soviet intermediate-range nuclear missiles were deployed in the European theatre. Each country has a stake in reducing, rather than increasing, the risk of nuclear war.

These weapons flunk the basic criteria for strategic stability. Because of their short flight time—5-10 minutes—along with their great accuracy, the SS-20 and Pershing II warheads are well adapted for surprise attack at a time of crisis. They thus invite preemptive strike. And in the limited geographical area of Western Europe, few such missiles could be expected to survive. Their mobility would probably mean only saturation attack and greater devastation.

But despite the good reasons that can be mustered against new American missiles on NATO territory, the Soviet SS-20s won't stay unanswered. These same reasons should have prevented their deployment. Not uniquely, nuclear weaponing is being allowed to override genuine security considerations. If the SS-20s are not at least greatly reduced, the Soviet leaders must expect to face GLCMs and Pershing IIs.

Moreover, the Soviets must take into consideration the effect that a breakdown in

the current talks would undoubtedly have on successful resumption of the SALT process. Soviet obduracy in Geneva would mean the advance frustration of new talks on the intercontinental-range systems. With the consequent demise of SALT, the United States could readily increase by many times 572 the number of warheads aimed at the Soviet Union from land, sea and air.

What must be avoided, however, is a confrontation between the United States and its NATO colleagues on the issue of intermediate-range missile deployment in Western Europe—a political issue that we should leave, in the last analysis, to the Europeans. Alliance leadership does not demand that we tell them that we know best what's good for them. Nor can the Soviet challenge to the cohesion of the Western Alliance be met by applying pressures that add to the internal political problems of West European governments.

In stating the intention of the United States to open negotiations on the intermediate-range nuclear missiles, Secretary of State Alexander Haig told the Foreign Policy Association last July that these talks would take place "within the framework of SALT." In early January 1982, after meeting with West German Chancellor Helmut Schmidt, Secretary Haig noted that the arms talks "constitute a very special category of east-west negotiations . . . because there are fundamental advantages to the West as well as the East in the continuation of a dialogue seeking control of nuclear armament." He thus implicitly linked the current talks on intermediate-range nuclear missiles in Europe to the over-all process of strategic arms limitation and explicitly confined the previously espoused linkage of arms control with other Soviet-American issues to only "the most exceptional of circumstances." Regrettably, Administration attitudes toward linkage, in the aftermath of former Secretary of State Kissinger's criticism, have become somewhat uncertain.

#### NEGOTIATING STRATEGIC ARMS LIMITATIONS

Obviously, negotiations on control of intermediate-range nuclear missiles would be an exercise in futility if the existing SALT framework were to be scrapped and the restrictions already negotiated were to be abandoned. The agreed statement of principles and guidelines negotiated as part of SALT II expressly contemplated that these intermediate-range nuclear systems would be dealt with in the next set of strategic arms limitation talks. Any ICBM and any SLBM can destroy any target covered by Soviet SS-20s or American land-based missiles in Europe. Under the provisions of SALT II, the Soviet Union is limited to 10 warheads on each of its giant SS-18 missiles. Without SALT, the SS-18s could be loaded up with 20 or 30 warheads each. An increase from 10 to 20 would give the Soviet forces more than 3,000 additional warheads to aim at NATO Europe targets. This is many more warheads than would be eliminated by Soviet acceptance of the zero option in intermediate-range nuclear missiles.

This example illustrates the fact that any sound strategic nuclear weapons policy requires energetic pursuit of strategic nuclear arms control. Nothing else will reduce the Soviet threat by as much as one nuclear warhead no matter how many additional strategic nuclear weapons programs are embarked upon and at whatever cost.

Only through arms control can we bring the strategic nuclear stalemate down to lower levels of cost and risk. Only by negoti-

ated, verifiable agreements can we have an accurate measure of the Soviet strategic nuclear arsenal.

Strategic policy considerations therefore mandate that the present talks in Geneva be utilized to revive progress towards control of all types of nuclear weapons that can strike strategic targets in the United States, Western Europe or the Warsaw Pact countries. Obviously, there should be exploration of more comprehensive controls than those embodied in the agreements already negotiated. But if we allow what has thus far been accomplished to lapse, while efforts are made to embody more complex formulae for controlling total megatonnage and more innovative and far-reaching verification techniques, then time again will become our enemy and unrestricted competition in strategic nuclear arms will gravely endanger our basic security.

To preserve the SALT framework within which meaningful progress can be made, the Soviet Union and the United States should formalize their declared intentions to do nothing inconsistent with the SALT II treaty provisions. Separate letters can be issued to that effect, following the precedent of October 1977 when the SALT I interim agreement expired.

A prompt agreement should be reached, in close coordination with other NATO countries, on controlling U.S. and Soviet land-based missiles of intermediate range. The issue of nuclear-capable aircraft in the European theatre should be deferred in the interests of expedition. The fact that these same aircraft have conventional missions will make their control complex and time-consuming. British and French nuclear forces cannot be the subject of U.S.-Soviet negotiations, although their existence won't be ignored.

At the same time, either in the present Geneva forum or in renewed talks on the central, intercontinental-range systems, attention can be given to some updating of the SALT II provisions. A new and early deadline can be set for reduction of strategic nuclear delivery vehicles to the ceiling of 2,250, which would have been achieved by December 31, 1981, if SALT II had been ratified. In addition, to show progress and to fit the Reagan Administration's announced commitment to deeper cuts, the two sides should agree on a schedule of annual reductions of 5 to 10 percent per year over the next several years.

The Protocol to the SALT II treaty expired on December 31, 1981. Primarily, this prevented deployment of ground- and sea-launched cruise missiles, as well as mobile launchers of ICBMs. The termination of the Protocol, however, is of relatively little importance because the Reagan Strategic Program provides ample time for negotiating the issues involved in the Protocol's provisions, provided prompt and serious negotiations are undertaken.

Ground-launched cruise missiles are, of course, one of the subjects of the current Euro-missile talks. No further decisions on the basing of the MX missile will occur before 1984, and thus no mobile deployment of the MX can occur for the next few years. Insofar as the Soviet programs are concerned, the SALT II treaty itself bars further production and deployment of the mobile-capable Soviet SS-16 ICBM.

To create a stable and predictable environment for a further round of negotiations on limiting and reducing strategic nuclear arms, the expiration date of the new treaty, now set for the end of 1985, should be ex-

tended through 1990. A commitment by the two sides to give priority attention to significant reductions in intercontinental ballistic missiles with multiple independently targetable reentry vehicles (MIRVs) would take note of legitimate concerns expressed by Reagan officials and American legislators.

Thus supplemented, and given President Reagan's personal stamp and endorsement, the treaty would unquestionably receive prompt Senate ratification. The Republican votes that were unavailable to President Carter during a campaign period in which Republican Presidential candidates took an anti-SALT II stance would now be present in abundance. Democrats who have supported arms control in the past would not now switch positions simply to oppose a President who retains wide popularity.

The Reagan Administration has a unique chance to make a major breakthrough in diminishing the greatest risk that human society has ever faced. This window of opportunity won't remain open very long, nor can it ever be opened as wide again. The arms control package that is now within reach, as described above, is far from perfect. But it is better than any that could ever be obtained at a later date, if the present opportunity is allowed to pass, and would greatly increase American and Allied security.

In the absence of these controls, the strategic nuclear weapons of the Soviet Union and of the United States will become ever more vulnerable and more dangerous. The major differences that must be expected to continue between these two nuclear superpowers can lead to periods of crisis and confrontation. Hair trigger forces, with growing counterforce capability, may precipitate the nuclear war that no one wants and that our modern world cannot survive.

#### SURVIVABILITY

(R. James Woolsey)

In order for our strategic forces to be able to deter war, even—as they must—during the extreme stress of a nuclear crisis, they must be able beyond any plausible doubt to survive a Soviet first strike.

This survivability is a bed-rock necessity. It may or may not also be sufficient as a standard for our strategic forces, depending upon your views about such matters. You may believe, for example, that it is also important for our strategic forces to be able to attack Soviet military targets, or to execute certain limited nuclear strikes, or to defend cities (if technically possible), or to endure—after a Soviet strike—for a sustained period in order to be able to conduct a longer nuclear war.

During the 1960's and into the 1970's we tended to take the survivability of our strategic forces for granted. Many, if not most, of the debates of those years centered around these other issues—for example, the wisdom, or lack thereof, of having a counterforce capability (i.e. the ability to attack military targets, especially hardened ones such as ICBM silos), or of having the doctrine and the ability to conduct limited nuclear exchanges. The debates on many of these latter topics, although they reflect important policy disagreements, have become abstruse and entangled. Further, time and the march of technology have passed some of them by, although much of the noise of strife still lingers in the air. It is time to focus the debate about our strategic forces on that which is clearly necessary—namely, survivability—and to put it ahead of discussions about those added capabilities.

This suggestion will disappoint most aficionados of, and almost all participants in, the strategic nuclear debate. Like an old married couple with a favorite argument, the origins of which have long since become obscure, the two main schools of strategic theorists have developed a standardized framework for these debates: assured destruction vs. nuclear warfighting. Each side has grown comfortable enbrodering its straw man characterization of the other. The battle of acronyms is rolling along nicely, one side calling the other MAD (Mutual Assured Destruction) and the second, now, calling the first NUTS (Nuclear Utilization Target Selection).<sup>1</sup> All this leads those outside the fraternity both to develop migraines and to suspect that Clemenceau's excellent dictum about war and generals needs a new formulation: planning strategic forces is too important to be left to the strategic theorists.

As the Soviets have persisted in the expansion of their counterforce capability, many of these old debates have become dated and irrelevant. The underlying reality is that, now, after some number of years of haggling with ourselves about sundry matters and falling to check the decline in survivability of our strategic forces, we have a great deal to do in that department.

This significant Soviet deployment of large ICBM's with excellent accuracy (one, the SS-18, considerably larger than the MX) is consistent only with their devoting extreme importance to the mission of attacking American ICBM's in their silos. This has rather reduced the impact of the argument that deployment of accurate American weapons would be provocative. One can make a reasonable case that some ability to attack successfully all portions of that which the Soviets value most—their military structure—is now an important element in our ability to deter war. As former Secretary of Defense Harold Brown has put it, although he would be deterred by the ability of an adversary to destroy cities, we are not trying to deter him, but rather the Soviets, who have given ample evidence of very different values. Also, technology has made accuracy improvements easier, so modernization of any of our forces will bring significant accuracy improvement in its wake. Former Carter Administration Under Secretary of Defense William Perry has said, for example, that technology is converging toward a world of infinite numbers of warheads with infinitely good accuracy. But in any case, although the degree of counterforce capability that we should seek is an important issue and one to which, to some extent, the forms of the old debate are relevant, the big expenditures and the major policy questions surrounding our strategic forces now are driven by the importance of improving their survivability.

We cannot become so single-minded about survivability that we become perpetually mired in a search for the perfectly survivable system. That way lies stasis. A system, of reasonable cost, that forces the Soviets to target it with a very large number of warheads, or that requires them to develop a very costly and complex system in order to be able to attack it, may make a significant contribution to our goal—making the enemy's overall problem of planning a first strike unimaginably hard. But, perfection aside, it still is important for us to concentrate on improving survivability for several reasons.

First of all, the vulnerability of any of the three major current components of our stra-

tegic forces—e.g. ICBM's—is a matter of serious concern for a reason that has nothing to do with the plausibility, or lack thereof, of any limited Soviet attack against ICBM's alone. Because of the long lead-times that are necessary in almost all cases to design and deploy new strategic systems, or even to modify old ones, we cannot be confident of being able to provide a "quick fix" for any vulnerability that might unexpectedly appear. It has taken us well over a decade, for example, to design and construct the first Trident submarine and get it to sea. If we have been lax (as we have been) in correcting a vulnerability of one part of the strategic forces (ICBM's) because we are relying on the other parts, and then some vulnerability appears in those other parts of the force as well, we may find ourselves in an extraordinarily serious situation—with no improvement in sight this side of years' worth of effort.

Moreover, such a vulnerability may indeed appear unexpectedly. Though there may be no immediate threat now to the survivability of our fleet of ballistic missile submarines and though we believe that we can keep our bomber force survivable (if we work at it), it would be most imprudent to bet indefinitely that no serious problem will arise with either system—given the massive Soviet investments both in military research and in the deployment of weapons that potentially threaten our strategic forces. In this context it is important to remember that preserving the survivability of our strategic forces, and, for that matter, of any military forces, is very different in character than government's other duties and functions. Einstein reportedly once remarked, "Raffiniert ist der Herrgott, aber boshaft ist Er nicht" (roughly, God is clever, but He's not plain mean). In other words, when we are in a contest with God, or Nature—trying to build a road, develop new energy resources, or fly to the moon—we are not playing against an evil-minded adversary who is trying to make our problem harder. In trying to keep our strategic forces survivable, we do have such an adversary. Indeed the level of Soviet effort in military undertakings that potentially threaten our strategic forces, such as anti-submarine warfare research, is what determines the scope and nature of our problem.

These Soviet efforts have indeed been remarkable over the last two decades. One reason is that, because they impose such low pay levels on their conscripted troops, the Soviets have proportionately a much higher share of their resources available to buy new weapons, including strategic weapons. For example, we spend over half of our defense budget on manpower and have only about a quarter to devote to buying equipment. Central Intelligence Agency estimates indicate that the Soviets spend about a fourth of their defense resources on manpower and thus can spend around half on equipment. Thus, although dollar or ruble cost comparisons between the U.S. and Soviet defense budgets are fraught with well-known problems, especially when manpower costs are involved, it is unsurprising and hardly arguable that the Soviet efforts on strategic weapons have substantially exceeded ours for many years and, particularly in the case of ICBM's, created new vulnerabilities for our strategic forces.

The Soviets, for example, have out-spent us about two-to-one in the last decade on ballistic missile submarine force investment. They have produced 30 ballistic missile submarines in seven years—better than four a

year—while we have been producing one annually (and they have recently been laying down new attack submarines, some of them diesel-powered, at the rate of one every five weeks, while we have been laying down one—now two—such nuclear boats a year). Their newest ballistic missile submarine is larger than Trident.

In investment in ICBM's, the difference is even more dramatic. We would have had to spend, in dollars, about four times what we did in the last decade to match their ICBM effort. In the period of just over a decade since we introduced our last ICBM, the Minuteman III, they have introduced four major modified versions of their then-existing family of ICBM's, plus an entirely new generation of three additional ICBM's—one, the SS-18, in four different versions.

These sorts of assessments prove little about vulnerability in and of themselves. But they are ample evidence of the extraordinary level of the Soviet commitment to increase the vulnerability of our strategic forces.

Even judgments of this kind, however, are often countered by warhead bean-counting. The argument frequently runs that—since the United States has thousands of missile warheads and a large number of bomber-carried weapons as well, and since this total is higher than the Soviet's total number of strategic warheads, at least for a short while longer—there is no cause for concern. This large number of American strategic missile warheads and bomber weapons is heavily driven by the large number of comparatively small and inaccurate warheads on our ballistic missile submarines and by the bombs and missiles on our B-52s. The U.S. warhead count has increased substantially over the last decade with the addition of Multiple Independently-targetable Re-entry Vehicles (MIRVs) to submarine-launched missiles, and the addition of new bomber weapons (the Short Range Attack Missile, SRAM, and in the near future, the Air-Launched Cruise Missile, ALCM). Such warhead and bomber weapon totals, however, have nothing to do directly with survivability. They improve the ability of the weapons carried by submarines and bombers to penetrate Soviet defenses once they reach those defenses, but not their ability to survive a Soviet strike. The real question is whether the submarine and bomber forces, whatever the number of warheads and weapons they carry, are so perpetually secure that we need little concern ourselves with vulnerabilities in the land-based missile part of our strategic forces.

These high levels of Soviet effort that have had the effect of increasing the vulnerability of our strategic forces show no sign of slackening. If Soviet military planners feel that our ICBM force has successfully been made highly vulnerable they could be expected to increase yet further their efforts to place the rest of our strategic forces at risk as well—e.g. by redoubling their already significant anti-submarine warfare research.

In addition to denying the Soviets this ability to concentrate on undermining the remaining parts of our deterrent and deterring them from ever being able seriously to consider a first strike, our strategic forces must be able to deter what is more likely, political blackmail—strong pressure, for example, on us not to assist a friendly government in the Persian Gulf that might be threatened by invasion or by Soviet-sponsored revolution. It is arguable that if even one of the three major parts of our strategic

deterrent has a serious vulnerability to a Soviet first strike, then such blackmail is relatively more plausible and that therefore the vulnerability must be corrected promptly. For example, as *The Economist* put it in its last issue of 1981:

It is unlikely that this doomsday scenario will ever be played out. But that does not mean that even a remote possibility of it will not profoundly affect the world during the dangerous years of the open window. The possession of this theoretical first-strike capacity gives Russia a psychological head-start in every confrontation of wills with the West. The Russians will raise their fist—the threat to use ordinary, nonnuclear force—more confidently in any such crisis. The West will be more hesitant to raise a counterfist. And the quicker fist could win the contest of wills.

But the questions about survivability, or any other issue concerning strategic forces, cannot be answered sensibly without first considering what standard or test we are to apply to the facts. For example, in law, in civil cases, a court or jury will normally decide which version of the facts of a case to believe by applying the test of where the "preponderance of the evidence" points it—which version is the more likely of the two to be true. But in criminal cases, to add a measure of protection for the accused, a jury must decide that he is guilty "beyond a reasonable doubt." In other words, if a jury believes the prosecution's version of the relevant facts—but only by such a narrow margin that it still has a reasonable doubt of the accused's guilt—it should vote to acquit. In quantitative terms, being 51 percent certain of a defendant's guilt should not be enough to justify the very important decision of sending him to jail or to his execution. The law consciously biases the test of the evidence toward the defendant in a criminal case because of the importance of his liberty.

Deterring nuclear war is the most important job we do as a nation, and deterring nuclear blackmail comes close. Survivability of our forces is so vital a part of such deterrence that we should be willing to set a standard for assuring it that gives to the protection of our strategic forces' survivability at least as much benefit of the doubt as we give to criminal defendants. Certainly there are other weapons decisions, such as whether to provide a counterforce capability for our strategic forces, where different standards might well apply. But survivability questions particularly deserve to be looked at through glasses highly colored by prudence and caution.

Such a standard, carried to ridiculous extremes, could mean that we would spend so much on strategic forces there would be very little left for other purposes. This would be most unwise. Certainly cost should be an important consideration for strategic as well as any other military forces. One way to help make survivability improvements affordable is to pay particular attention to ways in which some of the expenditures on them could be spread over other defense needs. Some possible survivability improvements, discussed below, have this characteristic.

From these perspective, then, we need to ask how likely it is that the Soviets could succeed, or that they have succeeded, with any part of their effort to put our strategic forces at risk. And, further, we must determine what we must do to ensure, beyond any plausible doubt, that they fail.

#### COMMAND, CONTROL, AND COMMUNICATIONS

For some time the most serious vulnerability of our strategic forces has been the systems and data links by which we command, control, and communicate with those forces. A related problem has been to ensure that a decision to use nuclear weapons can, in all cases, be made by a constitutionally responsible and legitimate decisionmaker. The strategic communications systems have grown, over the years, with very little central direction. Efforts to improve their survivability have often run afoul of budget pressures (some of the added redundancy and hardness that is needed can be quite expensive) or they have been postponed because the military services have continued to put other priorities higher. The Soviets can today have no confidence, however, that an attack on our strategic communications links would totally disable our strategic forces; they must be concerned that such an attack might have exactly the opposite effect—allowing enough time only for some part of our command structure to launch quickly a massive spasmodic nuclear attack on them in response.

A fragile strategic communications system, however, has more than one potential risk associated with it. As nuclear nonproliferation efforts fail or are undermined and the number of nuclear powers in the world, tragically, expands there is even the prospect that individuals such as the sporty trio of Iraq's Saddam Hussein, Pakistan's Zia, and Libya's Qaddafi will command nuclear weapons. Technology is also making it possible for such weapons to be quite small. Our lack of air defenses and modest level of air surveillance, and the nature of our open society, could leave us open to small or unconventional nuclear attack—e.g. smuggled weapons. We must face the possibility that in a few years the origin of a nuclear weapon detonated, say, in or over Washington, D.C., might not immediately be clear. Indeed, as described below, U.S.-Soviet cooperation to guard against a third-world nuclear power triggering nuclear war between the U.S. and the U.S.S.R. may now be at least as important a field for arms control efforts as the sort of numerical limits and reductions that have traditionally been center-stage.

It has not only been overall budget pressures and military service priorities, however, that have delayed important modernization and improvements in survivability for our strategic communications system. This delay illustrates one of the perverse twists that has been taken by the national debate over strategic weapons in recent years. Strategic communications is a highly technical and complex subject; its relationship to the conduct of something so terrible as nuclear war simultaneously makes it an emotionally charged one. More than once during the last decade or so, prospects for strategic communications improvements have been damaged by stray rounds from other battles.

For example, the debate about whether our missiles should be, or be able to be, launched on a warning given by radars or other sensors of a Soviet attack—even before Soviet weapons start detonating on their targets—has affected the modernization of our strategic communications. (Of course bombers can be, and are, "launched" on warning and recalled.) Some have thought that having a missile launch-on-warning capability and policy would be a handy way to avoid the need to spend the money to make our ICBMs survivable. Others have had such confidence in the technology of possible strategic warning and

communication systems, or have so despaired of making our ICBMs survivable, that they have been reluctantly willing to rely on launch-on-warning rather than to exert the effort to try to assure that ICBMs could ride out an attack and then respond.

A more reasonable view of missile launch-on-warning or, as it has come to be called, launch-under-attack, was expressed last November 11 by the Under Secretary of Defense for Research and Engineering, Richard DeLauer:

We are not changing our consistently held view that launch under attack is a good capability . . . but a dangerously destabilizing strategy to depend on. We do not, and we will not depend on it.

In other words, although there may be circumstances (e.g., if the Soviets had already initiated a massive conventional war) in which we would want the President to have the ability to launch missiles on warning—and would want the Soviets to know that he could do so—it would be extremely dangerous to rely on such a policy, day in and day out, to the exclusion of providing our strategic forces with the ability to ride out a surprise attack. The Ballistic Missile Early Warning System (BMEWS), when it was first installed two decades ago, mistook the rising of the moon for a flight of Soviet ICBMs, and today's systems are not wholly free of malfunctions.

Yet adopting a day-to-day missile launch-on-warning policy, as an alternative to investing what is necessary for survivable strategic forces, has continued to have its advocates over the years. To thwart them, some decisionmakers have in the past been motivated not to push hard for improvements to our strategic communications systems in order to avoid it appearing as if the nation were moving to such a policy of relying on launch-on-warning. (Many of the steps to modernize strategic communications that have become necessary would also have the incidental effect of making a launch-on-warning policy technically more feasible—they would by no means make it necessary, however.) Delays in modernizing, and improving the survivability of, strategic communications have thus sometimes perversely occurred to serve another laudable goal—to help ensure that the country continued to press toward making its strategic weapons, particularly its ICBMs, survivable.

These and many problems have plagued strategic communications for years. The Administration's decision in October 1981 to move out smartly to modernize and improve the survivability of our strategic communications is a good beginning cut at these Gordian tangles and deserves full support. It is, in many ways, the most important part of the package of new strategic decisions, but there is much more to be done.

#### THE BALLISTIC MISSILE SUBMARINE FORCE

The ballistic missile submarine force is becoming the bedrock of our strategic deterrent, primarily because of its survivability. It is crucial that we not let that survivability deteriorate.

Certainly the addition of the long range Trident I missile (and as a result of the October 1981 decision, by the end of the eighties, the Trident II missile as well) improves submarine survivability by permitting patrols anywhere within tens of millions of square miles of ocean. And the new Trident submarine shows excellent quietness, giving it good security against passive acoustic detection—i.e. Soviet listening with acoustic sensors, with no effort on their part to put

sound in the water and listen for echoes. But even these sorts of improvements don't let us take submarine survivability for granted indefinitely, even if we manage to keep the number of submarine-launched missiles from declining. As we replace the 16-inch tube Poseidon submarines in the 1980's and the 1990's with large 24-tube Trident boats, the numbers of ballistic missile submarines at sea will decline. Even with an eventual all-Trident force of 20 submarines (one has been delivered and 9 funded) we would only have a dozen or so ballistic missile boats at sea at any one time. The vigor and scope of Soviet anti-submarine warfare work in recent years is enough to make any cautious planner concerned if the entire survivable ballistic missile force of the nation (assuming, for the moment, that our ICBMs have become vulnerable) should be located in only about a dozen hulls—each having about the displacement of a very large cruiser and as long as the Washington monument.

Certainly, the problem of open-ocean search for submerged submarines remains extraordinarily difficult—especially so if, as would be the case in any strategic attack, an enemy would have to attack the entire force virtually simultaneously. And whatever anti-submarine warfare efforts one might imagine, it is also plausible—as in other fields of warfare—to conceive of countermeasures to them. But against some types of possible anti-submarine warfare sensors, large size is a disadvantage. Planning conservatively for submarine survivability requires us to add to "Run Silent, Run Deep" the additional injunctions, "Be Small, Be Numerous."

The deployment of smaller submarines to supplement the Trident force would not be without its costs, both in dollars and manpower. Retaining crews for this demanding life in the Navy is extremely difficult, and large numbers of submarines mean many crews and complex logistics. Large numbers of small submarines would probably thus mean at least as great, if not greater, and overall cost per missile at sea as Trident—Trident is well-designed to keep its overall costs as low as feasible, even though the procurement cost of each individual submarine has become quite expensive.

The Administration's decision to place nuclear cruise missiles on our attack submarines (i.e. those that do not carry ballistic missiles) usefully adds to the number of U.S. submarines that the Soviets would have to attack. But the cruise missiles carried by the attack boats will be limited in range, and the number of missiles will also be limited because of the attack submarines' other missions—chiefly anti-submarine warfare. The addition of cruise missiles in this way, however, does have the major advantage of being comparatively inexpensive, since existing attack submarines, having another mission, are not themselves a major new cost of the cruise missile program.

The recent decision to deploy a small Extremely Low Frequency (ELF) communications system for the ballistic missile submarines also adds importantly to their survivability. Our ballistic missile submarines must today patrol very near the surface so that they can tow an antenna—a floating wire or buoy—on or just below the ocean's surface in order constantly to receive communications. Since ELF signals can penetrate water to much greater depths than other communication systems, this will now permit the boats to patrol much deeper, and will thus give them important flexibility in

evading some types of anti-submarine warfare sensors. It is of little importance—given its job—that the ELF system is only a "bell ringer", i.e. too limited to be able to send the actual message necessary to launch nuclear missiles, or that the ELF system could be knocked out in a nuclear war. Its purpose is the limited but vital one of making it possible for the submarines to "run deep" as part of their normal peacetime patrols and avoid the vulnerability of being tied to the surface. Other systems are available to send wartime messages to be picked up by wire or buoy antennas, but the need to come near the surface in those circumstances is not nearly so troubling as the need to patrol there perpetually.

But even with these improvements, because of the submarine force's importance—and the potential danger of having all our submarine ballistic missile eggs in a very few, very large, Trident baskets—it would be reasonable to begin now to design a smaller submarine to supplement the Trident force. This problem needs further work. The objective may well not be reasonably met by deploying the largest possible missile (e.g. the MX) on the smallest possible submarine based in very limited areas (i.e. near U.S. coasts)—in the manner of the original proposal for a Shallow Underwater Missile (SUM) system. What is needed is flexibility and survivability. It might be that some submarines, smaller than Trident, should carry a large number of long-range cruise missiles rather than, or in addition to, ballistic missiles. Such submarines, whatever missile or missiles they carry, should definitely have the flexibility to patrol in deep ocean areas, and under Polar ice, not merely on the continental shelf. Such a force might be merely an adaptation of a class of existing attack submarines, or newly designed smaller ballistic missile submarines along the line of the current Poseidon boats. But given the long lead-time needed to build submarines, the time to begin to supplement and diversify our submarine missile force is now, before the news of significant Soviet anti-submarine warfare improvements in the 1980's or 1990's follows the news, in the 1970's of their rapid and unexpected deployment of very accurate ICBM warheads.

#### STRATEGIC BOMBERS

Our strategic bombers have three potential types of vulnerability—before they escape their bases, while they are en route to their targets, and during their effort to penetrate Soviet air space. The third of these vulnerabilities has been significantly lessened by the development of the long-range cruise missile; the question of penetration continues, however, to attract the most attention and debate. The second vulnerability is the least serious, especially as existing or new bombers are shielded against nuclear effects; the job of destroying aircraft in flight, say over the Arctic, by attacking them with a barrage of nuclear weapons or some hypothesized combination of sophisticated sensors and new long-range weapon, remains extremely difficult. It is the bomber's first vulnerability—while they are on the ground or escaping their bases—that is the most serious.

The pre-launch survivability of our bombers would be threatened primarily by Soviet submarines, pulled in relatively close to our coasts, launching missiles at the bomber bases. This vulnerability can be mitigated by placing the bombers at bases far inland or, in a crisis, keeping crews in the cockpits, ready to take off quickly. But—depending on the types of missiles the Soviets might

use—the B-52's margin for escape could even so be very thin. For limited amounts of time this vulnerability could be significantly reduced by keeping the bombers continually airborne, as we did in the 1950's and into the 1960's. But, over an extended period of time, the maintenance and fuel requirements of sophisticated bomber aircraft make this a very expensive and cumbersome proposition.

Either the B-1B or the Advanced Technology, Stealth bomber could significantly reduce this problem of pre-launch survivability, by being able to escape faster and being more hardened against nuclear effects than the B-52. The B-1B will be available sooner; whether the extra cost involved in developing both new bombers instead of only one is justified by the quicker availability of a bomber having better pre-launch survivability is a difficult question. Insofar as the Reagan Administration decision to resuscitate the B-1 was grounded on real concern about this threat and on technical problems with the Stealth bomber program, it was reasonably based. Insofar as it was based on the political desirability of reversing the Carter Administration's cancellation of the program, or on the need to send a very expensive signal to the Soviets, it was unwise. The truth probably lies in the highly classified details of the Stealth bomber program and its prospects. Any issue which has so divided eminent scientists and engineers (e.g. former Under Secretary of Defense William Perry on one side, Under Secretary Richard DeLauer on the other); able recent commanders of the Strategic Air Command (e.g. General Richard Ellis on one side, General Bennie Davis on the other); and careful Congressional experts on defense issues (e.g. Senator Sam Nunn on one side, Senator Henry Jackson on the other) is not a simple problem. Those outside the executive branch and Congress who are not fully familiar with the details of the Stealth bomber program would be well advised to be somewhat cautious about the firmness with which they express their views. But unless it ultimately appears that real developmental problems have cropped up during the last year for the Stealth bomber program, the decision to procure the B-1B will probably prove to have been a costly and unnecessary step.

In any case, the Administration can reasonably be asked to ensure that the B-1B does not interfere with higher priority Air Force programs—notably the Stealth bomber, the Air-Launched Cruise Missile, and the Air Force's efforts to improve pre-launch survivability, including obtaining an adequate number of tanker aircraft. Survivability of strategic bombers, for example, is heavily affected by such issues as whether the bombers are dispersed, the number of tankers for the bombers, and the tankers' own ability to survive.

The question whether to develop and procure one or two new bombers to replace the B-52 is one of cost and technological risk, not one of objectives. There is broad agreement in the strategic community, and rightly so, that a bomber force provides an important and flexible addition to our strategic nuclear forces—one that can be used in conventional conflicts as well as to help deter nuclear war, and one whose existence seriously complicates any potential simultaneous Soviet attack on our ICBMs.

Bombers, however, unless they are kept on airborne alert, will always suffer from one serious deficiency: safe escape from their bases depends on their receiving ade-

quate warning. In a hypothetical extended crisis in which, for example, our warning systems were being blinded, jammed, or destroyed—if, for example, our satellites had been attacked—the bombers' pre-launch survivability could be seriously compromised. For this reason there is understandable reluctance to rely solely on them and on submarines for our strategic deterrent.

#### INTER-CONTINENTAL BALLISTIC MISSILES

There was once a time in which ICBMs in silos, by themselves, met virtually every requirement of our strategic systems. Most importantly, they were virtually invulnerable to attack—because Soviet missiles were not accurate enough to destroy them they were able to ride out any possible attack and still retaliate.

Those days are gone. As noted above, William Perry has described technology as converging toward a world of infinitely good accuracy (and infinite numbers of warheads).

A certain rear-guard action has been fought against this view, to little effect. The theme of the argument is that there are enough uncertainties about whether U.S. ICBMs are vulnerable—practically as well as theoretically—that we can act as if they are secure. The argument has primarily been that Soviet ICBMs must be inaccurate because of differences between what happens in testing and what would happen in an actual attack. For example, it has been asserted that Soviet ICBMs would necessarily be inaccurate in an attack because they would have to fly in untested North-South trajectories. Certainly the coordination of any Soviet attack on our strategic forces—even a partial strike against 1052 ICBM silos alone—would be a highly uncertain proposition. Command, control, and communications would be complex and the famous uncertainties of war—Clausewitz's "friction"—could plague any such effort as they could any large military operation. But, in spite of some disagreement about the pace of accuracy improvements, Perry states the general view of the overwhelming preponderance of the technical, intelligence, and military communities: satellite flights over the poles in North-South orbits for some twenty years, submarine-launched ballistic missile testing in North-South trajectories, and intelligence data on Soviet testing give cold comfort to anyone who would be optimistic about the survivability of undefended silos in a nuclear war. Certainly, the exact accuracy of Soviet ICBMs, in any given year, is a matter of reasonable dispute, hence so is the exact point in the decade when the vulnerability of our ICBM silos becomes unacceptable—e.g. in the early 80's vs. the mid-80's. But, from the point of view of one doing cautious planning to ensure our strategic forces' survivability, it would be foolhardy to assume that Soviet ICBMs will be perpetually inaccurate, because they must fly in North-South trajectories or for any other reason. It would be especially foolhardy to assume that the Soviets would be so doubtful, in a grave crisis, of their missiles' tested accuracies that they would ignore their test data. We assume that our ICBMs will achieve their tested accuracies in wartime. What counts is less what the actual accuracies would be in a nuclear war—which none of us will ever know—but what the Soviets would expect.

There has been much discussion of the "window of vulnerability" of our ICBM force. If one insists on using that metaphor, particularly given all the freight it now carries, there should at least be a recognition that we cannot really know how wide the

window is open at any time—the only reasonable question is whether it is opening or closing. Although some characterizations of this ICBM vulnerability issue can produce rather Strangelovian arguments, and although one should not confuse vulnerability of our ICBMs with vulnerability of our whole strategic forces, there is still a real underlying problem that must be solved. Unless we have some strategic force, other than our submarines, that does not depend on warning (as the bombers do) to survive a Soviet attack, then we are betting very heavily on lack of Soviet progress in anti-submarine warfare. Unless we wish to continue that bet, for a very long time, we had best look hard for some way to base another strategic force in a survivable manner. From the point of view of assuring the long-run survivability of our strategic forces, this is a key issue—and it is also an extraordinarily difficult one.

It may be emotionally satisfying, and provide relief from worrying about the problem, either to affirm such faith in the infallibility of (American) technology that you are willing to rely on launch-on-warning or, alternatively, to become such a skeptic of (Soviet) technology that you are willing to rely on the inaccuracy of their missiles. These extremes of belief and lack thereof in technology might be characterized in an unfriendly fashion, if one were so inclined, as, on the one hand, "American computers can't make mistakes" and, on the other, as "It'll never fly, Ivan." The solution, or solutions, to our ICBM vulnerability problem, however, are likely to be found on the far more difficult territory between these two extreme views of technology: a terrain marked by complex judgments, weighed opinions, partial solutions, and tough calls.

#### MX IN MULTIPLE PROTECTIVE SHELTERS

One such tough call was made by the Carter Administration when it approved the basing of the new MX ICBM in Multiple Protective Shelters, the famous ICBM "shell game" that was to be located in Utah and Nevada. This basing mode for ICBMs has been characterized by some of its supporters as the only reasonable, and clearly the best, option for preserving ICBM survivability—all others having been thoroughly reviewed and found wanting—and by some of its detractors as a laughable contraption designed by Rube Goldberg.

The truth, as usual, is more complex.

The shell-game basing mode approved by the Carter Administration had several deficiencies, primarily as a result of its tangled bureaucratic history, the attempt to mesh it with the Salt II Treaty, and efforts to limit the amount of land its deployment would affect. But a somewhat amended version of the same basic shell-game idea—possibly with the missile shelters wider apart (to make ABM defense easier), possibly with vertical instead of horizontal shelters, and probably with no effort made to enable the missiles to dash quickly from one shelter to another—could probably have worked, with an important caveat. Over the long run, some way would have had to be found to limit the effect of the Soviets' overwhelming the shell-game system by adding enough accurate warheads to attack it successfully—a program for which they not only have the technology in hand but most of the production lines in operation as well.

Three general answers were given to this problem: that Soviet fear of an American strike against their ICBM's would limit Soviet investment in such large fixed ICBMs as the SS-18 and the smaller, but

still MX-sized, SS-19 (these being the weapons best-designed to attack the MX); that the SALT II treaty would, effectively, limit the number of Soviet warheads and thus keep the shell-game system ahead of any threat to it; and that we could, if necessary, offset Soviet warhead increases by building more shelters or deploying anti-ballistic missiles (ABMs) to defend the system.

Each of these three long-run solutions to the shell game's prospective problems of survivability, in turn, faced difficulties. Relying on Soviet fears about the MX threat to their own ICBMs in order to limit their ICBM program struck many as an encouragement to the Soviets (if they needed any such) to continue to add to their ICBM force to threaten the MX in its shell-game basing and then to prepare to launch their own ICBMs on warning if they were attacked.

The SALT II Treaty had its virtues, for its five-year term, as a limitation of Soviet warheads. Directly, it limited only launcher numbers and the number of warheads per missile, although its testing provisions could also have somewhat delayed future Soviet efforts to add further to the number of warheads on each of their ICBMs. But after the five-year term of SALT II, it was asked, how do we convince the Soviets to renew, or even improve, an agreement that we need in order to keep them from putting our whole ICBM force at risk? The best answer was probably that we would have exerted such leverage on them by threatening to deploy an ABM defense of the shell game unless adequate and effective limitations were placed, by agreement, on Soviet warheads for as long as necessary. The Carter Administration stressed that, since the shell-game system alone would have been adequate to provide a reasonable number of surviving MX missiles against an attack by the estimated current number of Soviet hard-target warheads, we might have needed only to keep our threatened ABM system in development, not to deploy it; also we could have kept at the ready an expansion in the number of shelters. (But this latter would not have had nearly as great a degree of leverage against substantial Soviet warhead increases as a potential ABM deployment.)

An ABM defense of, say, 200 MXs secreted among 4600 shelters would have been possible with a far less sophisticated ABM system than would be needed to defend a few hundred silos. If, ex hypothesi, the location of each MX and each ABM system were unknown to the Soviets and each ABM system were capable, by preferentially defending the MX, of causing the Soviets to fire an extra two warheads (i.e. a total of 3 warheads instead of only one)<sup>2</sup> at each of 4600 shelters, then the Soviets would have to launch far more than 4600 warheads at the shelters themselves. The short-range two-shot ABM system defending each MX could force them to launch 9200 additional warheads to exhaust the ABM defenses in order to be relatively certain of destroying almost all of the MXs. (The objective, of course, not being to serve as such a "sponge" for nearly 14,000 Soviet warheads, but to be such an effective sponge that an attack would never be made.) The large number of shelters in the system, in other words, gave great leverage—if all worked as advertised—to an ABM with a comparatively modest task. With a fewer number of shelters, this leverage was significantly diminished. With, say, 200 MX missiles based in only 200 silos, each ABM system would need to destroy nearly seventy Soviet war-

heads before it itself was destroyed in order to exhaust the same nearly 14,000 Soviet warheads.

This was an unimaginable task with the sort of ABM technology most people contemplated—short-range interceptors, plus possibly an "overlay" of exo-atmospheric interceptors. Indeed, with such technology it would probably be extremely difficult to charge a "price" of more than around half a dozen<sup>3</sup> extra Soviet warheads per shelter. Even a sophisticated ABM of this same type, then—say one charging a price of 6 additional warheads per shelter—would have to be defending a shell-game system with around 2,000 shelters in it in order to require the Soviets to use the same approximately 14,000 warheads to destroy the system. Indeed it would take 600-700 shelters (for, say, 100-200 MX missiles), defended by a similarly sophisticated ABM system (i.e. six effective shots per launcher), to require the Soviets to launch the same 4,600 warheads that would have been required for them to attack an undefended system of 4,600 shelters.

By reaching excellent, verifiable arms control agreements with the Soviets and renewing them over the years, we might have—with the full shell game—avoided the need to deploy ABMs to keep the MX survivable. But to reach such agreements, if indeed it was possible, we would have had to manage our technology and our politics in such a way as always to keep an ABM deployment, and an apparent willingness to abrogate the ABM Treaty of 1972, staring the Soviets in the face. For these reasons, (a) the shell game with a large number of shelters, and (b) the readiness to deploy ABM defenses using reasonably available technology, were never alternatives to one another over the long run. They went, and go, together like a horse and carriage.

The Carter Administration's decision to follow this complex road of preserving ICBM survivability—a shellgame MX, arms control agreements effectively limiting Soviet warheads, and the ever-implicit threat of an ABM deployment—was certainly among its most difficult. It was a principled decision and its logic can be defended. But, for the long run, the path that had to be negotiated had so many points of ambush—from the requirements of Western States' water law, to forecasting future Soviet-American relations, to the technology of successfully hiding both mobile 100-ton ICBMs and mobile ABM systems—that there were bound to be searches for alternate routes.

#### THE CURRENT ICBM SURVIVABILITY PROGRAM

The Reagan Administration's decision on ICBM basing gives up a degree of near-term ICBM survivability—given Soviet ICBM accuracies, the Administration's decision to deploy MX in existing silos, hardened or not, provides little more than a fig leaf, and that, at best, for only a short time.

For long-run survivability of the ICBM force, the Administration is pursuing three options: ABM defense, deep underground basing, and continuous patrol aircraft. In addition, under Congressional pressure, it is continuing to review shell-game systems of one kind or another.

Without some breakthrough in ABM technology, any renewed effort to find a combination of ABMs and shell games will face prospects and problems very similar to those faced by the Carter Administration. Efforts to have only a few shelters in a shell game, for example, will demand that we reach (and our reach may well exceed our

grasp) for proportionately more sophisticated ABM systems for defense. Otherwise the few shelters will quickly become vulnerable, if they are not indeed already vulnerable at their time of deployment. (Efforts to keep ICBMs survivable when based in individual silos alone, without any deceptive basing, will require even more sophisticated ABM systems—unachievable without some major breakthrough in ABM technology.) In such a case there is a significant risk that advertised, but not real, ABM technology will grow to fill the gap. It is sometimes amazing what technology can do in the defense world as long as the only test it needs to pass is one posed by a questioner, sitting at a conference table, watching projections of multi-colored view-graphs and an articulate briefer tapping them with a collapsible pointer.

A further problem may develop if there is an effort to deploy MX missiles in a shell game in Minuteman fields in the Northern United States. The logistics problems of moving 100-ton missiles around on roads in those snowy areas were what drove the Air Force toward the nice, flat, warm environs of Las Vegas in the first place. A shell game that doesn't work—because it is too difficult to move the MXs and keep their location secret—would be a financial and strategic disaster.

The other two potential Reagan Administration programs for long-run ICBM survivability deserve particularly careful and fair-minded study. Neither would recreate the old days of an ICBM force with excellent survivability, land-line communications for excellent peacetime command and control, prompt response, and low operating costs. But it may be reasonable, now, to stop trying to achieve all this in a single system and to focus on the key requirement of survivability. If one insists on trying to have all such desirable characteristics in a single ICBM system, today, he is driven back toward a shell game with many shelters and a plausible ability to deploy a comparatively low-risk ABM.

A few, say 50-100, MXs (or for that matter a larger number of smaller ICBMs) based in one or both of these two ways—deep underground or on continuous patrol aircraft—could severely complicate the problem of any Soviet planner. This is, after all, the main objective. As former Secretary of Defense James Schlesinger puts it, we want to assure that any Soviet planner, asked to assess the plausibility of the first strike, will always answer, "Not today, Comrade."

Deep underground basing for ICBMs has a perceptible doomsday flavor to it, even in the doomsday world of strategic nuclear force planning. Nonetheless, it may contain some interesting possibilities to enhance survivability. It may be, for example, that testing will bear out the claim that a missile that has been tunneled into some types of geographical features, such as mesas, would require such a huge number of nuclear explosions to destroy it that a successful attack would be prohibitively difficult—this would be because the system could not be destroyed by attacking a single entry or exit point, and because some types of soil readily absorb nuclear blast effects. Such a missile would be far from promptly available, of course, but equipment contained with it might permit it to tunnel out via a previously undetermined path and be available in a matter of days. It is certainly not an idea without inherent problems, but it is worth further examination for cost and technical feasibility.

The notion of a specially-designed continuous patrol aircraft is potentially promising. This new concept has not been rigorously examined before because airborne ICBM systems have previously always faced a dilemma. The fuel and operating costs of keeping a reasonable number of conventional aircraft of currently-existing types continuously aloft—as we did with some of our strategic bombers into the early 1960's—was prohibitive. But any system in which almost all of the missile-carrying aircraft could not be kept routinely aloft and the aircraft thus had to stay at airfields had many of the same problems as the bomber force, as described above. If the current generation of jet transports, such as C-5As or 747s, were to carry ICBMs, we would indeed be driven for cost reasons to keep them on bases in a normal day-to-day status; consequently, they would have no better (and probably worse) pre-launch survivability than the B-52s. The use of Short-Take-Off-and-Landing (STOL) aircraft, carrying ICBMs, was considered carefully by the Carter Administration—these were to be kept at normal air bases and then flushed to a large number of more austere bases upon warning of a possible attack; logistics costs at the large number of required bases eventually killed this idea.

The launch of an ICBM by parachuting it from a large aircraft is a relatively simple matter, however, demonstrated some years ago. The accuracy of an ICBM launched in this way would be good enough to destroy unhardened targets, but it could destroy hardened targets only with some sort of external navigation aid to the missile, e.g. position information from satellites such as those in the GPS system. Transmitting such information is feasible; direct navigation fixes from ground features or land-based equipment could also allow good accuracy. If an aircraft could be designed explicitly to fly on patrol over a large area and could be given radically-better fuel efficiency—enough to make the long-run costs of such a system comparable with other reasonable alternatives—this sort of basing for ICBMs may make the short list for serious and careful consideration for the first time. Its survivability would then need a thorough assessment.

Initial indications are that an aircraft properly designed for such a purpose, having a gross take-off weight comparable to a C-5A and capable of carrying an MX (or a larger number of smaller missiles), could have a fuel efficiency in the range of eight to ten times better than modern jet transports and consequently an unrefueled endurance of 5 days or more. Such an aircraft would, in some ways, be a modest-technology system, not a sophisticated one. It would probably be powered, for example, by fuel-efficient turboprop engines, not jets, and have a long glider-like wing for added lift. It would probably use composite materials to lessen its weight significantly. Composite materials are far more extensively used in aviation construction work than they were a few years ago—indeed the commercial executive transport Lear Fan aircraft, now undergoing certification testing, uses composite materials and turboprop engines to achieve an advertised fuel efficiency four times better than executive jets, and it is a swept-wing aircraft designed for speed, not for fuel-efficient patrol.

At an early reading, neither the technology of constructing such an aircraft nor the logistics of operating it (it needs no specially designed airfields, for example) seems pro-

hibitive. Indeed, since an aircraft with this type of range and endurance has a number of other potential uses, its development cost might well be spread over a number of different missions. An order of magnitude reduction in fuel use of this sort—even if the aircraft must fly relatively slowly (150–200 knots) and low (5–10,000 feet) to obtain the best efficiency—opens up many vistas, for military and civilian uses. Some types of ships, such as amphibious ships, are only about ten times more fuel-efficient in moving cargo than today's jet transports. An aircraft that approaches some ships in its fuel efficiency has, to put it mildly, some interesting potential uses. It would clearly be better, for example, to have command and control aircraft that can stay aloft, unrefueled, for nearly a week rather than for merely a matter of hours. Ocean surveillance and anti-submarine warfare patrol aircraft could significantly benefit by a many-fold increase in their range and endurance. So could tankers. Our long-range air transport in the 1973 Israeli-Arab War required six tons of fuel for every ton of payload delivered, and a recent training exercise for a mere dozen fighter aircraft in the Mid-East required the equivalent of 30 C-5As and 32 large tanker aircraft to support it. These sorts of fuel requirements for transport aircraft are a military logistician's nightmare; aircraft that might be used as transports or tankers that are themselves extremely fuel efficient open up many possibilities for rapid support of allies abroad, for example.

Although it may be that such an aircraft would have a number of such potential uses, whether or not it could carry ICBMs is far from clear. Before a continuous-patrol aircraft could be used in such a role there are two sets of problems to deal with, one unworthy and one important.

The unworthy set of questions relates to the unexciting nature of such a strategic system. We are used to our strategic systems being at the cutting edge of our technology: flying higher, farther, and faster—staggering the world with the technological virtuosity, e.g., of the first Polaris submarine. These systems have been the Defense Department's equivalent of NASA's moon program: many of the best engineers and best military officers have developed and operated them. It is a bit of an emotional shock to many in the strategic business to consider designing merely a fuel-efficient cargo plane to fly around randomly over oceans or Southwestern deserts. It would also be difficult to imagine wearing a white silk scarf while lumbering about in a modern version of Howard Hughes's Spruce Goose. But however psychologically and institutionally interesting such reactions may be, they are negligible considerations, at best, if such a system could provide an affordable and survivable addition to our deterrent at a time when ICBM survivability is being seriously eroded.

The important set of questions about such a system relates to its survivability: whether a number of such U.S. aircraft could, at reasonable cost to the Soviets, be simultaneously detected, and tracked, and destroyed. Occasional detection alone would not threaten such a force any more than occasional detection of a submarine would threaten the destruction of the whole submarine force. This survivability issue deserves fair and thorough consideration, with full attention given to the countermeasures that could be used to protect such an aircraft, especially in a crisis—e.g. jamming of Soviet sensors, use of decoys, etc. Flying at low altitudes

could be useful to help avoid some types of sensors. Countermeasures might include, for example, not only patrolling over tens of millions of square miles of ocean but, if necessary, over some parts of the United States as well. Soviet systems that might—at some cost—conceivably be designed to detect and even attack such an aircraft when it was patrolling over large ocean areas might have significant problems detecting or attacking it if it shifted, when threatened, to patrolling over land. Thus an aircraft that had the ability to change from being an "above-ground-mobile" system could present quite a range of problems to the Soviets if they set out to threaten it.

#### SMALL, SINGLE-WARHEAD ICBM'S

Small, single-warhead ICBMs have sometimes been suggested as an alternative to MX because, for an equivalent number of warheads, there would be ten times more missiles than in the case of a ten-warhead MX. Also, being only 10 tons or so in weight rather than 100 tons, there are theoretically more ways to base such a missile. But increasing the number of missiles by a factor of ten, for an equivalent number of warheads, means added cost—buying 2000 expensive guidance systems for ICBMs, for example, costs more than buying 200. Also, if it were deployed in silos or shelters, many more ABM launchers and radars would need to be bought to defend such a system than to defend a smaller number of larger ICBMs.

These added costs would probably not be a sufficient reason for staying with MX rather than shifting to a small ICBM, however, if there were clearly a more survivable way of basing a small ICBM. Both the deep underground and continuous airborne patrol methods, however, are consistent with either large or small ICBMs. Merely spreading small missiles throughout a larger proportion of the shelters of a shell game accomplishes little—2000 small ICBMs in 4600 shelters are not appreciably more survivable (although moving them around is of course easier) than 200 MXs in the same number of shelters; in either case, assuming the Soviets don't know in which shelters the missiles are located, they would have to attack all 4600 shelters. Two thousand small ICBM's in 2000 individual silos are about half as survivable.

Deploying small missiles in a mobile mode—either on trucks, on helicopters, or on Vertical Take-Off and Landing (VTOL) aircraft based at military facilities, as has been proposed—could make some contribution to survivability. If no method of basing the MX appears feasible, these sorts of approaches should probably be examined. But unless such systems are continuously mobile, they would need warning—just as bombers do—to escape their bases. Even if they were dispersed and continuously mobile over a large portion of the country, however, and even if the political problems of their being out among the public could be solved, they might well be vulnerable to a far smaller barrage attack than the sort of attack which would be needed against continuously patrolling aircraft.

The best version of basing for small ICBMs, in terms of quick response to warning, would probably involve the use of a newly developed VTOL aircraft capable of carrying such a small missile; such an aircraft development would not be a simple matter, however, and thousands of reliable pilots would be needed to operate such a system.

#### ARMS CONTROL

If the job of preserving strategic survivability is so difficult, why not rely on arms control to accomplish it? The Carter Administration approach, described above, did this, in part, in order to limit the number of warheads that might be used against the MX shell game. It is necessary, however, if one is going to rely on arms control agreements with the Soviets to preserve survivability, to have excellent confidence that such agreements can be verified and sustained over a long period of time. This amounts to saying that one needs to have under development programs that are not only technically able to stymie Soviet efforts to endanger our deterrent—if they cheat, abrogate, or deploy quickly upon the agreement's expiration—but our programs must be such that we can reasonably expect to have, over the long haul, the political ability to make credible and sustain the threat to deploy them.

Programs such as ABM, which would require us to abrogate a treaty in order to make a unilateral decision to deploy (and even, in some cases, to test), have deficiencies in this regard. Abrogating the ABM treaty would create a number of problems—the Reagan Administration pointed out at the time of the October 1981 decision, for example, that it must consider "how Soviet ballistic missile defenses—which would almost certainly be deployed in response to any U.S. missile defense system—would affect U.S. and Allied offensive capabilities." But among the problems of ABM treaty abrogation would be that, except in extreme circumstances, abrogation would be unlikely to be an event that would show off our national political unity to its best advantage.

Whether arms control agreements limiting launcher numbers and warheads are called SALT or START they can, at best, only make a partial contribution to the objectives of checkmating Soviet efforts to undermine our deterrent. There is every reason, nevertheless, to pursue such negotiations thoroughly and forthrightly. It would also be sensible to integrate our planning about arms control with our strategic force planning far better than we have done in the past. But we must remember that the chances of success in arms control negotiations are far greater (indeed they may only exist) if we are honestly confident ourselves that we can preserve our strategic forces' survivability even if we find that such agreements cannot be reached, ratified, or renewed—for whatever reason.

In the meantime there are arms control efforts other than SALT/START that may deserve at least as much, or even more urgent, attention. As long as we maintain our own forces adequately and give the Soviets no hope of being able to profit from nuclear threats, it is far less likely that U.S. or Soviet nuclear weapons would be the first ones since 1945 used in war than it is that, say, Iraqi, Pakistani, or Libyan nuclear weapons would be so used.

There are two important arms control consequences of this. First, non-proliferation should be moved back at least into a tie for first place on our arms control agenda. However important it may be that the United States or its allies be able to sell nuclear material and facilities to other countries for peaceful purposes, that consideration should lose in a contest with limiting the proliferation of nuclear weapons. Second, as Senator Sam Nunn has suggest-

ed, we should begin exploring ways, beyond the hot-line, to ensure that we and the Soviets can exchange information quickly and securely in a crisis—even if there is nuclear destruction in one of our capitals. We must be able, together, to make certain that some new nuclear nation, or even a set of terrorists, cannot lead us to engage in a U.S.-Soviet nuclear war.

#### OTHER CONSIDERATIONS

As Soviet nuclear forces have grown to achieve parity, or better, with ours, many of the earlier debates about nuclear forces have taken on a new cast. A good argument can be made that we need the flexibility to conduct limited nuclear strikes and to attack hardened Soviet targets in order to help deter Soviet leaders who have given ample evidence of the prime value they place on their instruments of military power. Programs devoted exclusively to the objective of having such a counter-force capability, however, should have to pass a more demanding fiscal and philosophical test than survivability improvements. In any case, most of the hard questions on strategic forces today relate to survivability.

We should have enough theatre nuclear forces in Europe and near Japan to match Soviet modernization of their forces of this sort. In no small measure this is to link our fortunes to Europe's and Japan's, heavily for their own benefit, and to ensure that the Soviets do not believe that they could fight a nuclear war limited to one of those regions. Similarly, our theatre and strategic nuclear forces still have some role in helping deter massive, but non-nuclear, Soviet assaults. Survivability is important for these theatre nuclear forces, just as it is for strategic forces.

But to rely exclusively on nuclear weapons to deter, for example, Soviet use of chemical or toxin warfare is foolhardy—especially in light of the Soviets' recent apparent violations of the Geneva Biological Weapons Convention of 1972. The days of that sort of extension of nuclear deterrence are gone. Similarly, we do not now have the option, as we may have had during our days of nuclear superiority in the 1950's to rely heavily on strategic nuclear weapons to deter conventional war. We cannot leave any part of the spectrum of military forces unacceptably weak and plan wholly on the threat of escalation for deterrence. To deter a conventional attack, for example, we cannot heavily rely on theatre or strategic nuclear weapons—we must be able to fight, and fight well, with our conventional weapons.

This is not to say that we should neglect to press our allies—particularly the Germans and Japanese—for greater contributions to the common defense. We definitely should so press them. But the increased importance of our own conventional forces, as Soviet nuclear forces have increased relative to ours, is a matter requiring urgent attention. It will unfortunately be far more expensive—however clearly we do it, and whatever waste in the defense budget we can eliminate—than the improvements in the survivability of our strategic forces discussed above.

History offers some insight about whether we can afford these strategic and conventional military investments or not. The percentage of its gross national product that a nation spends on defense is worthless as a prescriptive number—we should not be trying to spend a fixed share of our national income on defense any more than we should be trying to spend a fixed share of our per-

sonal income on insurance. The objective is to be adequately protected, not to pay premiums. But the share of GNP we spend on defense is a reasonably rough measure of the relative burden that defense is placing on us as a society. In the late 1970's we spent between 5 and 5½ percent of GNP on defense—right at the lowest level we have spent since the North Koreans rolled across the 38th parallel in the summer of 1950. During John Kennedy's peacetime Presidency, on the other hand, we spent about 9 percent of GNP on defense. The current Administration has proposed moving from our recent post-Korean War low toward a level (around 6¼ to 7 percent of GNP) less than half-way back to John Kennedy's level of commitment. It is our misfortune that we must now correct significant strategic and conventional military imbalances at a time of drastic cuts in domestic programs, high unemployment, and many other needs—from rebuilding the nation's roads to saving the social security system. But disproportionate defense spending cannot fairly be set up as the cause of this fiscal problem. Current and projected defense spending is disproportionate neither to the Soviet effort that makes it necessary nor to our own past levels of commitment to defense. Excessive tax cuts are a far more logical target as the cause of this difficult dilemma.

Much rides on how we handle this problem. In the 1930's, the governments of Britain and France and, to some extent, of the United States as well made World War II more likely by their failure to maintain adequate military forces. The economic problems we face, as a nation and as an alliance of free nations, are far less severe than those during the great depression, and the stakes of failing to be strong enough to deter aggression and war are much higher.

If we do fail, it will be our own fault. And history will not forgive us.

#### GLOSSARY

**ABM:** Anti-Ballistic Missile. A system designed to attack incoming nuclear warheads targeted against either civilian or military (e.g. silo) targets.

**ALCM:** Air-Launched Cruise Missile. Armed with either a nuclear or a High Explosive warhead.

**ATB:** Advanced Technology Bomber (Stealth). Designed to reduce the risks of detection by Soviet air defenses.

**BMEWS:** Ballistic Missile Early Warning System (U.S.)

**C<sup>3</sup>:** Command, control, and communications—i.e. the systems for managing nuclear weapons and doctrine.

**Counterforce:** The ability to strike the enemy's military targets, and especially hardened missile silos.

**Decoupling:** The theory that, in certain circumstances, the U.S. strategic arsenal would not be employed to retaliate against a Soviet attack on Western Europe, despite NATO doctrine.

**Deep Underground Basing:** The concept of putting ICBMs in very deep vertical tunnels to reduce the risks of their destruction by nuclear attack.

**ELF:** Extremely Low Frequency. A (proposed) U.S. system for communicating with submerged submarines.

**First-Strike:** The first attack in a nuclear exchange. Also disarming first strike, the attempt to cripple the retaliatory capability of the other side.

**Flexible Response:** The concept that response to attack should be in some way proportionate to the nature of the attack.

**Fractionation:** The mounting of more than one warhead on a missile, thus dividing its available megatonnage among several targets. See MIRV.

**Fratricide:** The theory that, should two or more nuclear explosions take place close to one another (in time and space), their blast effects (e.g. against a missile silo) could partially offset one another.

**GLCM:** Ground-Launched Cruise Missile. Armed with either a nuclear or a High Explosive warhead.

**ICBM:** Intercontinental Ballistic Missile. For example, the U.S. Titan, Minuteman, and MX; and the Soviet SS-11, SS-17, SS-18, and SS-19.

**INF:** Intermediate-range Nuclear Forces. See LRTNF.

**Launch on Warning:** The doctrine of beginning a strategic nuclear response when there is confirmed evidence that any enemy nuclear strike is in progress.

**Launch under Attack:** The doctrine of beginning a strategic nuclear response as soon as the first enemy nuclear weapons start exploding.

**Limited Nuclear War:** The theory (plus the doctrine and hardware to support it) that it would be possible, following the beginning of strategic nuclear war, to undertake a series of controlled exchanges, to limit the extent of fighting and to terminate hostilities—all as rational acts of policy.

**LRTNF:** Long-Range Theater Nuclear Forces. Designed for deployment in Europe, including the U.S. Pershing II ballistic missile and GLCM (for deployment beginning in 1983) and the Soviet SS-4, SS-5, and SS-20. Now called intermediate-range nuclear forces (INF).

**MAD:** Mutual Assured Destruction. The concept that both the United States and the Soviet Union should be able to sustain a nuclear attack, and still be able to launch a retaliatory strike causing damage out of proportion to the goals sought in the initial attack—i.e. unacceptable damage.

**MIRV:** Multiple, Independently-Targetable Re-entry Vehicle. Several warheads on a single missile, each of which can be guided to a separate target.

**MPS:** Multiple Protective Shelter. A U.S. concept for basing the MX missile which would shuttle each missile among many shelters, to reduce the risks of their detection and destruction.

**MX:** The U.S. Missile-Experimental. ICBM designed to replace or supplement Titan and Minuteman.

**SALT:** Strategic Arms Limitation Talks. Conducted between the United States and the Soviet Union between 1969 and 1979, and which produced three sets of arms control agreements (SALT I, 1972; ABM Protocol, 1974; SALT II, 1979).

**Second-Strike:** The nuclear response to a first strike. Also the ability of nuclear forces to survive a nuclear attack and retaliate, causing unacceptable damage.

**SLBM:** Submarine-Launched Ballistic Missile. For example, the U.S. Polaris, Poseidon, and Trident, and the Soviet SSN-6, SSN-8, and SN-18.

**SLCM:** Sea-Launched Cruise Missile. Armed with either a nuclear or a High Explosive warhead.

**START:** Strategic Arms Reduction Talks. The name suggested by the Reagan Administration to replace SALT.

**SUM:** Shallow Underwater Missile. Designed to be deployed on small, conventionally-powered submarines in U.S. continental waters.

Triad: The combination of U.S. airborne, land-based missile, and submarine-based strategic nuclear weapons.

## FOOTNOTES

<sup>1</sup> See Keeny and Panofsky, "MAD Versus NUTS," "Foreign Affairs" (Winter 1981/82).

<sup>2</sup> For purposes of simplification these illustrative figures ignore such matters as the Soviet need to target additional warheads on U.S. shelters to take account of missile unreliability and inaccuracy. A full description of all these factors would shift the warhead numbers some, upward, but at the expense of causing the reader's eyes to glaze totally over.

<sup>3</sup> See Kent, "ABM Revisited," "The Washington Quarterly," Autumn 1981 (price of four or five warheads per shelter is "substantial"; a price of nine is "a formidable challenge technically").

### LOW-INCOME ENERGY ASSISTANCE

Mr. GRASSLEY. Mr. President, Wednesday afternoon, under pressure because of the impending recess, the Senate passed an urgent supplemental appropriation of \$123 million for low-income energy assistance. Tuesday, it was stated on the floor of the House of Representatives that a number of States, including Iowa, are out of money, or are in danger of being out of money in the near future if we do not pass this supplemental appropriation.

It is my understanding that the House Appropriations Committee received its information from the National Consumer Law Center which was apparently given a contract to obtain this information from each State energy assistance office.

Mr. President, I remain in close touch with the energy assistance program in Iowa. I was perplexed when I heard that Iowa might be running out of money, because as late as Monday of this week my office spoke with Bob Tyson, who directs Iowa's low-income energy assistance program, and he did not raise the point that Iowa's program might be running out of money. So I phoned to inquire about the situation in Iowa. My office spoke with Bob Tyson, and he told us that Iowa is not running out of money. He said, I could quote him—"Iowa is not running out of money."

Mr. President, this incident highlights a serious institutional problem we have in this body. All too often, we are reduced to last-minute, slapdash legislation. We are confronted with this problem most often when we are asked to appropriate millions of dollars of taxpayer money before we can go home for recess. We should also be concerned about more careful accountability for all energy assistance programs in the States, with turnback of all expended funds.

Mr. President, I did vote for the supplemental appropriations because the weight of the evidence convinced me that the harsh winter has presented problems to a number of States in trying to meet the heating needs of their low-income and elderly populations. I do hope, however, that we take

pains in the future to examine spending bills more carefully.

### SENATE JOINT RESOLUTION 144—NEGOTIATED SETTLEMENT IN EL SALVADOR

Mr. DODD. Mr. President, yesterday, I introduced Senate Joint Resolution 144 for myself and for Senators TSONGAS and KENNEDY.

A complete explanation of the resolution appears in yesterday's RECORD, beginning at page 1536.

I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

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

## S.J. RES. 144

Whereas the conflict in El Salvador has inflicted on the people of that country a tragic toll in lives and property;

Whereas the conflict appears to be a stalemate with no end in sight;

Whereas the continuation of the conflict will further polarize the political climate in El Salvador and place in jeopardy the peace and security of the Central American region;

Whereas the government of El Salvador has demonstrated its commitment to the holding of elections;

Whereas the combined political and military leadership of the insurgent opposition has declared its willingness to engage in negotiations without preconditions to end the conflict;

Whereas other groups and nations in Central America and Europe have announced their willingness to facilitate such negotiations; and

Whereas the present opportunity to pursue such negotiations is a unique moment in the history of the conflict and may not be repeated: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That with respect to the conflict in El Salvador, it should be the policy of the United States Government to encourage all parties to the conflict—

(1) to begin unconditional negotiations for the purpose of achieving a cease-fire arrangement under international supervision, and

(2) to pursue these negotiations for the purpose of reaching an overall political settlement to the conflict, one element of which would be open and free elections under international supervision.

### EARTHQUAKE THREATS: CALIFORNIA NOT ALONE

Mr. CRANSTON. Mr. President, California has been described as a state of mind, an El Dorado on the Western Slope, a nation unto itself, a place of regeneration and renewal, and a harbinger of things to come. It has also been described, quite accurately, as a place where serious earthquakes have occurred in the past and are likely to occur again.

But California is not alone. In fact, as James Fallows points out in a recent Atlantic Monthly article, at least 10 other States—both east and

west—are in zone 3 of seismic risk maps, where "major distributive earthquakes may occur." The most powerful earthquakes this Nation has known occurred not in California, but in Missouri, in the last century.

The implications are clear. Earthquakes are a national problem—not only because they are a virtual certainty for the most populous State in our Nation—with a potential large-scale loss of life and billions of dollars in property loss and drains upon the Treasury—but because California is not the only State threatened by earthquakes.

I commend James Fallows' article to my colleagues and ask unanimous consent that it be printed at this point in the RECORD.

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

## LIVING ON THE FAULT LINE

(By James Fallows)

Standing in the wash of the Santa Ana River, you can see mountains all around you. The San Gabriel, the San Bernardino, and the San Jacinto mountains form a long, semicircular arc to the north and east, pierced by the passes that lead variously to such outposts on the California desert as Barstow, Indio, and Palm Springs. To the south and west are the lower hills that separate the San Bernardino Valley from the booming conurbations of Orange County and from Los Angeles itself, which lies seventy miles due west.

On those days, infrequent during summer, when opaque brown smog has not blown inland to fill the valley and lap over the rim of the mountains, the contours of the ranges are clearly visible from the valley floor. There is no natural obstruction to the view more substantial than the waist-high scrub. The sharp edges and escarpments of the mountains suggest their dramatic origin, as products of the pushes and pulls on the earth's surface that are even now creating mountain ranges in the West. The white gravel in the dry riverbed has been washed down from the mountains during the flash floods that from time to time strike this bone-dry region. The "river" runs with water for only a few days out of every year.

It can seem the bleakest of settings, especially when the Santa Ana winds blow down from the high deserts at temperatures well above 100 degrees. Yet, like many other harsh regions of the Southwest, this has been a scene of phenomenal growth. As people continue to move to southern California, as Los Angeles has filled up, as real estate prices in Orange County have shot to the sky, many people have taken the next step in from the coast and have brought a population explosion to the "Inland Empire." The orange trees that line Interstate Highway 10 are the remnants of groves that were until the past two decades an economic mainstay of the region. They succumbed first to the smog and then to the subdividers. Some 400,000 people lived in the San Bernardino Valley in 1960. More than 700,000 live there now. There are plans for an "instant city" of 200,000 more people, to be built in the hills outside Chino, where the corners of San Bernardino, Orange, and Los Angeles counties touch.

People have moved to this valley seeking cheaper real estate, the good life in the sun, and the opportunities that economic growth creates. They are an hour's drive from the mountains, an hour from the ocean, and far, far away from such northern, urban cares as frost and economic decline. And their search has led them to the area that, according to many scientists, will be the site of the next catastrophic earthquake to strike the continental United States.

Those who live in the vicinity, as I did when I was growing up, are accustomed to earthquakes. Many pride themselves on surviving them, as those on the Gulf Coast might on surviving a hurricane. But the prospect that scientists now suggest is different from anything within living memory in southern California.

"We have known for years that major earthquakes in California are inevitable," says Clarence Allen, a geophysicist at the California Institute of Technology. "The scientific attitudes have not changed as much as the public perception that this is a real problem." But both scientific and public attitudes have been heavily shaped by two scientific developments of the past decade.

The first, which has been widely publicized since the early 1970s, is the evolution of the theory of plate tectonics. This theory postulates that the earth's crust consists of a number of large "plates," floating on a molten mass within the earth. There are seven of the larger plates—one bearing most of Africa and half of the Atlantic and Indian oceans, another holding virtually all of the European and Asian land mass—and a number of small ones. As the plates have drifted apart from, and into, each other, their motions have changed the world's geography. They opened the basin that became the North Atlantic Ocean, when the North American plate slid away from the Eurasian. They created the Himalayas, which mark the region where India was driven northward and collided with southern Asia. They stimulate volcanic action, including the recent eruptions at Mt. St. Helens. (As the small Juan de Fuca plate is pushed beneath the North American plate off the Washington and Oregon coasts, it melts at the tremendous temperatures and pressures of the earth's depths and then flows upward, in molten form, as lava.) The motion of the plates can also cleave regions from one another, as is now taking place in California.

The most famous of the "faults" that are responsible for California's earthquakes is the San Andreas—which, from the perspective of plate tectonics, is not just any fault but the boundary between two great plates. To the east of the fault lies the North American plate, which contains more than 99 percent of the land area of the nation, along with Canada, Mexico, and roughly half of the Atlantic Ocean. To the west of the fault is the Pacific plate, which runs beneath the ocean to the Mariana trench—where it disappears beneath the Philippine plate. The city of San Francisco is on the North American plate. Santa Cruz and Monterey, immediately to the south, are on the Pacific plate. So are Los Angeles, San Diego, and the other population centers of southern California.

Through the millennia, the two plates have been moving past each other along the San Andreas Fault, the Pacific regions slipping north, the North American south. The Baja California peninsula resembles in length and width an indentation on the

western coast of Mexico. That is exactly where it came from, geologists say, before it moved north with the rest of the Pacific plate. The motion of these two plates goes on at rates as high as 5 or 6 centimeters a year—very fast, by geologic standards. Rocks on the Pacific side of the fault near Point Arena match those on the North American side at Taft, 350 miles to the south. The two regions abutted one another until the fault motion started about 25 million years ago. Ten million years from now, Los Angeles and San Francisco should lie in the same latitude.

For California, the significance of the tectonic theory was to explain the basic mechanism of earthquakes, not only on the San Andreas Fault but also on the many others that parallel it and the few that run at right angles to it. Year by year, the plates creep past each other; from time to time, rocks must yield. The largest recent earthquake in California, the 1906 "fire" (as civic boosters chose to call it at the time) in San Francisco, could be seen from the perspective of plate motion as the event through which the northern section of the San Andreas Fault released the strain that had been accumulating over the years.

It took a second and more localized scientific development to add the note of certainty to forecasts that a catastrophic earthquake will strike southern California. The man most often identified with this development is Kerry Sieh, a geologist at Caltech. His contribution has been to estimate the schedule on which the rocks along the fault give way.

As the plates move past each other, the strain that accumulates at great depth can be accommodated in different ways. The plates can release some or all of the strain by "creeping" past each other with steady movement, or through numerous small earthquakes that human beings barely feel. Such creeping takes place along a section of the San Andreas Fault in central California, and it leads to novel effects, such as the fissure at a frequently photographed winery in Hollister that is gradually being split by the fault. Much of the tension along a fault line can also be relieved through less frequent quakes of "moderate" power, in the range of 5 or 6 on the Richter scale. Many of the subsidiary faults in California behave this way. Finally, the rocks on a fault line can lock solid. When this happens, there is no gradual distortion of roads, fences, or wineries, nor are the earthquakes frequent. The two sides of the fault remain motionless until the shearing force of the plates' movement overwhelms the strength of the rock itself. The result is a "great" earthquake, which releases enormous accumulated energy all at once and can result in one side of the fault moving as much as twenty feet past the other in the space of a few seconds or minutes. The San Francisco quake of 1906 was such a great earthquake, affecting the northern section of the San Andreas Fault. Another portion of the fault, which runs roughly 200 miles between a small town called Parkfield, in central California, and the San Bernardino Valley, and which is sometimes referred to as the southern section of the San Andreas and sometimes as the south central section, has been locked solid for more than a century. In 1857, during its last great earthquake, the sides of the fault moved past each other by as much as thirty feet. The southernmost section of the fault, which starts near San Bernardino and runs to the Salton Sea, has had no major ruptures during "historic time"—ge-

ologists' term for the 200-plus years of written records for the region, as opposed to the eons of the rocks. Scientists' understanding of this portion of the fault is so incomplete that they are not sure whether it should be considered very likely or very unlikely to suffer a major earthquake in the foreseeable future.

Kerry Sieh's approach was to study the layers of earth at several places along the southern San Andreas Fault to see what they revealed about the timing or previous earthquakes. Through a variety of techniques, such as uncovering layers of peat moss that had been deformed by violent earth movements and then determining their age, he concluded that along the portion of the fault that ends north of San Bernardino, there was a pattern of dormant periods followed by strong earthquakes. Working from an early version of Sieh's findings, the Federal Emergency Management Agency issued the following warning last January as part of a report it prepared for the National Security Council on the consequences of a major earthquake in California:

"Geologists can demonstrate that at least eight major earthquakes have occurred [on the southern San Andreas] in the past 1200 years with an average spacing in time of 140 years, plus or minus 30 years. The last such event occurred in 1857. . . . geologists estimate that the probability for the recurrence of a similar earthquake is currently as large as 2 to 5 percent per year and greater than 50 percent in the next 30 years. . . . The aggregate probability for a catastrophic earthquake in the whole of California in the next three decades is well in excess of 50 percent."

Kerry Sieh has recently reworked his estimates, allowing for greater uncertainty about the magnitude of previous quakes and for the imprecision of the carbon 14 dating process. "The best scientific guess would be that the average interval is somewhere between 125 and 225 years, with both of those being extremes," Sieh said recently. "My own intuitive best guess is that it's about 160 years, plus or minus 30. I'd say that there's a 50 percent chance of a great quake in the next four decades." Considering that the last great earthquake in southern California was 124 years ago, Sieh said at the end of one of his papers, "We are almost certainly not 'overdue' for a repeat of the great 1857 earthquake, but we are clearly well along in the process. We are much too far along, in fact, to neglect serious preparations for the eventuality."

The repeated allusion to "great" earthquakes is important, for it refers to a difference in magnitude so enormous as to become a difference in kind. "Great" quakes are generally understood to be those of magnitude 8 or above on the Richter scale. (Sometimes those of 7.75 magnitude are so classified.) The last "great" quake in the continental United States was the one in San Francisco in 1906. Since then, Alaska has experienced a great quake, in 1964, and there have been devastating earthquakes in Chile, China, Japan, Italy, and elsewhere. But in California, the strongest earthquakes in the past seventy-five years have been in the 6 and 7 range on the Richter scale—and most of them have been centered in unpopulated areas. The most damaging of the quakes, though not the strongest in Richter terms, were the 1933 earthquake in Long Beach, magnitude 6.3, and the 1971 San Fernando quake, also a magnitude of 6.3. Within a matter of years, there will be no

one alive in California with personal memory of the effects of a "great" quake there.

Without the testimony of survivors, it may be hard to imagine the consequences of a "great" earthquake. The difference between 6.3 and 8.3 on the Richter scale does not sound fundamental, but it is. Each increase of 1 on the Richter scale signifies an increase of thirty times the energy and ten times the deflection on seismic measuring devices. If the San Andreas Fault should produce an earthquake of magnitude 8.3, as many geologists expect, it would release about 900 times as much energy as did the San Fernando earthquake of 1971. (The greatest quake of modern times, which struck Chile in 1960, had a magnitude of 9.5.)

The effects of major earthquakes are more readily comprehensible when expressed in terms of ground shaking, on the "Modified Mercalli Scale." This is a measure of the effects of ground movement as they are felt in specific regions. The scale runs from I to XII. Level I is "Not felt except by a very few under especially favorable circumstances," and II is "Felt only by a few persons at rest, especially on upper floors of buildings." In a "great" quake, large areas may be subjected to the highest intensities of shaking, levels IX through XII:

"Level IX: Damage considerable in specially designed structures; well-designed frame structures thrown out of plumb; great in substantial buildings, with partial collapse. Buildings shifted off foundations. Ground cracked conspicuously. Underground pipes broken.

"Level X: Some well-built wooden structures destroyed; most masonry and frame structures destroyed with foundations; ground badly cracked. Rails bent. Landslides considerable from river banks and steep slopes. Shifted sand and mud. Water splashed (sloped) over banks.

"Level XI: Few, if any, (masonry) structures remain standing. Bridges destroyed. Broad fissures in ground. Underground pipelines completely out of service. Earth slumps and land slips in soft ground. Rails bent greatly.

"Level XII: Damage total. Waves seen on ground surface. Lines of sight and level are destroyed. Objects thrown into the air."

In most versions of the Mercalli scale, levels IX to XII are grouped under the heading "Panic is general."

During the 1971 San Fernando earthquake, in which highway overpasses collapsed and forty-five people were killed when a Veterans Administration hospital fell down, there were shaking intensities of IX and perhaps even higher in some areas near the epicenter. The California Division of Mines and Geology has produced maps that display the predicted shaking intensities for a great quake on the southern San Andreas Fault. They show bands of IX intensity stretching for more than 100 miles, with levels of X to XII expected in sizable zones.

As the descriptions on the Mercalli scale may suggest, the main threat to human life during an earthquake comes not from the earth's movement itself but from things that fall. When severe quakes have occurred in out-of-the-way places, such as the 1872 earthquake in Owens Valley, they have rearranged the landscape but have taken comparatively few lives. That earthquake, centered in the stark region east of the Sierra Nevada Mountains, was the strongest in California's history—its force was so great

that within seconds it added ten to fifteen feet to the height of an escarpment and moved the sides of the fault twenty feet past each other—but only sixty people were killed. Unless people are trapped in the path of a landslide, hit by falling trees or drowned by the large ocean waves, called tsunamis, that earthquakes sometimes produce, they face little danger if they find themselves out in the open when an earthquake strikes.

The danger comes instead from buildings, especially those made of brick and other masonry, that are shaken to pieces during strong earthquakes and, in falling, cause most of the deaths. Some of the unreinforced brownstones of Manhattan, Federal townhouses in the Georgetown section of Washington, D.C., and mansions along Commonwealth Avenue in Boston, all so solidly built, could be converted to rubble in an earthquake, for their style of construction is generally the first to fail during strong quakes. Wood-frame houses, by contrast, are the most stable structures, since they are able to sway and absorb the earth's motion. Only under the most severe shaking intensities do one-story frame houses collapse.

The ability of different buildings to withstand shock is also greatly influenced by the ground on which they stand. The best place to be during a strong earthquake is on solid rock; the worst is on soft ground, mud, landfill, or areas with a high water table. Rock diminishes the intensity of the shaking; soft earth magnifies it. This principle is not limited to California. If a strong earthquake were to hit Boston (which is a less remote possibility than it may seem, since Boston has historically been one of the more seismically active areas in the East), the houses of the Back Bay would be most severely shaken, because they are built on landfill. In 1906, the regions of San Francisco built on reclaimed land near the bay were far more heavily damaged than buildings on top of the city's rocky hills. The ultimate danger in such areas is liquefaction, caused by violent shaking that drives groundwater upward through the soil and thereby transforms it to quicksand. Heavy buildings, especially multistory structures that are not anchored in bedrock, can tip over or sink into soil after it liquefies.

Through most of its southern section, the San Andreas Fault traverses dry plains and rocky canyons, where there are few buildings to destroy. But after it crosses through the San Bernardino Mountains at the Cajon Pass, it enters the inland valley that is now supporting such rapid growth, and it comes at its nearest point within about thirty-five miles of Los Angeles. It is the combination of the increasing probability of a quake, its expected magnitude, and its nearness to such a vast and wealthy human settlement that has created an atmosphere of concern about an earthquake on the southern San Andreas. Two other possible earthquakes are on the list of concerns: a major quake on the northern San Andreas, which is thought to be less likely, since only seventy-five years have passed since the San Francisco earthquake, but which would affect an even more densely populated area and therefore might be more devastating; and a moderate earthquake on the Newport-Inglewood Fault, which runs directly through Los Angeles and was responsible for the Long Beach earthquake of 1933. Statistically, the latter is thought to be a longer shot than either of the others, but because it would affect Los Angeles directly, it might be the most damaging of all.

Shortly after Jimmy Carter took a tour of the landscape of devastation around Mt. St. Helens, he grew concerned about the effects of a catastrophe in California and ordered a federal task force to prepare a report. Based on assumptions about how many people would be killed in different kinds of structures (for instance, 2 to 4 deaths per 10,000 population in wood-frame houses, 5,000 deaths per 10,000 in ordinary masonry buildings), the task force came up with the following estimates of deaths and of injuries serious enough to require hospitalization. Some of the situations it considered were these:

	Location		
	Southern San Andreas	Newport-Inglewood	Northern San Andreas
Richter magnitude.....	8.3	7.5	8.3
Time:			
2:30 a.m.:			
Dead.....	3,000	4,000	3,000
Injured.....	12,000	18,000	12,000
2:00 p.m.:			
Dead.....	12,000	21,000	10,000
Injured.....	50,000	83,000	37,000
4:30 p.m.:			
Dead.....	14,000	23,000	11,000
Injured.....	55,000	91,000	44,000

In addition, there is, of course, the property damage. A consultant named Karl Steinbrugge, who was responsible for many of the most widely circulated damage estimates, predicted that the property damage could amount to some \$17 billion for the southern San Andreas, \$38 billion for the northern, and \$69 billion for the Newport-Inglewood. Because of the enormous uncertainties about both the quakes and the resistance of structures, Steinbrugge stressed that any of the estimates might be off by a factor of two or three—either high or low.

In 1973, the National Oceanic and Atmospheric Administration, known as NOAA, prepared two thick volumes to enumerate the likely effects of a major earthquake in Los Angeles and of one in San Francisco. The books contain page after page of maps, each one plotting the two major faults in northern and southern California and showing their location in relation to major facilities: hospitals, blood banks, reservoirs, railroads, airports, highways, military bases, aqueducts, natural-gas lines, electric generating stations and transmission lines, oil pipelines, and other facilities. The southern California report says, for example, that a major quake on the San Andreas could kill between 400 and 800 people who are already in hospitals and put 50 percent or more of hospital beds out of commission, at precisely the time that the demand for emergency service would be most intense. It also says that "in the event of an 8.3 magnitude shock on the San Andreas Fault, the failures of Fairmont and Bouquet Canyon dams should be assumed," and that such failures could kill more than 7,500 people and render 111,000 homeless; that all of the aqueducts that serve Los Angeles and San Bernardino cross the San Andreas Fault at least once and one of them crosses it four times, and that the regions may be without its major water supplies for between two weeks and three months after a quake; that transportation, communications, finance, and all other essential services would be interrupted.

After reviewing these and other predictions, the Federal Emergency Management

Agency concluded in its report earlier this year that "the Nation is essentially unprepared for the catastrophic earthquake (with a probability greater than 50 percent) that must be expected in California in the next three decades. Because of the large concentration of population and industry, the impacts of such an earthquake would surpass those of any natural disaster thus far experienced by the Nation. Indeed, the United States has not suffered any disaster of this magnitude on its own territory since the Civil War."

"What must be stressed is that this prospect presents us with an unprecedented problem in the history of the United States," Carl Ledbetter, a young mathematician who was briefly the director of the Southern California Earthquake Preparedness Project, said earlier this year in testimony before a congressional committee. "There has been no other time when the lives of as many as 69,000 people have been threatened at once; there has been no other time when losses on the order of magnitude of \$135 billion have been a real consideration; there has been no other time when the productive capacity of a region which generates one dollar in twelve of the country's Gross National Product has been under such a real and unavoidable threat."

"We do not know how to think about threats of this magnitude; they are unreasonable by all our past standards."

Some scientists seem to feel that they do know how to think about such threats. They are concentrating on finding ways to predict when and where earthquakes will occur. From experience in the U.S. and more advanced work in the Soviet Union, Japan, and China, geologists have focused on several signs that usually appear from several months to several hours before large earthquakes occur.

One such sign is a pattern of small "foreshocks" that leads to a major shock. ("The problem is distinguishing between those and other patterns that don't turn out to be foreshocks, because no large earthquake follows them," says Karen McNally, another of Caltech's geophysicists.) The Chinese have associated the period before large earthquakes with changes in the nature and behavior of groundwater. The water level in wells sometimes changes just before a quake, and the water may contain different concentrations of radon gas. Both of these changes are apparently signs of rearrangements in the underground rock layers, which affect the courses through which the water must pass. Other scientists have constructed grids of geodetic markers on the earth's surface near a fault, on which they take repeated measurements to determine how much the earth's accumulating strain has distorted the grid.

There are even attempts under way to make scientific sense of the familiar folk-wisdom reports that animals can tell when an earthquake is coming on. In central California, near the San Andreas Fault, one researcher has built a number of burrows for field mice and monitored them to record the animals' activities. He will attempt to establish the normal patterns and the variations from them for seasons and for feeding cycles—and then he will wait for the next big earthquake.

"We need more time—and we need more earthquakes," says Karen McNally. Few phrases are more frequently heard from the geologists and seismologists than "We'll learn a lot from the next big one." Such knowledge may be costly. Clarence Allen, in

discussing events of the past year or two, says. "There's been a change in the seismic pattern [in southern California] that makes us more worried than we'd normally be. We know we're in an area and an era where a great earthquake would be no scientific surprise. We see a pattern of low activity for fifteen years or so—and now this change to higher activity, which makes us nervous." There are similar implications from the Palmdale Bulge, an area along the San Andreas Fault north of Los Angeles where the ground has apparently risen about a foot. "On the assumption that the bulge exists, as I would argue it does, it may be significant," Allen says. "Its shape is roughly coincident with the fault, and the very rapid rate of its rise—by geological standards—makes us think it might be trying to tell us something." But just what the bulge—or the changed seismic pattern, or the groundwater, or the animals—may be trying to say will be much clearer after the next big earthquake has confirmed or disproved the hypotheses.

In the meantime, of course, scientists are offering forecasts whose details of time and place may be imprecise but whose general point is hard to miss. But because the day of reckoning is so uncertain, and because the catastrophe is so strongly associated with divine judgment, against which the efforts of mortals are no defense, it has been hard for California and its public officials to decide what to do.

The things that could conceivably be done fall into two categories—mitigation and preparedness. Mitigation means taking steps before an earthquake to minimize the damage; preparedness means being ready to cope with the problems created by the earthquake.

Since earthquakes do most of their damage to buildings, the most obvious mitigating procedure is to strengthen buildings that might otherwise be destroyed. This California has tried to do, by passing new laws and tightening its building codes after each serious earthquake. When the 1933 Long Beach earthquake crushed masonry buildings throughout southern California, including a large number of schools, people realized that if the earthquake had occurred a few hours earlier, when school was in session, thousands of children might have been killed. The result was the Field Act, which set more stringent standards for school construction and, despite some delays in application, has made schools the safest public buildings in the state. During the 1971 San Fernando earthquake, the Van Norman Dam was so severely damaged that, according to most experts, it came within a few seconds' shaking of falling altogether. If it had done so, the death toll from that earthquake might have increased by a factor of 100. Soon afterward, the state undertook a dam inspection program that has—theoretically—made its dams much safer than before. The improvement must so far be considered only theoretical, because neither the dams nor the skyscrapers that have sprung up in Los Angeles since the thirteen-story limit on construction was removed in 1956 have yet been subjected to the test of a major quake. Engineers have often found themselves chagrined by the results of previous quakes. In 1979, a 6.6 magnitude quake struck the Imperial Valley, an earthquake-prone region east of San Diego. The most serious single casualty was the Imperial County Services Building, a new six-story structure that had been advertised as incorporating the latest standards in earthquake-

resistance but which was so severely damaged that it had to be demolished.

The major structural peril is the large stock of old (pre-1934), unreinforced masonry buildings. There are about 8,000 of them in the city of Los Angeles alone, and their inevitable destruction is expected to be responsible for 80 percent of the deaths and 75 percent of the injuries in a great earthquake. The buildings are located mainly in the crowded downtown areas of Los Angeles and in the less fashionable sections of San Bernardino and other cities. The population that lives and works in them is largely poor and non-white, which is why earthquakes—though they threaten Porsche and pickup alike when freeway bridges collapse—will probably end up killing a disproportionate number of poor people. The economic forces that have kept the old buildings from being reinforced or renovated during the previous fifty years also make the owners of the buildings unlikely to invest voluntarily in such reconstruction. Early this year, the Los Angeles City Council passed an ordinance requiring that all the old buildings be either greatly strengthened or razed.

While earthquake experts generally praise this step, they point out two catches: the deadline for renovation is a dozen years away and could be stretched out even further through legal maneuvering; and no one has figured out who should pay the bill. One school of thought contends that anyone who bought one of these buildings knew there was a hazard and has no right to complain because the gamble didn't work out. Others argue that strengthening the old buildings and reducing the potential disaster serves the public's interest and therefore deserves public financial support, through either tax incentives or low-cost loans. Still another group claims that trying to repair these structures before a quake will always be too costly to make sense. "You can't talk about a massive program of retrofitting old buildings," says Richard Andrews, the acting director of the Southern California Earthquakes Preparedness Project. "If you're talking about a building still under construction, making it seismically resistant might add 5 to 7 percent to the cost. For those that are already built, it can add 100 percent." Instead of worrying about avoiding property damage, some earthquake authorities conclude, it makes better sense to assume that the scientists will provide some warning, and then to get people away from the buildings and out of harm's way when an earthquake is due.

In a more fundamental sense, mitigation includes not only the buildings but also the places where they are built. From this perspective, the population boom in northern San Bernardino County can be seen as a move in the wrong direction. The northern outskirts of San Bernardino and the surrounding small communities—Del Rosa, Highland, Patton Devore—are dotted with tract homes and new condominium developments. This very region is the southern limit of the 200-mile ground rupture that can be expected if the next great earthquake follows the pattern of the one in 1857. The geological map shows that the San Andreas and several associated faults pass directly through the new developments.

Since 1972, construction near fault zones has been controlled by California's Alquist-Priolo Act, which declares the areas near active faults to be "special study zones" and forbids construction intended for human occupancy within fifty feet of the trace (sur-

face line) of an active fault. I visited one of the largest condominium developments north of San Bernardino, a place with several hundred units—adults-only apartments plus an adjoining mobile-home park. "You may have noticed some wide yards, some extra swaths of grass," Robert Rigney, the county administrative officer for San Bernardino County, later remarked. "Those represent the geologists' best guess about where the fault line runs." When I asked the saleswoman at the development whether there were any earthquake problems in the area, she said, "This is southern California, honey. This is earthquake country. You ever look at a fault map? There's no place you can go that's very far away from them, so my advice is just to forget about it."

Indeed, Robert Rigney says that nearness to the fault, as in the case of this development, could be a source of false alarm. "The fifty-foot limit was designed to protect structures from damage caused by ground ruptures," he says. "Once you've passed that point, proximity doesn't mean much. As for the shaking—well, the whole valley will have that." As Clarence Allen puts it, "In a truly great quake, once you're a few feet away from the rupture it doesn't make much difference whether you're there or five miles away."

Robert Rigney also raises a larger question: Should people be prohibited from doing something—like buying new houses near the fault line—that may well cause them harm? "The zoning laws are designed to protect against injuries and deaths, especially in public buildings. They are not intended to protect property per se. If people choose to live here, that's their choice."

In a sense, he's right. The sociologists whose reports make up a larger and larger fraction of official publications about earthquakes have consistently pointed out that among all the possible responses to warnings of a quake, moving away from southern California is the public's last choice. "The Southern California public's lack of readiness is quite rational," a report from the Policy Research Center at the University of Redlands said early this year. "The threat is too uncertain in its impact and timing to command a high priority with people, especially since they face more pressing life demands which justify higher costs and yield higher immediate benefits. Just as people accept the risk of driving a car in order to gain the freedom it allows, many residents may also consider the earthquake threat an 'acceptable risk' in light of the benefits of living in Southern California."

The only thing wrong with the idea that people have knowingly accepted a risk is that many of them don't have the slightest idea what the risk really is. The most widespread source of misinformation is the notion that, since nearly everyone in California has lived through some earthquakes, they have a rough sense of what a big earthquake would be like. When I moved away from California in the late 1960s, I mocked the fears of my eastern friends about the effects of a quake. I'd been there; I knew what they could do. My confidence was eroded recently, when I discovered that during the period I lived there the strongest earthquake to strike southern California was 4.5 on the Richter scale—about a millionth as strong as the big one that is predicted.

Giving people more of the basic information about faults, earthquakes, and hazards is a principal mission of one of the most hopeful new entries in the earthquake field, the Southern California Earthquake Pre-

paredness Project. The project was launched as a cooperative effort of the federal government and the state. Its major purpose was to bring government officials, industrialists, and scientists together so that they could start figuring out who would do what to repair the damage done by the big earthquake. Who would fly in enough cash to keep the local economy running during the weeks it might take to reconstruct bank records lost when the computers go down? ("They tell us it will take ten days to get restarted for every one day the system's out," says Richard Andrews, of the project.) Who will run the morgues? Who will handle the insurance companies, if there is a prediction of a quake nine months from now and they start refusing to renew earthquake coverage?

The project has been hampered in its early stages by a messy disagreement between Robert Olson, who as director of California's Seismic Safety Commission has administrative jurisdiction over the project, and Carl Ledbetter, the mathematician and academic administrator who, at the age of thirty-one, was hired as the project's first director in January of this year. In July, Ledbetter submitted his resignation after Olson had asked him to do so. Olson claims that the disagreement was purely one of personal tastes and administrative styles. Although Ledbetter himself does not say so, others feel that he had made some officials nervous, even envious, because of his very success in getting the press and the public to begin thinking of earthquakes as a serious threat.

The disagreement about the southern California project may have been largely a clash of personalities, but it rises above that to the extent that it illustrates the internal friction that has characterized many efforts to "do something" about earthquakes. Most of the public bodies that have wrestled with the earthquake problem seem to have proven more successful so far in accommodating their own professional and bureaucratic habits than in doing things that would make a significant difference if a great earthquake should strike, say, next month. For politicians, those habits include making gestures of concern. Thus, Governor Edmund Brown, Jr., has appointed a special task force to look into earthquakes; its findings are not notably different from the many reports that other task forces have written and filed over the years. For sociologists, earthquakes provide a reason for polls differentiating between "elite" and "mass" views on, for example, the credibility of earthquake warnings delivered through different news media. The "public policy" consultants have seen in earthquakes an opportunity for constructing elaborate flow charts and "decision trees" of phenomenal complexity, much as their professional brethren did fifteen years ago when laying plans for Model Cities and the Job Corps. Meanwhile, new houses spring up near the fault zone and old houses stand waiting to collapse.

There also seems to be a genial agreement among many of the participants that ignorance is bliss. If there is a constant in the political history of earthquakes in California, it is that responsible officials are often eager to promote the idea that it can't happen here. Arnold Meltser, of the University of California, has pointed out that "the geological map of California published by the California State Mining Bureau in 1916 did not contain any indication of faults, not even the famous San Andreas"—

and this ten years after the San Francisco earthquake. Representatives of Palmdale have done their best to have their bulge referred to instead as the "Southern California uplift." When officials of a county in southern California discuss what their role after an earthquake should be, they tend to emphasize what they will be doing to help repair the devastation elsewhere, not what help they themselves will need.

Any non-Californian who is tempted to mock the desire to ignore earthquakes is invited to consider his own situation. While the government's seismic-risk maps show that most of California is in Zone 3, where "major destructive earthquakes may occur," that zone is not confined to California. It also includes parts of Utah and Idaho; the area along the Mississippi where Arkansas, Missouri, Tennessee, and Kentucky meet; the Charleston region in South Carolina; greater Boston; a strip along the Great Lakes; and the St. Lawrence Valley in upstate New York and northern Maine. For several months in the winter of 1811-1812, a powerful sequence of earthquakes occurred in New Madrid, Missouri. In 1886 there was another powerful earthquake in Charleston, South Carolina.

I asked Clarence Allen what caused those earthquakes. He said, "No one knows."

On a smoggy summer day when the temperature was 99 degrees, Carl Ledbetter rode with me through the foothills north of San Bernardino where the San Andreas Fault runs. "If I remember the maps correctly, the fault goes right past this intersection," he said as we stopped at a crossroads. On one corner of the intersection was a mobile-home park.

"Mobile homes are tremendously vulnerable during earthquakes," Ledbetter said. "They suffer about six times as much damage as regular homes. All of these will be thrown off their supports. They'll all be gone." We drove up a steep hillside, where several dozen new single-family homes were ready for occupancy. "You see the grading on the terraces here? That will never hold. There will be landslides all down this hill."

We drove back down the hill, to the floor of the Santa Ana wash. Farther to the east, where the San Andreas Fault began to divide into two roughly parallel zones, there was a narrow, sharply defined ridge, of the sort that is sometimes created by fault action. Several modern, obviously expensive houses sat on top of the ridge. "I've got to bring my camera up here and take 'before' pictures of all these places," Ledbetter remarked. "Then I'll come back for the 'after.'"

"We could do something about it," he said, as we drove through the wash to Redlands. "Little things can make a big difference, like strapping down the water heater to ensure you'll have something to drink, or knowing how to turn off the gas lines and prevent a fire. Also big things, like thinking about land-use policies, and being prepared for a big earthquake's impact on the nation's economy and its military security. It's not impossible to protect ourselves. But we'd have to start doing it now."

#### U.S. POSTAL SERVICE ESTABLISHES E-COM SYSTEM

Mr. STEVENS. Mr. President, recently the U.S. Postal Service established their E-COM system which allows large business mailers to have mail delivered electronically through

the Postal Service. This process reduces the cost to the mailers and the general public. In addition, much needed revenue will accrue to the Postal Service with which to help offset the cuts in public service appropriations to the Postal Service.

I want to remind my friends that this public service appropriation is the only subsidy provided the U.S. Postal Service for general operations. This appropriation now constitutes less than 1 percent of the Postal Service's total budget as compared to 25 percent prior to the Postal Reorganization Act of 1970, and in the 1983 budget there will be no Federal tax dollars appropriated for the basic operation of the Postal Service.

The Postal Service's entry into the computer age has been welcomed by many segments of this country, including private enterprise who must depend on the Postal Service to reach every American regardless of his or her residence. This entry into the computer age was noted recently by the Amarillo Globe-Times in their editorial of January 6. I ask unanimous consent to have this editorial reprinted at the end of my remarks.

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

[From the Amarillo (Tex.) Globe-Times, Jan. 6, 1982]

#### COMPUTERS HELPING U.S. POSTAL SERVICE

The U.S. Postal Service has entered the computer age. We hope the trend will continue.

Post offices nationwide can now use a new electronic mail service, Electronic Computer Originated Mail (E-COM), which will allow large-volume mailers to transmit their messages from one computer to another by telephone . . .

The Postal Service lost almost \$126 million from March (when it raised its First-Class postage rate to 18 cents) to November (when it then raised its rate to 20 cents), according to Robert L. Hardesty, chairman of the Postal Service Board. While the cost of postal service has steadily increased (without improving services), the price of computers has decreased, making them even more attractive to big businesses and eventually to us.

We welcome the Postal Service to the computer age.

#### DEATH OF JOE GLEASON

Mr. STEVENS. Mr. President, I was saddened to learn that a good friend and outstanding labor leader, Joe Gleason, executive vice president of the American Federation of Government Employees, passed away on Sunday. Joe was an excellent example of the leadership that has been consistent with the American Federation of Government Employees.

In 1980, Joe traveled extensively in Alaska to learn firsthand the problems and accomplishments of AFGE members who work in our unique environment. This trip underscored the depth

of his commitment to assist Federal employees in their efforts to provide all the services the American public expects of its Federal employees.

We will miss not only Joe's wise counsel but his Irish wit. I know my friends join me in expressing condolences to his lovely wife, Jenny, and their three sons, Daniel, Robert, and Patrick.

#### TOWARD A PEACEFUL SOLUTION TO THE CIVIL WAR IN EL SALVADOR

Mr. CRANSTON. Mr. President, the conflict in El Salvador continues to destroy the lives, the property and the hopes of the El Salvadoran people each day. And there is no end in sight.

Little progress has been made on the fundamental issues which have sparked this civil war—inequitable land distribution, human rights violations by the military-civilian regime and agitation by Communist guerrillas bearing arms transshipped through Cuba and Nicaragua. Elections may be held next month. But acts of political terrorism perpetrated both by leftists and rightists offer little promise that a meaningful election can be held absent a cease-fire.

The Reagan administration's response to these complex problems is predictable—the solution offered is more weapons and more excuses for rightist violence.

I do not believe this is a satisfactory response. I agree that the United States should use its economic resources to push the El Salvadoran regime on land reform, human rights and controlling its military forces. And I do not believe that in the face of a flow of foreign arms from Soviet proxies the United States should declare a unilateral halt in military aid to the Duarte regime, if that regime is exploring all avenues toward resolving the civil war and advancing the process of democratization.

I cannot, however, support the Reagan administration's end run around Congress to rush yet another \$55 million in military aid to El Salvador. Such a major commitment should be debated fully and expressly supported by the representatives of the American people in Congress before it is allowed to go forward.

And as an original cosponsor of the legislation establishing strict human rights and democratic freedoms criteria on any further military aid to El Salvador, I am highly dubious of the administration's recent certification that progress is being made on human rights in that country and that the Duarte regime has demonstrated a willingness to negotiate a cease-fire and a political resolution of issues with the rebels.

It may be that such negotiations would fail, that the leftists in El Salva-

dor are intent upon establishing a totalitarian state which chokes personal and press freedoms like Nicaragua, like Cuba, and like the U.S.S.R. But how can the administration assert that negotiations with the rebels are impossible if they have not left this door open?

I am giving my support and cosponsorship today to the joint resolution introduced by my good friends and colleagues on the Senate Foreign Relations Committee, Senators TSONGAS and DOBB, which calls upon the administration to encourage such negotiations. Specifically, the resolution encourages all parties to the El Salvadoran civil war to: "begin unconditional negotiations for the purpose of achieving a cease-fire arrangement under international supervision, and to pursue these negotiations for the purpose of reaching an overall political settlement to the conflict, one element of which would be open and free election under international supervision." Mr. President, an El Salvador policy which seeks progress solely through the force of arms will lead only to more terror for that country. The United States should not be reluctant to use its economic resources to advance the cause of freedom and of human rights. But we should not give unconditional aid to a military regime which perpetrates what the New York Times recently called acts of butchery against its own people. Such a policy is wrong. Such a policy will not be supported by the American people.

#### CONCLUSION OF ROUTINE MORNING BUSINESS

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

Mr. STEVENS. Mr. President, what is the pending business?

#### DEPARTMENT OF JUSTICE AUTHORIZATIONS, 1982

The PRESIDING OFFICER. The clerk will state S. 951 by title.

The assistant legislative clerk read as follows:

A bill (S. 951) to authorize appropriations for the purpose of carrying out the activities of the Department of Justice for fiscal year 1982, and for other purposes.

The Senate resumed consideration of the bill.

Mr. STEVENS. Is there a motion pending before the Senate now?

The PRESIDING OFFICER. There is a point of order pending before the Senate that the motion to reconsider was dilatory.

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

Mr. STEVENS. I yield to the Senator from Mississippi.

Mr. STENNIS. I do not know what the situation is. I have just been requested by the leadership on this side to suggest the absence of a quorum.

Mr. STEVENS. I just wanted to make certain that the Senators listening in their offices know what the pending business was before the Senate and that the pending business was a point of order. The Senator is correct that there should be a quorum call awaiting the arrival of the managers of the bill.

We do suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### ORDER FOR THE EXTENSION OF TIME FOR ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, I ask unanimous consent that there be an additional period of routine morning business for a period of not to exceed 20 minutes, in which Senators may speak therein for not to exceed 5 minutes each.

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

Mr. QUAYLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

#### THE SOVIET USE OF CHEMICAL WARFARE

Mr. QUAYLE. Mr. President, on the evening of December 21, an ABC special news report entitled "Rain of Terror" was broadcast on nationwide TV. It presented the results of an investigation by ABC into the question of the possible use of chemical and biological weapons in Southeast Asia and Afghanistan.

Convincing information was furnished which strongly suggested that lethal mycotoxins in the form of "yellow rain" and other lethal chemical agents and incapacitants have been used in Laos, Kampuchea, and Afghanistan. The viewer of this broadcast was left with the clear impression that the Soviet Union has been supplying these substances.

ABC is to be commended for its fine investigative efforts in documenting these barbarous crimes against humanity.

On the day following that broadcast I had the opportunity to meet in my offices with the intelligence officers who have responsibility for analyzing reports of the use of such chemical

agents. Although the most convincing pieces of this puzzle remain very highly classified, the ABC and intelligence reports present the outlines of a consistent picture.

Taken together, they indicate that there is now compelling evidence that the Soviet Union, directly in Afghanistan and indirectly through proxies in Southeast Asia, has violated international treaties governing the use of chemical and biological agents. In contravention of the 1972 Treaty on Chemical and Biological Warfare, the Soviets are engaging in flagrant and systematic use of such weapons.

Hundreds of attacks have been made and number of deaths caused by these lethal agents may be in the tens of thousands. It appears that the Soviet Union, as a matter of national policy, has concluded that mycotoxins are an efficient and cost-effective method of killing civilians in theaters of local conflict.

Images of gas chambers in concentration camps come to mind as, once again, we have a ruthless, totalitarian state callously and wantonly operating on the basis that "The end justifies the means."

I was pleased to learn that an inter-agency group, comprised of member agencies of the National Foreign Intelligence Board, is now carefully preparing an official "All-source" report on this subject and its implications. I am anxiously awaiting its issuance.

Although only a classified version can contain all the evidence and all the proof, the conclusions which are to be set out in a planned unclassified version will make it clear that the Soviet Union is conducting chemical warfare.

Evidence that the Soviets are using mycotoxins as a weapon of war is important to the United States and to the world for several reasons:

First, mycotoxins—so-called yellow rain—are weapons which are optimized for the killing of unprotected civilian populations, not military personnel. Ground troops can quickly protect themselves through the use of protective garments. Or they can shoot down the low-flying Soviet-made "crop-duster" type planes which disperse the chemical agents.

The particular horrors of yellow rain were described to me in a letter written by Dr. Richard Harruff, who was a volunteer physician dealing with refugees coming out of Thailand. In his letter he described the symptoms of those who had been victimized by the yellow rain. His words are as follows:

The most common [complaint] is generalized weakness, especially of the lower extremities, with numbness. Other complaints include loss of appetite, nausea, and weight loss. Males complain of impotence, women report a high rate of spontaneous abortions soon after exposure. Infants born to exposed mothers are often weak and lethargic

and die within a few days or months due to apparent respiratory failure.

This is just a brief glimpse at the results of the Soviets' field experiments in chemical warfare.

The type of protective clothing and decontamination equipment necessary to fend off an attack of this type is not commonly found in remote villages of Southeast Asia. Because the effects of the yellow rain are of short duration, an organized policy of genocide can be carried out in these areas with little or no residual direct evidence.

That would be horrible enough. However, in some cases, according to several reports, the remoteness of the areas involved have been chosen to permit medical personnel to administer experimental antidotes to the survivors. Is there a latter-day Dr. Mengele directing the Soviet experiments to determine how best to kill civilians, and how best to protect Soviet troops?

A second reason for concern is the knowledge that because of the command structure and support necessary to carry out these operations, the direction of these "experiments" must come from the upper echelons of the Soviet Government. It is not reasonable to believe that low-level personnel could initiate and coordinate operations on this scale. Nor could they arrange for elaborate coverup operations. The use of deadly chemical agents against unprotected civilians must be on the direct orders of the highest civilian and military authorities in the Soviet Union. It is they who must be held responsible.

A third reason for concern is the evidence that yellow rain is but one part of a massive Soviet effort to equip themselves with chemical and biological weapons. Their annual expenditures in these areas are many times those of the United States, taking into account their investment in personnel, training, and equipment. The overall family of programs include weapons optimized for attacks on NATO and U.S. military personnel. I would remind my colleagues of the Sverdlosk accident where lethal anthrax agents from their biological warfare plant killed hundreds of Soviet citizens. Here again, in contravention of the compliance provisions of the 1972 treaty, the Soviets refused to cooperate in any kind of investigation.

Every Soviet division has a chemical warfare/biological warfare [CW/BW] capability which greatly eclipse Western proficiency in these areas. They are reported to have a 35-to-1 advantage of the United States in the number of chemical warfare support units.

Fourth, the Soviets have violated solemn international treaties. They probably did so because they coldly calculated that they would not be caught in the act, due to the peculiar

nature of yellow rain, principally its lack of persistence and easy deniability.

But they have been caught, and the Soviet response has been to lie. Both the most formal and even informal of U.S. pleas to stop the killing—pleas which have been made outside the glare of publicity to save lives rather than exacerbate East/West tensions—have been rebuffed. How should such a Soviet attitude be factored into the INF and start discussions?

Despite the existence of overwhelming evidence of killings, experimentation on humans, and of treaty violations, the Soviet Union continues to lie and to dare the world to do anything about it.

The fifth, and perhaps most important reason for concern, is the matter of proliferation. If development of chemical and biological weapons is permitted to continue unimpeded, the technology of such weapons will, in short order, become widely known and disseminated throughout the world. Consider for a moment the implications of Colonel Qadhafi having access to a lethal chemical and biological agents, much less the Red Brigades or other terrorist groups.

The time has arrived when this issue should be brought to the forefront of government, press, and public discussion. It has not been a major issue, frankly, because the deaths have occurred in remote portions of Asia, not in Europe or the United States.

The President should condemn the Soviets in the strongest possible terms and indicate that the world cannot tolerate the continued use of these agents. The intelligence agencies should declassify as much of the evidence now on hand as possible so that the light of public knowledge might help stop this cruel and senseless killing.

Third World nations should be fully advised of our latest findings and urged to speak out, because it is against them that these agents are being used and will be used.

Mr. President, Yesterday, a distinguished gentleman from the State of Iowa in the other body, Representative JIM LEACH, outlined his concern on this issue of chemical warfare. I commend Representative LEACH, who has done much to bring this issue before the public presenting his views to the House.

On February 9, Mr. Rostow spoke on this subject in Geneva. I ask unanimous consent that the relevant portions of his speech be printed in the RECORD immediately following my remarks.

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

(See exhibit 1.)

Mr. QUAYLE. Mr. President, this issue is of grave concern to all of us. We shall certainly have a dialog in

Congress this year. Nobody likes to discuss the issue, but we are going to have to. What we are going to have to do is begin to outline what our options are, to discuss what, in fact, can be done. I think our first option, the one most reasonably suggested, is to begin an international discussion of what, in fact, has occurred. I am hopeful, I am confident, that we will be able to reveal facts and information that will show beyond any reasonable doubt that what I have said here this morning is true. Then we have to go to work to see what kind of pressure, what kind of forum will make the Soviet Union respond.

The issue will be emotional, it will be intense, but I hope that we will approach this with a deliberate attitude that will show sophistication on the issue and come to grips with the very fundamental problem that is not only confronting us at home but is an international problem as well.

#### EXHIBIT 1

REMARKS BY EUGENE V. ROSTOW, TO U.N. COMMITTEE ON DISARMAMENT, FEBRUARY 9, 1982

Troubling questions have arisen about Soviet compliance with international agreements concerning chemical and biological warfare. Those questions affect every state in the world community. And they cast a shadow over the possibility of verifying Soviet compliance with treaties on the control of other arms, particularly nuclear arms.

In 1967 the International Red Cross published disturbing evidence about the use of Soviet chemical weapons in the Yemen. Now, initial circumstantial evidence that lethal chemical weapons have been used in Laos, Kampuchea, and Afghanistan has been confirmed by new evidence from Southeast Asia—evidence of the use of prohibited lethal mycotoxins, which are particularly cruel and inhumane weapons of war. The production and use of such weapons raise most serious questions about compliance with existing international constraints on such activities, including the Biological and Toxin Weapons Convention of 1972 and the 1925 Geneva protocol, to both of which the Soviet Union is a party, and demonstrates the necessity of further consideration of the adequacy of applicable verification and compliance provisions.

It is vital that all countries concerned cooperate to the fullest extent with the work of the UN group of experts investigating the matter. It will not suffice simply to call attention to the problems. We deserve answers. The 1979 anthrax outbreak in Sverdlovsk has never been satisfactorily explained. The Soviet Union and its friends and allies have vehemently denied that they are engaged in any way in the use of toxins or other chemical weapons. But they remain altogether unwilling to discuss these matters in detail or to offer the kind of cooperation that might alleviate the legitimate concerns of the world community. Soviet behavior in the face of such inquiries has simply deepened the suspicions and anxiety of all persons of good will. This is a fact of particular importance to the work of this committee.

It is therefore essential that the verification of compliance with arms-control treaties be made a central feature of our work

program here. Until the nations agree on the principle of far-reaching international cooperation in monitoring and enforcing compliance with such agreements, arms control and disarmament cannot begin to achieve their full potential as programs of peace.

Mr. QUAYLE. Mr. President, at this time, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

Mr. WEICKER. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will call the roll.

The legislative clerk resumed the call of the roll.

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

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

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### DEPARTMENT OF JUSTICE AUTHORIZATIONS, 1982

The Senate continued with the consideration of the bill (S. 951).

Mr. JOHNSTON. Mr. President, last evening, I made a point of order. I should like to withdraw that point of order at this time.

The PRESIDING OFFICER. The point of order is withdrawn.

Mr. JOHNSTON. 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. JOHNSTON. 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. JOHNSTON. Mr. President, what is the pending business?

The PRESIDING OFFICER. The question is on the motion to reconsider the vote by which the second committee amendment was tabled, offered by the Senator from Connecticut.

Mr. JOHNSTON. Mr. President, assuming that that motion is tabled, what would be the next order of business?

The PRESIDING OFFICER. The third committee amendment.

Mr. JOHNSTON. I ask the Chair, is the third committee amendment subject to a point of order as being non-germane?

The PRESIDING OFFICER. The third committee amendment is non-germane on its face and would fall.

Mr. JOHNSTON. Is it in order to make that point of order at this time?

The PRESIDING OFFICER. The amendment is not yet pending. It could be made when it is pending.

Mr. WEICKER. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. WEICKER. If the point of order is raised as to nongermaneness at the request of any other Senator, could that then be submitted to the Senate?

The PRESIDING OFFICER. Points of order are submitted to the Senate at the discretion of the Chair, not upon demand of a Senator.

Mr. WEICKER. Let me rephrase my question to the Chair.

If the Chair should rule the third committee amendment to be nongermane, would it then be a right of the Senator to appeal the ruling of the Chair and ask for the yeas and nays?

The PRESIDING OFFICER. That would be a right of the Senator.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that it be in order to move to lay on the table the motion to reconsider and that it also be in order for the Senator from Connecticut to appeal the ruling of the Chair and to seek back-to-back votes on those two matters.

The PRESIDING OFFICER. Those rights are already available, and unanimous consent is not needed.

Mr. JOHNSTON. Very well. Mr. President, I move to table the motion to reconsider, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

The yeas and nays were not ordered. Mr. WEICKER. 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. WEICKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MOTION TO TABLE MOTION TO RECONSIDER VOTE BY WHICH SECOND COMMITTEE AMENDMENT ON PAGE 3, LINES 19 AND 20, WAS TABLED

Mr. JOHNSTON. Mr. President, I move to table the motion to reconsider, 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. The question is on agreeing to the motion to table the motion to reconsider. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll. Mr. INOUE (after having voted in the negative). Mr. President, on this vote I have a pair with the distinguished Senator from Tennessee (Mr. SASSER). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay."

I withdraw my vote. Mr. STEVENS. I announce that the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from Florida (Mrs. HAWKINS), and the Senator from Idaho (Mr. McCLURE) are necessarily absent.

I further announce that, if present and voting, the Senator from Florida (Mrs. HAWKINS) would vote "yea."

Mr. CRANSTON. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Hawaii (Mr. MATSUNAGA), and the Senator from Tennessee (Mr. SASSER) are necessarily absent.

I further announce that the Senator from Ohio (Mr. GLENN) is absent on official business.

I also announce that the Senator from New Jersey (Mr. WILLIAMS) is absent because of illness.

Mr. WEICKER. Mr. President, regular order.

The PRESIDING OFFICER. Are there Senators in the Chamber who have not voted who wish to vote?

The result was announced—yeas 59, nays 30, as follows:

[Rollcall Vote No. 11 Leg.]

YEAS—59

Abdnor	Exon	Murkowski
Andrews	Ford	Nickles
Armstrong	Garn	Nunn
Baker	Gorton	Percy
Bentsen	Grassley	Pressler
Boren	Hatch	Proxmire
Burdick	Hayakawa	Pryor
Byrd	Heflin	Quayle
Byrd, Jr.	Helms	Randolph
Byrd, Robert C.	Hollings	Roth
Cannon	Huddleston	Schmitt
Chiles	Jepsen	Simpson
Cochran	Johnston	Stennis
D'Amato	Kassebaum	Stevens
Danforth	Kasten	Symms
DeConcini	Laxalt	Thurmond
Denton	Long	Tower
Dixon	Lugar	Wallop
Domenici	Mattingly	Warner
East	Melcher	Zorinsky

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

Inouye, against

NAYS—30

Baucus	Hart	Moynihan
Boschwitz	Heinz	Packwood
Bradley	Humphrey	Pell
Bumpers	Jackson	Riegle
Chafee	Kennedy	Rudman
Cohen	Leahy	Sarbanes
Cranston	Levin	Specter
Dodd	Mathias	Stafford
Durenberger	Metzenbaum	Tsongas
Eagleton	Mitchell	Weicker

NOT VOTING—10

Biden	Hatfield	Sasser
Dole	Hawkins	Williams
Glenn	Matsunaga	
Goldwater	McClure	

So the motion to lay on the table was agreed to.

The PRESIDING OFFICER. The clerk will state the next committee amendment.

The legislative clerk read as follows:

On page 4, after line 16, insert the following:

"(5) for the Antitrust Division for its activities: \$49,566,000";

The PRESIDING OFFICER. Under the precedents, once cloture has been invoked, the Chair is constrained to take the initiative to rule out of order any amendment that on its face is nongermane. The pending amendment adds new matter to the bill and the Chair, therefore, rules it is out of order.

The Senator from Connecticut. Mr. WEICKER. I appeal the ruling of the Chair and ask for the yeas and nays.

Mr. JOHNSTON. Mr. President, point of order.

The PRESIDING OFFICER. There will be order in the Senate. The Senate will be in order. Is there a sufficient second?

Mr. JOHNSTON. Mr. President, point of order.

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

The yeas and nays were ordered.

Mr. JOHNSTON. Mr. President, the point of order is: Is the Chair required to rule dilatory an appeal from the ruling of the Chair on the question of germaneness?

The PRESIDING OFFICER. The Chair is not required to make such a ruling.

The question is shall the ruling of the Chair stand as the judgment of the Senate?

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. Mr. President, on this vote I have a live pair with the Senator from Tennessee (Mr. SASSER). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. STEVENS. I announce that the Senator from Kansas (Mr. DOLE), the Senator from Oregon (Mr. HATFIELD), the Senator from Florida (Mrs. HAWKINS), and the Senator from Idaho (Mr. McCLURE) are necessarily absent.

I further announce that, if present and voting, the Senator from Florida (Mrs. HAWKINS), would vote "yea."

Mr. CRANSTON. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Hawaii (Mr. MATSUNAGA), and the Senator from Tennessee (Mr. SASSER) are necessarily absent.

I further announce that the Senator from Ohio (Mr. GLENN) is absent on official business.

I also announce that the Senator from New Jersey (Mr. WILLIAMS) is absent because of illness.

The PRESIDING OFFICER (Mr. ABDNOR). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 65, nays 25, as follows:

[Rollcall Vote No. 12 Leg.]

**YEAS—65**

Abdnor	Ford	Melcher
Andrews	Garn	Murkowski
Armstrong	Goldwater	Nickles
Baker	Gorton	Nunn
Bentsen	Grassley	Percy
Boren	Hatch	Pressler
Bumpers	Hayakawa	Proxmire
Burdick	Heflin	Pryor
Byrd	Helms	Quayle
Harry F., Jr.	Hollings	Randolph
Byrd, Robert C.	Huddleston	Roth
Cannon	Humphrey	Schmitt
Chiles	Jepsen	Simpson
Cochran	Johnston	Specter
D'Amato	Kassebaum	Stennis
Danforth	Kasten	Stevens
DeConcini	Kennedy	Symms
Denton	Laxalt	Thurmond
Dixon	Long	Tower
Domenici	Lugar	Wallop
East	Mattingly	Warner
Exon		Zorinsky

**NAYS—25**

Baucus	Inouye	Pell
Boschwitz	Jackson	Riegle
Bradley	Leahy	Rudman
Chafee	Levin	Sarbanes
Cohen	Mathias	Stafford
Dodd	Metzenbaum	Tsongas
Durenberger	Mitchell	Weicker
Eagleton	Moynihan	
Hart	Packwood	

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

Cranston, against

**NOT VOTING—9**

Biden	Hatfield	McClure
Dole	Hawkins	Sasser
Glenn	Matsunaga	Williams

So the ruling of the Chair was sustained as the judgment of the Senate.

The PRESIDING OFFICER. The Senator from Connecticut.

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

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

**CANDIDATE REAGAN'S TAIWAN PLEDGES UNFULFILLED**

Mr. GOLDWATER. Mr. President, it is painful for me to do this, but I must call attention to the fact that the President of the United States has not kept his campaign promises regarding Taiwan. Not yet, at least.

Presidential candidate Ronald Reagan pledged to "carry out in its entirety the provisions of the Taiwan

Relations Act." Candidate Reagan also said several times early in 1980 that, as President, he would support reestablishment of "official Government relations" with Taiwan, such as a liaison office. Candidate Reagan also declared, in the context of our dealings with Red China, that he would "not accept the interferences of any foreign power in the process of protecting American interests and carrying out the laws of our land."

But, now that he is President, he has not enforced the Taiwan Act. He has failed to sell advanced fighter aircraft to Taiwan. His State Department has even blocked, to date, the coproduction of an advanced aircraft engine.

The really sad part about this is that the President is not following his own instincts. He is bending to Peking's demands.

I know that somewhere, deep in the recesses of the State Department, there is an entrenched group who wants no part of Taiwan. They are completely sold on the idea that Red China is the answer to peace in that part of the world. I have even heard from within the State Department the incredible proposition that "Peking is the Pacific anchor of NATO."

How anyone could feel that a government which has murdered over 50 million of its own people can be a force for peace is beyond my comprehension.

What we as an independent Nation must wake up to is recognition of the fact that Red China is cleverly seeking to manipulate the United States to its own selfish ends. Communist China is practicing the old trick of dictators who make outrageous, excessive demands one day and then claim to show moderation the next day by asking for only part of their demands.

At this moment, Red China is engaged in a campaign to back the United States into agreeing to a limit, a certain final date, for the delivery of any kind of arms sales to Taiwan.

On January 12, Red China's Foreign Ministry strongly protested the modest decision by President Reagan to allow continued coproduction in Taiwan of the F-5E, an aircraft which has been in coproduction since 1969. In late December, Red China "demanded," in the wording of its own press release, that the United States clarify its decision to sell \$97 million worth of spare parts for older jets to Taiwan.

Clearly, Red China is trying to dictate American policy. Even after abrogation of the defense treaty with Taiwan and recognition of the Peking regime, our Government never did more than adopt the status quo regarding defense sales to Taiwan.

Red China is attempting to pressure President Reagan into dumping the Taiwan Relations Act and all our commitments to assist in the defense

needs of Taiwan. But we have never indicated a willingness to discuss an end to defense sales to Taiwan. The President should declare vocally that the subject is not now, and never will be, up for negotiation. He should renounce any idea of a secret agreement to cut off aid to Taiwan now or later.

The Taiwan Act, passed by Congress and signed by former President Carter after formal diplomatic relations were opened with Red China, unequivocally requires that the United States shall provide Taiwan with defensive arms adequate to maintain its self-defense. The statute, which is part of the binding law of the land, provides that the determination of Taiwan's defense needs shall be "based solely" upon the needs of Taiwan, not upon the dictates of Red China.

Red China is lying when it claims we are committed to ending defensive arms sales to Taiwan. The Communist government is also lying when it describes our position toward Taiwan in the Joint Communiqué of 1979.

In the English text of that document the United States merely "acknowledges" Chinese claims to Taiwan. In the Chinese text, the same word is translated as "recognize." Yet in translating the identical English word "acknowledge" in 1972, as part of the Shanghai Communiqué, Red China was at pains to use a Chinese word meaning to "take note of."

What this means is that the present Communist rulers on mainland China are pursuing a stiffer line than the "Gang of Four" they replaced. The current "Gang" in Peking claims the Joint Communiqué of 1979 had conceded them the right to Taiwan and that the subsequent, and contradicting, Taiwan Act of April, 1979, is invalid.

It is important for the administration and the American people to recognize that the new rulers in Peking are not pacifists. They are asserting a much stronger position than even Mao had. It was Mao, not Deng, who opened contracts with the United States.

In his book, "White House Years," former Secretary of State Henry Kissinger writes this:

Never once did Mao indicate any impatience over Taiwan, set any time limits, make any threats, or treat it as the touchstone of our relationship.

The new masters in Peking have shortened their waiting period. Vice Premier Deng and his group want all the problems between Peking and Taipei to be solved in the 1980's. Those who think matters may turn worse if Deng is disposed had better look at the facts.

The so-called peaceful reunification proposal of Peking is nothing but a sham. Red China's demand that we end all arms sales to Taiwan by a cer-

tain date makes the reunification offer an empty gesture. The Communists are doing no more than putting on a big show.

Never has Red China renounced the use of force against Taiwan. Even if the dictators on the mainland did swear not to use force, no one could believe it. Some of us remember the Communist slaughter of Tibet.

And what good has our soft stance toward Taiwan done us? The news media report that Assistant Secretary of State Holdridge was dispatched to Peking in part to enlist Red Chinese cooperation in sanctions against the Polish Government for imposing martial law. Not only have the Communist leaders in Red China failed to join in our appeal for sanctions, but Peking has just signed a trade compact with Poland increasing trade by 30 percent this year.

Red China has not condemned the Soviet role in the crackdown in Poland. Clearly, the slavemasters in Peking are reserving for themselves the right to suppress any free labor strife that may erupt on the mainland. This shows their priority remains the continued enslavement of the Chinese people and it exposes their true attitude toward the potential use of force or the threat of force against Taiwan.

Now, Mr. President, let us take a look at the myth we hear so much about, the claim that Red China ties down over 40 Soviet divisions. To say the least, this is a gross exaggeration.

True, 46 divisions are deployed in the Far Eastern frontier. One faces Alaska as much as anywhere. Some analysts call these divisions anachronisms, already in a state of low readiness. Whether the stationing of these divisions reflects an anachronism or Soviet expansionism, it is not because of Soviet fear of an invasion from China.

Finally, Mr. President, I address the question of Taiwan's security needs. Taiwan is facing threats from both the Taiwan Straits and Bashi Channel. Replenishment of weapons must be an integral part of Taiwan's national defense planning.

The purchase of the FX advanced fighter is necessary to the credibility and success of this defense plan. Taiwan's Air Force is much smaller than the air arm of Red China, with a ratio of 1 to 11. Taiwan must have defensive aircraft of advanced quality to stop an attack.

Taiwan possesses about 50 F-100's and 40 F-104G's. These are antiques, obsolete or obsolescent. Some 70 F-5A's and F-5B's are trainers and provide little or no combat capabilities. Taiwan's forces also include about 190 F-5E's, which do not possess all-weather capability.

The jet fighter forces of Red China include nearly 3,600 aircraft, of which 3,000 are Mig-19's and 80 are Mig-21's.

The line-up of Red Chinese fighters and attack bombers on airfields directly opposite Taiwan may be less today than it was a few years ago. But there are 2,000 military aircraft deployed within 500 miles of Taiwan. These forces could strengthen the air bases on the coast within a short time.

Moreover, Red China is currently co-producing Spey engines in cooperation with Rolls-Royce of England. As a result, by the mid-1980's, the Communist air force will possess new high-performance fighters.

In order to counter the numerical superiority and growing high-performance capabilities of Red China's air forces, it is imperative that Taiwan be provided with fighters such as the FX.

The balance of power across the Taiwan Strait in the mid-1980's is at stake now. We are really talking about the years 1986 to 1990. Unless we allow Taiwan to plan for the long leadtime required for the manufacture of a squadron of FX fighters, I fear Taiwan's defense needs will not be met. If President Reagan does not act now to keep faith with his campaign promises, it will be too late.

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

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

#### ORDER OF PROCEDURE

Mr. STAFFORD. Mr. President, I ask unanimous consent that notwithstanding the cloture situation, I be allowed to proceed on an extraneous matter, with the time to be charged against the hundred hours.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

#### ENVIRONMENTAL ISSUES ARE NONPARTISAN

Mr. STAFFORD. Mr. President, I should like to introduce into the RECORD a letter which greatly disturbs me. I resent what it implies about me personally and about my political party.

This letter is written by Representative MORRIS UDALL on the stationery of the Democratic Congressional Campaign Committee. To whom it has been mailed is unclear. But there is no uncertainty as to its message.

The letter is an appeal for votes and money for Democrats and the Democratic Party on the basis—and I quote—"that Democrats are far more likely than Republicans to vote for environmental measures."

The letter goes on to say that—and again I quote—"the Democratic philosophy is proenvironment; the Republican philosophy is antienvironment."

I am distressed that the statements are made in the first place. They are patently unfair to members of the Republican Party.

Environmental issues have never been partisan matters. I have served in both the Senate and the House of Representatives, and I know from my own experience the ways the issues are treated. And that is not on the basis of whether you are a Republican or Democrat.

For that matter, these issues are not bipartisan either. They are nonpartisan. It makes no difference whether a Senator or Representative is a Republican or a Democrat, just as it makes no difference whether he is from the East or the West, the North or the South.

The dividing line on these issues is whether individuals prefer strong environmental legislation or weak environmental legislation. Democrats disagree with Democrats on that issue and Republicans disagree with Republicans.

It is nonsense to assert that a bill passes some environmental litmus test because it bears the names of Democrats or the names of both Republicans and Democrats.

These kinds of statements carry the danger of becoming self-fulfilling prophecies. Merely because they are made, they can cause people to start alining on issues along party lines, even though party membership has nothing to do with it. To make statements of this sort jeopardizes the laws which all of us—Republicans and Democrats alike—have struggled to enact over the last three decades.

But I resent this statement for another reason. By implication my Republican colleagues and I are depicted as favoring dirty air. In fact, Senator JOHN CHAFEE and I have spent the better part of the last 14 months working on clean air issues, sometimes to the virtual exclusion of other pressing and important matters. We have spent literally thousands of hours attempting to preserve and protect the Clean Air Act and other environmental legislation.

But this letter goes further. It implies not only that I am for dirty air, but that all Democrats are for clean air. To imply this at a time when the author's own Democratic colleagues are the leading proponents of a bill which would cripple the Clean Air Act is misleading and much worse.

I ask unanimous consent that the text of the letter be printed in the RECORD.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 1.)

Mr. STAFFORD. Senator CHAFEE and I have sought to improve the Clean Air Act. But the Democratic initiative on the House side seeks to virtually repeal it. Practically every important provision in the Clean Air Act would be repealed if H.R. 5252 were to become law.

I believe a simple listing of the major provisions of the Clean Air Act is informative. I know that the alphabet soup will be meaningless to many unfamiliar with the Clean Air Act, but I also believe readers will get the message.

I ask unanimous consent that this listing be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. STAFFORD. Of course, Mr. President, the real issue is not whether words are removed from the law, but whether air will be dirtier. One example vividly answers this question.

H.R. 5252 repeals the requirement that major new sources of air pollution install best available control technology when they build in areas where the air is clean. The bill also repeals the increment system, which is designed to limit the growth of pollution in these clean air areas.

Under contract with the Environmental Protection Agency, a consultant recently studied 285 new source permits. One purpose of that study was to determine whether the Clean Air Act requirements make any real difference. The results are summarized in a table from that report which I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 3.)

Mr. STAFFORD. Mr. President, I am not a mathematician. But as I read this table, for the 285 permits studied, the BACT and increment requirements reduced emissions from these new plants by a total of 344,214 tons per year. Translated to pounds, this is equivalent to 688 million pounds of pollution per year being kept out of the air by the Clean Air Act in its present form.

If the growth were to remain level, the Clean Air Act would filter 3.5 billion pounds of pollution a year out of our air by the turn of the century. Yet, some changes proposed by H.R. 5252 would allow that much additional pollution to saturate our air.

I might add that this view of H.R. 5252 is not mine alone. Yesterday, there was a hearing on this bill at which Senator HART of Colorado testified. He is not only a distinguished member of the Committee on Environment and Public Works, but he is former Chairman of the National Commission on Air Quality. He urged

that the bill be rejected. I ask unanimous consent that Senator HART's testimony be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 4.)

Mr. STAFFORD. Mr. President, there are always differences of opinion on legislation, especially when they are complex. What I would suggest to the Representatives from Arizona is that the explanation for such conflicts lies in differing judgments, not different political parties.

#### EXHIBIT 1

THE NEXT ENDANGERED SPECIES WILL BE THE ENVIRONMENT ITSELF—UNLESS DEMOCRATS KEEP CONTROL OF THE HOUSE OF REPRESENTATIVES

(By Morris K. Udall)

Dear Fellow Environmentalist: There is more to saving our environment than recycling newspapers and buying returnable bottles.

It's called winning elections.

With anti-environmental Republicans like Strom Thurmond and Jesse Helms in charge of the Senate . . .

With anti-conservationist James Watt running the Interior Department . . . Our environment's last line of defense has become the Democratic majority in the House.

But that majority won't exist for long unless we act now—to win the 1982 Congressional elections.

That's why the Democratic Congressional Campaign Committee has set up an Emergency Environmental Fund—to monitor the actions of James Watt and his cronies, to expose President Reagan's broken campaign promises on the environment, to keep track of and computerize (at a cost of \$68,000) the anti-environmental voting records of House Republicans. This effort will help elect men and women to Congress who will work and vote to protect the environment.

Make no mistake: the Reagan/Watt approach to conservation is to throw out the laws and turn the so-called "developers"—really the destroyers—loose.

As Chairman of the House Interior and Insular Affairs Committee, I have been astonished and appalled by Secretary Watt's actions. I believe he is singlemindedly seeking to destroy and distort our nation's basic environmental laws—laws which you and I fought to enact.

Congressman Phil Burton says Watt is waging "unconditional war on our great natural resources."

Those of us who care about the environment must do more than care.

We must fight back. And we must fight back at the polls.

This is no idle call to arms. Who could believe that any responsible person—much less the Secretary of the Interior—would propose:

To cut almost in half all funding for federal environmental programs;

To halt expansion of our national parks system;

To authorize offshore oil drilling along the unique, pristine California coast;

To wipe out the Urban Parks Program, the Noise Pollution Program, the Coastal Zone Management Program;

To weaken regulations on strip mining, disposal of toxic wastes, and drilling and mineral exploration on public lands;

To let Big Business concessions operate national parks.

Today we Democrats in the House are holding the line against radical proposals like these, but it is an embattled line. The huge Right-Wing Republican Campaign Machine, determined to capture control of the House in 1982, is already rolling to cut the Democrats down.

If they succeed, Watt will succeed—and environmentalism as we know it will vanish.

We must win the vital 1982 elections. We must elect Democrats to the House. That is why I am asking you to support the Emergency Environmental Fund.

It is clear that Democrats are far more likely than Republicans to vote for environmental measures—and always have been.

In 1980, according to the League of Conservation Voters, the average pro-environmental rating for a House Democrat was 17 percentage points higher than for a House Republican.

Democrats are considerably more independent of anti-environmental special interest groups; in 1980, for example, the top five recipients of chemical industry campaign funds were all Republicans.

The Democratic philosophy is pro-environment; the Republican philosophy is anti-environment. In their 1980 Platforms, the Democrats called for a strict Clean Air Act, the Republicans attacked it. Hundreds of examples show Democratic sensitivity—and Republican insensitivity—to the environment. It is a simple truth that without the Democrats in Congress there would be no environmental laws at all.

But even some Republicans are concerned about James Watt's excesses. Nathaniel Reed, a GOP stalwart from Florida, believes that "a whole generation of Americans may come to believe that the only people who care about the environment are the Democrats."

But caring won't mean much unless we have the votes to stop Watt.

And the only way to stop him today—the only way—is to protect the Democratic majority in the House.

You can do that by contributing to the Emergency Environmental Fund of the Democratic Congressional Campaign Committee.

The DCCC, the political right arm of House Democrats, helps us plan, organize, and pay for our campaigns.

It provides vital campaign services—polling, research, targeting, technical assistance—which many candidates couldn't otherwise afford.

DCCC is our greatest weapon. Without it many of our candidates would have no chance at all.

So I urge you to contribute today to the Emergency Environmental Fund.

Send \$25, \$50, \$100—whatever you can afford.

There is no better way to help defend our environment against the onslaught of James Watt and the destroyers.

There is no better way to make sure environmental protection does not become the next endangered species.

Help us win the crucial elections so we can win the crucial votes in the House.

Please send your check today!

Sincerely,

MORRIS K. UDALL,

Member, Democratic Congressional Campaign Committee.

EXHIBIT 2  
H.R. 5252

STATIONARY SOURCE PERMITTING

Deadlines: Extended to 1993.  
Offset Requirement: Repealed.  
Percentage Reduction: Repealed for Commercial Boilers.  
LAER Requirement: Repealed.  
Inspection & Maintenance: Repealed, except for urban areas over 500,000 which exceed standards by more than 50 percent.  
Class I Increment: Weakened to permit five violations per year.  
Class II Increment: Repealed.  
Class III Increment: Repealed.  
BACT: Repealed.  
Inclusion of Fugitive Emissions: Repealed.

Mandatory Class II Protection for Certain Federal Lands (30 million acres): Repealed.

STATIONARY SOURCE ENFORCEMENT

Mandatory Civil Suits: Repealed.  
Criminal Penalty: Repealed.  
Noncompliance Penalty: Weakened, tantamount to repeal.  
Ban in Major Source Permitting: Repealed.

MOBILE SOURCE REGULATIONS

CO Standard of "3.4" gpm: Repealed (new standard is "seven" (equal to 7.49 gpm or less)).  
Nox Standard of "1.0" gpm: Repealed (new standard is "two" (equal to 2.49 gpm or less)).  
Requirement that each car meet emission standards: Repealed.

207(a) Warranty: Repealed.  
207(a) Parts Certification: Repealed.  
207(b) Warranty for emissions "devise or system": Repealed.  
5-year/50,000 mile warranty: reduced to 2 years/24,000 miles.  
Truck Standards: Delayed.

NEW PROVISIONS

Chlorofluorocarbons: Regulation prohibited until certain requirements are met.  
Mobile Sources: Certain studies must be conducted before standards can be changed.  
Mobile Sources: Standards must have minimum lead times of 4 years (trucks) or 3 years (cars).  
Mobile Sources: Standards for autos must have minimum effective time of 4 years.

EXHIBIT 3

TABLE 5-9.—CUMULATIVE BACT PERMITTED EMISSIONS REDUCTIONS ASSOCIATED WITH PSD

	Pollutant									
	PM	SO <sub>x</sub>	NO <sub>x</sub>	CO	VOC*	H <sub>2</sub> S	F1	TRS	Acid mist	Vinyl chloride*
Emissions reductions beyond NSPS (tons per year)	7,700	218,700	54,400	2,970	NA	0	240	2	2	0
Non-NSPS emissions reductions associated with proposed versus permitted BACT (tons per year)	5,100	34,200	5,100	3,000	NA	0	0	0	0	0
Total emissions reductions (tons per year)	12,800	252,900	59,500	5,970	NA	0	240	2	2	0
Total BACT-permitted emissions (tons per year)	54,200	761,800	712,400	159,100	13,700	700	300	1,160	180	110
Emissions reductions percent of total BACT-permitted	24	33	8	4	NA	0	80	0.2	1	0

\*Similar to all VOC's emissions and emissions reductions are difficult to quantify because of work practice or equipment standard BACT's and NSPS's.

EXHIBIT 4

TESTIMONY BY SENATOR GARY HART ON H.R. 5252 BEFORE THE SUBCOMMITTEE ON HEALTH AND ENVIRONMENT

Mr. Chairman, I welcome the opportunity to appear before you as the opening witness in this hearing on H.R. 5252, the "Clean Air Act Amendments of 1981," introduced last December by Congressmen Luken, Madigan, Traxler, Hillis, Dingell, and Broyhill.

Before addressing the specifics of the bill, I would like to share with the Subcommittee my general thoughts on the principles which should guide Congress in the revision of the Clean Air Act.

Some people believe that because the Clean Air Act has led to major improvements in air quality, it needs no revision. Others believe that as our most far-reaching regulatory program, the Act needs substantial overhaul to reduce the regulatory burdens on industry. But the critical test for the Clean Air Act—as for any government program—is effectiveness in the real world. Our review must be based on three principles:

First, where the Act has worked well, it must be preserved, and even strengthened.

Second, where the Act has created an unnecessarily complex regulatory maze, it must be streamlined and simplified.

And third, where the Act is not addressing major air quality problems, it must be expanded.

The Clean Air Act needs reform to give the American people what they want and deserve both cleaner air and less unproductive government regulation.

Unfortunately, the bill before you today falls far short of this standard. Despite the claim Mrs. Gorsuch will make in a few minutes, this bill does not build upon the strong bipartisan commitment to clean air we have had over the past 12 years. Instead, this bill, and the Administration's endorsement of it, flies in the face of that commitment. It would repeal fundamental parts of the

Clean Air Act. And it would not strengthen a single sentence of the law.

That is not how previous Administrations and previous Congresses have addressed our air pollution problems. And we all know that is not how the American people want those problems addressed now.

There are many ways the shortcomings of the bill could be documented. One way is to compare the bill with the recommendations of the National Commission on Air Quality. Even a quick glance at the two shows them any fundamental differences between the balanced approach taken by the Commission and the extreme approach taken in H.R. 5252. On every important issue except one—the standard setting process—the bill is far weaker than the Commission's position. In total, of the 75 recommendations made by the Commission for legislative action which falls within the jurisdiction of this Committee, only 13 are included in the bill.

I'll describe the major differences briefly.

NONATTAINMENT

The bill would weaken drastically the Act's program for cleaning up areas more polluted than the national health-based air quality standards—condemning millions of people to continuation of excessive pollution levels.

The bill would repeal the Federal sanctions which the National Commission found have been responsible for getting states to meet the Act's requirements.

The bill would limit the automobile inspection and maintenance requirement, which the Commission found to be "the most effective method that has been demonstrated to reduce emissions from in-use vehicles," to just two cities.

The bill also includes new deadline provisions which are so open-ended they would let states make unrealistically optimistic projections of meeting the deadlines, to avoid the tough controls which are necessary.

PREVENTION OF SIGNIFICANT DETERIORATION

H.R. 5252 includes three provisions which would greatly undercut the control of pollution in areas cleaner than the national air quality standards.

First, the bill would allow much more pollution in our national parks and wilderness areas, and would repeal special protection for other important national lands.

Second, the bill completely eliminates the class II increment system. This system is too complex and unproductive to justify its continuation everywhere, but states should have the discretion to continue a simplified Federally-enforceable class II system where they think it is appropriate to do so.

Third, the bill would substantially weaken the simplest and most effective part of the PSD program, the requirement for tough controls on new plants, by replacing state decisions with weaker nationwide standards established by EPA.

MOBILE SOURCES

Perhaps the worst part of H.R. 5252 is its rollback of emission controls on cars and trucks.

The bill would repeal the statutory presumption of strict heavy truck standards—despite the Commission's finding that this change could make a major difference in air quality, and despite the 10 to 4 vote of the Committee on Environment and Public Works to write those strict standards into the law itself.

The bill would relax both the carbon monoxide and nitrogen oxide automobile emission standards—and give EPA discretion to relax these and other standards even further.

The bill would repeal the 1984 requirement that cars in high altitude areas be as clean as at sea level.

Taken as a whole, these changes would reverse the major progress we've been making in cleaning up cars and trucks.

## ACID RAIN AND HAZARDOUS POLLUTANTS

Almost as disturbing as what H.R. 5252 would do is what it would not do. The bill does not include a single provision to strengthen the Act.

Acid rain now causes billions of dollars of damage in the Northeast; unless it is controlled, it will cause far more damage throughout the country. Similarly, while especially toxic pollutants may cause great health problems, only four have been regulated thus far.

Mr. Chairman, other witnesses will discuss individual provisions of H.R. 5252 in much greater detail. But the problem with this bill is greater than the sum of its specific shortcomings. The sponsors of H.R. 5252 have suggested the bill would ease regulatory burdens on industry. But we must not overlook the fact that our economy cannot be truly healthy unless our workers—our people—are themselves healthy.

We do not need to follow the path of this extreme legislation to achieve what its sponsors seek.

We have the opportunity to reduce unnecessary complexity in the Act without sacrificing public health. For example, when the Act was last revised, we spent many hours debating whether new plants in heavily polluted areas should meet "lowest achievable emission rate." ("LAER") or "best available control technology" ("BACT") standards. Now that LAER—with all its complexity is in the Act, it's clear that our theoretical argument was relevant only within the Beltway. The people who actually write pollution control permits have essentially required "BACT" everywhere—and our air is getting cleaner.

We have the opportunity to reduce costs associated with air pollution control and still keep our air clean. For example, the NCAQ recommended a package of mobile source controls which would save \$30 per car for relaxation of the carbon monoxide standard, and an additional \$125 per car for applying the 1984 high altitude requirement only to cars actually sold at high altitudes. Yet, with the other elements of the Commission's package, these cost savings would not cause any unacceptable air quality effects.

But, H.R. 5252 rejects such even-handed, considered approaches, creating the danger that no bill amending the Clean Air Act will pass the Congress this year. And that would serve neither our economy nor our citizens well.

Mr. Chairman, I urge the Subcommittee to reject H.R. 5252, and instead continue on the path of responsible reform.

Mr. DURENBERGER. Mr. President, I should like to express my appreciation to the distinguished Senator from Vermont for bringing this matter to our attention. I also want to take this opportunity to express my thanks to Senator STAFFORD for his dedicated leadership as chairman of the Senate Environment and Public Works Committee to improve the Clean Air Act—not weaken it.

On the issue of air quality, the Democratic House leadership is clearly not in touch with the overwhelming majority of the citizens in this country who have decisively expressed support for a strong, effective act. Even Democratic Members of the House have been strongly critical of H.R. 5252 in-

roduced by Representative DINGELL, Democrat from Michigan, chairman of the House committee that has jurisdiction over the Clean Air Act. Actions of the House do not jibe with Mr. UDALL's assertion that "our environment's last line of defense has become the Democratic majority in the House." On the critical issue of air quality, the Senate Republican leadership has been outstanding in its steadfast commitment to a strong, workable act.

So far as this Senator is concerned, clean air and clean water are not partisan issues—certainly not in my State of Minnesota, where public commitment to a quality environment has not diminished over the years. My constituents tell me the law needs to be strengthened. Of particular concern are the issues of long-range transport and acid deposition which are not covered in H.R. 5252. In fact, based on the data which Senator STAFFORD just shared, it sounds as if the Democrats' bill would actually increase the acid rain problem, not diminish it.

Frankly, that is not acceptable to the people of Minnesota or to this Senator. Acid deposition is the most serious new air pollution problem to emerge since Congress last revision of the Clean Air Act and should be dealt with during this reauthorization of the act.

Although acid deposition was recognized as a serious problem primarily in the Northeastern United States and Canada, continuing research has led to the recognition that my State of Minnesota and other upper Midwestern States face a great environmental, economic, and health loss as a result of acid deposition if the present emissions of sulfur dioxide are not reduced substantially.

Minnesota has demonstrated its concern over air quality by establishing stricter air quality standards than those required by Federal law—only seven States have ambient air standards as strict as those set by the Minnesota Pollution Control Agency. Minnesota's ambient air quality standards are 50 percent more restrictive for SO<sub>2</sub> and ozone than the Federal standards. The average emission rate in Minnesota for SO<sub>2</sub> is 3 pounds per million Btu's—three times lower than some States upwind of Minnesota. There are single powerplants in Kentucky and Ohio that individually emit more SO<sub>2</sub> than the entire State of Minnesota which contributes only 1 percent of the Nation's sulfur dioxide emission.

Minnesota is paying more for air quality control than many States yet the State cannot protect itself from the effect of transboundary transport of acid deposition. Minnesota pollution control agency staff estimates that only 30 percent of acid rain falling in Minnesota is due to emissions in

the State. The balance originates elsewhere.

Meteorological studies done under the auspices of the EPA by Dr. Walt Lyons and others have clearly documented the existence of gigantic swirling weather systems that move huge masses of air pollutants in all directions from the major source regions of the Ohio River Valley. It is a mistake to rely on simplified textbook notions of the prevailing westerlies moving air only from west to east.

In addition, a more comprehensive approach to dealing with interstate transports than is presently provided under the provisions of the Clean Air Act is needed to address the concerns of those engaged in the day-to-day administration of the Clean Air Act. The flow of air pollution across State lines creates serious institutional equity and air quality problems for many areas of the country. As the National Commission on Air Quality found, there are significant problems from the long-distance transport of a number of air pollutants, which are not effectively addressed in the Clean Air Act.

I again express my thanks to Senator STAFFORD and his committee for their leadership on the reauthorization of the Clean Air Act—leadership that is responsive to the citizens of this country. Clean air is neither a Republican nor a Democratic issue—but at this time responsible leadership is clearly in the U.S. Senate.

Mr. CHAFEE. Mr. President, I should like to associate myself with the remarks of my distinguished colleague from Minnesota, Mr. DURENBERGER. Not only could H.R. 5252 cripple our efforts to clean up dirty air in areas where tens of millions of people live, but also, it does not even address the serious problem of acid rain.

Over the past several years, an enormous amount of research has been committed to this problem, and the causes and effects of acid rain have been heatedly debated. In light of the evidence presented thus far, it is high time we begin taking steps to curb the devastating effects of acid rain. Not only has the prestigious National Academy of Sciences suggested that drastic reductions of sulfur dioxide—a precursor of acid rain—would be needed if we are going to get this problem under control, the National Commission on Air Quality also recommended that Congress "require a significant reduction by 1990 in the current level of sulfur dioxide emissions in the Eastern United States." Yet, H.R. 5252 would actually increase emissions of the pollutants that cause acid rain.

Inextricably tied to the acid rain problem is the whole issue of interstate transport of pollutants, another issue which H.R. 5252 fails to address. Although the Clean Air Act does con-

tain provisions which in effect say that one State's emissions should not contribute to another State's pollution, these provisions have proven to be unworkable. The end result is that downwind States such as those in the Northeast end up being the dumping grounds for pollutants generated by sources to the west.

Failure to control emissions from States whose pollution ends up in the Northeast has forced Rhode Island and other States to devise stricter and more costly controls which can affect the local economy. Why should Rhode Island or any other State have to pay to clean up the air pollution generated by dirty sources in other States? Is it fair for one to dump his garbage on his neighbor's lawn simply because he does not want to pay to have it disposed of properly? Is this equitable? I, for one, believe it is not and will be working with members of the Senate Environment and Public Works Committee and other Members of the Senate to put teeth into the interstate transport provisions of the Clean Air Act which will require States to curtail their pollution if it interferes with other States' ability to meet air quality standards.

Finally, Mr. President, I would like to point out that Congress has always approached the resolution of environmental problems in a nonpartisan manner. During the environmental decade of the 1970's, Members from both sides of the aisle and in both Houses of Congress worked together to develop such landmark laws as the Clean Air Act, the Endangered Species Act, the Resource Conservation and Recovery Act, the new Superfund program and a plethora of other important environmental programs. Just last December, Members from both parties worked together to reauthorize the Clean Water Act's wastewater treatment program. The end result was a program that will improve our water quality, cut redtape, and save the taxpayers \$1 billion a year. This would not have been possible if we did not have the nonpartisan support of Members from both the House and Senate. I hope, as we continue to work on the reauthorization of the Clean Air Act, that all of us come together to develop a strong and equitable clean air program which will continue the national commitment to improving air quality.

Mr. ROTH. Mr. President, I join in the remarks of the Senator from Vermont and the Senator from Rhode Island. I share their sentiments.

I am not a member of the Committee on Environment and Public Works, nor do I pretend to be an expert on environmental legislation. But I do not need to be an expert to know that this country has made tremendous progress over the past 15 years and that this is not the time to turn back.

Speaking as only one Member of Congress, I will say that I am proud of the votes which I have cast in favor of environmental legislation. Those laws have helped clean Delaware's air and water, protect her beaches, and preserve our wetlands. And all of those things are as important to the citizens of my State today as they were in the years past, when these laws were put on the books.

I am not saying that there is no room for change. Of course there is. Times change and laws need to change with them. But the objectives of these statutes enjoy broad popular support and for good reason. They determine not only whether we are to live, but what the quality of that life is to be. Speaking for myself, I will say this is no time for retreat. Certainly, it is no time to massively rewrite laws like the Clean Air Act, which is what the proposal on the House side appears to do. I shall make one other observation.

When I was first elected to the Senate, I was privileged on many occasions to be the guest of a kind and good colleague, former Senator John Sherman Cooper. At that time Senator Cooper was a member of the Committee on Public Works. He wrote much of the early environmental legislation.

He was succeeded by my good friend, J. Caleb Boggs, who was at that time the senior Senator from my State of Delaware. I remember well the day Senator Boggs and I personally delivered to the House of Representatives the Senate-passed version of the Marine Protection, Research, and Sanctuaries Act, later referred to as the ocean dumping law.

Since Senator Boggs left the Senate in 1972, three other Senators have succeeded to his position. Two of them—Senator BAKER and Senator STAFFORD—are still Members of this body. The third, Senator Buckley of New York, is now an Under Secretary of State charged with responsibility for international environmental matters. During the Senate tenures of these three men, they have helped write much of the environmental legislation now on the books.

These five men and I have two things in common:

First, we are all members of the same political party.

Second, we all support—as do the American people—strong and effective environmental legislation. The inference that this has been a partisan political matter is not only unfair, it is flatly untrue. These issues have always been discussed and voted upon in a nonpartisan way and to state otherwise is a disservice. It is a disservice not only to the members of my party and the American people, but a disservice to the laws themselves. They are too important to become objects of political manipulation.

Mr. WEICKER. Mr. President, I think the Senator from Delaware is exactly correct. These laws are too important to become objects of partisan exploitation. They are also too important to lose.

I think it is only fair to point out that at the same time one Member of the other body is attacking others on a partisan basis, members of his own party are sponsoring legislation that would cripple the Clean Air Act. If there is any doubt about that, the remarks of the Senator from Vermont lay these to rest.

I must say that this issue is of special interest to my State of Connecticut. We have some of the strongest air pollution laws in the United States. We have those laws because we care for our environment and wish to preserve it. But a great deal of our pollution comes from outside the State, not inside. From Connecticut's point of view, the Clean Air Act needs to be strengthened so that these neighboring States can be forced to reduce their pollution. The worst possible outcome from my State's point of view would be to further weaken the law.

As controls on our neighboring States are relaxed, thus increasing the flow of pollution into our State, our citizens are left with two choices:

First, further increasing pollution control which is already the toughest in the Nation, thus driving business into the dirty neighboring States; or,

Second, passively accepting increasing levels of pollution which threaten the health of our children, the quality of our streams and lakes, and the productivity of our croplands.

The Clean Air Act was enacted in large part to prevent forum shopping for dirty air. Now is not the time to cripple the Clean Air Act. It is the time to strengthen it.

A proposal which weakens the law will only set off a round of competitive bidding among the States. The States most willing to weaken their pollution laws would attract industry. Those States unwilling to put the health of their elderly and children on the auction block would lose twice: Once, when business and jobs went elsewhere; twice, when the pollution from those industries flowed back into their borders.

There is only one protection against this kind of marketplace system and that is a strong Federal law. We were smart enough to realize that over a decade ago when we enacted a tough Clean Air Act and I hope we are smart enough to realize that today.

Mr. President, I commend the Senators from Vermont and Rhode Island for their efforts in protecting and maintaining the Clean Air Act and hope their colleagues on the other side—of both political parties—join them.

Mr. EXON. Mr. President, next Tuesday, February 16, marks the 64th anniversary of the reestablishment of the independent state of Lithuania. This marks a special day in the proud, 731-year history of the people of this freedom-loving Baltic nation.

This day will live forever in the hearts and minds of Lithuanian patriots. This is one reason why they will never submit to the Soviet yoke imposed on them during the June days in 1940 that live in infamy for the Lithuanian people as surely as Pearl Harbor does for Americans.

It was during that dark period that Josef Stalin, his lust for conquest heightened by his recent unholy alliance with Adolf Hitler, invaded Lithuania—in violation of an "eternal" treaty of peace the Russians had signed only 20 years earlier.

Since that time, the Soviets have attempted to "Russify" the Lithuanians, to strip them of their deeply held religious beliefs and to deprive them of hope that the promise of independence, symbolized by February 16, would someday be fulfilled.

But the Soviets have failed miserably. The 5 million people of Lithuania, with the unwavering support of their half million relatives and descendants living in the United States, resist—often at risk of imprisonment and their very lives.

The United States has correctly refused to recognize the unlawful Soviet annexation of Lithuania and its sister Baltic states. Our State Department maintains a desk devoted to Lithuania, Latvia, and Estonia. Our top Government officials are forbidden to visit the Baltic states because of their rightful concern that the Soviets would twist such visits into "recognition" of their unlawful acts. Here in Washington, there continues to be posted a charge d'affaires for the free Lithuanian people. Maps issued by U.S. Government offices show Lithuania and its Baltic sisters, not as part of the Russian mass, but as the separate nations they are.

The memory of February 16, 1918, is undimmed in the hearts of those Lithuanian heroes who have defied and are defying the Soviet police state by publishing dissent journals, petitioning the United Nations and insisting that the Soviet honor the Helsinki accords they so casually ignore.

And the memory of that day is undimmed in the United States as we here today hail a brave nation that, though tiny in land area, is huge in courage, pride, and love of freedom.

#### OUR FOOD PRODUCERS

Mr. EXON. Mr. President, we are all quite aware but probably not fully aware of the grave difficulties facing our food producers today with regard to the squeeze that is going on be-

tween the cost of production ever increasing on one hand and generally falling commodity prices on the other.

All of this is complicated by a less than realistic approach to the farm difficulties with the 1981 Farm Act that this Senator has addressed previously.

Mr. President, I shall ask unanimous consent to have printed in the RECORD at this time two most interesting articles that I think highlight the difficulties of the farmer as well as in some instances in the matters printed below indicate possible constructive ways to work our way out of our present economic difficulties in the farm belt.

Mr. President, I ask unanimous consent that immediately following my remarks there be printed in the RECORD first an article from the Le Mars Daily Sentinel of January 21, 1982, with regard to syndicated national columnist Eliot Janeway, and following thereafter an article from the Wall Street Journal of February 1 entitled "Falling Grain Exports Bruise the Farm Belt; Damage Could Spread."

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

[From the Le Mars (Iowa) Daily Sentinel, Jan 21, 1982]

#### FOOD SEEN AS WAY OF "ASSERTING U.S. IDEALS, STRENGTH"

(By Jolene Stevens)

One word—"dis-astrous"—sums up today's agricultural picture, says Eliot Janeway, well-known, outspoken and yes, sometimes controversial, economist-author.

The one strong point in the ag scene, as seen by Janeway, is that American agriculture "swings with exports" and, he adds, "export demand for American food products is literally limitless."

Today's agricultural image in world affairs is, however, not a good one, Janeway says. "It's an image seen as Uncle Sucker's feeble-minded prodigal nephew. In the honeymoon euphoria inspired by President Reagan's inauguration, Agricultural Secretary Block's call to use food as the strongest trading weapon within America's reach was greeted with deafening silence.

"The Administration intoxicated itself with the rhetoric of free market forces opening a new promise land to it abroad."

Poland, Janeway says, offers "the opportunity of the hour. The Polish crisis is a food crisis. Russia is strangling Poland because she is also in the throes of a food crisis. Dangling American food in front of the desperate Warsaw and Moscow regimes offers the way to assert America's ideals and strength throughout satellite Europe, without military risk or political provocation."

Janeway sees Catholic relief agencies "the appropriate distribution vehicle with Vatican blessing". At the same time he says the way to reassure Europe that America has no intention of disturbing the peace there is to give the Germans opportunity to pay our farmers for their food.

"The fringe benefit to Germany would," Janeway says, "be the opportunity to use American food to induce the Poles to go back to work in return for free access to food, also enabling Warsaw to make good on its bad debts to the German banks.

"But instead of improvising bold new programs calculated to act on Agriculture Secretary Block's vision of American food as a bargaining lever, the Administration is dithering between doing nothing and doing the wrong thing, which revival of the Nixon-Carter food embargo tactic would be.

"Farm organizations," he continues, "are limiting their role to the negative one of pressing Reagan to keep his promise not to reimpose an embargo."

Janeway is candid in his criticism of the efforts of the ag lobby in Washington, as well as efforts of national farm organizations in bettering the ag situation.

"The ag lobby has wasted most of its expense money cheering Stockman's hypocrisy all the way to the poor house," Janeway says. "Any clout various farm groups have left has been dissipated by their naivete in fighting each other for bigger pieces of a smaller pie.

"All of them are paying dearly for having borne the prospectus of shrinking markets blind, instead of pressing the White House to develop an aggressive food exporting reciprocal trade program based on exploiting the increasingly desperate need of major prospective food export customers for access to the huge U.S. oil import market."

Efforts of farm organizations "would be irresistible" Janeway continues "if only farm organization spokesmen stopped pestering senators and congressmen interested in being helpful to agriculture with aimless and impractical echoes of 19th century theories that didn't work then.

"The urgent need of the day is," he says, "for all farm organizations to take the lead in rallying all industry groups interested in maximizing exports, along with all oil-consuming groups gauged by over-priced imports in developing a unified American foreign trade bartering push and no more nonsense about holding our breath while waiting for Stockman's economic theology to materialize."

Asked about problem areas in exports, Janeway says it's "simple and sad" to summarize: "more volume at lower prices for less take home pay."

There are, Janeway says, four extreme problem areas in agriculture at present. The first, he says, is in what he terms "the antiquated thinking of farm organization spokesmen who persist in the illusion that farm export opportunities are offered by free markets abroad rather than via government negotiation.

"Secondly, there is," he continues, "the out-to-lunch attitude of the Reagan administration, which has no plans for engineering any government to government pipelines for moving burdensome crop surpluses still backing up our demoralized domestic farm markets.

"A third problem is in the dogmatic insistence of spokesmen for the Moral Majority movement that U.S. government policies aimed at activating food as a bargaining lever with unfriendly powers is anti-Christian; though surely any method of bargaining aimed at avoiding the absolutely anti-Christian expedient of nuclear holocaust is genuinely Christian in the deepest meaning of the term."

And finally, Janeway says, there is what he calls "the sinister, systematic and shrewd downward manipulation of crop futures prices by Soviet purchasing agents".

Janeway sees as today's strongest point in the agribusiness picture, the opportunity to process soybeans into sanitized packaged food products. These, he continues, can be

"acceptable equivalents to pork products in the huge Moslem market where the population is exploding, but where sanitation is primitive and where die-hard religious taboos have closed the door both to pork products and fresh foodstuffs." Fresh foodstuffs, he adds, are the weakest segment in the domestic processing and marketing.

What about ag trade-offs with other industries as an effective means of improving the ag picture? "Misery loves company," Janeway says. "The list of sick industries devastated by Stockman is growing faster than the Med-fly population did at the worst of the blight in California."

"The most obvious industries for the farm organizations to make alliances with, fall into two groups: other commodity exporters, i.e. coal and lumber, and other importers of overpriced petroleum products."

None of the country's farming areas, Janeway predicts, will be immune from the current squeeze until "priorities are reversed and domestic economic prospects are evaluated in the light of foreign economic problems and opportunities."

"The best run farm operations of today, however, are those which have been pulling out of livestock raising and have begun concentrating on mechanized intensive cultivation of crop land."

"Land prices are down, for the first time, even in boom farm areas like Georgia. Ownership is shrinking, and 1982's higher costs of borrowing and operating will shrink it still further despite the obvious reluctance of farmer lenders to foreclose."

"Realists in agriculture are welcoming bids from foreign money in search of sanctuary. All foreign buy-outs of American farm and ranch land," he continues, "are grossly overpriced and represent steals by the American sellers."

What about the future of agriculture, developments and trends? "The future," he says "is always an outgrowth of the present. Our present is pregnant with a crisis that is at once manageable and unmanaged."

"Only Washington can manage an international political confrontation exploding into an arms race. But there's no way in the world that the powers-that-be in Washington today will begin to do so until they recognize the burning need of the hour to develop an American counter-offensive against Russia's military posture, and until they activate America's farmers to serve as her shock troops leading the change."

[From the Wall Street Journal, Feb. 1, 1972]  
**SHOCK FOR GROWERS: FALLING GRAIN EXPORTS BRUISE THE FARM BELT; DAMAGE COULD SPREAD**

(By Sue Shellenberger)

HAVANA, Ill.—Selling food to foreign countries is big business in this Corn Belt town of 4,400 on the Illinois River. Lately, business hasn't been good. Many nations have cut their purchases of U.S. grain and people in Havana are feeling it in their pocket-books.

Much road traffic in Havana still consists of trucks rumbling over the town's brick streets with hundreds of millions of dollars in grain to be loaded on barges headed for the port of New Orleans. But corn prices in Havana are down 25 percent from last year, and the volume of grain shipped from all Illinois River ports is down one-fifth.

Havana farmers, who send most of their grain abroad, have cut their spending plans and are signing up for government price supports at a fast clip. Farm-equipment dealers are hurting, and barge operators are

feeling the pinch. At Havana National Bank, Chairman Frank Cook Jr. says: "Prices are depressed, and that hurts." What if conditions don't improve? "I'd retire," Mr. Cook says. "Conditions have to change."

Farm exports have fallen sharply nationwide, because of world slumps and tensions and because of competition from other countries. There have been declines before, but this time many of the causes seem unlikely to change soon. "We're dealing with some structural problems that are rooted in either economics or politics, and it will be difficult to turn these things around quickly," says Martin Abel, senior vice president of Schnitker Associates, Washington economic consultants.

#### END OF AN ERA

Apparently an era of explosive export growth, which brought about large increases in U.S. farm income and productivity, has ended. Although farm exports are likely to pick up from current depressed levels, their average growth through the 1980s won't approach the boom levels of the 1970s, experts say. That may slow food inflation for U.S. consumers, but U.S. farmers and the overall economy may suffer.

"World grain trade essentially doubled during the 1970s. That kind of increase simply can't go on," says D. Gale Johnson, a University of Chicago economics professor. Barring crop failures elsewhere, he says, "there will be two or three fairly painful years" for the farm economy.

Vincent Malanga, the senior economist at A. Gary Shilling & Co., New York economic consultants, predicts average annual growth of 2 percent for U.S. grain exports in the 1980's, down from 8 percent in the 1970s. That suggests, he says, that "the farm economy is going to be a relatively weak link in the general economy in the 1980s."

#### QUITE A SHOCK

The farm-export slump began in the year that ended last Sept. 30. Volume, falling far below forecasts, dropped by 1 percent. The picture has darkened since: Foreign sales and shipments of U.S. corn, wheat, soybeans and sorghum have been running 11 percent behind a year earlier.

To farmers accustomed to the last decade's soaring trade—spurred by rising world appetites for meat, milk, eggs and bread, plus the opening of huge markets such as the Soviet Union and China—the decline comes as a shock. After all, exports accounted for 85 percent of the growth in consumption of U.S. grains during the 1970s. By 1980, two-fifths of U.S. crops were being sent abroad, providing about 30 cents of each farmer's dollar of cash income. The trade surplus in agriculture grew twentyfold over the decade, to \$26.7 billion in 1980.

In fact, the 1970s culminated in a near-shortage in 1980—when drought and three years' steady increase in export demand pushed U.S. grain prices sharply higher—and in fears of a 1981 shortage. Those fears were eradicated by the weather: Crop yields last fall were astonishingly high. But serious problems also arose, so that much of the surplus grain that normally would have flowed into world trade sat in farmers' bins instead. Some of the problems:

Rising interest rates around the world discouraged grain dealers from building inventories.

Food demand slowed in industrialized nations beset by recessions.

Rising debt forced many nations, already burdened by expenditures for imported oil,

to devote more cash to debt payments and less to food imports.

The result of all these factors in Eastern Europe, where grain imports jumped at an annual rate of 30 percent or more in the last five years, is a mood of increasing austerity. In Romania, where a food-rationing program is in effect, President Nicolae Ceausescu, in a speech about disappointing harvest results, told Romanians they eat too much bread anyway and are getting too fat. In Yugoslavia, corn meal has been mixed with scarce wheat flour to make bread without raising wheat imports. U.S. grain exports to Eastern Europe are running 15 percent behind last year.

Another significant factor is the rising belief world-wide that the U.S. is willing to use trade embargoes as a political tool. President Ford suspended grain shipments to the Soviet Union for a time in 1975 amid a flap over the sales' effect on U.S. food prices, and in early 1980 President Carter embargoed a large part of U.S. sales to Russia over its invasion of Afghanistan.

Although President Reagan lifted that embargo, the recent Polish crackdown led him to postpone negotiations with Russia on a new grain-sales contract, and he hasn't ruled out further restrictions if the Polish situation worsens. All this makes some nations reluctant to depend heavily on the U.S. for food, and it encourages development of farm production in competing grain-exporting nations.

Since the 1980 U.S. embargo on Soviet grain trade, for example, the Soviets have turned Argentina into a virtual trade colony, and the U.S. share of Russian grain imports has slipped to 40 percent from 75 percent. After the embargo, the Russians more than quadrupled their share of Argentina's wheat and corn exports to 80 percent and 88 percent, respectively.

Elsewhere, self-sufficiency campaigns are cutting into grain imports. Mexico, U.S. farmers' third-biggest customer, is trying to avoid food dependence on "the colossus of the north" and managed last year, with the help of good weather, to grow all the beans and corn it needed for the first time in 10 years.

There are other long-term factors. Whitney MacMillan, the chairman of Cargill Inc. of Minneapolis, the big commodity merchandiser and processor, cites rising competition from grain-exporting nations that, "largely left out of the export growth of the 1970s, are now finally gearing up to serve this demand." Aided by grain price supports and import duties, farmers in the European Economic Community for the first time in many years have become net exporters of grain instead of importers. European grain exports could rise 50 percent by 1985, Mr. MacMillan estimates. Canada, too, plans to increase its grain exports sharply.

Competition already has cut into U.S. trade in some of the hottest world markets. In the Middle East, "there's a strong growth in demand, but competitors are getting a bigger share," says John B. Parker, an Agriculture Department economist. France and Brazil recently have captured much of the growth in food imports by the Saudis.

All told, the U.S. share of world trade in grain and soybeans dropped to 52 percent in the 1980-81 marketing year from 56 percent the year before.

#### GAINS POSSIBLE

U.S. farm trade could pick up, of course, if crop failures force grain-importing nations to assign food imports a higher priority. An

improvement in the world economy could spur sharp increases in trade with such big potential markets as China. And meat and poultry consumption in most of the world still lags behind the U.S. diet of 240 pounds a year. Czechoslovaks consume about 170 pounds, for example, and Mexicans about 64 pounds.

But the biggest new markets, such as the Soviet Union, are already open, and the potential for a renewed surge in growth is outweighed for now by other factors.

In the U.S. Farm Belt, many farmers are painfully aware of the export slowdown and are puzzled by it. "You bet I think of it," says Havana farmer Doyle Walker. Most of Mr. Walker's crops are usually sold abroad. In December, prices for corn in Havana dropped 15 cents a bushel, roughly 5 percent, instead of rising as they normally do at that time of year. The reason was international tension over the Polish situation: Buyers thought that the U.S. might impose another grain embargo against the Soviet Union; that would depress prices, so the buyers held back, anticipating better deals later.

Lunching at Waterworth's restaurant in downtown Havana, Fred Reeves, the manager of the Havana elevator of Growmark Inc., a farm cooperative based in Bloomington, Ill., muses about such influences. "There's been a tremendous change," he says. "Fifteen years ago, we weren't a world market. We were a domestic market. All of a sudden the farmer has to answer to world demand, to what's happening in Hungary, in Poland, in Argentina. Fifteen years ago, we wouldn't have thought of it."

#### SQUARE IN THE EYE

Across town, at Melvin Weakly's John Deere farm-equipment dealership, Mr. Weakly and his manager, Delbert Sielschott, spend much time cutting their inventories and talking about sluggish grain demand. In 1981, "a lot of farmers just couldn't generate enough income to buy equipment," says Mr. Weakly, and the year was his worst ever. "We don't see too much of a future, up to the mid-1980s," for grain demand. "We try to look the situation square in the eye," Mr. Weakly says. Concludes Mr. Sielschott: "And it looks pretty bad."

Along the Illinois, as many as 100 idle barges backed up at some ports even before last month's freeze, and barge rates plunged 20% or more. About one-fourth, or "tens of thousands," of U.S. railroads' grain-hauling cars are idle, says the American Association of Railroads.

Taxpayers are starting to pay for the slump, too. The Agriculture Department in December handed out \$400 million to wheat farmers to compensate them for low prices. And farmers have put a record 1.16 billion bushels of corn in storage under a government price-support reserve program—an amount worth \$2.8 billion at today's prices and equal in volume to the entire Indonesian rice crop.

If the slowdown continues, as many experts say it will, it could affect the whole economy. Food-price inflation, barring crop failures, is likely to be slowed by ample grain supplies and to lag behind the general inflation rate for much of the 1980s, Mr. Malanga of Shilling says. Cheaper feed for livestock will lead to "a more healthy climate" for producing beef, pork and chicken, says the University of Chicago's Mr. Johnson.

But the export boom of the 1970s benefited the economy in other ways. Based on an

Agriculture Department calculation that every one million metric tons of U.S. farm exports generates 100 jobs, about 16,000 people last year owed their jobs to these exports. Farm exports also reduce the need for costly government price-support programs and help raise the dollar's value against other currencies by improving the U.S.'s overall trade balance. Besides, those who prosper from exports spend more, spreading their prosperity around.

Mr. EXON. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

#### DEPARTMENT OF JUSTICE AUTHORIZATIONS, 1982

Mr. JOHNSTON. What is the pending business, Mr. President?

The PRESIDING OFFICER. The fourth committee amendment on page 4, line 19.

Mr. JOHNSTON. Mr. President, is the ruling of the Chair that striking through line 5 and changing the number to 6 on page 4, line 19, constitutes a committee amendment?

The PRESIDING OFFICER. It does constitute a committee amendment.

Mr. JOHNSTON. Is that necessary, since amendment No. 3, which was item No. 5, has now been stricken as being nongermane? I think we have excluded one amendment.

The PRESIDING OFFICER. That is not one amendment. But there is an argument to be made for defeating that amendment. The question is on agreeing to the committee amendment.

Mr. JOHNSTON. I move to lay the committee amendment on the table.

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

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from Florida (Mrs. HAWKINS), the Senator from California (Mr. HAYAKAWA), the Senator from Nevada (Mr. LAXALT), and the Senator from Idaho (Mr. McCURE) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Alabama (Mr. HEFLIN), and the Senator from Ten-

nessee (Mr. SASSER) are necessarily absent.

I further announce that the Senator from Ohio (Mr. GLENN), the Senator from Vermont (Mr. LEAHY), and the Senator from Rhode Island (Mr. PELL), are absent on official business.

I also announce that the Senator from New Jersey (Mr. WILLIAMS) is absent because of illness.

I further announce that, if present and voting, the Senator from Tennessee (Mr. SASSER) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 63, nays 24—as follows:

#### [Rollcall Vote No. 13 Leg.]

##### YEAS—63

Abdnor	Exon	Nickles
Andrews	Ford	Nunn
Armstrong	Garn	Percy
Baker	Gorton	Pressler
Bentsen	Grassley	Proxmire
Biden	Hatch	Pryor
Boren	Helms	Quayle
Burdick	Hollings	Randolph
Byrd	Huddleston	Roth
Harry F., Jr.	Humphrey	Schmitt
Byrd, Robert C.	Inouye	Simpson
Cannon	Jackson	Specter
Chiles	Jepsen	Stennis
Cochran	Johnston	Stevens
D'Amato	Kassebaum	Symms
Danforth	Kasten	Thurmond
DeConcini	Long	Tower
Denton	Lugar	Wallop
Dixon	Matsunaga	Warner
Domenici	Mattingly	Zorinsky
Eagleton	Meicher	
East	Murkowski	

##### NAYS—24

Baucus	Durenberger	Moynihan
Boschwitz	Hart	Packwood
Bradley	Heinz	Riegle
Bumpers	Kennedy	Rudman
Chafee	Levin	Sarbanes
Cohen	Mathias	Stafford
Cranston	Metzenbaum	Tsongas
Dodd	Mitchell	Weicker

##### NOT VOTING—13

Dole	Hayakawa	Pell
Glenn	Heflin	Sasser
Goldwater	Laxalt	Williams
Hatfield	Leahy	
Hawkins	McCure	

So the motion to lay on the table was agreed to.

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

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

#### THE HOLOCAUST AND THE HISTORIANS

Mr. PROXMIRE. Mr. President, In her most recent study of the Nazi regime, titled "The Holocaust and the Historians," Prof. Lucy Dawidowicz addresses the diverse analyses of the Holocaust by historians. She focuses

on both the neglect and portrayal of the Holocaust.

This book is timely. The subject of the Holocaust has encountered a bizarre twist in recent years. Revisionist historians in countries including France and the United States are publishing articles to the effect that the genocidal Holocaust never occurred.

One example of this perspective in the United States is the newspaper the *Spotlight*. Last week I received a reprint of an issue headlined "The Great Holocaust Debate." Typical articles are titled "Were Six Million Jews Exterminated?", "Chasing 'War Criminals' For Profit", and "Allies Used Torture To 'Prove' Jews Were Extermination Victims."

No matter how insulting we may find these headlines, the publisher's right to print them is protected by our Constitution. Although these allegations cause relatives of Holocaust victims immeasurable suffering, statements contesting the occurrence of genocide would not be prohibited under the Genocide Treaty.

Indeed, all existing first amendment freedoms would be preserved by the Genocide Treaty. The treaty would make the following acts punishable: genocide; conspiracy to commit genocide; direct and public incitement to commit genocide; attempt to commit genocide; and complicity in genocide.

I therefore urge my colleagues to ratify the long-awaited Genocide Treaty.

#### CAUTION ON USE OF WINDFALL PROFIT TAX AS AID TO GAS PRICE DECONTROL

Mr. FORD. Mr. President, from time to time, we hear of a windfall profit tax in relation to price decontrol of natural gas. This would be sold to us as a device to lower the Federal deficit, a very good sounding reason.

Deregulation of all wellhead gas prices by January 1, 1983, would mean another \$30 to \$40 billion to producers annually. But it is argued by some deregulators that this excess could be coupled with a "windfall profit tax."

A tax patterned on the oil windfall profit tax would produce \$12 billion in 1983 and 1984. This would shift the argument from "profits" to "help balance the budget." Mr. President, I suggest that this is an illusion. Some might even suggest that it borders on being a fraud to the consumer.

The Congressional Budget Office this week highlighted the \$12 million Federal revenue illusion. The CBO finds, because of decontrol's impact on the economy, that:

Taking all factors into account, the net revenue gain from decontrol and a windfall profit tax could be as low as \$1 billion in 1983 and \$6 billion in 1984. If the tax was not limited to the period of accelerated decontrol, it could raise large amounts of revenue in the period after.

Mr. President, the CBO report goes on to point out that it would be the consumer who bears the full cost of gas price increases. In the case of the windfall profit tax on oil, producers were forced to absorb the tax because of the competitive price pressure of imports. No such source of competitive gas exists.

Mr. President, I ask unanimous consent the CBO's brief treatment of this issue be printed in the *RECORD*.

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

#### WINDFALL PROFITS OR EXCISE TAXES ON NATURAL GAS

Price controls on most domestic natural gas are due to be lifted on January 1, 1985, under the terms of the Natural Gas Policy Act of 1978 (NGPA). The deregulation of natural gas prices at the wellhead, whenever it occurs, will probably result in a substantial increase in gas prices and producer revenues and profits. In a decontrolled market, natural gas prices would most likely tend toward the heat-equivalent (Btu) price of the major fuels with which gas competes, most notably oil. The NGPA, however, has held prices below this level. For example, industrial and utility boiler fuel sold for approximately \$5.50 per million Btu's in the fall of 1981, while natural gas was delivered to these users for \$2.98. For residential users, home heating oil sold for \$9.00 per million Btu's, while gas was delivered for \$4.60 in the same period. These differences suggest that substantial new gas industry profits would follow upon wellhead decontrol. These profits could be the focus of a windfall profits tax on natural gas at the wellhead.

The revenues raised by such a tax, and the duration of the tax, would depend upon the adopted definition of "windfall" income. One option for such a tax would be to allow the deregulation of all wellhead gas prices on January 1, 1983. This option would create a "windfall tax base," that is, new revenues to natural gas producers in excess of those they would have received under NGPA, of up to \$30 billion in 1983 and \$40 billion in 1984. Applying to this base a windfall profits tax similar to that on oil could produce as much as \$12 billion in revenues in each of these years. This figure must be regarded as a maximum, however, since prices might not increase as rapidly as this calculation assumes. In addition, higher profits for natural gas producers might lead to reduced profits and incomes in other sectors of the economy, especially if tight monetary policy holds down overall nominal GNP. These lower incomes would result in offsetting reductions in corporate and individual income taxes in those other sectors. Taking all these factors into account, the net revenue gain from decontrol and a windfall profit tax on natural gas could be as low as \$1 billion in 1983 and \$6 billion in 1984.

If the tax was not limited to the period of accelerated decontrol, it could raise large amounts of revenue in the period after 1984. For example, an excise tax of \$0.60 per thousand cubic feet—unrelated to any windfall—would raise approximately \$11 billion per year after 1984.

A windfall profits tax on natural gas would differ from the existing crude oil windfall profits tax in several respects. The most important difference is that, unlike the oil tax, a windfall profits tax on all gas

would raise the price of gas to consumers. In the oil case, producers were forced to absorb the tax because of the competitive pressure exerted by large imported supplies that entered the United States at the market price. No such source of competitive gas exists. Domestic gas price increases are checked only by the possibility of long-term switching to other fuels, most probably to oil. Thus, a tax on all gas would be borne by producers and consumers, with a possible inflationary impact over and above that of natural gas decontrol alone.

In the absence of a windfall profits tax on natural gas, decontrol would increase producer revenues substantially, and with them corporate and personal income tax revenues from the natural gas industry. These tax increases could, however, be partly or wholly offset by effects elsewhere in the economy. Corporate profits and personal income outside the gas industry might decrease as the composition of national output changed in response to higher gas prices. Inflation could increase during the adjustment to higher gas prices, possibly also dampening growth. This could reduce federal tax revenues in general, and perhaps also increase those automatic transfer payments that are associated with reduced GNP growth or tied to measures of inflation. Thus, it is not clear that decontrol of natural gas alone—in the absence of a windfall profits or excise tax—would increase total federal tax revenues or reduce the deficit in the short run. In the long run, decontrol would increase economic efficiency, thus increasing both real GNP and federal revenues.

#### ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, so that there will be no misunderstanding, we have had our last vote for the day.

I ask unanimous consent that there now be a period for the transaction of routine morning business in which Senators may speak for not more than 2 minutes. It is the intention of the leadership to wind down the proceedings of the Senate by 3:15.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, will the Senator allow Senators a longer period of time than 2 minutes?

Mr. STEVENS. I will amend that to 5 minutes.

Mr. JOHNSTON. Mr. President, reserving the right to object, is there any reason why we could not have unanimous consent to speak on non-germane matters and thus chew up the time of the 100 hours?

Mr. STEVENS. It would be our feeling that we ought to have a period for routine morning business right now, that the time not be charged to the bill; and that we indicate to Senators we are off the bill. This would be for the purpose of assuring everybody we are not going to have any more proceedings under the bill. Accordingly, that is the reason for the request for routine morning business. But, I do believe the minority leader is correct. A 5-minute time limit I think would suffice. We do have a small amount of just routine business that the minority

leader and I must transact. But there are many Senators who want to make plane flights, and would want to be assured that there is not going to be any more legislative business today. Going into the morning business mode would satisfy that concern.

THE PRESIDING OFFICER. Is there any objection?

Mr. BOREN. Mr. President, reserving the right to object, I am working on some remarks I would like to place in the RECORD today which might take 7 minutes instead of 5, I do not know how long.

Mr. STEVENS. I will be happy to be recognized. As a matter of fact, I seek recognition now, if an order will be entered for routine morning business, and I will yield my time to the Senator from Oklahoma.

THE PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. STEVENS. I do yield what time I might have to the Senator in order that he may proceed.

Mr. BOREN. I thank the Senator.

#### SOME COMMONSENSE AT THE FED

Mr. MELCHER. Mr. President, a few days ago I circulated a "Dear Colleague" to the Members of the Senate indicating that I intended to offer, at the first opportunity on the Senate floor, an amendment requiring the President to begin immediate consultations with the Federal Reserve Board on possible changes in monetary policy to lower real interest rates.

I believe this had to be our first order of business if we were to get this economy back on its feet and have any hope of controlling the budget deficit. The Federal Reserve Board's high interest rate and high unemployment policies of the last year have added 2 million Americans to the unemployment lines, added thousands of businesses to the bankruptcy rolls, and \$60 billion to the budget deficit for this year. This policy has to be reversed.

In his testimony yesterday before the House Banking Committee, Federal Reserve Board Chairman Paul Volcker said that the Board feels it will probably loosen up monetary policy to the point where it will not block economic recovery without causing inflation. This is just the medicine I have prescribed for over a year now. Without it, economists predict we could see another million workers out of jobs and another \$30 billion added to the already ballooning deficit. Inflation rates are down 3 percent—why not bring interest rates down at least 3 or 4 percent? We can get people back to work, get housing, agriculture, and other small businesses back on their feet, and Congress can concentrate on doing its part to control the budget and the deficit.

Inflation has dropped and real interest rates must now also drop. If Federal Reserve Board Chairman Volcker implements the monetary policy changes he announced yesterday, we can see real interest rates drop.

I know that policy pronouncements do not always end up the same in practice. I believe the Federal Reserve took a step in the right direction yesterday, but I intend to closely monitor the implementation of this monetary policy in the coming months to see that we stick to that path and do not backslide once more to high interest rates, high unemployment policies. I will continue to press for action on my legislation to force interest rates down.

THE PRESIDING OFFICER. Who yields time?

Mr. STEVENS. Mr. President, who is recognized at the present time?

THE PRESIDING OFFICER. No Senator has the floor.

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

THE PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### PERMITTING THE ENTRY OF THE STEAMSHIP VESSEL "OCEANIC CONSTITUTION" INTO THE TRADE

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 3782, documentation of the vessel *Oceanic Constitution*, reported favorably from the Commerce Committee today.

THE PRESIDING OFFICER. Without objection, it is so ordered. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3782) to revitalize the pleasure cruise industry by clarifying and waiving certain restrictions in the Merchant Marine Act, 1936, and the Merchant Marine Act, 1920, to permit the entry of the steamship vessel *Oceanic Constitution* into the trade.

The Senate proceeded to consider the bill.

Mr. MATSUNAGA. Mr. President, I rise to express my strong support for H.R. 3782, a bill to revitalize the domestic passenger ship industry. Passage of this legislation would provide hundreds of jobs in U.S. seafaring and related maritime industries. In addition, it will go a long way to strengthen our Nation's military preparedness.

Enactment of this measure will allow the passenger vessel *SS Constitution* to join its sister ship, the *SS Oceanic Independence*, in operation of a weekly cruise service among the Hawaiian Islands. In 1979, this body

unanimously adopted similar legislation which allowed the *Independence* to return to U.S.-registry and operate in the coastwise trade. That action has been an unqualified success.

The *Independence* has been operating among the Hawaiian Islands for close to 2 years now. During that time, over 45,000 passengers traveled to my State of Hawaii to enjoy a cruise on this vessel. The *Independence* has not only provided jobs for many seafarers and company employees, it has been a boon for a broad spectrum of related service and tourism industries. The return of the *Constitution* to the coastwise trade will provide hundreds of further employment opportunities and will be an additional boon to the economy as a whole.

It is not often that we have an opportunity to rejuvenate a critical national resource such as U.S.-flag shipping. The return of the *SS Constitution* to U.S.-registry and domestic operation would represent another important step in restoring the U.S. merchant fleet to the status required for our national defense and economic strength, for by law, the *SS Constitution* must be made available to the U.S. Government for purchase or charter as a naval auxiliary in times of emergency.

Mr. President, it is imperative that we enhance American-flag shipping. Our economy demands it and our defense needs require it. Accordingly, I urge all of my colleagues to join me today in supporting passage of H.R. 3782.

Thank you.

THE PRESIDING OFFICER. The question is on the third reading of the bill.

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

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

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

The motion to lay on the table was agreed to.

#### EXECUTIVE SESSION

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nomination of Maj. Gen. Walter F. Ulmer, Jr., to be a lieutenant general. This is made at the specific request of the chairman of the Armed Services Committee, which reported this nomination favorably today.

THE PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. No objection.

**NOMINATION OF MAJ. GEN. WALTER F. ULMER, JR., TO BE LIEUTENANT GENERAL, U.S. ARMY**

The legislative clerk read the nomination of Maj. Gen. Walter F. Ulmer, Jr., to be lieutenant general, U.S. Army, reported earlier today.

The PRESIDING OFFICER. The nomination is considered and confirmed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

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

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of this nomination.

**LEGISLATIVE SESSION**

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

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

**ORDER TRANSFERRING TIME OF SENATOR TOWER TO SENATOR BAKER**

Mr. STEVENS. Mr. President, I ask unanimous consent that the 1 hour allotted to Senator Tower under rule XXII postcloture be transferred to the majority leader.

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

**AUTHORIZING TESTIMONY BY JAMES SOURWINE, AND REPRESENTATION BY SENATE LEGAL COUNSEL**

Mr. STEVENS. Mr. President, on behalf of the majority leader, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. PRESSLER). The clerk will state the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 319) authorizing testimony by James Sourwine, and representation by Senate legal counsel in the case of *David Richardson v. Raymond J. Donovan*, Civil Action No. 79-2053.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Alaska?

There being no objection, the Senate proceeded to consider the resolution.

Mr. STEVENS. Mr. President, this resolution under Senate Rule XI would authorize James Sourwine, a Senate employee, to testify in the case of *David Richardson v. Raymond J. Donovan*, Civil Action No. 79-2053, pending in the U.S. District Court for the District of Columbia. Mr. Sour-

wine's testimony has been requested by the defendant.

The resolution also directs the Office of Senate Legal Counsel to represent Mr. Sourwine in connection with his testimony in this case to protect the privileges of the Senate if the need arises.

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

The resolution (S. Res. 319) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

**S. RES. 319**

Whereas in the case of *David Richardson v. Raymond J. Donovan*, Civil Action No. 79-2053, pending in the United States District Court for the District of Columbia, counsel for the defendant has requested the testimony of James Sourwine, an employee of the Senate;

Whereas Title VII of the Ethics in Government Act of 1978, Public Law 95-521 ("the Act"), establishes the Office of Senate Legal Counsel and provides that the Senate may direct its Counsel to represent the Senate, its committees, Members, officers, or employees;

Whereas by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas when it appears that testimony of an employee of the Senate is needful for use in any court for the promotion of justice and, further, that such testimony may involve communications, conversations, and matters related to the official business of the Senate, the Senate will take such action thereon as will promote the ends of justice consistently with the privileges and rights of the Senate: Now, therefore, be it

*Resolved*, That pursuant to section 704(a)(2) of the Act, the Senate Legal Counsel is directed to represent James Sourwine in connection with his testimony in the case of *David Richardson v. Raymond J. Donovan*, Civil Action No. 79-2053;

Sec. 2. That James Sourwine is authorized to testify in the case of *David Richardson v. Raymond J. Donovan*, Civil Action No. 79-2053, except concerning matters for which the Senate Legal Counsel or his representative determines are privileged from disclosure.

Mr. STEVENS. 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.

**RECORD TO REMAIN OPEN UNTIL 4 P.M. TODAY**

Mr. STEVENS. Mr. President, I ask unanimous consent that the RECORD remain open until 4 p.m. today, or until the time the Senate adjourns if it is later than that, for the introduction of bills, resolutions, and statements.

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

Mr. STEVENS. Mr. President, I yield to the Senator from Alabama.

**EXPRESSING THE SENSE OF THE SENATE WITH RESPECT TO THE ASSASSINATION OF KEMAL ARIKAN, A CONSUL GENERAL OF THE GOVERNMENT OF TURKEY ASSIGNED TO THE UNITED STATES**

Mr. DENTON. Mr. President, I rise today to condemn the recent assassination in Los Angeles of the Consul General of Turkey, Kemal Arikan, and to send to the Chair a resolution describing the sense of the Senate in reaction to this tragedy.

As you know, Mr. Arikan was attacked while driving to work on the morning of January 29, 1982. According to witnesses, Mr. Arikan was shot at close range by two young men while he waited at a traffic intersection. Responsibility for the killing was claimed by the Justice Commandos of the Armenian Genocide, a terrorist organization whose avowed purpose is to avenge the alleged terrible injustice visited upon the Armenians by the Ottoman rulers of Turkey 65 years ago.

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

Mr. ROBERT C. BYRD. Mr. President, the request for immediate consideration has been cleared on this side of the aisle, so I am not going to object to the request.

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

The legislative clerk read as follows:

A resolution (S. Res. 320) expressing the sense of the Senate with respect to the assassination of Kemal Arikan, a consul general of the Government of Turkey assigned to the United States.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DENTON. Mr. President, this resolution expresses unequivocal condemnation of this and all such brutal and cowardly acts against diplomatic personnel. It extends to the family of Mr. Arikan and the Turkish people the most profound sympathy of the Senate.

This dastardly deed underscores the importance of the hearings held by the Security and Terrorism Subcommittee, which has been investigating the causes, origins, and support of terrorism. Last summer, for example, the subcommittee held a hearing on terrorism in Turkey. It brought to light the fact that the large-scale killing of Turkish diplomats, which continues on the pretext of revenge for past massacres of Armenians, is actually in large part an attempt by the Soviets to destabilize Turkey, a member of

NATO whose territory and welfare is vital to Western security. Mr. President, I ask unanimous consent that an excerpt of the transcript of that June 25, 1981, hearing be included in the RECORD immediately following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered. (See exhibit 1.)

Mr. DENTON. Findings such as these help improve our understanding of the fundamental purpose of organized terrorism and thus our ability to prevent and to counter further terrorist action. The tragic attack on Mr. Arian, the kidnaping of General Dozier, the recent murder in Paris of Lieutenant Colonel Ray, all compel us to attend more to the threat organized terrorism presents to our security and welfare.

Mr. President, I welcome additional cosponsors and urge my colleagues to support the resolution.

#### EXHIBIT 1

##### TERRORISM: THE TURKISH EXPERIENCE

##### STATEMENT OF CHAIRMAN JEREMIAH DENTON

Senator DENTON. Good morning. This hearing will come to order.

We welcome you here this morning. A special welcome to my distinguished colleague from North Carolina, Senator John East, whose interest in this subject is manifested by a recent article in Human Events on June 13, entitled: "Is the USSR Really Supporting International Terrorism?"

Senator East is here in spite of pressing commitments elsewhere. As I understand it, Senator East, you will have to leave us reasonably soon?

Senator EAST. In about an hour.

Senator DENTON. Thank you very much for your attendance this morning.

I would like to welcome our two witnesses who have come all the way from Turkey to testify this morning.

Prof. Aydin Yalcin is professor of economics in the faculty of political sciences, University of Ankara, and Prof. Osman Okyar is professor of economics, University of Hacettepe.

Welcome, gentlemen.

I have an opening statement. I have asked Senator East, and he says that he will defer on that point.

After making my statement, I will ask the witnesses to come forward and make their own opening statement.

This Subcommittee on Security and Terrorism has held four hearings apart from oversight hearings. Previous hearings have examined international terrorism in a broad fashion so as to help the subcommittee understand the origins, directions, and interrelationship of various groups involved with terrorism.

We have also examined the sources of support, both direct and indirect, for terrorist activity worldwide.

Special attention has been focused on the Soviet Union and its surrogates, in light of their apparent major commitment to international terrorism as a tool for destabilizing Western governments in an effort to further their ultimate goal of world Communism.

I believe this morning's hearing will be particularly contributory toward that portion of our investigation.

We have also studied the historical antecedents of Soviet terrorism to better understand their involvement with this insidious method for bringing about political change.

At our hearing on June 11, 1981, I made a statement regarding terrorist elements and Marxist influences in the Provisional IRA.

On the following day, June 12, the subcommittee witness, Dr. Stefan Possony, testified that "it is quite clear that there is a strong Marxist-Leninist element in the Provisional arm of the IRA."

Since my comments did not, in my view, fully reflect my understanding of this issue, I should like to state the following in an attempt to clarify my present understanding of this issue.

The official wing of the IRA is a Marxist organization which in the late 1960's rejected terrorism as a solution to the political and economic issues which divided families in Northern Ireland. The Provisional wing of the IRA was a splinter group formed in the late 1960's by a faction of the membership which advocated indiscriminate use of terror as a major tactic to accomplish its political and social goals for an Ireland united under Socialist principles.

The main intent of my comment was to point out that this distinction is not understood by many well-meaning Irish-Americans and others who funnel their hard-earned money to support what they believe to be a legitimate, purely nationalist organization which uses violence reluctantly as a last resort to achieve what cannot be achieved by peaceful means.

During the last 10 years, there have been hundreds of terrorist attacks undertaken by the IRA which resulted in heaping misery on totally unsuspecting and largely innocent victims. This clearly demonstrates the Provisional IRA's total commitment to the most brutal terrorist tactics.

My last point on this issue is this. The main mouthpiece of the Provisional Sinn Fein, which is the legal political arm of the illegal Provisional IRA, is a publication called An Phoblacht, meaning Republican News, which publication adopts an undisguised "left wing/revolutionary tone."

Successive governments of the Irish Republic have been described by An Phoblacht as "fascist" and "neocolonial." The Provisional Sinn Fein speakers have been urged to tell the unemployed "to take to the streets and terrify the ruling class into giving them work."

That is urged by that publication.

The current war, as the publication refers to it, is described as a people's war against imperialism" and "a war of liberation" designed to set up a system of control "returning full power to the people."

I heard those terms hundreds of times when I was in a Communist nation and regard it as the all too familiar rhetoric of Marxist-Leninism. I am sure that those in this audience identify it the same way.

Ruairi O'Bradaigh, IRA man of 30 years and president of the Provisional Sinn Fein, was quoted in L'Europeo, September 13, 1979, as saying:

"We do not want a confederation of the south with the north; nor do we want an Independent Ulster. We want a general dismantling of the existing establishment in the Irish Republic and Ulster both."

He went on to explain his views on dismantling both the Irish Republic and Ulster in the publication Il Giornale Nuovo, published in Milan on September 2, 1979.

In my comments, I have not addressed and certainly do not intend to minimize the

pervasive economic and social discriminations imposed upon the Catholics of Northern Ireland which have given rise to this violence from the point of view of those looking at it and perhaps misunderstanding its nature.

Nor do I wish to ignore the extraordinary legal procedures employed by the British Government in Northern Ireland.

Those procedures include routine detention for up to 7 days without preferring charges; coercive interrogations sanctioned by law; de facto internment in the form of remands, awaiting trial; and, in some cases, trial without jury pursuant to provisions weighted heavily against the accused, including the placing of the burden of proof on the defendant.

I am sure that the British would say that they are forced into such activities by terrorism.

As chairman of this subcommittee, I am giving full consideration to scheduling a hearing after the summer recess to address the problem of terrorism in Northern Ireland and the roots and infrastructure of U.S. private support for the terrorists.

In recent weeks, the world was shocked by the attempted assassination of Pope John Paul II by a Turkish terrorist with reportedly right-wing ties. Thereafter, we learned of the hijacking of a Turkish airliner to Bulgaria by alleged left-wing Turkish terrorists.

More recently, the 18th Turkish diplomat to be assassinated was killed abroad by reportedly Armenian terrorists.

Moreover, within the last 3 years, Turkey has suffered over 25,000 casualties, killed and wounded, as a consequence of terrorism which has run rampant in that democratic country.

In order to give a proper appreciation for the magnitude of this slaughter, these numbers represent the equivalent of the entire population of Pottstown, Pa.

These alarming events have directed the Western world's attention to the plight of Turkey, a situation which in my view has received too little notice in the American press and media.

For more than 30 years, Turkey has been ruled by a democratic regime. The slogan or maxim "sovereignty belongs unconditionally to the nation" has served as the foundation of this democratic state.

Turkey is one of Islam's last free societies, the sole remaining Moslem state to have authentic elections and multiple parties.

You will hear from the witnesses of the remarkable progress, in terms of the rate of change toward democratic institutions and practices within the state.

Turkey is indispensable to her NATO allies for the defense of southern Europe and the eastern Mediterranean and, therefore, a highly visible target for Soviet-engineered destabilization and takeover efforts.

Therefore, I believe it is most appropriate that we take a closer look at the Turkish experience with terrorism.

In my own belief, as far as the United States is concerned, I do not believe we have reached the ideal set down by our Founding Fathers. I do not mean to make a direct comparison between the state of democratic practices in the two countries.

This closer look at Turkish experience with terrorism will be furthered by our witnesses here today, two men who have not only studied this problem in a scholarly fashion but also have lived in its midst.

I will ask you gentlemen, if you will, to come forward and take your places.

Prof. Aydin Yalcin is a professor of economics in the Faculty of Political Science at the University of Ankara.

Prof. Osman Okyar is professor of economics at the University of Hacettepe in Ankara.

Professor Yalcin presently publishes a scientific biweekly called Forum and writes for various Turkish and foreign newspapers and periodicals.

From 1965 to 1973, he was a member of the Turkish Parliament and the National Executive Committee of the Justice Party. He has also authored various books on Communism in Turkey, Fascism, and contemporary doctrinaire movements.

Professor Okyar is the former rector of the University of Ataturk at Erzurum.

He has served in the Turkish Government in several senior posts and as head of the Economics Department and dean of the Faculty of Social Sciences at the University of Hacettepe.

Again, welcome, gentlemen. We look forward to your testimony. We greatly appreciate your presence.

Would you care to make an opening statement?

STATEMENT OF AYDIN YALCIN, PROFESSOR OF ECONOMICS IN THE FACULTY OF POLITICAL SCIENCES, UNIVERSITY OF ANKARA, AND OSMAN OKYAR, PROFESSOR OF ECONOMICS, UNIVERSITY OF HACETTEPE

Dr. YALCIN. Thank you, Mr. Chairman.

It is a great pleasure and privilege for me to share my opinions and my thoughts with you on such a problem as international terrorism which affects the whole free world.

As you emphasized in your opening statement, I am going to talk as a person who was a kind of victim, as I tried to explain in my written statement. I had to carry a body-guard for a long time.

Fortunately, I feel very free; and we are no more under threat.

To communicate to you our experiences and observations and our concern, not only for our own nation but also for the whole free world, I am going to start with a general observation.

#### THE REPEAT OF HISTORY

Turkey was under direct threat by Soviet Russia in 1946 when Mr. Molotov asked our Ambassador to cede some part of eastern Turkey to Soviet Russia and to install joint military defense installations on the Dardanelles and the Bosphorus, the straits linking the Black Sea and the Mediterranean.

We felt for the first time that we were under direct threat from Soviet Russia. We decided to resist. We had the sympathy and help of the United States under the Truman doctrine. That was very great moral support for us.

After so many years, we feel and we see that the cycle has moved all the way around. This time, the threat is not direct but indirect. The demand is not direct but by proxy.

The same territorial demands are repeated this time by the Soviet-supported terrorists and most splinter parties who profess to be Marxist-Leninist and allies of Soviet Russia.

I refer to Armenian terrorists, Asala, who said this openly. I also refer in my written statement to some Marxist-Kurdish cessationists who also professed quite openly that they have had Soviet support and they are grateful for it—to the whole Turkish nation on Turkish television.

As this committee is interested to know more about the complete evidence of this

grand design, which I tried to describe, I should like to refer you to some of the points I tried to develop in my written statement.

I am not going to read it, but I would just like to summarize some of the points which show very clearly and very undeniably the Soviet and Eastern European involvement and some other surrogates of the Soviets, such as the Marxist factions of the PLO, such as George Habbash's guerrilla groups and also Syria's involvement in training and arming Turkish terrorists.

In my written statement, there is very impressive evidence of this foreign involvement in Turkish terrorism. I gave you some facts and figures about the cost of total armaments captured in Turkey after the 12th of September last year.

The total cost of this enormous armament, which goes up to nearly 650,000 small arms, is calculated by the Turkish authorities as stated by the Turkish head of state, General Evren, in one of his public speeches, is estimated to cost about \$250 million.

He said that the security authorities had added up the total amount of internal money obtained through bank robberies and extortions and it was not even one-fiftieth of this total. That means 2 percent of this enormous amount of financial cost.

He asked: Where does it come from? It certainly comes from secret sources and from illegal sources.

Senator DENTON. May I just make sure I heard you correctly there?

First, I would like to welcome the chairman of the Judiciary Committee, Senator Strom Thurmond, who just came in.

Sir, would you care to make a comment? Senator THURMOND. Please continue. I am in another committee, but I just came in for a little while.

Senator DENTON. All right. Professor Yalcin I believe just said that the total number of small arms and various types of arms was something like 650,000. It was 633,724 for terrorism in his country. The calculations as to their cost amounted to \$250 million.

In looking into the money that bank robberies and extortion by terrorists contributed toward that sum, they found it was roughly 2 percent of the cost of those armaments. Is that correct, sir?

Dr. YALCIN. That is correct. Senator DENTON. Please proceed.

#### FOREIGN AID TO TERRORISTS

Dr. YALCIN. This is just the armament part of this infrastructure.

People ask themselves how much it would cost to maintain the whole fighting group, which is armed by nearly 650,000 arms. These figures relate to the 1st of June. Every day new findings are discovered and confiscated from the terrorists.

For financing safe houses, travels, and other expenses, our security people calculate that the total finances required for such an amount of terrorist activity should be around at least three times this \$250 million.

In other words, this is a real war; this is not a fantasy of a few amateurs who profess themselves to be fighting for a religious cause. It is a professional thing; it is an army by itself.

I should like to continue with such circumstantial evidence which accumulates every day.

I should like to remind you that we are right at the beginning. We have just scratched the surface. We do not know yet, the full extent of the problem, because the

investigations are still continuing. I am sure within a matter of 1 year or 2, Turkey will be able to contribute more because we shall be in a position to know much better through court proceedings and through documents captured by our security authorities.

This is evidence collected just at the beginning of this tremendous operation.

I should like to come to the sources of this armament. Soviet arms figure prominently in these findings. Kalashnikovs have become more or less a part of the household equipment in certain parts of Turkey.

There are two routes which this tremendous number of armaments penetrate into Turkey. It is along the Black Sea coast in the north which has very direct access to Bulgaria.

From time to time in Turkish press, small shipments of arms are captured with dubious destinations.

In 1977, a Greek vessel called *Vasoula* was stopped on the Bosphorus. It was carrying about 67 tons of armaments, allegedly destined for Ethiopia, contrary to the original information given to Istanbul Port authorities.

Another interesting incident occurred 3 years ago when some Argentine-made armaments were captured in the hands of Turkish terrorists. The serial numbers were on them.

The Foreign Ministry contacted the Argentinian Government about how it came to Turkey. They said it was manufactured on an order from a Bulgarian state agency and shipped about 3 weeks ago to Bulgaria.

You can form an idea about the efficiency and speed of how Argentinian-manufactured armaments ended up in the hands of Turkish terrorists.

#### FOREIGN ORIGINS OF ARMS

In total, security authorities estimate that about 60 percent of armaments captured from the terrorists have Western brands. They make a qualification, saying that most of these arms are fake or counterfeit manufactured.

They gave me just two examples to illustrate what they mean. The French-manufactured Unique pistols and guns were sent to France to the manufacturing firm. They said it was not their manufacturer at all, and the serial number did not tell if it was their manufacturer.

In a second case, certain Berettas—Italian-made guns—were captured from the Turkish terrorists. The foreign office got in touch with the Italian firm, and they were told that this same serial number was still in the hands of the Italian Carabinieri. It was, again, a fake manufacturer. It was manufactured under a Beretta license in Bulgaria.

Senator DENTON. May I make sure I understand you on this, sir?

Reportedly, from your security authorities, 60 percent of the captured arms, and ammunition bear Western countries brand names and serial numbers. In tracing some bona fide Argentine-manufactured firearms, you found that on questioning the Argentinian Government, these weapons were ordered and delivered to the Bulgarians.

Dr. YALCIN. Yes. Senator DENTON. And those weapons were found in the hands of your terrorists in Turkey.

As to the 60 percent of the arms and ammunition bearing brand names and serial numbers from Western countries, your authorities are informing you that most of

them were not manufactured in those countries but bear counterfeit brand imprints.

One example was some French weapons—pistols of the Unique brand—which proved to be imitations of the originals. In the other case, the Italian Berettas not only were imitations but the Italian police had in their possession weapons with the same serial numbers on them, doubly proving the allegation that they were imitations; is that correct, sir?

Dr. YALCIN. That is correct.

Senator DENTON. Thank you. Please go ahead.

Dr. YALCIN. Another interesting example of this obvious involvement in Turkish terrorism is a serial in one of our biggest national dailies, *Hurriyet*, which published a series of feature articles on the arms smuggling, with quite detailed history as well as quite a number of interesting pictures.

Some of the arms smuggling mafia from Turkey had established a very profitable partnership with certain Bulgarian State agencies of foreign trade.

The target and aim of this partnership was obviously to arm and to smuggle illegal arms into Turkey.

#### FOREIGN TRAINING OF TERRORISM

Another interesting evidence of this involvement was an open statement on the Turkish radio and the television on the 2d of March by one of the Marxist-Kurdish cessationists who was involved in quite a number of killings in eastern Turkey. He said that he and his friends had training in Palestinian camps, and they had financial and otherwise support from friendly Socialist countries.

This statement was heard by millions of Turkish people.

According to Turkish newspaper information, as well as some information given to me by our officials, the Turkish terrorists are trained mainly in two Palestinian camps, controlled by either George Habash or a Syrian guerrilla movement, Al Saika.

According to what I was told, more than 300 Turkish guerrillas are still in training. The Turks number second to the Arabs trained in these camps.

When this problem is raised with the representative of the PLO in Ankara, he gives very unconvincing answers, saying that they are being trained to combat Zionism. They cannot control them after their training—for what cause they will combat.

Originally, they are being trained to combat Zionism, which is not a very convincing argument.

As I referred in my beginning statement, another guerrilla movement, claiming to represent Armenian people, Asala, is based in Lebanon in the areas controlled by the PLO.

In one of the joint press conferences, communicated by international press agencies, they said that they are fighting to get back their lost land in the eastern provinces of Turkey.

When he was questioned about whether they were also fighting against Soviet Russia, he said: In Soviet Russia, an Armenian fighting against Soviet Russia is out of the question. What we are interested in is to get back our former lands from eastern Turkey.

#### INDIRECT OR PROXY AGGRESSION

When I referred in my opening statement to a proxy repetition of the same demand, addressed to Turkey in 1946, he made the repetition of the same demand—the same provinces demanded by Soviet Russia in

1946, this time not by Molotov but by Asala, which is a Marxist-Leninist-Armenian terrorist group which claims responsibility for the killings of about 18 Turkish diplomats, as you pointed out.

Senator DENTON. The same provinces that were being demanded by the Soviet Union during the time at which you received the aid of the Truman doctrine are now being demanded by the Marxist-Armenian terrorists; is that correct?

Dr. YALCIN. Yes, Mr. President.

The demand was expressed in 1946. Turkey expressed its resolution to resist against it. We said we were going to fight; we shall never accept the cessation of Turkish territory.

Western states, the Allies of the Second World War, especially the United States, came out with a statement by then-President Truman in April 1947. After seeing the Turkish resolution to defend herself, he said: "We are going to defend countries who defend their freedom and their independence. We shall be by their side. We shall do everything possible to help."

Senator DENTON. This name Habash is a relatively common name. Is this the same George Habash who worked with the notorious Feltrinelli and is the same George Habash who has come up so many times in this hearing involved with the PFLP camps in Lebanon?

Dr. YALCIN. Yes, Mr. Chairman; that is correct.

In a statement given to the Middle East Review, carried by the Turkish daily *Tercuman*, on the 20th of June, 1981, an Asala leader of the Armenian terrorist organization said: "We are fighting for the same cause with the Turkish terrorist and the Kurdish terrorists."

This confirms our diagnosis that Armenian terrorists, who claim responsibility for nearly 60 attacks against Turkish targets, as well as the assassination of 18 Turkish diplomats, have been part of a larger picture of international terrorism instigated and heavily supported by the countries of Eastern Europe.

In the cities of evidences, perhaps I should mention particularly the psychological warfare mechanism directed against Turkey through a front organization of international communism, supported very closely by Soviet Russia, such as the World Peace Council, whose president is an Indian Communist. He is a member of the National Executive of the Indian Communist Party.

In one of their recent meetings in northern Europe—in Scandinavia, in Stockholm, I believe—they decided to start a solidarity movement with Turkish Democrats persecuted by the military Fascist regime of the present military commanders which had to intervene to stop the bloodshed in Turkey.

The Turkish Communist Party clandestine radio, which operates from East Berlin, constantly transmits subversive propaganda against Turkey. They have supported very closely internal uprisings tried by certain terrorist groups, as well as a Marxist trade union organization in Turkey. They clashed 2 years ago in Ismir in a big factory.

When this clash between the security authorities and small Marxist groups was going on, this Communist radio instigated very openly—and we have the transcript of their appeals—so it is obvious that this Soviet-supported Eastern Berlin Communist radio is still operating, expressing sympathy and expressing solidarity with Turkish terrorists.

Of course, when we approach the Soviet Government and other Eastern European surrogates, they deny any involvement.

#### SOVIET DUPLICITY

I would like to illustrate one very interesting conversation which was communicated to me by the former Prime Minister of Turkey, Mr. Demirel. It was in the time of a closer relationship between Soviet Russia and Turkey. We exchanged mutual trips and mutual visits. I, myself, went on one of these trips.

Mr. Kosygin asked Mr. Demirel if there was anything which he could do to improve the mutual relationship. Is there anything which disturbs you in the way of this closer friendship?

Mr. Demirel said: "No, Prime Minister; I have nothing to complain about." And he insisted.

Mr. Demirel, the Prime Minister of Turkey, said: "Mr. Prime Minister, as you insist so much, just one very unimportant thing occurred to me which I do not understand really and I should like to communicate."

"You talk about friendship and close cooperation and noninterference in neighboring countries. We know that a secret radio operating from Eastern Berlin is transmitting every day unspeakable abuse against myself and the Turkish Government and Turkish institutions. That I cannot reconcile with your statement."

Mr. Kosygin expressed surprise: "I did not know, Mr. Prime Minister. I shall look into it, and I shall communicate with you again."

He communicated after 2 days. He said: "We do not know about the existence of this radio."

This is just the situation in which we find ourselves. When we produce dozens of evidence, they disclaim any responsibility for it. It is up to you and up to the public opinion of the free world to judge by this evidence what they mean.

I do not know whether I have taken too much of your time, but I should like to give another aspect of the question which is how this thing happened; how this accelerated in the last few years.

I think, Mr. President, that there are quite a number of reasons which I can think of in order to explain this bloodshed. One is internal, certainly.

#### EXPLOITATION OF TURKISH INTERNAL DIFFICULTIES

Foreign powers found suitable ground to operate in Turkish lands among the Turkish people. After all, about 25,000 young people cooperated with an external power against their own country, against their own state, and against the regime in which they live.

Turkey is in a very delicate phase of her social-economic-moral development. It is a rapidly industrializing country. It is a rapidly developing and urbanizing country.

I gave quite a number of facts and figures in my written statement. I do not want to repeat them. However, in order to illustrate the scope of this question, I should perhaps mention that in 1950—30 years ago—about 5 million people were living in urban centers. It is now nearly 25 million people within a matter of one generation who have changed their whole way of life and their whole way of thinking and their professions, and so forth.

This traumatic inner development is one of the destabilizing factors which affects a sizable part of our population.

Another more medium-term development occurred in the economic field. As you

know, Western economies were affected very badly after the oil shock of the mid-1970's. Turkey was growing by about 7 percent per annum—second to Japan in the rate of growth. It was industrializing, and the industrial sector became the leading sector of our economy.

This process slowed down and stopped after 1974. Unemployment, high inflation, foreign exchange crisis, shortages, and undercapacity operation of Turkish industry created a negative atmosphere in which the terrorists and the Marxists tried to exploit, saying: "You see, Turkey is doomed. It cannot recover. It is heading for disaster in this setup."

#### INTERNATIONAL ENVIRONMENT

Another factor to my mind could be the international environment. I think in the seventies, the Western World was rudderless, as far as we can see. There was no leadership; there were conflicting interests within the family of free nations.

In order to illustrate this point more vividly, I should mention perhaps that the American people imposed an embargo on Turkey, which is an ally within NATO. The feeling of betrayal and the feeling of being let down and the feeling of isolation was an extremely suitable ground for Marxist propaganda, and this has contributed a great deal to today's violence, today's courage, and today's extraordinary truculence when they started.

We feel that the whole atmosphere is changing now. We feel that the international atmosphere is changing and there is more effort on the part of Western nations, especially American people, to offer leadership for the free world. It is a very promising specter for us who are trying to save our freedom in collaboration with NATO.

This is perhaps the gist of what I had in mind, Mr. President. I shall be extremely happy to answer any questions you may direct to me.

Senator DENTON. Thank you.

In view of the chairman's presence, I would defer to him if he cares to ask you any questions and then to Senator East since he will not be able to stay here long.

Senator THURMOND. Thank you very much, Mr. Chairman.

I find the testimony very intriguing. I have no particular questions at this point; I just want to express my appreciation for the presence of these gentlemen this morning.

Senator DENTON. Thank you very much, Mr. Chairman.

Let me acknowledge again the importance of your leadership and, in my opinion, the relevance and the need for the look into terrorism which would not be taking place were it not for your thoughtfulness and initiative before I even arrived in this body and before Senator East did.

I would like to offer, for what it is worth, my own expression of admiration for that.

Senator THURMOND. Thank you very much.

Senator DENTON. Senator East?

Senator EAST. Thank you, Senator Denton.

I believe we have to vote very shortly, but I would like to underscore your remarks about Senator Thurmond's leadership. In particular, I would like to say how appropriate it was to create this subcommittee and appoint you as chairman of it.

You have undertaken a great service on this question of dealing with terrorism and security.

I would hope that you will continue this great work and this great leadership.

It occurs to me, in hearing the testimony this morning, plus the testimony you have earlier taken here, that one can, if one can look at all the evidence, discern a pattern of terrorism in the world—a pattern that is designed clearly and so frequently to promote ideological and national aims. It varies in its scale of intensity from very small, isolated items to massive scales.

It is not an exaggeration to say, I do not think, quite unique to our time and to our century. Totalitarian governments, be they Nazi or Communist, have employed this technique. The 20th century has been dogged with it and will probably continue to be dogged with it for the balance of this century.

I know you and I have talked about it and do feel that the great purpose of this subcommittee can be to bring out the roots of this particular problem to show what sort of threat it represents—not only to the rest of the world, which is very important, but what it can ultimately mean in terms of security and well-being of the United States.

We have an obligation in the U.S. Senate and in the Judiciary Committee in particular to make sure that we understand the nature of this problem and that we have balanced and extensive hearings into the nature of it and that we recommend to the full Senate whatever corrective action is needed in order that we can deal with this in the long run, which could take many shapes, forms, and sizes. We will wait to see what that may be once the evidence is in.

Again, I do commend you. I am honored to be a part of this subcommittee in getting this initial testimony which will establish the patterns, I think. It is clear from testimony today, for example. Then we can move on into these other areas.

I did want to say that. I look forward to continued service with you here on the subcommittee.

Senator THURMOND. Mr. Chairman, could I just ask one or two questions here?

Senator DENTON. Yes, sir.

Senator THURMOND. In your statement you have discussed terrorism in Turkey. You have told how some of these people were trained in Lebanon; you have told of Armenians being involved; and you have given other examples.

Is there any question in your mind that the root of this trouble stems from Soviet policies? In other words, do you feel that the trouble you had in Turkey was exported there from the Soviet Union or that the Soviet Union is attempting to practice terrorism in the various countries of the world?

#### DEEP ROOTS OF SOVIET DEVELOPMENT

Dr. YALCIN. Yes, Senator.

I think there are quite a number of reasons for it. Turkey's armed forces are second to the United States within the NATO alliance. Turkey is a member of the family of Western nations. We are a founding member of the Council of Europe. We are an associate member of the European Economic Community. We are a member of the Organization of Economic Development [OECD]. We are also a member of the Islamic Nations Conference.

It is very strategic—not only from a real estate point of view but also psychologically and politically. Turkey occupies a very interesting link between the West and the East.

I should also perhaps mention the fact that there is a very sizable population within Soviet Russia that I observed when I accompanied the Turkish Prime Minister in Soviet Russia. They are extremely careful

and extremely curious about Turkey—how Turkey is doing; how it is progressing; what kind of political social system it is following.

The Islamic and Turkish population is now 27 percent of the whole Soviet population. It is nearly 72 million people with whom we have historical, cultural, linguistic, and religious links.

Turkey in the eyes of Soviet Russia is an extremely important country—much more important than the strategic geographical position. Psychologically and morally, it is a very important country.

If Turkey becomes a successful model of social development and a free representative democratic country, it is a bad example for the whole Marxist propaganda throughout the world.

We feel that Turkey is one of the main targets—not only from a military point of view but also from an ideological and social point of view.

Senator THURMOND. The question I am getting at is to what do you attribute terrorism in Turkey? Is the root of it coming from the Soviet Union? Are they the ones inspiring this terrorism in Turkey and other places throughout the world?

Dr. YALCIN. The Soviets are extremely careful not to get caught being involved directly. They do it indirectly through proxies and surrogate states, such as Bulgaria, the PLO, and Syria, with whom the Soviet Union has very close links.

Through them, the Turkish terrorists get financing, technical training, armaments and moral support.

In that sense, I refer to Soviet involvement.

Senator THURMOND. Thank you very much.

I believe we have to go and vote now.

Senator DENTON. Yes, sir. We will have to go vote.

We will recess this hearing until 11 o'clock. We stand in recess. Thank you, gentlemen, for waiting.

[Recess taken.]

#### IMPRESSIVE TURKISH INTERNAL DEVELOPMENTS

Senator DENTON. We will resume the hearing.

Your statement, Professor Yalcin, is so comprehensive and to the point that we will have fewer than the usual number of questions. You have added to our information in this investigation in an extremely important way.

I want to make several comments on your written, as well as your verbal, statement. You mentioned several examples of the progress of Turkey, which progress has been handicapped by the terrorist influence.

In deference to fairness, I would point out the remarkable fact that between 1950 and 1975, the rate of literacy, as you have indicated in your written remarks, was from 33.6 percent to 62 percent, which I think is most remarkable in any time frame in any part of the world.

It is so tragic that when such progress is being made in a nation, and yours is not the only one making progress, at the very time you are making the progress the terroristic effort is if not controlled by, at least, is supported by and indirectly used by the Soviet Union, as you say partly for the psychological purpose of preventing the exemplary progress from contradicting their theme that one must go Communist to succeed.

I feel a great sense of respect and fellowship with you—not only in NATO but in the sense of trying to proceed with the march of

civilization, as you have done in such admirable fashion in your own nation.

Your Prime Minister's talk with Mr. Kosygin is not one that is difficult for me to interpret. I hope it becomes one which is less difficult for all of our people to interpret.

Indeed, I hope that your testimony, particularly your written testimony, finds its just place in our media; because a rise in public consciousness is necessary to support government policy to cope with terrorism and to prevent within the United States the kneecappings and the slaughter and the chaos which has taken place in Turkey as well as the policies necessary to help our friends, such as you, repel it. That public consciousness, as you know, is an extremely important factor.

I hope that your testimony is handled with the proportion of attention which it so clearly deserves.

Would you care to isolate perhaps the steps which lead you to the conclusion that foreign groups or states, particularly the Soviet Union, supported terrorist groups in Turkey, beginning with the Soviet pressure directly placed upon Turkey in the year 1946 and the evolution of that into using terrorism, particularly Armenian terrorism, for the same purposes. Would you give your evaluation of the Degree to which this support for terrorism through surrogates has become a relatively new and major factor in Soviet policy.

#### TERRORISM AS AN ALTERNATIVE TO DIRECT AGGRESSION

Dr. YALCIN. Mr. Chairman, when one way is blocked, it is a natural instinct to try alternatives. Open aggression against Turkey is out of the question because it brings unforeseen consequences. With Turkey being a NATO ally, it might bring unforeseen consequences for the whole world, including the Soviets.

In military doctrine, and as a former military man you know much better than I, we hear that there are grades of pressure in the classical sense of the strategist Clausewitz.

There are quite a number of alternatives for pressure. War is one of them and internal subversion. Proxy aggression is an alternative. Falling in one way, one is bound to try at least other alternatives.

We feel that this alternative, which is internal subversion, will prove to be a failure. I am sure with better understanding of this problem throughout the world and also the resolution of the Turkish nation to settle this question speedily, effectively, and in an orderly manner, Turkey will transform herself again and restore her free institutions and parliamentary system and multiparty system which we are going to start very soon. I think it will show to adversaries that even these alternatives will not be successful.

I shall feel extremely gratified if we can help in a humble way to arouse world public opinion that this kind of pressure is no solution to any problem, except to kill innocent people and to leave hardship and hatred and suffering. It is not a rational way of doing things.

Mr. President, your committee is doing an extremely important function in educating and informing not only American public opinion but also the world public opinion.

We in Turkey are much better informed of what is at stake. I am afraid that the free world is not yet fully aware of this new danger. I have a feeling that perhaps America is now changing. She has become more aware of the dangers. In Western Europe there is less consciousness of this thing.

Through exchanging our mutual experiences, we can perhaps educate the public opinion of the free world in order to serve as a deterrent, as NATO is a very effective deterrent.

This common stand by the free nations by common diagnosis and by common conclusion about our measures will play a very important role in deterrence for this new kind of aggression which is called in military terms a middle-level conflict and a middle-level indirect aggression.

Your committee is doing, in my humble judgment, an extremely important function to start countervailing power to stop this bloodshed.

#### THE ROLE OF THE MEDIA

Senator DENTON. Thank you, sir.

The degree to which we can affect public consciousness will depend on the degree to which the testimonies here are imparted through the media.

I not only respect our media, but I consider them as essential to democracy as government. I do have the feeling that there are many who find themselves in the position of trying to keep government honest, as it were. They can sometimes become understandably enthusiastic about challenging efforts made by government to lead toward a higher understanding within the country of things which the government originates.

I am trying, as best I can, to rely upon sources within our own media for some of the leads. Eventually, we will get to some of those.

For example, our media had taken the lead in pointing out the export illegally of technology from the United States, which is to our great security disadvantage. We intend to get around to that sort of thing when we can.

Did you notice in Turkey's traumatic experiences through the 1970's and up until now that the reality and the immediacy of the terrorism in Turkey altered the slant, let's say, that some of the truly conscientious, which are the extreme majority of the media, took within Turkey toward these problems?

Dr. YALCIN. I think our media has done an extremely valuable job of informing Turkish public opinion.

There was very detailed honest reporting of what was going on. The government security authorities supplied any information they needed.

As a former politician, I get around and talk to people like shopkeepers and taxi drivers and peasants. To my surprise, their sound commonsense is much more strong than the urban people—the so-called educated, intellectual people.

Both mass media—Turkish radio as well as Turkish television—and especially the Turkish press, gave very extensive coverage to this question. It has been a very important democratic education of what is going on. Turkish public opinion is much more informed than it was a year or 2 years ago.

I hope that the same thing happens in the free world. I have every confidence that one way or another the prejudices will break down and people will look at things with an open mind.

#### ELECTORAL IMPOTENCY OF MARXISM

Senator DENTON. I share that hope fervently.

I note the remarkable discrepancy between the influence of Marxist-oriented terrorism in Turkey, in terms of the disturbance and influence they can cause by violence, and the 2.6 percent of the popular

vote which went Marxist in Turkey. That seems to be a characteristic internationally. I do not know of any nation which has voted to go Marxist.

Dr. YALCIN. Turkish democracy has given every chance to every kind of opinion to influence public opinion.

I had a very interesting conversation with one of the leading intellectuals of the Marxist groups, who was also a member of Parliament like myself and a colleague of mine and a former professor of economics.

He said that they used mass media more extensively than the Justice Party, which represented the majority party which I represented at that time. Yet they were unable to influence Turkish public opinion.

As an electoral force, Marxism is not a threat to Turkey. However, as an illegal, undercover, and violent underground action, it is a great danger.

Probably, in their frustration of democratic politics, most of the Marxists stray toward violence in their frustration—just like the frustration experienced by Warsaw Pact countries. Finding open aggression not out of the question, they have to resort to some other alternatives. I think the same pattern is duplicated within Turkish internal Marxism.

Mr. Chairman, I should like to give you my long-term estimate. I have had quite a number of former students of mine who happened to be involved in this violence. Most of them repented.

I hope that the young generation which went astray will recover their commonsense and repent the mistakes they have made and the harms they have done, and it will be an educative process. This is my hope and expectation.

Senator DENTON. I have watched my own children undergo that kind of change. Returning to this country in 1973 and finding that calm discourse between some of them and myself was impossible on some of these issues, I simply remained silent; 3 years or so later, I found them through their own experiences—often overseas and often just from their observations within this country—becoming proponents of the same points that I would have propounded in those days had we been able to discourse.

I share your optimism, as well as hope, on that point.

As a man as scholarly rooted as yourself, I humbly would check one of my own impressions on you that following World War II in which we were allies with the Soviet Union, they did not abandon their 1917 expressed ambition for expansion—indeed, world domination. However, where they had large Army forces already located and stationed within Eastern European nations, they held false elections and took those nations over. As you indicate, they are having difficulties in keeping some of them down. Czechoslovakia, Poland, and Hungary having been the main examples—Poland being the principal one at this moment.

They tried at the same time guerrilla-type pressure on Turkey and Greece, which was answered by your own very brave people who are respected by both the free world and the Communist world as among the strongest fighters in the world. I say that as a military man of experience.

The Truman doctrine helped you and helped Greece in that respect. The formation of NATO definitely helped stem the expansion in Western Europe and in Southern Europe. The Eisenhower doctrine was a parallel to the Truman doctrine in the Mideast. Then there was the shift to surrogate mili-

tary conventional aggression in Korea. I think events proved this in Vietnam.

What bothers me is that after those recourse to more subtle forms of expansion, such as subversion and surrogate aggression, after the U.S. experience in Vietnam, we had recourse to direct aggression by a major power—namely, the Soviet Union in Afghanistan—which was a reversal of the trend, in my view, starting in the late 19th century by which the community of nations recognized that there were better means of solving world problems than the enforcement of the rule, "might makes right."

There should be inhibition against overt military aggression and resolution of the problem by recourse to such institutions as The Hague Tribunal and later the League of Nations with its embedded inhibition of economic sanctions against an identified aggressor.

As a scholar of that general subject, I am disappointed in the United States. We are now aware that as weak and incomplete a process as the League represented, although the United States was not a member, historians can point out 72 wars which would have broken out were it not for the League of Nations.

I find it frustrating to be seen as a military-solution type when most regular military officers, including myself—that having been my former profession—are among those most opposed to having to resort to military solutions.

The United Nations came along with additional inhibition against aggression of the imposition of military force by the United Nations. Of course, there is the problem that one major party in the United Nations and one major philosophical group has no interest whatever in the noble aims of the United Nations, in terms of inhibiting aggression.

#### AFGHANISTAN: A NEW VICTIM OF DIRECT AGGRESSION

It strikes me as very disappointing and ominous that the Afghanistan aggression was met with such weak response, even in terms of the vocal condemnation on the part of the rest of the community of nations. I parallel that increased risk in the chess game from the Soviets' point of view with their increased boldness in the terrorism field.

I would like to compare those observations with your own analysis, sir.

Dr. YALCIN. The experience of Afghanistan awakened some parts of Turkish public opinion because of certain frustrations among which I mentioned American arms embargo, which created a kind of adverse feeling in our nation.

There is a certain amount—very limited though—of tendency toward neutralism.

The example of Afghanistan helped to kill this tendency among certain layers of people in Turkey. The Islamic world feels very strongly, although militarily it cannot be of great help to come to the aid of Afghanistan. Psychologically and morally I think Soviet aggression created a very great impact within the Islamic world, Mr. President. That I can assure you.

A very young and very pleasant Afghan student of mine I asked what he was going to do. He said as soon as he graduated he would go and join the guerrillas. He was a young graduate with a family.

In a very modest way, without any pompous feeling of nationalism, and so forth, he said his plan was to go back to Pakistan and join the resistance.

There is a very strong undercurrent movement among the Islamic people that this ad-

venture on the part of Soviet Russia has become a real and very close threat for the whole region.

#### RIGHT AND LEFT WINGS IN TERRORISM

Senator DENTON. In your written testimony, you made reference to the relative success being enjoyed recently in Turkey with respect to putting down terrorism. You make some remarks about the present state of right and left wing terrorism. Would you care to expound on that now in your verbal testimony?

Dr. YALCIN. Mr. Chairman, I think the evolution of this rightwing and leftwing terrorism in Turkey went hand in hand as a result of the weakening of governmental authorities throughout the country.

When the people felt the threat of one group, they could not get immediate help from the police or from the administration. The leftwing guerrillas, knowing the situation, approached them. If they were threatened by the rightwing, they approached the person threatened and said: "We shall protect you—join us, contribute money, and get certain duties from us. Wait for our instructions," and so forth.

This rightwing and leftwing violence snowballed. It became a part of the feedback mechanism to accelerate the rate of violence.

Most of the young people, feeling the impotency of the security authorities and the administration, very nearly cooperated with the rightwing groups, although they were conscious of the danger. Once you get yourself involved, you cannot leave it. It is impossible.

Fortunately, when the new government was installed on the 20th of September, the rightwing terrorist groups were disbanded. Most of them who were involved in killings were rounded up. There were about a few thousand rightwing groups. The proportion is 1 to 10—1 rightwing and 10 leftwing terrorists.

The rationale or justification of their existence vanished all of a sudden, so there is no rightwing terrorist attack ever recorded in the Turkish newspaper.

Senator DENTON. Did you notice any difference in the apparent outside support fed to rightwing versus leftwing terrorists?

Dr. YALCIN. I think rightwing terrorists mostly domestic in origin. They were supported financially by the small shopkeepers or by simple people who felt threatened by the leftwing and sympathized. There was a backlash to Turkish nationalism.

The threat of Soviet Russia, as communicated by the leftwing terrorists, created a backlash on the part of all Turkish nationalist feeling.

The question is now to round up and liquidate the remnants of certain underground organizations.

#### INTERNATIONAL COMPARISON

Senator DENTON. Are you familiar with the book "The Terror Network," by Claire Sterling?

Dr. YALCIN. Yes, Mr. Chairman. I became aware for the first time when a Turkish newspaper serialized the part dealing with Turkey. That part is extremely accurate. It is very balanced and extremely illuminating.

We learned a few things in a perspective. We could not fit into a pattern some of the points which Claire Sterling's book contributed.

I have not finished it yet, but I have come to the last chapters. It is extremely illuminating.

I have noted certain extraordinary parallels between Turkish terrorist, ETA's, Span-

ish terrorist, Italian Red Brigades, IRA, and the Baader-Meinhof terrorism.

The doctrine, style, infrastructure, ideology, and the logistics involved are extremely similar to our case.

I think Mrs. Sterling's book is a great contribution to understanding the whole picture. It enabled us to piece together certain gaps which puzzled us in Turkey. It has been a great help.

Senator DENTON. Her characterization in her book of the situation in Turkey was not inaccurate from your perspective?

Dr. YALCIN. No, not at all. It is very accurate.

Senator DENTON. She mentions an extensive and apparently successful disinformation campaign conducted by the Soviet KGB between 1966 and 1970 against the American NATO presence in Turkey. This was accomplished in part, according to her, by the introduction of three forged documents. Would you comment, if you can, on this or any other disinformation operations and their effect on Turkey?

Dr. YALCIN. Mr. Chairman, there are so many. These are just a few examples which came to the attention of Mrs. Sterling.

In Turkey, there are so many that I cannot really enumerate. Fortunately, enjoying a free press in Turkey, some of this disinformation becomes identified easily.

One of the famous disinformation attempts was in connection with a book published by an unelected Senator, an appointed Senator, and a former leftwing military person. He claimed that there existed a CIA, or American Government, document to eliminate certain progressive liberal democratic intellectuals in Turkey. It was so preposterous and it was so artificial that nobody really paid much attention. It became a kind of theme, repeated continuously by leftwing commentators and writers. Everybody knew that it was a tactic, and nobody paid much attention.

There was also another disinformation thing during the Turkish-Greek dispute. In order to intensify the antagonism between Turks and Greeks, quite a bit of fabricated inaccurate information used to be leaked to Turkish press. It was not only Turkish press. I was told also by the officials that certain unfounded and ungrounded information was supplied by people to create ill feeling between Turkey and Greece.

#### RIGHTWING TERRORISTS AS COVER

Senator DENTON. The attempted assassination of the Pope involves a man who reportedly has rightwing connections—Mehmet Ali Agca. He seems to have been possessed of a great deal of money without any visible means of earning it and to have survived against the surveillance efforts of many nations, in spite of his having been very well identified by your own authorities.

How would you see the establishment of his credentials, whether they are determinatively rightwing or leftwing. Would you have any comments on what the Turks might care to say about his activities and the nature of his motivations?

Dr. YALCIN. Mr. President, I do not know much about the recent activities of Mehmet Ali Agca who attempted to assassinate the Pope. I can perhaps communicate to you our general impression and observation.

He is an extraordinary character, from the very beginning, when he was involved in the killing of the editor of a newspaper, which is a very respectable newspaper. My wife works there. She is a diplomatic correspondent in Ankara.

His reputation was that he belonged to a rightwing group of the underground world. The killing of a respected and very influential liberal editor of the Istanbul Daily, a national daily, created an image that he was a rightwing fanatic.

From what we heard about his past, his personality, and his background, he was not a fanatic at all. He was not a practicing Moslem. He did not much care about religion. He was a professional killer with the utmost self-control. He was a very premeditated person whom anybody could manipulate easily.

This is the picture one gets from the Turkish press reports after his escape from prison and the death sentence given by the court. We do not know who helped him, but he escaped from prison. I was told that he went to Iran where nobody is governing. I think it is a chaotic situation. I do not know who helped Mehmet Ali Agca in Iran.

He came back to Turkey with a forged passport, and he went to Bulgaria. For a rightwing extremist to go to Bulgaria is suicide.

That struck our attention. It was a very strange phenomenon for a rightwing terrorist to pass through as a transit from Bulgaria. It aroused quite a bit of speculation and suspicion. I do not know who is manipulating whom.

The Pope is a symbol of Polish nationalism. To be assassinated by a Turk might fit into a grand picture or a grand design of anti-Turkish propaganda accusing our people of committing genocide against Christian minorities.

These are my purely speculative thoughts out of the circumstantial evidence. I do not think he is a representative of rightwing terrorists. Rightwing terrorists are rather amateurs. They get caught very easily by the security. They are not as efficient as Mehmet Ali Agca.

Senator DENTON. It was Dr. Stefan Posony at our last hearing who went through a rather long history of the development of Soviet philosophy regarding terrorism. At the point of his conclusion, there were no more press here, understandably, because they have deadlines and so forth.

He made the same point, as I recall. After going through his analysis of this gentleman, he noted too that although he has the rightwing image, it was rather anomalous that he visited Bulgaria. He then developed the qui bono question, and there was not much doubt about the inference which he was drawing.

We will be asking other witnesses the same kinds of questions dealing with the attempted assassination of the Pope.

#### ASSASSINATION OF TURKISH DIPLOMATS

Have you caught any of the terrorists who killed the 18 Turkish diplomats?

Dr. YALCIN. As far as I know, one assassination took place in this country years ago; I think in 1972 or 1973. He was caught.

The last one occurred in Geneva in Switzerland. He was caught. We are waiting with great curiosity the story behind it.

So far, we really do not know about the culprits or about their background or about their organization. Probably this time we shall hear more.

Senator DENTON. I did note that in one of the cases in which you caught an attempted assassin, he said he had been given the weapon by someone who was not even able to speak Turkish. You have not ascertained where these fellows are coming from or, particularly, by whom they are being supplied any weapons or philosophy. You are still investigating that; is that correct?

Dr. YALCIN. No. That happened years ago. Senator DENTON. Oh, I know.

Dr. YALCIN. The first assassination of the general commander of the Gendarmerie.

Senator DENTON. Yes; that was the example I referred to.

On these others, the diplomats' assassins, you are still investigating them and have very little to report about them?

Dr. YALCIN. In diplomats' assassinations, we are not involved in the investigation because it concerns other countries. We follow with great interest what will come out.

Unfortunately, most of the investigations were inconclusive, except the last one when the person who attempted the assassination got caught by the police in Switzerland.

#### DISAPPOINTMENT OF TERRORISTS' EXPECTATIONS

Senator DENTON. In looking at the experience of Turkey and comparing it to the experience in Uruguay with terrorism, it seems you have been able to avoid—I will not beg the question by saying "unfortunate"; it might have been inevitable—but at least the undesirable solution which the Uruguayans imposed; namely, an extremely authoritarian military regime with the loss of many liberties which existed prior to the terrorist activities.

The military in Turkey, in other words, has not responded to the terrorism in the way anticipated and hoped for by the terrorists, either in 1960 or 1971 or 1980, when it became necessary for the military to intervene to restore and maintain order.

The military intervened to rescue the country with a commitment to lift martial law and hold national elections once order was restored and terrorism brought under control, rather than to replace Turkey's democratic order. Terrorists from all factions were arrested and imprisoned and not just those from one persuasion.

Would you comment on what appears to be a notably different response, considering the way some of the South American terrorist events have culminated—the unique response by the Turkish military in response to terrorism?

Dr. YALCIN. Mr. Chairman, the doctrine is quite the same in quite a number of these terrorist strategies. Most of the South American terrorist handbooks are translated into Turkish.

In Marighella's book the aim is expressed to destroy democracy and show to the people the sham aspect of bourgeoisie and so-called freedom and create within the society a distrust and frustration as a result of strong military action. That was the general strategy.

However, in the Turkish case, this did not work. First, our military is not interested in domestic politics. They have proved this point. They intervened in 1960 and withdrew in a matter of a year and a half by constitutional amendments and by rearranging our social and political institutions.

That happened again in 1971, when the military did not intervene directly. They expressed their frustration and protested in such a way that the civilian government had to resign. The Parliament was not dismissed, and the whole democratic structure was operating.

We had a few limited reforms in our legislation as a result of this event. However, this time, the scope of the question was much bigger than in the previous ones; because the killings and the network of terrorist activities became more enlarged. The terrorists learned a lot about their past mistakes, and they did not repeat them this time.

Again, their anticipation did not materialize. First, it was not convincing for either Turkish public opinion or international public opinion that it was a simple sheer military dictatorship—a kind of totalitarian regime to be followed by this military intervention.

Second, the population at large, which is a very important thing for any country facing terrorism, was so furious and so antiterrorist and so hostile to this violent group that even in Eastern Turkey where some of the Marxist terrorists claimed to be representing the feeling of independence of Kurds, and so forth, the Kurdish people followed them and caught them and delivered them to the gendarmerie.

The close cooperation between the security authorizes and the military and the civilian population has been a disappointment for the terrorists.

#### A PEOPLE'S WAR AGAINST THE TERRORISTS

Turkish people did not just stand aside as passive observers. They participated to defend their state and to defend their freedom and to defend their social, economic, and political system. It was a people's war against the terrorists. The whole tables turned upside down.

The foreign reaction was also not in the way they expected. They expected that the Western democracies would revolt at the destruction by the military of a Turkish civilian regime.

I think the foreign reaction—our allies' reaction—was extremely positive, because they understood immediately that the question was not doing away with the civilian regime but the question was about to deal with the threat to the civilian regime and to the Turkish democracy.

These terrorists were more or less isolated. Only the Soviet fronts cooperate with them in Western Europe. Extreme left wing groups give them any moral support. It gives a feeling of solidarity.

They are also disappointed in their calculation of the worldwide reaction against Turkey.

#### STRENGTHENING OF TURKISH DEMOCRACY

We feel that the military will decide, which will be very soon, to start with the Constituent Assembly to draw up a new constitution for the Turkish democracy.

I think the wind from the sails of these people, trying to lead psychological warfare against Turkey, will be denied when Turkey prepares herself again with a reformed constitution and with the necessary legislative rearrangement for our future.

We have observed that our previous political system had certain extremely important defects. Probably, you will recall, Mr. President, that the Parliament was unable to elect the President for about 6 months after hundreds of votings. There was obviously a gap in our constitutional system.

We tried to experiment with extreme forms of proportional representation which gave undue force to marginal groups and to small groups to dictate their sectorial interests on the majority.

These kinds of defects became more obvious. Through a new amendment in our constitution, we are hoping that this political reform will enable Turkish democracy to deal with any future attempt of terrorism and any future attempt of disruption of Turkish democracy.

Senator DENTON. You have, as noted, personally lived in the terrorist environment, as well as obviously being an intellectual academic man. You have discussed the polit-

ical evolutions and public opinion evolutions that took place. Could you become more concrete regarding the events in Turkey, the terroristic events? What impact did they have on the personal lives of the citizens? What changes were there in any of your citizens' habits, attitudes, and living patterns that have resulted from this terrible experience?

#### EFFECTS OF TERRORISM ON PEOPLE'S LIVES

Dr. YALCIN. Mr. President, I think from the observation I had, as well as my friend's observation in his university, that the quality of education dropped considerably. Serious people stopped attending lectures. There was bad feeling among the academic community. They did not communicate with each other.

In outside fields, people stopped going to public places. There was a kind of—not hopelessness—but a sort of pessimism about the future of the country. It was reported in Turkish newspapers that some of the investors just postponed their decisions, because the country was heading for chaos. In a chaotic situation, you cannot make any rational calculations of investment.

Economic goals and economic stability were threatened. There were continuous inflationary demands on the part of the Marxist trade union movement, disrupting the economy, announcing unofficial strikes, occupying industrial plants, and continuous demonstrations, and so forth.

That affected the population very deeply. It did not drive it to hopelessness, but there was a kind of hesitation and a kind of doubt about the future of the country that was being created in the minds of quite a number of people.

On the whole, we felt that the whole thing as so artificial that somehow or another the Turks would deal with the situation and the Army, which has a history of 600 years of dedication and discipline and devotion to the motherland, would intervene. People in general and peasants in villages felt that one way or another the state would prevail. That was the general mood I think.

My colleague here perhaps might add his own assessment and his own observation.

Dr. OKYAR. May I?

Senator DENTON. Yes, sir, by all means, Dr. Okyar.

Dr. OKYAR. I agree with Dr. Yalcin's assessment.

We lived in a very confused kind of world, a confusion which I think was increased by political troubles. Political troubles stemmed from too much animosity between the two leaders of our political parties.

The animosity went to very great extremes, leading to accusations, counteraccusations, charges of one party being closely related to one side on the right and the other party being closely related to the other side, on the left.

This very bad political leadership, I would say, led to confusion in the minds of the people as to the sources of the trouble. They could not know very much what was going on.

It also created a very bad situation in the universities where we were both working, because the students were encouraged in their terrorist actions by this political uncertainty. They said that if this is the way the political system is working and if this is the way the democratic institutions are functioning or are not functioning—because they were not functioning for a year or two—then why not resort to terrorism or to violence.

Senator DENTON. Which is the intended development of actions inscribed in the minimal manual for urban guerrilla warfare.

Dr. OKYAR. Yes.

Senator DENTON. That is shared by all those trainees throughout the world who are undertaking this terrorism.

It is a very difficult thing to stem, particularly, I would think, in a smaller country with less psychological solidarity and less determination, if I may say so, than that possessed by the Turkish people.

Dr. OKYAR. Yes.

To have resisted this crisis situation, which in addition was compounded by the inflation and economic difficulties for 2 or 3 years, speaks I think to the capacities and the strengths of the people in Turkey.

The people never realized what was happening. They only realized it after the 12th of September, when night after night on the television we watched with horror every day new groups, new cells, and new gangs being discovered and a fantastic quantity of arms, almost sufficient to equip an army corps—600,000 revolvers and machine guns and 30,000 rifles.

This finally brought down the veil and educated the people as to the source of the trouble.

Senator DENTON. I do not want to let it be derived that I personally believe that the Soviet Union masterminded or originated some of the causes or the friction in Turkey, nor do I believe that to be the case anywhere in the world.

I regret that the first day's hearing resulted in the news item being that I failed to prove that. I was amazed at that finding, because I did not believe that going in because I had read the statements of the four witnesses. I had my own opening statement which indicated that.

I was most disappointed to find that that was the news item, rather than the degree to which those witnesses found the Soviet Union involved and the union of forces and philosophy involved worldwide in terrorism and the modus operandi which is common to them all.

It appears to me that that is the news, and we are trying to develop that in terms of public consciousness.

As I say to you, it takes two to tango on that. First there are those who try to bring out that which is significant in these hearings; then there are those who transmit that through the media. I have not lost hope or optimism that we shall succeed in that.

I do not pretend to be omniscient. I shall make some mistakes, but I am proceeding with the interests of happiness, peace, and justice in this hearing. I believe that applies to the Democrats and the Republicans on this committee as well.

Senator Leahy told me in the elevator that he is involved in other required activities. He spent a good deal of time recently with your highest officials in Turkey and was very much impressed with what they had to say about what you have been speaking this morning. He wished he could have been here with us.

I would like to thank you, again, Professor Yalcin, and you, Professor Okyar, for your most valuable testimony.

I would like to remind you that we will hold the record open for 10 days for the submission of written questions from other Senators or questions which we may raise ourselves which have not been answered, if you would be kind enough to respond to those. At this point we will also insert in the record your full statement, Dr. Yalcin.

We will convene another hearing tomorrow dealing with terrorism and the role of the Soviet Union and what could be called its subcontractors.

Our witness will be the editor of Foreign Report, a publication of the esteemed London Economist. He is the editor of Foreign Report, which is an arm of that.

Articles by him have appeared in the Washington Post, New York Times magazine, and other American publications. He is the author of two nonfiction books, "Urban Guerrillas" and "The Collapse of Democracy." He is also the co-author of "The Spike."

His name is Mr. Robert Moss, and we are looking forward to his testimony tomorrow. I thank you for your kind attention and participation.

This hearing stands adjourned.

Dr. YALCIN. Thank you.

Dr. OKYAR. Thank you.

[Whereupon, at 12:10 p.m., the hearing recessed, to reconvene the next day at 9:30 a.m.]

[The prepared statement of Professor Yalcin follows:]

#### PREPARED STATEMENT OF PROF. AYDIN YALCIN—TERRORISM IN TURKEY

It is a pleasure, privilege and honor for me to share my knowledge of and views on terrorism with the representatives of a nation with whom we Turks are resolved to defend our freedoms through mutual common efforts within NATO. I have come here to give my testimony not as a government representative, but as an independent and informed citizen of a terrorism-stricken country which has suffered heavy casualties totalling 5,769 killed and 19,305 wounded since 1977 from terrorist violence. I should like also to point out that I shall speak here as a person who has first-hand experience with living in an atmosphere of constant terror in the last few years. Until September 12, 1980, the year of the Turkish military takeover, I had to have a personal bodyguard and my home was under official protection for a year and a half following several threats by phone and letters. Although I shall try to give an objective and systematic account of these personal and social experiences, it will be, I am sure, quite different from those arrived at by means of indirect reporting or statistical tabulations compiled from a distance.

As an educator and writer, as well as a former legislator, I shall try to convey to you some of the insights I have gained through this long period of agony during which we lost to senseless slaughter hundreds of prominent members of our society, great statesmen, ambassadors, journalists, professors, judges and thousands of young people.

#### BACKGROUND AND A SHORT HISTORY

In order to put things in a perspective, I should like to draw your attention to a few relevant facts about Turkey.

While possessing her own distinctive historical and cultural background, Turkey also is a sincere and devoted member of the community of nations of the free world. She is a member of the NATO Alliance, a founding member of the Council of Europe, an associate member of the European Economic Community and the Organization of Economic Cooperation and Development (OECD). She is the only country which at once belongs to the family of nations of the Western world as well as Islamic community of nations. She also has cultural, historical, ethnic, religious and linguistic ties with the

ethnic groups which constitute 27 percent of Soviet population according to its last census of 1979.

Through these special features of her national life, Turkey's experiences are quite relevant for a number of nations in the Middle East, the Islamic world and among the developing countries. The hardships, tensions, and dislocations caused by rapid industrialization and urbanization will serve as a test case or social laboratory for a number of nations in the future.

Turkey has been in the midst of rapid social and economic transformation in her recent history. The structure of the economy has changed radically in the last 25 years. Agriculture is no longer the leading sector of the economy and has dropped below the ratio of industry in our gross national product. Industry contributed nearly 25 percent of the GNP in 1978 against 22.7 percent for agriculture in the same year. Parallel with this development, urbanization surged ahead. Fifty percent of our population now lives in urban centers versus 25 percent in 1950. The number of people living in urban centers shot up from 5.2 million in 1950, to 22.5 million in 1980, increasing nearly five times within a period of 30 years. The rate of literacy rose from 33.6 percent in 1950 to 62 percent in 1975. The number of higher education institutions and student population also increased sharply. The number of universities increased from 5 to 20 between 1960 and 1980; and the number of university students rose from 50,000 to nearly 350,000 in the same period.

It may be helpful to bear in mind these summary indices of social transformation as I endeavor to analyze the travails Turkey is going through. These radical changes in our social structure and way of life have created conditions ideally suited to exploitation by forces both within and outside the country.

Marxism, a disease of Western industrial society, is really a disease of childhood rather than of maturity, as some social scientists and philosophers have pointed out. Yet, it has not failed to influence minds in certain sectors of our society. Despite such influence in certain circles, it has proven to be an utter failure in generating strong mass support in our democratic politics. The Marxist Turkish Labour Party obtained the support of 2.9 percent of the vote in 1965 elections and the combined votes of all the Marxist splinter groups and parties failed to attain even this modest score in several subsequent elections.

As a result of this frustrating electoral experience, Marxist groups gradually tended towards political violence. The dwindling number of Marxists who went on trying to gain strength through the democratic process were even accused of betraying the cause of revolutionary ideology.

Student unrest spreading throughout the world in the late sixties had not failed to reach Turkey. It started in university campuses as mild educational reform movements and rapidly changed character. Boycotting of classes, occupation of university buildings and offices, escalated into violent clashes with the police and security forces. It is perhaps appropriate to note that this radicalization and politicization of student movements gained momentum following the Havana Convention of "The Three Continents" in 1966, where the potential of the student force was emphasized.

The student violence spilled over to the labor sector in 1970 when a Marxist trade union (DISK, the Revolutionary Trade Union Confederation) organized a strike in

Istanbul which quickly turned into a violent riot and forced the government to proclaim martial law in that province. Political kidnappings and assassinations followed one another in an ever-intensifying cycle of violence. The first Kalashnikov weapon made its debut on the scene of Turkish terrorism when a young student tried to assassinate the commander of the Gendarmerie in 1972. The offender, who was captured, immediately confessed to the police that he had obtained this weapon in an apartment in downtown Ankara from somebody who did not even speak Turkish.

The terrorist activities accelerated in the early 1970's. The government, proving to be weak and inefficient, had to resign after an armed forces memorandum in March 1971. A non-partisan independent government was formed by the parliament and the martial law authorities dealt with the question of terror with speed and efficiency. By the 1973 elections, the military had withdrawn to their barracks, leaving the initiative to political parties again. As the People's Republican Party, a left-of-center political force under the leadership of Bulent Ecevit, had come out with relative success in this election, it set up a coalition government which soon proclaimed an amnesty. Most of those convicted of political terror and violence were thus released, and they did not hesitate to get themselves rapidly organized to start their mission from where they had left off.

The regrouping of their cadres took less than two years, and their violent activity started surfacing from 1976 onwards. By gaining moral strength and enjoying the extreme liberal tendencies of the party of Mr. Ecevit, the Marxists managed to penetrate the civil service and even the police force. The People's Republican Party became infested by left-wing penetration after the 1977 general elections, when no single party obtained majority. Weak coalition governments followed one after another.

Law and order came to a point of total breakdown. The excesses of the Communist terror created a backlash from the extreme right. Both leftist and rightist groups were heavily armed and challenged each other in the streets, on the campuses, in the cafes. The formation of so-called "liberated zones" in towns and cities became a key goal for both left and right. A kind of feedback mechanism, or vicious circle, seemed to have been installed in the process of mutual killings of both extremists.

Mutual recrimination and continuous strife among the political parties prevented a common effort to deal effectively with the violence and contributed to the escalation of terror. In fact, the level of violence resembled, and for most practical purposes had become, civil war. People were massacred in the provincial towns of Malatya, Sivas, Corum, Kahraman, Maras and Izmir. On the eve of the 12th of September 1980, the day of military take-over, the daily rate of killing had attained an unbelievable 28 lives. It became obvious to everybody that events went beyond the scope of any conceivable civilian democratic solutions.

#### THE ROOTS AND SCOPE OF TERRORISM

The process of rapid social transformation of the past three decades, to which I referred earlier, went hand-in-hand with unhindered freedom of expression, association and action provided by the ultra-liberal Constitution of 1961. Democratic liberties were exploited to a degree that made a mockery of the concept of freedom and the necessary self-restraint it implies. Under the

pretext of pluralism and university autonomy, the university campuses became the refuge of outlaws and armament depots of urban guerrillas. Freedom of association was interpreted in such a way as to permit organization of a Marxist police association (Pol-Der) which described the present social and economic system as "an exploitation device of the bourgeoisie" in their publications. A rival right-wing police association (Plo-Bir) was also organized. These extremist organizations clashed in the streets and shot at each other instead of safeguarding law and order.

Communist propaganda and indoctrination were intensified during the last twenty years. A torrent of Marxist literature with the cheapest price tags became available to all in book stalls and side street vendors. "The Marxist classics" and "the books of the masters," Marx, Engels, Lenin, Kautsky, Luxembourg, Stalin, Trotsky, Mao, Dimitroff, Gramsci, etc., became familiar household names for the new generation of Marxists. Modern interpreters and theoreticians of the creed, such as Politzer, Althusser, P. Baran, P. Sweezy, M. Dobb, E. Mandel, Bettelheim, etc., were translated into Turkish within a short span of time.

According to Soviet sources, the annual number of new Marxist books published in Turkey varied between 50 and 90 in the second half of the sixties. A student of mine made a library research and identified about 760 entries of Marxist literature between 1960 and 1970, which supports the claim of the Soviet source. Marxist propaganda was also spread through 270 periodicals published before the 12th of September 1980. The author has identified 61 Marxist-leftist publishing houses, 8 distribution and marketing firms, several book stores specialized in Marxist literature and many record and tape recording houses of so-called "progressive and revolutionary song, music and poetry readings." Through these elaborate and extensive distribution and marketing systems, Marxist literature, including textbooks for urban and rural guerrillas like those of C. Guevara, Carlos Mariella, Alberto Mayo, General Giap, etc., became available to the public. These are even handbooks and manuals advising militants about tactics and behavior when captured by the police and brought to the court, in order to confuse their investigators and to keep secrets of their organization. (I have elaborated these points in detail in my book, "Some Observations on Turkish Communism," published in Turkish).

Universities and the institutions of higher education, especially teacher training colleges, have become the main targets of Communist penetration, and a sizable group of Marxist intellectuals now occupy the academic staff of our elite institutions.

As an educator and writer, I have given serious thought to the question of the appeal of Marxism to certain of our young intellectuals. Marxism, as a crude interpretation of history and of current affairs of the contemporary world, has proven to be a useful substitute for sound and solid social science training. Modern democracies and the educated classes of the developing world have to meet the challenge posed by Marxism through an intensive effort of sound and high level training in the social sciences. I cannot see any other alternative to combat Marxist ideology and Communism on a moral and intellectual plane. I came to the conclusion that the best remedy to protect free society from the assaults of totalitarian ideologies of both right and left lies in rais-

ing the level of education and following a well-coordinated policy of sound education in the classical tradition of democratic societies.

#### MECHANICS AND INFRASTRUCTURE OF TURKISH POLITICAL VIOLENCE

Turkey has been accumulating a very costly social experience in her efforts to deal with political violence. There is certainly plenty of circumstantial evidence of outside involvement in Turkish terrorism. But this should not blind us to the fact that about 25,000 of our young people in prisons today have become the target of outside intrigues and voluntary culprits of this bloody instigation. Therefore, the core of the solution resides with us, both Turks and our friends abroad. However, a balanced diagnosis and assessment of outside interference should be made clear and a system of dissuasion should be installed before the situation gets out of control.

As many well-informed analysts have pointed out in their accounts of the problem, (Mrs. Clair Sterling in her book and television interviews makes this point quite clear), outside help and involvement come into the picture because the domestic scene is so well prepared and suitable for such an adventure. An ideal atmosphere had been created for intensifying terrorism in Turkey if we recall what had happened prior to the mid-seventies.

As a result of the oil crisis, Turkey's delicate balance of self-sustained growth came to a halt after 1974. Turkey's impressive rate growth which was running around 7 percent per annum (next to Japan within OECD) dropped to almost nil in the second half of the decade. The foreign exchange reserves accumulated in the previous few years were speedily drained away. Investment stopped and unemployment spread in many sectors. The American arms embargo created a feeling of isolation and resentment against the West. Anti-American, anti-NATO and anti-Western propaganda intensified in the meantime. The Soviets and their stooges in the outlawed Turkish Communist Party declared Turkey, Iran, Pakistan the "weak links in the chain of international imperialism."

Turkey, a NATO ally with the largest land army (around 600,000) next to that of the U.S., became an indirect target of a Soviet offensive. The American arms embargo was interpreted by Warsaw Pact planners as an attitude indicating that Turkey had become dispensable in the eyes of the West and the United States. Furthermore, the arms embargo led the Western banking and financial system to consider Turkey as a high-risk country. The restrictive policies pursued by these institutions toward Turkey, as a result of this evaluation, exacerbated Turkey's economic and social difficulties and made the ground more propitious for the subversive activities undertaken by international Communism.

The Soviets deny vehemently any suggestion of a threat toward Turkey and talk about "friendship, cooperation, good neighborly behavior and non-interference in domestic affairs" and get angry when any Turkish official makes a reference to the Soviet threat, even hypothetically, as did the statement of the Turkish commander of NATO's Southeast Europe headquarters during a recent NATO maneuver in Eastern Turkey. Taking into account the Soviet sensitivities on this question, Turkish authorities refrain from pointing a finger at any specific Communist State. On the other hand, there are so many evidences of out-

side involvement in our terrorist problem that everybody knows now what is meant by the term "outside powers" in official Turkish statements.

I should like to mention some of the obvious and undeniable signs of Great Power involvement in Turkish terrorism in a logical sequence:

Let us start with the question of logistics and training of Turkish guerrillas. In a recent press conference (on the 6th of June) the Prime Minister disclosed that illegal firearms confiscated by Turkish security forces September 1980 through May 1981 totalled 473,553. Together with 160,170 various types of arms voluntarily delivered by the people, in response to a government decree, the grand total becomes 633,724. General Evren pointed out in his speech in Konya last February that the total value of such a tremendous amount of arms and ammunition runs to 25 billion TL, an equivalent of 250 million dollars. He added that the total amount of money acquired through bank robberies and extortion by the terrorists do not even constitute one fiftieth (2 percent) of the cost of armaments in the hands of terrorists.

"Where does it come from," he asked, "if not from a rich external power?"

The types of arms and equipment are also quite interesting. The breakdown is as follows: pistols—472,114, automatic pistols—3,095, infantry rifles—30,183, automatic rifles—4,361, shotguns for hunting—13,636, and the number of rounds of various ammunition—2,155,036 (the latter figures were provided by a different source and do not necessarily tally with the totals mentioned by the Prime Minister). The number of Kalashnikov automatic rifles has been given as 1,371 as of the 1st of June. There also have been found a large number of Soviet-made anti-tank mines, booby traps, etc. In 1978, the security forces discovered 446 Soviet-made anti-tank rockets hidden in caves near *Mardin*, a southeastern Turkish town on the Syrian Border.

It is a routine news item in Turkish newspapers that small ships from the Bulgarian Black Sea area are loaded with smuggled arms and ammunition earmarked for Turkey. On June 3rd 1977, Turkish police intercepted a Greek cargo vessel, "*Vasoula*," on the *Bosphorus* coming from *Varna*, a port of Bulgaria. The vessel was carrying 67 tons of armaments allegedly destined for Ethiopia (as claimed later at the court trial), contrary to the original information given to Istanbul Port authorities. In 1976, Turkish security authorities captured Argentina-made firearms on some Turkish terrorists. It was learned later that these weapons were originally procured from Argentina by a Bulgarian state agency, shipped via air cargo to Bulgaria, and ended up in the hands of Turkish terrorists in a matter of a few weeks. This incident was reported in the Turkish as well as international press and caused a diplomatic scandal between Turkey and Bulgaria.

According to security authorities, 60 percent of the captured arms and ammunition are Western models with brand names and serial numbers. However, the Turkish authorities found later on, through official demarches in respective countries of origin, that most of them were not manufactured in those countries. A case in point was the question of some French weapons captured on terrorists, such as pistols with French brand, "Unique," which proved to be imitations of the originals. Another example is the Italian "Berettas" captured from the

terrorists. When the Turkish government communicated with Italy on this question, it became evident that those captured proved to be manufactured in Bulgaria under a license agreement, as the serial numbers of the same weapons were in the hands of Italian Police stock of arms.

When the Soviet government and other satellite states are approached as a result of such investigations, they deny any complicity and give the standard answer that they cannot control the flow of their manufactured arms, due to a widespread network of arms smuggling in the world. It is indeed true that some of these arms smugglers have established profitable business contacts with some official Bulgarian commercial agencies, as reported by Turkish press and book publishers (Istanbul Daily *Jurriyet* reported in a series of such undertakings in November 1980, and also Mr. Ugur Mumcu's book on arms smuggling).

Of the remaining 40 percent, about 30 percent of the captured arms and ammunition carry clear signs of Eastern European origin and the rest (10 percent) are of domestic manufacture. Another route of arms entry into Turkey is via the Syrian border where several crates of newly manufactured Soviet arms and ammunition were discovered recently, including anti-aircraft automatic guns, anti-tank rockets, etc.

A captured Kurdish Marxist terrorist, interviewed by the Turkish television on the 2nd of March 1981, clearly stated that "they had valuable help of money and ammunition from the socialist countries." He also made no secret that he had had eight months of guerrilla training in PLO camps in Lebanon, "like so many others from Turkey." The government sources informed me that Turkish guerrillas are generally trained in either Al Saika camps in Syria or G. Habbash's PFLP camps in Lebanon. They are trained in three-month programs and now Turks are second in number only to the Arabs in those camps. At the moment there are about 300 Turks under training. The captured terrorists told the police that their training instructors were from Cuba, East Germany, and North Korea. One of them had "advanced electronic bombs courses" with the Armenian terrorists specializing in this field.

The Armenian terrorist organization, "Asala," does not deny its Marxist orientation and admits working in close cooperation with the Turkish terrorists in Palestinian camps as well as abroad. In a statement given to the Middle East Review, and carried by the Turkish daily, *Tercuman*, of the 20th of June 1981, an Asala leader said "we are fighting for the same cause with the Turkish terrorist." This confirms our diagnosis that Armenian terrorism, which claims responsibility for 60 attacks against Turkish targets, as well as the assassinations of 18 Turkish diplomats, has been part of a larger picture of international terrorism instigated and heavily supported by the countries of Eastern Europe. There is, therefore, no reason to treat it as a separate case, a claim for human rights, etc.

At this point, I should like to point out how vitally important it is to disband or break the ring of sympathizers around the terrorists who give them moral and material support. In order to deal with terrorism effectively, the terrorists ought to be isolated from the ring of outside sympathizers around them. Unfortunately, some countries, including some of the Allies in NATO, do not seem to realize the importance of this point. In Paris and Athens, cooperation

among various terrorist groups is protected by responsible authorities. Hundreds of banners, reading "Greeks, Kurds, Armenians fighting for the same cause" have been carried in open-air meetings in Paris, Athens, etc., as a protest against Turkey.

The complicity in Turkish terrorism of Soviet and Eastern European states is so well documented that the press organs of the Turkish terrorists "Dev-Yol," "Dev Sol," etc., have been full of praises for "The great Socialist homeland Soviet State" and for the support expected from "the great Soviet Union."

The Soviet Union still makes extensive use of the Clandestine Radio Broadcasts of the Turkish Communist Party to increase the morale of imprisoned left-wing terrorists. It has actively supported an armed uprising of Marxist guerrillas in Ismir Taris Factory in February of 1980 by these radio broadcasts. On 5 May 1981, they paid tribute to the guerrillas killed in armed clashes with the police in the 1970's. The Soviets use the Turkish Communist Party Broadcasting as their alter ego and to convey messages to the Turkish underground Communist cells and guerrilla formations.

#### THE PRESENT SCENE

The Turkish military, in the last 9 months, has managed to deal effectively with rampant terrorism. The death toll dropped to less than one a day. Among the 412 people who died in the last 9 months, nearly 80 percent were terrorists who ventured into armed clashes with the security forces. The number of those arrested was 22,632 convicted 1,601, and detained 3,986 as of the 1st of June this year.

There is intensive propaganda carried out by former terrorists who fled abroad, in close cooperation with the Communist parties and extreme leftist groups in Western Europe. There are allegations of torture and violation of human rights. In fact, there are 154 files on torture allegations. About 20 policemen have been prosecuted on torture allegations. The government acknowledges that there have been a few individual cases in such a big operation. However, the head of the state and the government deny any deliberate policy on this question.

Turkey's head of state, General Evren, claimed in one of his recent statements that the government security forces have been about 90 percent successful in dealing with terrorism. Yet there is still a lot to be done to eradicate the disease. There are already signs that those who have gone underground (Newsweek magazine reported that about one-third of the terrorists have been captured, one-third fled abroad and the rest went underground) are far from being utterly demoralized and are waiting for an opportune moment to come to the surface again.

If the outside world is informed about the real nature of terrorism in Turkey, if an international effort is launched to go to the root of the matter with the aim of eradicating alien support for terrorist organizations, Turkey may put her house in order within a reasonably short span of time. Our social system and free institutions will be adequate to meet the challenge of any future adventure on the part of Communist terrorists. As I tried to explain earlier, the right-wing terrorism in Turkey has been a derivative phenomenon. This is confirmed by recent events. While the security authorities have been very successful in dealing with Communist terrorists, right-wing terrorism has vanished from the scene completely. I feel confident and optimistic that with better understanding of the roots of

the matter, with moral and material support to our nation from her friends abroad and with effective measures of dissuasion against outside supporters of terrorism, peace, stability and democratic rule can be restored in Turkey sooner than expected.

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

The resolution (S. Res. 320) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

#### S. RES. 320

Whereas Kemal Arikan, the consul general for the mission of the Government of Turkey in Los Angeles, was shot to death on January 28, 1982, in Los Angeles;

Whereas acts of terrorism daily cause suffering and death in the world;

Whereas the gravity of attacks against representatives of foreign governments and the universal abhorrence of such attacks has been expressed repeatedly by the international community; and

Whereas free people should condemn such brutality wherever it appears and should take all lawful steps to prevent it and to bring to justice those who commit such acts of terrorism: Now, therefore, be it

Resolved, That the Senate hereby—

(1) condemns in the strongest terms the vicious and brutal act of assassination of Kemal Arikan, a consul general of the Government of Turkey and a guest of the United States, on January 28, 1982, in Los Angeles;

(2) expresses its deepest sympathy with the family of Kemal Arikan and with the Government of Turkey and the people of Turkey in their time of sorrow; and

(3) calls upon Federal, State, and local law enforcement authorities of the United States to conduct, to the maximum extent practicable, an unceasing investigation of this case, to engage in the prosecution of the offenders to the maximum extent that the law permits, and to take appropriate steps to deter future attacks.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President with the request that he transmit such copy to the Government of Turkey.

Mr. DENTON. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

(Mr. SYMMS assumed the chair.)

#### ABRAHAM LINCOLN

Mr. MATHIAS. Mr. President, tomorrow is Abraham Lincoln's birthday, which brings to mind how often Lincoln's advice, given over a century ago, is useful today.

As I have faced various decisions, I have found it helpful to turn to Lincoln for counsel, but seldom have I found anything so appropriate to the moment as these words, which Lincoln penned to Horace Greeley 120 years ago in 1862:

I shall try to correct errors when shown to be errors, and I shall adopt new views so fast as they are shown to be true views. . . .

#### CONGRESSIONAL RECORD COMPOSED ENTIRELY BY ELECTRONIC PHOTOCOMPOSITION PROCESSES

Mr. MATHIAS. Mr. President, I would like to draw the attention of Senators to the CONGRESSIONAL RECORD of January 25, 1982. Although it may look like past RECORDS, it is, in fact, unique because for the first time, the text of the entire issue was composed at the Government Printing Office using electronic photocomposition production processes.

Electronic photocomposition offers many advantages over the traditional metal-type methods. The RECORD is now captured as a computer data base on electronic terminals equipped with video screens. This data is then used initially to produce the photocomposed pages for printing. The system allows the operators to correct typographical errors more easily and quickly than the previous lead-type methods.

Besides having the ability to store and retrieve information, the text editing system permits that information to serve multiple purposes. For example, on January 25, our distinguished colleague from Hawaii, Mr. INOYE, introduced a bill, S. 2013, to make heroin available to patients with cancer. S. 2013 was printed in its entirety on page 43 in the CONGRESSIONAL RECORD in the three column page format using the standard RECORD 7-point typeface. The text editing system was then used to extract the bill language of S. 2013 from the RECORD data base and produce the bill pages in the appropriate style and size of type and page format. All this is accomplished electronically by the system, thereby eliminating costly rekeyboarding. Full text data bases containing over 100 million characters of bills submitted each session by the Members of Congress are also maintained at the GPO.

Before the advent of electronic text processing, 19 to 20 thousand galleys of lead type pages representing several sessions of Congress had to be stored at GPO in preparation for printing the permanent RECORD. Whole floors at the GPO were literally filled with the galleys of lead type. These galleys had to be removed from storage and transported to the compositor who would make necessary changes painstakingly by hand. Now all of the updating is done at a video display terminal, and the areas formerly used to store the galleys can be used for other purposes.

I am particularly pleased to note that by using electronic photocomposition processes, \$140,000 will be saved in the composition of the RECORD this year.

In addition to the CONGRESSIONAL RECORD and bills, other publications

such as the Federal Register, the Code of Federal Regulations, and the United States Code have existing, massive full text data bases which are updated continuously and used for various information processing purposes. Hundreds of other Federal publications are also processed through the GPO's electronic photocomposition and text editing systems each year.

I welcome the convenience, efficiency, and cost savings which this new technology affords, and I commend the employees of the Production Department at the Government Printing Office for adapting the miracles of modern technology to serve the traditional needs of Congress and the rest of the Federal Government.

#### THE PRESIDENT'S PROPOSED BUDGET

Mr. BOREN. Mr. President, yesterday the Senate minority leader, Senator ROBERT C. BYRD, called upon the President to withdraw his proposed budget for this year in order to submit a new one which would have lower projected deficits.

I agree completely with the suggestion of the Senator from West Virginia and join him in urging the President to do so. I join in this suggestion not for any partisan reason. The problems facing our Nation are too great for us to play politics with them. I urge the President to withdraw his budget because I am convinced that the huge deficits in it for this year and suggested for future years will have a devastating impact on our economy if they are allowed to develop.

Every Member of this Senate knows that I have tried hard to give this President a chance to succeed. He was elected by the people and I have felt that he deserved a fair chance to put his program in place. I have voted to give him that chance. People were trying to send all elected officials a message in the last election. People were saying to us, "Reduce unnecessary spending and make the Government cost effective."

Above all, the people were saying, "The Government must balance its budget and live within its means."

The popular wisdom is absolutely correct on this score. Yet the administration has abandoned the goal of the balanced budget at an alarming rate. The President is clearly getting bad advice from those who say that budget deficits do not matter. The Secretary of the Treasury has said in recent days that deficits are not as important as is believed. He blandly spoke of his hope of balancing the budget by 1987. David Stockman has said that even that might not be possible under the current budget which we have been sent.

Mr. President, if we wait until 1987 or later to balance the budget, it will likely be far too late to salvage the

American economy. We cannot have any economic recovery until interest rates come down. Farmers, small businessmen, couples wanting to buy homes, and many others simply cannot bear the burden of these high interest rates. If they continue, many sectors of the economy will be pushed into virtual bankruptcy and our Nation will sink into an even deeper and more prolonged recession.

Those who have incorrectly advised the President that deficits do not matter have closed their eyes to the fact that the size of the deficit and the anticipated future deficits have a great input on interest rates. The Government will borrow over \$100 billion this year just to pay the interest on our \$1 trillion national debt.

Mr. President, the amount that we will borrow this year just to pay the interest on the national debt, the over \$100 billion, is more than it took us to run the entire Federal Government just 20 years ago when John Kennedy first took the oath of office and the total Federal budget was only \$82 billion.

When the Government has to borrow to pay the interest on the national debt, it pushes up the interest rates by increasing the demand for credit.

Fifteen years ago our Government was consuming only about 2 percent of the available credit in the country. This past year the Government has consumed more than 30 percent of all the available credit in the country by borrowing to meet the interest payments on the national debt.

If these huge deficits continue, piling the debt still higher, Government borrowing will increase further, and interest rates are bound to increase.

Under the President's own projections, well over \$300 billion would be added to the national debt over the next 4 years under his budget under the most optimistic assumptions.

Under the Congressional Budget Office estimates and other projections, as much as an additional \$1 trillion could be added to the national debt under this budget by 1987.

Mr. President, this is a clear path to economic ruin. We can only guess. We are now consuming 30 percent of the credit in this country with a \$1 trillion national debt, and interest rates have already been pushed at times as high as 20 percent. Imagine how high interest rates will be pushed if we have to service a \$2 trillion national debt.

We can well look back to the days when 20 percent interest rates were considered the good old days.

We must be prepared to do whatever is necessary to get the deficits under control. Congress must make it clear that it will move to balance the budget by 1984 by holding the line on all

spending and by holding defense increases to more reasonable levels.

As a last resort, the altering of the schedule of individual tax cuts by spreading them over a longer period of time may well have to be considered, if it is required to balance the budget.

Suggestions like those of Senator HOLLINGS to freeze all spending increases and to slow the schedule of future tax cuts should not be dismissed out of hand. His proposals may need to be modified, but they should at least be considered.

I would add, Mr. President, that I am appalled that the Secretary of the Treasury would dismiss by the sleight of hand with the statement, with one word, "ridiculous," a very serious suggestion by the Senator from South Carolina.

I say there are many of us on this side of the aisle who, in a bipartisan spirit, have tried to help this administration because we believed that they wanted to balance the budget. Let me say that we are less than impressed by that kind of partisan and shameful rhetoric from the Secretary of the Treasury, dismissing the sincere concerns of people on this side of the aisle to try to balance the budget. It is certainly not the kind of spirit that we need to engender in the Nation's Capitol as we try to get together as Americans on a bipartisan basis to deal with this alarming problem of increased deficits.

I commend my colleague from South Carolina for having the courage to come forward with serious suggestions. I commend the minority leader, the Senator from West Virginia, for having the courage and foresight to call upon the President to reconsider his budget. By the same token, I deplore the calloused, partisan attitude that has been reflected by the statements of the Secretary of the Treasury.

For the good of our country, all of us must band together without regard to party and move to get the budget deficits under control. I urge the President to take the first step toward building a true bipartisan approach by withdrawing his present budget so that we can all work together to recommit ourselves to the task of bringing down interest rates and moving to balance the budget by 1984.

Mr. ROBERT C. BYRD. Mr. President, I want to thank the distinguished Senator from Oklahoma (Mr. BOREN) for his kind remarks and his very fine statement.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

## ANOTHER VIEW OF THE PRESIDENT'S PROPOSED BUDGET

Mr. MOYNIHAN. Mr. President, I join my colleague from Oklahoma in commending the proposal made yesterday by the distinguished minority leader in a spirit of national unity and responsibility. The minority leader suggests to the President that he withdraw the budget sent us earlier this week, and he asks that the President return to us a document that would make possible serious bipartisan consideration.

Mr. President, it seems to me that the minority leader's case is certainly strengthened by the reports we have of the meeting today at the White House with, as I understand it, certain of the President's principal advisers and congressional supporters. As reported by United Press International, Mr. MICHEL, the minority whip of the House of Representatives, told the President it would be most difficult to get GOP votes for his budget, in its present form.

Our colleague, Senator PAUL LAXALT of Nevada, joined in this statement. Mr. LAXALT is reported as saying that President Reagan is realistic, that the President knows there is going to be give-and-take, and that there is going to be compromise. He said:

We made the point, Howard and I, that the President and some of his people would have to fight hard for that principle of maintaining the military proposal while leaving only further cuts in social programs as a means of achieving a lower deficit. He realized how difficult, if not impossible, such a course would be.

Mr. President, this raises a question of credibility, one of the most important kind. In the last several sessions of the Budget Committee last year, I outlined the long and sustained record of Democratic committee members throughout 1981, regarding the administration's economic projections. The projections and economic assumptions offered by administration spokesmen, Mr. Stockman being the principal one, were greeted with varying degrees of incomprehension or, indeed, incredulity. I recalled an exchange between Mr. Stockman and I in February in which he presented the administration's estimate of real economic growth in GNP for the year 1982: 4.2 percent. I found myself saying to him:

"How can you seriously suggest to the economic forecasters, the planners, the people of this country, that there is going to be a 4.2 percent increase."

I said, "you are going to be here in 2 years' time, and we are going to say, 'whatever happened to that 4.2 percent real growth?'"

Mr. Stockman, without any apparent compunction, assured us that, no, this growth would surely occur, it would be the case. This was in February. It was not until the years' end and

Mr. Greider's article appeared in the Atlantic Monthly, that we were to learn that within days of having been told by us that these projections were sound, he was confessing to Mr. Greider that, clearly, these projections were not sound, and what were we going to do about it?

The administration's assurance that the 1982 budget would produce only a \$42.5 billion budget deficit also invited incredulity. On March 15, 1981, I addressed the New York Economic Club and said, "the budget deficit for 1982 will be \$60 billion, and probably more." The administration now concedes it will be \$98.6 billion; it will probably be higher still.

We are beginning a process which absolutely depends on mutual confidence between the Congress and the executive. I asked, what happens to that process when the executive misrepresents data? The budget process will not work on that basis.

Mr. President, there is a first principle of public discourse which states that everyone is entitled to his own opinion, but not to his own facts. I repeat that, Mr. President: Everyone is entitled to his own opinion, but not to his own facts. Yet all through the last year, we were given significantly wrong facts, so wrong that we must begin to believe they were deliberately wrong.

When I warned about these misrepresentations, a new recession already was looming, one which came much more rapidly than it would have, in part because of doubts in the financial markets about what the Government was doing to the economy if it so misrepresents self-evident facts. The period of recovery between the last recession and the present one was four quarters. That is the shortest period of economic expansion since 1919—a mere 12 months between contractions; 1919, Mr. President, was the year that the First World War came to an end, and long steel strikes helped spread general dislocation. Not since that time, more than 60 years ago, have we experienced such a short period of expansion.

I am one of the Members on this side of the aisle who opposed the first budget resolution on the grounds that it incorporated erroneous economic assumptions, as we innocently thought at the time. I reiterated those warnings this past November during the Budget Committee debate on the second budget resolution.

Let me review the record here, Mr. President.

First, we were told a real GNP would increase 4.2 percent in 1982, a very large increase on top of an inflation of about 9 percent. That would have involved more than 13 percent of growth in nominal GNP, wholly unlikely. By the time we were considering the second budget resolution, Mr. Presi-

dent, the administration had scaled-down this real growth projection to 3.4 percent. The Republican members of the committee further reduced it to 2.5 percent. It is now projected by the administration, Mr. President, at 0.2—down from 4.2. Roughly speaking, that is a 95-percent cut. And in point of fact, the Congressional Budget Office projects even lower growth for 1982, negative growth of -0.1 percent.

Mr. President, it is the fact that, from within the administration, we learn that these numbers were falsified. Mr. Paul Craig Roberts, until recently Assistant Secretary of the Treasury for Economic Policy, has resigned from the administration. He resigned, and now he has written in Fortune magazine that the inflation assumptions the administration presented to us with such solemnity were deliberately altered.

They were jacked up deliberately, to bring about revenue projections that fit the administration's desires, and in particular, Mr. Roberts tells us, the desires of the Office of Management and Budget to hide the deficit. They tried to reconcile it by proposing a velocity of money that was also unreal and unimaginable.

Mr. President, the Assistant Secretary of the Treasury for Economic Policy resigned from the administration, and now he says the administration was misrepresenting its economics and did so all last year.

I have been on the other side of this exchange. I have served in the Cabinet of the two preceding Republican Presidents. I have served in the Cabinet or sub-Cabinet of four successive Presidents. I have never witnessed such disregard for facts plain to all other economic observers.

In the beginning of this session, as a peace offering if you will, I put the proposition to the Budget Committee that if the President this time would only send us a budget in which the principal economic assumptions corresponded to those of the Congressional Budget Office, or corresponded to those of the principal econometric models run by Wharton Econometrics, Chase Economics, Data Resources, Inc., and so on—we would begin afresh.

This is not a perfect science, in any sense. It is perhaps not a science at all. But it is a legitimate endeavor. Much more is known about forecasting economic activity than was known, and it is carried forward under certain professional standards.

Some propositions are within the range of a mathematical probability; some are not. Responsible and respected econometricians working with various different models produce very close results. They are not always right; but they can explain why they reached their judgments, and fellow

professionals will share those judgments. That is the best that can be done, and it is not bad.

We are, in fact, pretty good at it, compared to the stumbling around in the dark which all economies experienced until at best 30 years ago.

All we asked the President was that he do what every Budget Office has done since the Bureau of the Budget was established under President Harding, which is to send forward the best professional judgment, one which could match ours.

I said in those hearings that if that were to be done, if a new budget comes forward based on assumptions which corresponded to the best professional views, the best expectations of what the economy holds in store, then we have a chance to work together seriously.

I am sorry, Mr. President. Was I speaking under a 5-minute understanding? I was not aware of that.

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

Mr. MOYNIHAN. Forgive me. I can conclude in 1 minute.

Mr. ROBERT C. BYRD. Will the Chair recognize me for 5 minutes?

The PRESIDING OFFICER. The minority leader is recognized.

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

I yield to the Senator as much time from my 5 minutes as he may require.

Mr. MOYNIHAN. I thank the minority leader. I speak on behalf of his proposal.

I say again that in January we proposed that, if the President would only send us a credible budget—no matter how difficult the numbers and the task might appear in sum—we would put the misrepresentations of 1981 behind us. There would be no recriminations. There would be no charges that once again we face the same matter and, having been taken in once, we would not cooperate. It was an open offer: "Let us counsel together" on what clearly was going to be a set of very difficult problems, problems created by the loss of revenues which on this side of the aisle, to the very last moment, we were pointing to and pleading to avert.

However, that is not what has happened. We were sent a budget which simply does not correspond to anyone's expectations of the path this economy will take. The projections of real GNP, once again, are widely extravagant.

The administration forecasts and assumes in its budget an average real GNP growth of 4.7 percent from 1982 to 1987.

Mr. President, last year, when the administration assumed 4.2 percent real growth for this year, we said that is clearly not going to be the case. Probably it will be zero or below. Now, consider this. In the postwar period of

1947 to 1981, the average annual real growth rate was 3.5 percent. In percentile terms, these may not seem large, but the dollar consequences for the GNP are enormous; 4.7 percent average annual real growth is not going to happen. We are also not going to have the interest rates they assume. We are also not going to have the inflation rates they assume. And therefore, how can we expect the revenues they promise? How can deficits not be startlingly greater even than those they are now projecting?

No less a person than James Schlesinger, who was Acting Budget Director under one Republican President, Secretary of Defense under another, and Secretary of Energy under a Democratic President—the only man in American history to be a full Cabinet member in three successive administrations—said it cannot happen.

If we have before us a document in which the intangibles are questioned and in which no one accepts whatever the premises, how are we to reason together and come to some acceptable conclusion? We cannot speak together on the basis of distortions and misrepresentations.

It is not as if the President's own people have not acknowledged the misrepresentations of last year. It is not as if people of great stature have not said it—today, Mr. Henry Kaufman, chief economist of Solomon Brothers; yesterday, Mr. Schlesinger, I stand here with some experience in these matters, and I say this budget is not responsible. It jeopardizes the whole budgetary process.

We hear from the other side of the aisle that they are not going to have any budget resolution. The collapse of a carefully and hopefully begun enterprise is threatened, a process designed to instill budgetary discipline, simply to grab this week's headlines. By making things appear bad enough, but not as bad as they are, they would jeopardize the whole congressional effort to make them better.

Mr. President, I say that the minority leader acted responsibly and correctly when he suggested, in the spirit of the national interest, that the President withdraw the budget, redo it along realistic lines, and send it back to us. We can accept it in those terms.

I thank the Chair. I apologize if I proceeded as if I were not under a 5-minute allocation of time, of which I was not aware. I did not think matters were so pressing in the Chamber at the time. Any time my friend from Minnesota rises to speak, it is a pressing matter for me to listen to him.

Mr. BOSCHWITZ. Mr. President, I have listened with care to my colleague from New York, who has spoken eloquently, as he always does, and who speaks eloquently in the Budget Committee, on which I serve with him.

Not so long ago, he told us that we Republicans worship at the shrine of a balanced budget and that he fears that we are giving up that shrine.

Mr. MOYNIHAN. Will the Senator yield to me for a comment? I simply quoted my fellow New Yorker, Mr. KEMP, who said, "We Republicans no longer worship at the shrine of a balanced budget"—a fact that is much in evidence today.

Mr. BOSCHWITZ. This Republican is not exactly a worshiper but believes very strongly in the business of a balanced budget.

I listened with interest to the Senator from New York speak about the projections. I remember well that during the last administration, we Republicans made speeches that were very similar, about the projections that were made by the President at that time. They, too, were often off the mark. Why, we had a balanced budget that eventually became a deficit of nearly \$60 billion. It seems that very often, as my friend from New York knows, administrations are optimistic about what they can do, what they can achieve, and what their policies are.

I am a believer in the policies of this administration. However, I also have my own thoughts on the budget, which I am going to discuss. I believe that there will, indeed, be a budget resolution. I have not heard from any of my colleagues on this side of the aisle that we feel there will be no budget resolution, as the Senator has stated.

I think there will be a budget resolution. I think it will be done in a collegial style that we will all have some input into. The President's budget will be the starting point. Perhaps it will be the finishing point. Perhaps I will vote for it.

But at least for the moment I have some additional thoughts, not in contravention to the President but additional thoughts that I wish to put forward today with the idea in mind, as my colleague from South Carolina did yesterday, of adding to the forward motion and to the collegial thought that will go into the business of making a budget for this Nation in the next fiscal year.

If interest rates were lowered to 8 percent, maybe even 10 or 12 percent, within 2 weeks the economy would be humming, optimism restored, and unemployment reduced. So why does not the Government do something about it, and listen, while they are at it, why not reduce interest not to 8 percent but to 6 percent—and inflation at 2 or 3 percent would be a good idea, too.

The truth is Washington cannot turn interest or inflation rates on and off like a faucet. Believe me, if we could we would. In fact, no group would like to reverse the economic pic-

ture more than politicians. If we could quickly lower interest rates and inflation, return optimism and prosperity, we would be hailed as heroes, something we in the political game love to be. Our reelections would be assured—now that is a prospect worth thinking about.

So if we could, we would, but we cannot, in the short run, that is. The Government and all economic factors affect the economy only in the long term, so our policies have to be longer range. And just as we cannot switch on lower interest or inflation rates, people have to recognize, and do, that Reaganomics did not switch on the recession—it was a long time in coming.

**BUT WHAT ABOUT THE POOR, THE UNEMPLOYED?**  
Long-term economic planning is find, but as Harry Hopkins, F. D. R.'s right-hand man, noted, the poor eat every day. But today, unlike the 1930's the Government provides a safety net of social programs, and despite what you hear, Reagan has tampered little with basic programs. In 1930 the Government spent just a few cents of every dollar spent in this country. Today Government spends 43 cents of every dollar spent in this country and most of it is for social welfare.

**HOW DID WE GET WHERE WE ARE?**  
An easy money policy? Yes, that is part of it; so is excessive Government spending that leads to deficits, that lead to an easy money policy, that leads to inflation, and inflation is at the root of our problem. In recent years working people's income has risen quite a bit less than inflation. While during the 1950's and 1960's inflation averaged about 2 percent—working people's income grew a good deal faster. Since their wages grew faster than inflation, they could buy more and more and their standard of living rose. But in the 1970's this reversed. Inflation drove the price of goods up faster than wages and people could buy less, so fewer people were needed in factories to make—plywood, for instance—and all other consumer items. That, of course, caused unemployment.

While we have many economic problems inflation lies at the base of them all.

Few people realize and I am sure that my colleague from New York is aware, being a historian and having a great sense of history, that the inflation of the 1970's is new to the American society. Our country was built in an inflation-free economy. Excluding about 10 war years, for the 138 years ending in 1930 the average rate of inflation in the United States was six-hundredth of 1 percent.

Few people now remember that in 1971 President Nixon imposed wage-and-price controls because inflation was getting out of hand; it has risen to 4.8-percent annually. Today that seems a very acceptable level but it

really is not. In 1971 it seemed terribly high.

Interest rates reflect inflation, too. If inflation is 12 percent, can you borrow a dollar at 6 percent? At the end of the year you would give the banker his dollar back plus 6 cents, but the dollar depreciated in value 12 cents. Under those circumstances, would you loan your money out at 6 percent? Of course not. As a rule of thumb interest rates are the inflation rate plus 4 percent.

**SO WHAT CAN AND SHOULD WE DO?**  
There are three basic things the Government should do: First, lower the growth rate of Government spending to eliminate deficits; second, hold a steady but not restrictive course on the expansion of the money supply; and third, give incentives for capital formation, saving, productivity, and work.

Why is there so much emphasis on balancing the budget? In a way balancing our Government's affairs is not much different than your own obligation of fiscal responsibility in your home, business, farm, or school district, or your checkbook. But when the U.S. Government has large deficits, it has greater borrowing abilities than the rest of us. Last year to cover its deficits, the Government borrowed about 40 percent of the new funds available. When one borrower takes 40 percent of all available funds, there is hardly enough for the rest of us. We are crowded out of the ability to borrow, as the economists like to say. Government borrowing creates so great a demand for money that the demand for money exceeds the supply of money and up go interest rates.

How is the budget effectively controlled? By cutting it? No, rather by slowing its growth. The Federal budget has four parts and the percentage of each part and the approximate dollar amount is charted below on the basis of figures of the 1982 budget:

	Defense	Interest	Entitlements	Appropriations	Total
Percent of total	24	11	47	18	100
Approximate dollar amount (in billions)	172	83	34	130	728

I have some proposals on the budget, and I submit them, to say it once again in a collegial way. I think if we are going to get to a budget resolution, it is going to have to be done with the thoughts of very many people. I do not give any thought to any criticism of the President at all. I have supported his tax measures; I have supported his budget. He has gotten us started, and has turned around the escalating rise in budgets. Even if you look at the budget he has presented, despite the deficits, the budgets are growing much more slowly.

There are four parts to my budget plan: defense, interest, entitlements, and appropriations.

**DEFENSE**  
Defense has, prior to this year, been a decreasing part of the Federal budget. During the Vietnamese period defense funds went disproportionately to that conflict. Research, development, and building of military material and equipment were neglected. They do have to be restored and I have supported a real increase in military expenditures. But the President's rate of proposed defense spending increase has to be lowered. As a practical matter we would not get a decrease in the growth of spending in other parts of the budget unless we moderate the growth rate in defense. The President's proposal is for a 16-percent compounded rate of growth. My suggestion would be 12-percent compounded. Since we currently have inflation at lower rates than previously thought, I think perhaps this 12-percent compounded rate of growth will give us the 5-percent real growth the defense budget needs. This is still much faster than entitlements—which on the other hand have grown faster in the past:

**BUDGET OUTLAYS**  
[In billions of dollars]<sup>1</sup>

	1982	1983	1984	1985	1986
Reagan proposal	172	205	235	273	311
Boschwitz' proposal	172	193	216	242	271
Budget savings of Boschwitz' proposal		12	19	31	40

<sup>1</sup> Excludes military retirement benefits which are an entitlement.

**ENTITLEMENTS**  
Entitlement programs are largely the social safety net that make payments directly to people. The 10 largest and the 1982 budget outlays of these 10 are:

	Billions
Social Security	155
Medicare	49
Civil service retirement	20
Unemployment compensation	24
Medicaid	18
Supplemental security income (SSI)	8
Aid to families with dependent children (AFDC)	8
Railroad retirement	5
Veterans pensions	4
Students loans and grants	5

So these 10 amount to \$296 billion of the total entitlements of \$316 billion. Military retirement, \$15 billion, and food stamps, \$12 billion, are often treated as entitlements which would raise entitlements to \$343 billion—the figure I have used below.

This has been the growth part of the budget in recent years, as much under Republicans as Democrats. The following chart shows the yearly cost of entitlements at the beginning and end of each Presidency:

OUTLAYS

(In billions of dollars)

	Beginning	End	Average dollar growth per year
Kennedy (3 yr).....	28	31	1
Johnson (5 yr).....	31	58	5
Nixon-Ford (8 yr).....	58	195	17
Carter (4 yr).....	195	304	27

In 20 years the entitlement programs grew over 1000 percent. This chart is not to suggest that these programs are not needed or unworthy of such growth. But working people's wages have not grown nearly as fast, and wages are what support these programs. Social security cost \$11.6 billion in 1960. In 1982 it will be \$155 billion. If your wages had kept pace the following would have happened: If your wages were \$5,000 in 1960 they would be \$67,000 in 1982. Will they be? Yet our wages support social security, and there should be some relationship between how the two rise.

MY PLAN IS NOT TO CUT A SINGLE PROGRAM—JUST SLOW ITS GROWTH

Most of these programs are indexed to inflation, so costs rise with inflation. Also new programs are often started or existing ones expanded in coverage. If for a 4-year period, Congress continues all programs but determines to start no new programs or expand coverage in any existing program, and for 4 years only increases the programs at the rate of 3 percent, the following budget savings would take place:

(In billions of dollars)

	1982	1983	1984	1985	1986
Cost of entitlement programs:					
Current policy budget.....	343	373	401	433	466
Boschwitz plan—all programs grow at 3 percent a year.....	343	353	364	375	386
Budget savings of Boschwitz plan.....		20	37	58	80

Unlike my friend and colleague Senator HOLLINGS, I would say do not cut them off at the pass entirely, but let the entitlement programs grow at 3 percent over the next 4 years.

APPROPRIATED PROGRAMS

The appropriated programs are generally not directed at individuals but rather at policy goals, such as education, good roads, clean air, housing, and so forth. The 11 largest appropriated programs and the 1982 budget outlays of each are:

	Billions
Education.....	\$13
Housing.....	9
Highways.....	8
Veterans medical care.....	7
National Aeronautics and Space.....	6
Environmental Protection Agency.....	5
Community development.....	5
Employment and training.....	5

	Billions
National Institute of Health.....	4
Urban mass transportation.....	4
Foreign aid.....	3

These 11 programs total \$60 billion. The budgetary action we took last year slowed the growth of appropriated programs already.

The President would have us cut a number of the appropriated programs in a rather broad way. I question whether we are going to be able to pass a budget with those broad cuts in appropriated programs in the House and, perhaps, even in the Senate where we have a majority.

My program is let the actions we took for the 1982 budget impact 1983 as planned, but make no further cuts in programs, and in 1984 through 1986 let all programs grow by 3 percent from an 1983 base year.

	1982	1983	1984	1985	1986
Current policy budget.....	131	124	135	142	146
Boschwitz plan (3 percent growth on 83 base).....	131	124	128	132	136
Budget savings of Boschwitz plan.....			7	10	10

INTEREST—OR HOW THE RATE GOES DOWN

At the beginning—sorry this has gotten so long—I noted that the Federal Government does not set interest rates. The marketplace for money does. Supply and demand control, plus the rate of inflation—or what the expectation is with regard to the rate of inflation—if the banker expects it to be 12 percent, he will not loan at 6 percent as in my earlier example. If the demand for money is high because the Government is borrowing 40 percent plus of the newly available funds, interest rates will be high. Of course, the Federal Reserve could dramatically increase available funds. That would level out the supply and demand for money. But, then, if the money supply rises too fast, inflationary expectations will rise and that will drive interest rates up.

But if the budgetary path I have outlined here were adopted, the Government would in relatively short order not be borrowing nearly as much, the need for expanding the monetary supply would ease, and the expectation of the inflationary rate would come down very substantially.

The interest savings shown below are, therefore, based on lower rates and less to be borrowed.

	1982	1983	1984	1985	1986
Current policy.....	83	94	112	121	124
Boschwitz proposal.....	83	95	97	97	97
Savings of Boschwitz proposal.....			4	15	24

I believe it is a sound way to restore better and stable economic times. It is the way the American dream—for rich, poor, old, and young alike—can be realized.

REVENUE ENHANCEMENT

What a nice term. So much better than "tax increases." But some we must take back if we are to balance our affairs. We should not, however, increase the personal or corporate rate—in fact, hopefully, we can reduce them further in the future. Nor should we change the newly adopted accelerated depreciation rates.

We should, however, do the following: Tighten up the minimum tax—particularly for large corporations; change the recently enacted (1981) law allowing the transfer of depreciation and investment credits (ITC) by loss, and other, corporations; revoke some of the additional advantages given the energy industry in 1981; remove certain advantages pharmaceutical companies have in Puerto Rico; the Government should sell rather than give away export quotas in textiles and other goods—the Government should be a lot firmer with countries that block our exports; over the years ingenious accountants and lawyers have developed tax shelters, loopholes—call them what you wish—and many do not have much bearing to tax equity. We have reduced top rates, now we have to reduce tax avoidance. It is the only fair and sensible thing.

The goal would be to increase revenues by \$20 to \$25 billion a year, or 3 percent higher than present collections.

My friends on the Finance Committee tell me that although I have put in my projections that this will raise \$20 billion, that it will in fact raise probably considerably more. But I have taken a rather conservative viewpoint of the amount of money raised.

IN SUMMARY ON THE BUDGET

So if we slowed the growth of defense and entitlement and appropriated programs, and if we "enhanced" revenues, the following would be a summary of what would happen:

BUDGET SAVINGS OF BOSCHWITZ PROPOSAL

	1982	1983	1984	1985	1986
Defense—Budget savings.....	12	19	31	40	
Entitlement.....	20	37	58	80	
Appropriated.....		7	10	10	
Interest.....	4	15	24	27	
Total budget savings.....	36	78	123	157	
Plus "enhancements".....	20	20	25	25	
Total of Boschwitz changes.....	56	98	148	182	
Less budget deficit under current policy (not including Reagan changes).....	(146)	(165)	(168)	(175)	
Total (deficits) or surplus under Boschwitz proposal.....	(90)	(67)	(20)	+7	

In summary, looking at the budget, looking at the projections of deficits, we would have in 1983 under this plan of slowing the growth of Government a \$90 billion deficit; in 1984 a \$67 billion deficit; in 1985 a \$20 billion deficit. I heard somebody today call a deficit of that amount "de minimis," as it did not amount to anything. \$20 billion is a lot of money to me. Nevertheless, we are getting close to a balanced budget in 1986. To continue, in 1986, we would have a \$7 billion surplus according to my projections.

I could not agree more with my colleague from New York that projections are projections but, nevertheless, we have to go by something, and if we get onto a budgetary path that indeed is going to bring us into balance, I think many things will happen in our society that will be considered most positive.

#### CONCLUSION

Some of my Senate colleagues or economists or others may come up with other plans and they may be better.

My plan is reasonable. It is based on these assumptions: First, recognize that the Government has grown faster than the economy and faster than wages for many years; second, do not get into a political fight by making huge cuts in some programs and none in others (as the President proposes); third, for a 4-year period (5 years if necessary) make the Government grow slower than wages and the economy by cutting no programs and the growth rate of all of them; and fourth, recognize that defense has been neglected (not everyone agrees with that to be sure) and let it grow faster than the rest of the budget, but not as fast as the President wants.

It is time we bring some order to Government.

In conclusion, Mr. President, I think I have a good plan. Again, it is not in contravention of the President's plan, but is in supplement to his plan.

You cannot automatically slow the growth of some of these entitlement programs, so it would require making some authorization changes, and I think that is one of the strongest points of this plan. We have to make some changes in entitlement programs, in who is entitled to some of the benefits and the levels of those benefits, if we are going to hold the entitlement programs in check. But I do not believe drastic changes will be needed.

Those kinds of changes can be reasonably made. They are not going to be huge changes that are going to gut the program, not by any means. But they will be authorization changes that will continue for many years to come and, in my judgment, make it possible to keep the budget in balance beyond 1986.

So, Mr. President, I hope that others feed their ideas into this whole business of constructing a budget for our country. I look forward to hearing reactions to my plan. I campaigned in 1978 on the basis of bending the line of budgetary growth as the basis upon which we can indeed bring our Government into check, and it is time that this be done.

I yield the floor.

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

Mr. BOSCHWITZ. I yield.

Mr. STEVENS. Mr. President, this morning as I had conversations with members of the press prior to the convening of the Senate, I mentioned the statement that Senator BOSCHWITZ had made, which I found very interesting.

His proposal merits serious consideration. As I said about the statement and proposition made by the distinguished Senator from South Carolina, this is a proposition which the Senate must consider as we try to reach a consensus on the budget process this year.

I am particularly intrigued, as the chairman of the Defense Appropriations Subcommittee, with the suggestions that Senator BOSCHWITZ has made about slowing the rate of growth in the defense budget. He has balanced that with his approach concerning slowing the rate of growth in the entitlements section of the budget and in other portions of our budget.

Having read in its entirety the release made by the Senator from Minnesota, which I believe is the basis for his statement here today, I was impressed with the analysis that the Senator made of trends in the past and the trends in the future with respect to where we are going in our attempt to eliminate this massive deficit. This defect puts pressure on our money markets. I do believe that it is something that the administration and the Congress must consider because this is another voice of a new Senator, raised not in opposition to the President, but in search of a solution for the same problems that the President's budget addresses. I might add parenthetically that I viewed Senator HOLLINGS' basic proposition in the same way.

We have been committed to reducing the deficits that are projected for this country. Senator BOSCHWITZ has offered, I believe, an alternative, and portions of his alternative must be considered in the final consensus that the Senate reaches this year.

I congratulate him on presenting his statement and for putting his full presentation in the RECORD. I hope that other Members of the Senate, and in particular the administration, will take heed and listen to the advice that is being given concerning the problems we face, not just with the

budget this year or next year, but the overall trends of our budget.

As I understand it, the Senator really is directing his attention to the trends of our deficits and what can be done to have that trend line go down rather than constantly up, is not that correct?

Mr. BOSCHWITZ. That is correct.

Mr. STEVENS. I congratulate the Senator for his presentation and thank him for sharing with the Senate the views which he previously shared with the leadership.

Mr. BOSCHWITZ. I thank the Senator.

#### U.S. POLICY ON THE WEAPONS SALES TO THE GOVERNMENT OF JORDAN

Mr. THURMOND. Mr. President, a news item in the Washington Post today indicates that Secretary Weinberger is attempting to influence the Jordanian Government to change its plans regarding buying an Air Defense System from the Soviet Union. In order to do that, Secretary Weinberger and the Reagan administration are offering to sell Jordan the equipment they need for defensive purposes.

Mr. President, this is an important step toward keeping Jordan in the community of free nations.

The relationship between Jordan and the United States has been cordial and mutually supportive for three decades. Largely due to the efforts of King Hussein, that country has remained a strong voice of anticommunism in the Middle East. Furthermore, King Hussein has maintained a strong posture for peace and moderation during very turbulent times in that area of the world when, frankly, it was rather difficult for him to be moderate.

Previous attempts by Jordan to buy an Air Defense System from the United States were not successful, in part, because of strong congressional opposition. As a result, a frustrated King Hussein turned to the Soviets to obtain such a system. Today, Secretary Weinberger and the President are attempting to thwart the Jordan-Soviet arms deal by making a reasonable offer to sell Jordan the equipment it needs for self-defense.

I support the administration policy in this regard, and I call upon the Senate to do the same. We should, however, get clear and firm assurances from the Jordanians that these systems will absolutely not be used for offensive purposes, but rather will only be used for the necessary defense of that nation.

Mr. President, it is vital to the national interest of the United States to keep Jordan outside the Soviet influence and in the free world, so that it may continue its role of promoting

peace and enhancing moderation in that vital region. Providing Jordan with the defensive equipment it needs will not only enhance the position of the Arab moderates, but it will also be a gesture of evenhandedness in that region.

#### UNITED NATIONS REPORT ON U.S. TREATMENT OF SALVADORAN REFUGEES

Mr. KENNEDY. Mr. President, for many months I have been concerned, as I know many Americans and Members of Congress have been, over the growing problem of refugees fleeing the escalating violence in El Salvador—especially those Salvadorans who have reached the United States or who are already here.

Despite strong representations from many quarters, including representatives of the U.N. High Commissioner for Refugees, the administration has closed our doors to those Salvadorans who do not want to return to their country during this time of violence and spreading conflict. This administration has willfully ignored past practice and has set about upon a policy to deny asylum or temporary safe haven to any Salvadoran.

The evidence in this regard has been painfully clear for many months—since I wrote to Secretary of State Haig last April 6 and the Department's response during hearings of the Subcommittee on Immigration and Refugee Policy in July. Throughout, the administration has refused to acknowledge the severity of conditions in El Salvador and they have denied claims of asylum or granting of extended voluntary departure.

The latter is contrary to the past practices of both Republican and Democratic administrations. During the worst days of the Lebanese and Nicaraguan conflicts, the United States temporarily adopted a number of special immigration measures to deal with nationals from those countries who were in the United States, or who reached our borders, to grant them safe haven through extended stays of voluntary departure.

To date, Mr. President, the United States has granted only one Salvadoran asylum in the United States out of nearly 2,000 who have applied, and we have refused to grant any extended voluntary departure.

Not surprisingly, this record of indifference toward the plight of Salvadorans has come to the attention of the Office of the U.N. High Commissioner for Refugees. Representatives from the Washington liaison office made an extensive tour last October throughout the Southwest, reviewing the INS treatment of Salvadorans.

Their report became available recently and, quite frankly, it is an extraordinarily discouraging one for

those of us who have noted with pride America's uninterrupted tradition of welcoming and assisting refugees.

The UNHCR Mission recommends that—

UNHCR should continue to express its concern to the U.S. Government that its apparent failure to grant asylum to any significant number of Salvadorans, coupled with continuing large-scale forcible and voluntary return to El Salvador, would appear to represent a negation of its responsibilities assumed upon its adherence to the Protocol.

Mr. President, what I find particularly distressing is that this is the first time in my memory that officials of the UNHCR have ever found it necessary to suggest the United States is failing to fulfill its international obligations toward refugees.

It is unconscionable and without precedent. We have never, ever, under Democratic or Republican administrations, allowed such questions to arise.

Mr. President, I commend the staff of the UNHCR for fulfilling their responsibilities and for bringing the United States to account. I, for one, deeply regret that they found it necessary to do so.

For the information of the Senate, I wish to share the text of their report's findings and recommendations. I ask unanimous consent that it be printed at this point in the RECORD.

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

#### UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES MISSION TO MONITOR INS ASYLUM PROCESSING OF SALVADORAN ILLEGAL ENTRANTS—SEPTEMBER 13-18, 1981

##### SUMMARY OF FINDINGS

1. Large numbers of Salvadorans continue to enter the U.S. illegally on a regular basis and this was seen to have a direct causal relationship with the internal strife in El Salvador.

2. The physical conditions under which the Salvadorans we saw were being held were, by and large, satisfactory.

3. Though in theory any Salvadoran illegal entrant may apply for asylum, there appears to be a systematic practice designed to secure the return of Salvadorans, irrespective of the merits of their asylum claims. Hence the overwhelming majority of those returning are doing so "voluntarily" without apparently being freely advised of their asylum rights.

4. According to INS Headquarters, during Fiscal Year 1981 (Oct. 80-Sept. 81) only one Salvadoran was granted asylum in the U.S. and none had been allowed to stay temporarily in the country for humanitarian reasons.

5. This would appear to be the result of a deliberate policy established by the U.S. authorities in Washington and not the result of individual INS judgement in the field.

##### RECOMMENDATION

Recommend that UNHCR should continue to express its concern to the U.S. Government that its apparent failure to grant asylum to any significant number of Salvadorans, coupled with continuing large-scale forcible and voluntary return to El Salvador, would appear to represent a negation of

its responsibilities assumed upon its adherence to the Protocol.

##### INTEROFFICE MEMORANDUM

To: Mr. M. P. Moussalli, Director of Protection, UNHCR Geneva.

From: K. Kalumiya, Legal Officer, and N. Tamayo, Washington Liaison Office.

Subject: Report on the Situation of Salvadoran refugees in the U.S.

OCTOBER 16, 1981

I. The purpose of this report is to provide the findings of the recent UNHCR mission to California, Arizona and Texas to assess the general situation of Salvadoran asylum seekers and the treatment of those presently being held in various detention facilities in the United States.

##### II. Introduction:

A. Participants and objectives.—Kallu Kalumiya, Legal Officer of the Washington Liaison Office, and Nina Tamayo, who is fluent in Spanish, represented the Office on this mission. The objectives of our trip were to gather first-hand information about the situation of the Salvadoran asylum seekers who enter illegally into the United States, and to visit the major detention facilities in the western and southwestern states where Salvadorans are being held in order to observe their condition and INS processing of their asylum applications.

Traditionally, large numbers of illegal entrants from Latin America, including El Salvador, have come to the United States seeking either better economic opportunities or in search of refuge from the constant political instability and violence common to many nations in that part of the Western Hemisphere. During the last two years in particular, there has been a remarkable increase in the numbers of Salvadorans entering the United States illegally across the Mexican border.

B. Itinerary.—We visited three of the States with the largest concentrations of Salvadorans in the U.S. i.e. California, Texas and Arizona, all of which, with New Mexico, share a common border with Mexico. We also visited two of the three major INS detention facilities for Salvadorans—El Paso and Harlingen in Texas. Although we did not visit El Centro in southern California—the other principal detention facility for Salvadorans, we saw two smaller detention facilities located in Los Angeles and in its satellite city, Pasadena. (There are two other large INS detention facilities with a few Salvadorans that we did not visit i.e. Krome North near Miami and Brooklyn in New York City). In addition, our visit to Tucson, where there is a major legal aid office that assists many Salvadorans in applying for asylum, enabled us to meet with a number of Salvadorans, some of whom had been held at El Centro, and who provided us with some useful insights into the situation there. A copy of the mission's itinerary is attached for your information (see Annexes A and B).

III. Major sources of information contacted:

During the mission, information concerning the situation of the Salvadorans was sought from three primary sources: (a) officials of the Immigration and Naturalization Service (INS), (b) attorneys and other concerned groups, and (c) the Salvadoran refugees themselves.

A. In Los Angeles, El Paso and Harlingen, where INS has district offices, we met with the respective district directors who, without exception, received us most cordially and provided necessary transportation ar-

rangements to the detention facilities. We had extensive talks with INS officials in those districts and they provided us with the basic information and statistical data concerning Salvadorans under their respective jurisdictions. We also sat-in on some exclusion/deportation and bond-reduction hearings before INS immigration judges in Los Angeles and El Paso.

B. Meetings were also held with interested groups and individuals that are active in the legal defense of refugees, namely "El Rescate" in Los Angeles, the United States Catholic Conference (USSC) in El Paso, private attorneys in Harlingen, and the Manzo Area Council in Tucson, which has been active in getting bond money for Salvadorans held in El Centro. Two private attorneys from San Francisco also arranged to meet with us at the Los Angeles Airport concerning Salvadoran individual cases. In Los Angeles, we had lunch with Mrs. Laurie Becklund, a journalist with the Los Angeles Times, who shared with us some of her extensive knowledge on the subject.

C. At the facilities in Pasadena, El Paso, and Harlingen, we interviewed a number of Salvadorans with a view to determining their principal reasons for leaving their country, the reasons they did not stay in any other Central American country, the basis for their fear of persecution upon return to El Salvador, and why so many of them were opting for "voluntary departure" and so few applying for asylum, in view of the general climate of violence in El Salvador.

#### IV. Findings:

A. Numbers Entering.—The actual number of Salvadorans entering the U.S. each month is not known. It is estimated by INS that for each one Salvadoran apprehended, four get in undetected. INS officials acknowledged that while there had been a long history of illegal immigration from El Salvador over the years, the numbers of Salvadorans seeking to enter the U.S. has dramatically increased recently. As Mr. Giuni, the INS district director in El Paso, put it "we had no Salvadoran problem in this area two years ago." This view was echoed in both Los Angeles and Harlingen. INS figures of Salvadorans encountered over a four and a half year period in the El Paso district area appear to support this view:

Fiscal year 1977.....	107
Fiscal year 1978.....	181
Fiscal year 1979.....	274
Fiscal year 1980.....	606
Fiscal year 1981.....	292

The monthly average number of undocumented Salvadorans apprehended by INS country-wide during 1980 and early 1981 was approximately 1,000, making it a total annual average of about 12,000. Many of the entrants were brought in from Mexico by smugglers who specializes in this business, known as "coyotes".

B. Numbers Detained.—Upon arrest for illegal entry by INS Border Patrol, aliens are transported to the nearest INS detention facility. There they are held pending their deportation or voluntary departure. The number of Salvadorans currently detained in the U.S. is probably between 400-500. As of September 81, following were the numbers being detained at the following centers:

El Centro.....	159
Pasadena.....	50
El Paso.....	75
Harlingen.....	89

The turn-over rate is quite high as each month several hundreds are returned to El

Salvador. The figures of those returned during 1980-81 from some of the major detention facilities are given below on page 16.

The legal basis for detaining undocumented entrants is Sec. 242 (a) of the Immigration & Nationality Act (INA) which provides that "pending a determination of deportability in the case of (illegal) aliens . . . such alien may . . . be arrested and taken into custody".

#### V. Conditions inside detention facilities:

A. Pasadena and Los Angeles.—The Pasadena detention center is located about 20 miles from Los Angeles and is a two-story building that was formerly a convalescent home. It is located on a major intersection near downtown Pasadena surrounded by palm trees and has no visible signs to indicate it is a detention facility. Presently used by the INS mainly for women and children, it is now a privately operated facility that houses about 40-50 entrants. The cost of operating the facility for the INS is about \$40,000 per month. Its general conditions are satisfactory: the living quarters are divided into male and female areas, though there are common areas for recreation, a lounge area with a television set, card tables, and a garden area. The living quarters are clean, spacious and have sufficient light. The detainees are provided with clothes, if necessary, and are given sheets and towels. They have meals three times a day and the menu is varied. The refugees also have access to a pay-telephone where they can place telephone calls though they cannot receive any. Though we heard no major complaints from the refugees about their living conditions, they did express frustration about not being able to receive telephone calls and not being able to receive visits from their family members.

There are approximately 40-50 persons who are processed daily for deportation at the Los Angeles facility. This is a day facility located in the basement of the INS building in downtown Los Angeles. It is generally used for refugees who have been transferred from either Pasadena or El Centro for processing prior to deportation or voluntary departure. The refugees are expected to stay there no more than one day until the immigration officials have completed the paperwork on their cases. A list of free legal services is distributed to the refugees and those who wish to return voluntarily are asked to fill out the "voluntary departure" form, written in Spanish and English, (see Annex C), while those who wish to apply for asylum are advised to consult any of the legal aid offices in the area. There is a pay-telephone available to the refugees, as well as sound-proof booths for consultations with their attorneys.

B. El Paso.—The facility at El Paso is located approximately 10 miles from downtown El Paso adjoining the international airport, close to the Mexican border. It consists of several small buildings that house male illegal entrants of diverse origins, such as Mexico, El Salvador, Guatemala, Colombia, Nicaragua, Bahamas, Cuba, etc. It can accommodate up to 300 persons. According to the INS district director, the largest number of illegal entrants, after Mexicans, are Salvadorans.

The facility is guarded and surrounded by barbed wire though there was no perceptible climate of tension between the immigration authorities and the detainees. The living quarters are spacious and clean, and each room has a color television set and is air conditioned. The INS provides clothing, soap and towels to the detainees. Both the

living and shower areas are cleaned daily by a group of detainees who are hired to work for \$1 per day. The detainees are required to remain outdoors during the day in an outside courtyard and have few recreation facilities.

C. Harlingen.—The detention facility at Harlingen is located about 50 miles from the town of Harlingen, Texas (pop. 50,000) near the US/Mexican border. About 10 miles from the detention center, there is a thriving tourist resort area on the Mexican Gulf. This is in sharp contrast to the total isolation of the facility itself where only small government-owned houses for the immigration officials stationed at Harlingen surround the area.

The detention center was formerly used as a U.S. Navy facility and was handed over to the INS in the early 60's. It is presently in the process of being rebuilt. A new two-story brick building, recreation grounds and large water treatment plant stand next to the present structure of small concrete buildings. Once completed, Harlingen will become the largest of the three INS facilities.

The facility now houses 236 male detainees. Of these, at mid-September, 89 were Salvadorans. Women are detained in the county jail together with other female inmates, and children are held in juvenile centers. According to the INS district director in Harlingen, the number of Salvadoran women detainees is very small.

The living quarters at Harlingen are crowded with bunk beds and the windows are closed off with wood and fence wire. The bed mattresses are worn and dirty. Ventilation is poor and there is no air conditioning, which is clearly uncomfortable in the hot and torrid summer climate of this region. The living quarters and the dining hall each have a television set which, is turned on in the evening.

The detainees spend their day idling outdoors in a guarded courtyard where there are no recreation facilities. The INS provides some of them with discarded U.S. military uniforms when clothes are needed. The courtyard is surrounded by a barbed wire fence and a uniformed security guard patrols the area from a watch tower.

According to the INS district director, a medical doctor regularly visits the center and a nurse is permanently stationed at the facility. Each detainee is given a medical examination on arrival.

D. El Centro.—Though we did not visit the detention facility at El Centro, we were informed by the INS and private law groups that it is located in a desert about 100 miles from San Diego, California. According to INS, the total number of Salvadorans detained there as of 21 September 1981 was 159. Of these, only 3 had applied for political asylum. Individual groups, i.e. "El Rescate" and Manzo Area Council described the conditions at El Centro as being "substandard". They all pointed out that the facility is isolated and the detainees do not receive adequate legal assistance. They also mentioned a lack of hygiene at the facility and the hot weather which in some cases caused skin and kidney problems. However, the USSC director in El Paso who had recently visited El Centro, mentioned that the facilities' conditions there were substantially the same as those in the El Paso detention facility. That, if correct, would mean that the conditions are basically satisfactory with respect to the living quarters.

E. Level of Bonds.—Art. 242(a) of INA, which provides INS with the statutory basis

for detaining undocumented aliens pending the administrative determination of their deportability, also provides that any such detained alien may instead "be released under bond in the amount of not less than \$500. . ." or "alternatively . . . be released on conditional parole". No Salvadoran illegal entrant to our knowledge has been released on conditional parole.

The level of bonds for Salvadoran detainees is very high: it is generally set at US\$5,000 country wide. We were given to understand by attorneys of "El Rescate" in Los Angeles that, until a few months ago, bonds for Salvadorans had generally been set at US\$1,000 in previous years. For those Salvadorans suspected of having been smuggled into the country, the bonds are set even higher—at US\$10,000—because they are usually needed later as material witnesses against the alleged "coyotes". Bonds are set on an individual basis, even for members of one family, including minors. That means for instance that a husband and wife with three young children may be required to produce at least \$25,000 before they can be released from custody. Some church groups have been active in raising bond money for Salvadorans. One such group is the Manzo Area Council in Tucson which has been responsible for securing the release of about 130 Salvadorans from the El Centro detention center, even though it is located in a different state. This group has been able in the past few months to raise some \$40,000 in cash for premium payment to bondsmen and some \$180,000 as collateral.

However, applications for bond reductions can be made to INS immigration judges, and in most cases, are reduced to around US\$2,000. In Los Angeles, we had the opportunity to sit in at some of the bond reduction hearings involving Salvadorans.

According to some groups we talked to, even those Salvadorans who voluntarily present themselves to the authorities seeking to apply for asylum have been asked to pay bond or be detained. Naturally this must discourage many others who are illegally present, but would otherwise like to show good cause for their illegal entry.

F. Work authorization.—According to the INS district directors in Los Angeles, El Paso and Harlingen, entrants who file for political asylum and who are released on bond are eligible to apply for work permits and such applications were generally granted for an initial six month period and are renewable, if necessary. The figures provided by the INS in El Paso indicate that to date 100 Salvadorans were given permission to work. However, according to information from attorneys of El Rescate in Los Angeles and the Manzo Area Council in Tucson, asylum applicants are being systematically denied work permits by the INS. A Salvadoran refugee we interviewed in Los Angeles and who had been released on bond from El Centro informed us that he had been denied permission to work. This is a further disincentive to those who have successfully effected illegal entry from seeking asylum.

G. Views of detainees regarding their condition.—

1. Most of the refugees interviewed at the facilities did not express complaints about their living conditions, though some of those interviewed who were free on bond did speak of the harsh living conditions in the centers, particularly at El Centro. One refugee free on bond in Los Angeles told of the extreme heat they had to endure outdoors from 6 a.m. to 7 p.m. in El Centro. He

also spoke of a skin disease epidemic and the poor hygienic conditions. Some of the Salvadorans in detention in Harlingen said that they would prefer returning to El Salvador, even if this meant facing death, to being forced to remain in detention in the United States. Many said that they had never experienced detention in their country. Others were anxious about the harsh economic situation in which they had left their families behind in El Salvador, expecting they would get work in the U.S. and be able to send them money.

2. Detention has also meant temporarily breaking up the families of illegal entrants. Families are routinely separated for detention purposes since males and females have to be held in separate facilities which very often are far removed. It appears that no visitation rights are usually permitted, except where a family member is sick.

H. Asylum Processing.—There were two notable features of asylum processing for Salvadoran entrants in the U.S.: 1) only a tiny proportion of those who made it to the U.S. sought to apply for asylum, and 2) there was not a single reported case where asylum had been granted.

The following figures are illustrative of the situation: During FY 81, the numbers of Salvadorans applying for asylum were as follows:

Los Angeles.....	1,439
El Centro.....	3
El Paso.....	34
Harlingen.....	34
Total.....	1,510

<sup>1</sup>G1 This relatively high figure reflects a number of asylum applications that were transferred to Los Angeles from other INS districts e.g. El Paso, because it is an area most Salvadoran out of detention choose to reside.

Those Salvadorans without U.S. visas applying for asylum at the Mexican-U.S. border are normally required by INS Border Patrol to remain in Mexico pending the outcome of their applications. This again is another disincentive from seeking asylum rather than try to enter illegally.

1. The Border Patrol.—This is the armed police force INS and is the first governmental agency that is normally encountered by Salvadorans coming into the U.S. from Mexico. Its principal function is to enforce U.S. immigration laws by stopping illegal entry. Its mentality, like that of any policing agency, is one of tough and effective law enforcement. According to INS District Directors, we spoke with, the Border Patrol has instructions to assist Salvadoran illegal entrants who seek to apply for asylum by providing them with all the required information in this subject.

However, this would seem to contradict some of the information provided both by the lawyers assisting Salvadoran asylum applicants and what some of the refugees themselves informed us concerning the Border Patrol. According to these sources, the Border Patrol does not explain the detainee's right to seek asylum. A refugee we interviewed in Tucson indicated that he was given no explanation of his right by the Border Patrol and was immediately transported to El Centro for detention.

2. Role of INS District Directors and Immigration Judges.—An alien seeking asylum in the U.S. has two options: he may apply for asylum before the local INS District Director (DD), or he may raise his claim for asylum during a deportation hearing before an INS immigration judge, as a claim for discretionary relief. However, as one federal court judge recently observed, the applica-

tion to the DD is "the alien's primary means of asylum. It is something he can initiate."

Under normal asylum processing therefore, it is the local INS district director who makes the initial determination, after consulting with State Department, whether or not a particular applicant is eligible for asylum. This way, if granted asylum by the DD, the asylum application will prevent the alien from having to undergo the rigors of deportation proceedings. Those denied asylum then go before an INS immigration judge to "show cause" why they should not be deported. They may then renew their asylum claims before the immigration judge, who must then consider each asylum claim do novo, while deportation is stayed.

For Salvadoran asylum seekers, this procedure has been in many instances abridged, cutting out the entire initial stage in asylum processing, i.e. determination of asylum and eligibility by the INS district director. What is happening is roughly as follows: Salvadoran illegal entrants who get arrested by the Border Patrol are immediately taken into detention and soon thereafter, if they have not opted for "voluntary departure", are brought before an INS immigration judge for deportation proceedings. It is at this stage in the context of deportation proceedings that those who wish to apply for asylum may do so. The immigration judge then requests for advisory opinion from the State Department before making a determination on their eligibility for asylum. It appears that only those Salvadorans who initially entered the U.S. legally i.e. with a visa, and then later ask for asylum, have their cases handled from the start by the district director.

Based on the few hearings we witnessed, our impression is that the proceedings were carried out in a pro forma and perfunctory manner designed to expedite the cases as quickly as possible and that the detainees were not given an effective opportunity to adequately present their cases and show good cause for their illegal entry or presence. However, among the INS immigration judges, Judge Barrett was singled out by "El Rescate" for his fairness in handling Salvadoran asylum applications in El Centro.

This means therefore that all undocumented Salvadorans, like Mexicans, are presumed to be illegal immigrants and therefore deportable, without taking into consideration the political conditions currently occurring in their homeland. Accordingly, they have to undergo deportation proceedings before they are accorded the opportunity to apply for asylum.

3. Access to counsel.—Since most Salvadoran refugees arrive without money, they cannot afford to hire lawyers to advise them as to their rights. The INS gives them a list of legal aid offices in the area which may give them advice as to their rights to apply for political asylum. However, in Los Angeles, the attorneys of "El Rescate" claim that the INS does not explain to the refugees their right to apply for asylum, and they contend that the refugees are given the "voluntary departure" form without due explanation of their rights to counsel. Furthermore, they say that the list of legal aid offices the INS provides in the Los Angeles district is outdated and some offices, like "El Rescate", has been deliberately excluded from the list.

In El Paso, the USCC which has one lawyer handles approximately 50 Salvadoran asylum cases per month. The attorney is called by the INS to counsel the Salvadorans of their right to seek asylum and visits

the detention facility twice a week. USCC's experience with the local INS district office has been good, and they consider that the source of the problem of asylum is principally one of national policy, rather than individual INS officials.

In Harlingen, the USCC is the only agency offering free legal aid. However, it does not take on any Salvadoran cases because its main concern is to handle illegal Mexican cases. The list of legal aid offices that is distributed in Harlingen includes attorneys in major cities in Texas, though none in Harlingen itself. The only group handling Salvadoran asylum claims in Harlingen are private attorneys Brodyaga & Garcia who offer free legal services only to a limited number of Salvadorans. They are currently representing about 25 Salvadoran asylum claims in Harlingen.

#### VI. Voluntary Departure and Deportations:

A. Over 90% of Salvadoran entrants in the U.S. return "voluntarily". It is estimated that in El Paso, which we thought had some of the more enlightened INS officials that we met on this mission, the rate of voluntary return is about 60%. In Harlingen, Texas, which has one of the highest rates of "voluntary returnees" (over 90%), during FY 81 (Oct. 80-Aug. 81) there was a total of about 2,700 Salvadorans sent back. Of these only 700 were "deportees", the rest being "volunteers". The numbers returned to El Salvador on a monthly basis were as follows:

	Los Angeles	El Paso	Harlingen	El Centro
October 1980	NA	NA	220	NA
November 1980	NA	NA	177	NA
December 1980	NA	NA	113	NA
January 1981	NA	NA	184	177
February 1981	NA	NA	144	69
March 1981	NA	NA	357	102
April 1981	435	NA	448	114
May 1981	366	NA	405	NA
June 1981	309	NA	218	129
July 1981	351	76	210	118
August 1981	351	55	206	NA
September 1981	351	47	NA	NA
Total	1,461	178	2,682	709
Grand Total <sup>1</sup>				5,030

<sup>1</sup> This is under one-half the total number admitted by INS to have returned to El Salvador during this period.

NA = Not available.

B. The reasons for this rather anomalous situation are complex and varied:

1. According to the INS, the majority of illegal Salvadorans decide freely to return voluntarily to their country of origin. Our observation to this statement was that it appeared contradictory for Salvadorans to have made such a long journey and then decide so quickly to return voluntarily once in the United States. One of the INS district directors agreed that this was a paradox. He also added that the duration of detention, from six to eight months, possibly deterred some of them from seeking asylum.

2. For many private attorneys, however, the reasons for large numbers of voluntary departures are quite different. In their experience, they said the refugees are detained at the border and given a "voluntary departure" form to sign without any explanation with respect to their rights to asylum. They allege a lot of psychological pressure is brought to bear on Salvadorans to opt for voluntary departure. They reported that they usually reach the Salvadorans after they have signed the "voluntary departure form" and that, up to this point, the detainees have no knowledge that they can retract from their signed "voluntary departure" statement. For them, the INS' gen-

eral attitude is to expedite the return of all "illegals" to their countries of origin at a minimum cost to U.S. government, while at the same time to process asylum applications at a slow and deliberate pace. Accordingly at every stage, "illegals" are encouraged to return "voluntarily", and for those who cannot afford an airline ticket, INS pays for them, even though technically they are not deportees.

3. In our view, most Salvadorans entering the U.S. do not seem to know that they have a right to apply for asylum. It also appears that the Border Patrol treats Salvadorans just like other "illegals", e.g. Mexicans, and rarely advises them of the possibility of seeking asylum. However, all illegals are immediately advised by Border Patrol officers of the option of "voluntary departure" and those who want to exercise the option are then asked to sign a voluntary departure form signifying their consent. We understand that such consent may be revoked at any time before embarkation for the return journey, and that many Salvadorans have done precisely that after becoming aware that they may seek asylum. On the other hand, many Salvadorans who we spoke to and who had opted for voluntary departure said they preferred to return home, rather than sit in detention indefinitely while their asylum applications were being considered. As one of them put it, "we would rather go back home and die", or in the words of another, "go back and try entering the U.S. again and with luck make it next time". Our impression is that another reason for voluntary return is that many Salvadoran asylum seekers cannot raise the required bond money to secure their release from detention—especially in view of the new INS policy not to grant work authorization to "illegals."

C. Forcible return of minors.—Private groups in the Los Angeles area reported many cases of forcible return of Salvadoran unaccompanied minors. The attorneys at "El Rescate" alleged that minors were taken into custody and given the same treatment as adults, i.e. INS asks them to sign "voluntary departure" forms or face deportation proceedings. They are presently representing 10 documented unaccompanied minors that are subject to deportation. They are also in the process of filing a complaint that seeks to have INS give every refugee minor the opportunity to meet with an attorney before being returned to El Salvador. According to INS, on the other hand, minors are set free on bond when there are relatives in the U.S. that can claim them. Those without relatives, INS admits, are generally returned to their country.

D. Role of the Mexican Government.—The INS Border Patrol has instructions to return immediately Salvadoran entrants who have valid entry visas to Mexico on encounter, whether or not they seek asylum. However, if entrants have no valid visa for Mexico, they are allowed into the U.S. and are detained. According to "El Rescate" and the Manzo Area Council, there are no guarantees for refugees who are returned to Mexico that they will not be forcibly deported to El Salvador. They expressed concern that there might be a secret agreement between the immigration authorities of both countries to return the Salvadorans to their country of origin. Salvadorans we interviewed, who had spent some time in Mexico, spoke of harassment suffered by them from Mexican immigration officials.

VII. Possible fate upon return to El Salvador:

The INS indicated it had no means of checking on the fate of the Salvadorans who return to El Salvador. They said they depend on State Department's diplomatic channels for their information as to the situation in El Salvador, and it was their understanding that returnees were not being persecuted.

The refugees themselves were not sure of their probable fate upon return to El Salvador, but most of them believed that the fact of having sought refuge abroad made them more vulnerable to persecution and harassment. As INS makes travel arrangements for deportation and voluntary departure in conjunction with the Salvadoran consular authorities in the United States, some refugees expressed fear that since their names are known to the Salvadoran authorities, they may be in danger of persecution by the government on arrival. Though the private agencies could not provide concrete evidence of persecution of returnees, they contended that such persons' lives were in danger not only because of the fact of a civil war situation there, but also because their stay abroad made them suspect to both sides in the civil war. Since our return, we have received a letter mailed in El Salvador from one of the refugees we interviewed before his return there. Although nothing serious seems to have happened to him since getting back, he expressed fear for his safety and requested resettlement in Canada.

#### VIII. Conclusions:

We would, in conclusion, like to make the following comments:

A. All the INS District Directors and other officials we met were extremely courteous and helpful to us—an indication of the respect they hold for our agency.

B. The influx of Salvadorans into the U.S. continues unabated. It is generally acknowledged by all parties concerned, including INS, that this influx, which became more pronounced during early 1980, has some causal relationship to the intensity of civil strife in El Salvador.

C. INS continues to deport or return hundreds of Salvadorans each month. It is evident that INS' general presumption is that the overwhelming majority of Salvadorans coming to the U.S. left their home for economic rather than political reasons and therefore do not qualify for asylum. That is basically why all undocumented Salvadorans are taken before immigration judges for deportation proceedings without district director's initial determination as to their eligibility or non-eligibility for asylum. This is also why INS has adopted a tough enforcement policy which, in turn, acts as a disincentive for many Salvadorans to seek asylum in the U.S.—a lengthy and expensive process. It is this combination of factors—detention, high bonds, non-work authorization, lengthy wait for asylum claims adjudication, and lack of proper counsel that has led a disproportionately large number of Salvadorans to opt for voluntary return.

D. Many of the Salvadorans we spoke to, on being asked why they had travelled to the U.S., usually responded that they had come in search of job or education opportunities. However, when we inquired further as to whether they would still have come to the U.S. if there were no on-going civil conflict in their country, all without exception responded that they would obviously have had no cause to leave since there would have been jobs for them at home and universities would have stayed open. Yet some others spoke simply of the climate of vio-

lence and death that had compelled them to flee their homeland.

E. Although INS officials privately recognize that there is a civil war situation in El Salvador, they assert this is not enough to justify grant of asylum on individual basis. Accordingly, not a single Salvadoran case in the INS districts we visited had been granted asylum. We pointed to the district directors we met that, besides asylum, there were other discretionary reliefs under U.S. law designed for this kind of situation e.g. (a) Deferred action—for those cases "where the district director determines that adverse (deportation) action would be unconscionable or result in undue hardship because of the existence of appealing humanitarian factors. . ."—(INS Operations Instructions (OI) 103-1a(ii)); (b) Stay of deportation—for those cases where there are "compelling humanitarian factors", (OI, 243.3(a) and (c) Voluntary departure—for cases of "temporary inability to return to (one's country) on account of civil war or catastrophic circumstances" (OI, 242.10f(3)). We then inquired whether any Salvadoran had benefited from any of these reliefs. In all the districts we visited, we were told there was not one single beneficiary. This was because, as one INS director put, "we are following a policy laid for us from the top". It is, therefore, fair to conclude that there is a systematic practice designed to forcibly return Salvadorans, irrespective of the merits of their asylum claims. At the same time, it is equally fair to say the INS does not seem to be practicing a discriminatory program against Salvadorans. The unfortunate situation is that Salvadorans are being treated like all other illegal entrants without taking into account the conditions prevailing in their country.

F. Many Salvadorans we spoke to asked us what UNHCR could do for them in their situation. We informed them that UNHCR was most concerned at the prospect of their deportation back to their homeland, and that we had requested U.S. authorities to adopt more liberal asylum practices towards their group but were not very optimistic that such change was imminent. To those who asked about resettlement possibilities into Canada or other countries, we advised them to contact us directly in Washington. We would appreciate any comments HQs may have concerning the availability of resettlement opportunities anywhere for those deserving Salvadorans in the U.S. who fail to get asylum here and are threatened with expulsion.

G. One of the activist church groups we met with in Tucson was very much concerned about the role of the Mexican authorities and the expulsion of Salvadorans from the U.S. They allege that the U.S. routinely hands back to Mexican authorities many of the Salvadorans arrested at the border and Mexico, in turn, returns them to El Salvador. They also pointed out that the Western Airlines flights from Los Angeles to San Salvador carrying Salvadoran returnees normally stopped overnight in Mexico City. Accordingly, they suspected there was some secret understanding between the U.S. and Mexican authorities to co-operate in the expulsion of Salvadorans. We informed them that UNHCR was not aware that Mexico, acting either individually or in corroboration with the U.S., was itself sending back El Salvadoran asylum seekers—a policy that would seem incompatible with Mexico's well known position regarding the Salvadoran political situation. We promised, however, that our office in Mexico would look into these allegations.

#### IX. Recommendation:

Recommend that UNHCR continue to express its concern to the U.S. Government that its apparent failure to grant asylum to any significant number of Salvadorans, coupled with continuing large-scale forcible and voluntary return to El Salvador, would appear to represent a negation of its responsibilities assumed upon its adherence to the Protocol.

Mr. KENNEDY. I also ask unanimous consent, Mr. President, that my earlier exchange of correspondence with the Department of State and the Immigration and Naturalization Service be printed at this point in the RECORD.

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

COMMITTEE ON THE JUDICIARY,  
Washington, D.C., April 6, 1981.

HON. ALEXANDER M. HAIG, Jr.,  
Secretary of State  
Washington, D.C.

DEAR AL: As you know, during the worst days of the Lebanese and Nicaraguan conflicts, the United States temporarily adopted a number of special immigration measures to deal with nationals from those countries who were in the United States on non-immigrant visas or outside seeking to visit or find temporary safe-haven here.

Basically, these measures involved the granting of stays of voluntary departure for Lebanese or Nicaraguans—with permission for them to work, if that was necessary under the circumstances—and adopting more flexible visa guidelines for those who had family or other ties in the United States. These special immigration measures helped countless hundreds of families, giving them safe-haven from the violence and conflict within their own countries.

At a hearing of the Subcommittee on Immigration and Refugee Policy last week, I raised this issue with the Acting Commissioner of the Immigration and Naturalization Service relative to El Salvadorans. I was particularly concerned over reports of large-scale deportations of Salvadorans. Given the escalating violence in El Salvador, I believe we must be vigilant that we are not unnecessarily endangering the lives of Salvadorans who understandably do not want to return to their country at this time.

Considering we adopted special immigration measures for the Lebanese in 1975-76, and for Nicaraguans two years ago, why has the Department of State failed to propose such action now relative to Salvadorans? Clearly, the Immigration Service must await a formal recommendation from the Department of State prior to initiating a policy of automatically granting stays of voluntary departure.

I have asked the Immigration and Naturalization Service to provide the Subcommittee with detailed information on the processing and deportation of Salvadorans, especially since January. In the meantime, I would appreciate receiving your views on this issue, and whether the Department is prepared to recommend to INS special immigration measures for Salvadorans in the United States or at our borders.

Sincerely,

EDWARD M. KENNEDY,

*Ranking Minority Member, Subcommittee on Immigration and Refugee Policy.*

DEPARTMENT OF STATE,

Washington, D.C., April 17, 1981.

HON. EDWARD M. KENNEDY,  
U.S. Senate

DEAR SENATOR KENNEDY: I am replying to your letter of April 6, to the Secretary requesting that the Department of State recommend to the Immigration and Naturalization Service (INS) that Salvadorans in the United States be granted voluntary departure status in lieu of forcible repatriation to El Salvador and work authorization and a more flexible visa policy for those who have relatives in the United States.

Under the United Nations Protocol Relating to the Status of Refugees, the United States is prohibited from undertaking the forced expulsion movement of a refugee to a country or frontier where persecution is likely to occur. In addition, the Refugee Act of 1980 obliges the granting of asylum status to those who establish a well-founded fear of persecution upon return to their country of nationality for reason of race, religion, nationality, membership of a particular social group, or political opinion. The responsibility for establishing a well-founded fear of persecution rests with each applicant. The INS does not classify Salvadorans in the United States as refugees unless they individually establish that their fear of being persecuted is a well-founded one.

While questions regarding exclusions or deportation proceedings are, of course, under the jurisdiction of the INS, the Immigration Service has informed us that no Salvadoran asylum seeker is sent back until a determination has been made that the claimant has not established a well-founded fear of persecution. It is not necessary for Salvadorans to "formally" request asylum. If a positive indication of unwillingness to return to El Salvador is made, and if the unwillingness is based on a fear of being persecuted, that is sufficient to have the case processed through asylum procedures.

Due to the so-called "final offensive" last January by the Farabundo Marti National Liberation Front, the Department believed it prudent to ask the INS to suspend action for 90 days on Salvadoran asylum requests. This 90-day period lapses April 15 at which time the Department intends to resume review of Salvadoran asylum requests. For those who establish a well-founded fear of persecution upon return to El Salvador the Department, in its advisory opinion, will so inform the appropriate INS District Office.

While civil strife and violence in El Salvador continue at distressing levels, conditions there do not, at present, warrant the granting of blanket voluntary departure to Salvadorans in the United States.

While fighting in some areas has been severe, El Salvador has not suffered the same level of wide-spread fighting, destruction and breakdown of public services and order as did for example, Nicaragua, Lebanon or Uganda at the time when voluntary departure was recommended by the Department and granted by INS for nationals of those countries.

Public order and public services, while under a serious attack, are still maintained, especially in El Salvador and the larger cities.

Moreover, Salvadorans now present in the U.S., whose number may be as high as 500,000, who were not involved in political or military activities before their departure, would not face, upon return, any more danger than is faced by their compatriots who never left the country.

We believe that the majority of Salvadorans in the United States did not depart their country solely to seek safehaven in this country.

Most traveled through third countries before entering the United States and many of them entered quite some time ago. Other countries closer to El Salvador, Honduras for example, have been generous in offering safehaven to Salvadorans who have fled.

Thus, it is not true that only the United States is a possible refuge. The Department, therefore, at this time, is not in a position to recommend to the INS the blanket granting of voluntary departure status or work authorization for Salvadorans presently in the U.S.

Similar considerations apply to the question of non-immigrant visas for Salvadorans outside our borders. As you know, the Immigration and Nationality Act provides that visa applicants must be considered to be intended immigrants until they establish that they qualify for one of the non-immigrant classifications.

Visitors establish eligibility by demonstrating economic, family, or social ties to their homelands which would induce them to depart voluntarily after a visit to the United States.

The extraordinary circumstances existing in such nations as Lebanon and Nicaragua, to which visa applicants would obviously not wish to return until circumstances returned to normal, would prevent persons who would otherwise be well qualified, from obtaining visas.

In these circumstances, we advised consular officers to take a "long-term view" of the applicants' ties to their homelands, those attachments which would induce them to return abroad when circumstances returned to normal. This policy obviously cannot assist an applicant who would not qualify for a visitor's visa under any circumstances.

As previously noted, we do not believe that the circumstances in El Salvador reach the same levels as existed in Lebanon or Nicaragua. Furthermore, we are not aware that there are Salvadoran visa applicants who in normal times could expect to receive visas who are now being denied because the current situation created questions about their intentions as tourists.

We will, of course, continue to assess Salvadoran developments closely and will inform the INS should these developments dictate a change in our position regarding voluntary departure status for Salvadorans.

Sincerely,

ALVIN PAUL DRISCHLER,  
Acting Assistant Secretary for Congressional Relations.

COMMITTEE ON THE JUDICIARY,  
Washington, D.C., April 6, 1981.

HON. DAVID CROSLAND,  
Acting Commissioner, Immigration and Naturalization Service, Department of Justice, Washington, D.C.

DEAR MR. CROSLAND: To follow-up our discussion at last week's hearing of the Subcommittee on Immigration and Refugee Policy relative to special immigration measures for El Salvadorans in the United States, I have written the attached letter to Secretary of State Alexander Haig.

I appreciate that INS must receive a recommendation from the Department of State prior to establishing a policy of granting stays of voluntary departure for Salvadorans who do not wish to return to their country at this time because of the escalating civil strife. However, I am hopeful the

Department will soon make such a recommendation, for I believe it is clearly warranted.

Again, I appreciated your testimony before the Subcommittee and I look forward to receiving whatever INS statistics you have on the recent processing and/or deportation of El Salvadoran nationals.

Many thanks for your consideration, and best wishes.

Sincerely,

EDWARD M. KENNEDY,  
Ranking Minority Member, Subcommittee on Immigration and Refugee Policy.

U.S. DEPARTMENT OF JUSTICE, IMMIGRATION AND NATURALIZATION SERVICE,

Washington, D.C., May 1, 1981.

HON. EDWARD M. KENNEDY,  
Ranking Minority Member, Subcommittee on Immigration and Refugee Policy, Washington, D.C.

DEAR SENATOR KENNEDY: In response to your letter of April 6, 1981, requesting whatever statistics we have on recent deportation of El Salvadoran nationals, the following information is available at this time: For the year October 1979 through September 1980, 8,868 Salvadorans were expelled. Since October 1980 the following expulsions have taken place, including voluntary repatriation and deportation: October 1980, 825; November 1980, 776; December 1980, 721; January 1981, 894. The statistics are not yet available for February and March.

During your questioning in the hearing you referred to previous instances in which blanket periods of voluntary departure were granted. I have enclosed, for your information, a summary of those instances, beginning with Ethiopia in May 1977.

We have received word from the Department of State that it is not in a position to recommend a blanket granting of voluntary departure for illegal Salvadorans presently in the United States. However, on April 15, 1981, the Department resumed a case by case review of Salvadoran political asylum requests. For those who can establish a well founded fear of persecution upon return to El Salvador, State will inform the appropriate Immigration and Naturalization Service District office.

I appreciate your interest in this matter. Let me know if you wish additional information.

Sincerely,

DAVID CROSLAND,  
Acting Commissioner.

#### ENCLOSURES

Aliens from the following countries have been granted blanket periods of voluntary departure.

Ethiopia—May 1977 to present.  
Uganda—April 1978 to present.  
Iran—April 1979 to November 1980.  
Nicaragua—June 1979 to September 1980.  
Similarities:

1. All grants were based upon Department of State recommendations.

2. Department of State was not recommending that any of the involved nationalities be considered as a refugee within the meaning of 203(a)(7). Ugandan and Nicaraguan aliens were ineligible for consideration under 203(a)(7), as stated by Ms. P. Derian in a letter to Commissioner Castillo concerning Ethiopians and Ugandans dated April 7, 1978. "Since Refugees from many countries, including Uganda, are ineligible for refugee status under the proviso to Sec-

tion 203(a)(7) of the Immigration and Nationality Act (INA) due to geographic criteria imposed by that section, many refugees in the U.S. can only be placed in voluntary departure status." The Iranian and Ethiopians were apparently found ineligible by Department of State for reasons other than the geographic criteria.

3. All initial recommendations were made by the Department of State prior to the Refugee Act of 1980.

Differences: Ethiopians and Ugandans were granted voluntary departure in one year increments.

Nicaraguans and Iranians were granted voluntary departure to specified dates as recommended by Department of State.

#### LEBANON

Based upon Department of State opinions a policy wire dated July 1, 1976 (attached) was issued stating that Lebanese nationals' requests for extensions of voluntary departure should be viewed sympathetically on a case by case basis (not a blanket grant of voluntary departure).

#### ETHIOPIA

Per request of Patricia M. Derian, Assistant Secretary of State for Human Rights and Humanitarian Affairs (letter dated May 1977), a policy wire, dated July 12, 1977 (attached) was issued stating that voluntary departure would be granted to Ethiopian nationals in one year increments.

On July 18, 1980, Victor H. Palmieri, United States Coordinator for Refugee Affairs wrote to Commissioner Crosland and requested that INS continue to defer deportation of Ethiopians. There has been no change in policy.

#### UGANDA

Per request contained in Ms. Derian's letter of April 7, 1978 concerning both Ugandans and Ethiopians, a policy memorandum, dated June 8, 1978 (attached) was issued stating that Uganda Nationals would be granted voluntary departure in one year increments.

In a letter dated June 22, 1979, Ms. Derian advised INS that conditions were too unsettled in Uganda to warrant a change of policy.

#### IRAN

In a letter to Mr. Michael Egan, Associate Attorney General, dated March 19, 1979, Mr. David Newsom, Under Secretary for Political Affairs, Department of State, requested that Iranians not be forced to return to Iran.

Mr. Egan responded to Mr. Newsom on April 11, 1979 and stated that departure would not be enforced until September 1, 1979.

On April 16, 1979, a policy wire (attached) was issued stating that Iranians would be granted voluntary departure until September 1, 1979. July 20, 1979 a policy wire (attached) was issued clarifying the policy regarding employment authorization. On July 28, 1979, Mr. Newsom wrote to Mr. Egan requesting an extension of the voluntary departure period to March 1, 1980.

Mr. Egan responded to Mr. Newsom on August 2, 1979 advising him that Iranians would be extended until June 1, 1980.

On August 9, 1979, a policy wire (attached) was issued extending the date to June 1, 1980. Clarification wires (attached) were issued on August 10, 1979 and September 20, 1979. On November 23, 1979, a policy wire (attached) was issued concerning the revocation of the voluntary departure period previously granted.

## NICARAGUA

In a letter to Commissioner Castillo dated June 26, 1979, Mr. Warren Christopher, Acting Secretary, Department of State, requested that INS place Nicaraguan nationals in a voluntary departure status until December 31, 1979.

A policy wire (attached) dated July 3, 1979 stated that, for Nicaraguans in the U.S. as of June 27, 1979, voluntary departure should be granted until December 31, 1979.

Mr. Christopher requested, in a letter to the Commissioner dated August 17, 1979, that the policy not be limited to Nicaraguans who were in the U.S. as of June 27, 1979. Mr. Christopher wrote again on January 4, 1980 and on June 27, 1980 requesting extensions of voluntary departure to June 30, 1980 and September 28, respectively. Policy wires (attached) were issued to that effect on January 4, 1980; January 8, 1980; and July 1, 1980. Mr. Christopher wrote on October 1, 1980 that further extensions of voluntary departure was not necessary.

A policy wire (attached) was issued on October 16, 1980 stating that Nicaraguan requests for voluntary departure would be handled on a case by case basis (no longer a blanket grant of voluntary departure).

#### SALVADORAN GOVERNMENT ACTIONS IN THE CASE OF THE FOUR MURDERED AMERICAN CHURCHWOMEN

Mr. KENNEDY. Mr. President, I welcome the reports, which I have seen in recent days, that there is finally some movement in the investigation into the murders more than a year ago of four American churchwomen in El Salvador. These reports say that six former members of the Salvadoran National Guard were turned over to civilian authorities on February 10 as suspects in the murders of the churchwomen.

Since that tragic event I and many concerned Americans have been seriously concerned at the failure of the Government of El Salvador to pursue seriously the investigations into these murders and we have been equally distressed by this administration's apparently relaxed and at times callous attitude on this problem. In legislation last fall, the Congress emphasized our determination that there must be progress in bringing to justice those responsible for the murders if there was to be any bilateral relationship between our two countries.

On the anniversary of the murders last December, the U.S. Senate adopted a resolution which I had introduced expressing deep concern over the failure of the Government of El Salvador to bring to justice those responsible for the murders, urging the Government of El Salvador to use every legal means available to bring about a just and expeditious resolution of these cases, and urging the administration to press for such a resolution.

In welcoming the transfer of six suspects to civilian authorities, I caution the administration that this is only a small first step and it has been long in

coming. The many religious leaders and other concerned Americans will be watching for continued progress and for tangible evidence that the Government of El Salvador is pursuing this case to its conclusion where those responsible for the murders are brought to justice.

#### THE 1983 BUDGET OUTLOOK

Mr. CANNON. Mr. President, I am deeply concerned both about the budget outlook and what appears to be a developing confrontation between the administration and Congress. It has not been a happy week for the Nation. On Monday, President Reagan sent us a budget which includes both massive cuts in spending and massive deficits. There are, I must admit, some attractive features to his proposals: The 1982 tax cut for individual taxpayers would remain on schedule and spending for national defense would be increased as the President has promised. But the bottom line is simply unacceptable. Even if Congress were to agree to all the deep cuts proposed for social programs—which of course is extremely unlikely—the deficit would remain so large that interest rates would remain high enough to choke off any prospect of economic recovery.

High interest rates have already flattened the automobile and construction industries and hit other industries hard as well. Everywhere in my State, businessmen, particularly owners of small businesses, fear that they cannot survive a continuation of the interest rates the Nation has experienced. Unfortunately, we cannot count on the Federal Reserve System to bring down interest rates. If they try to increase the money supply to bring down interest rates they may do so for a short time. But increasing the money supply rapidly will bring on more inflation and ultimately higher interest rates. And, in any event, Mr. Volcker and the Fed have made it clear that they intend to adhere to fairly tight monetary policy. Thus, the ball is squarely in the lap of Congress—if interest rates are to come down and economic recovery to proceed, we are going to have to do something about the deficit.

On Tuesday, even as criticism of his budget by his fellow Republicans was beginning to mount, President Reagan began to sound uncharacteristically strident. First he told us he had "drawn a line in the dirt" and dared us to step across it. Then he told us to "put up or shut up."

On Wednesday, just yesterday, my distinguished colleague FRITZ HOLLINGS did put up an alternative proposal. Like the majority leader, I find it intriguing and worthy of further consideration. Senator HOLLINGS' proposal is, in some respects, a mirror image of

President Reagan's. While the President's budget contains some attractive items with an absolutely unacceptable bottom line, Senator HOLLINGS has boldly presented us an alternative full of unacceptable items but with an attractive bottom line. I believe few of us would like to freeze defense spending, defer tax cuts we have already enacted, or freeze cost-of-living increases for social security recipients. But the bottom line—smaller deficits, lower interest rates, and the prospect of economic recovery is a goal we have to find some way to attain.

Today we recess for George Washington's birthday. Perhaps the best gift we can give the American people is to go home and think about the grim alternatives before us. For myself, I want to congratulate Senator HOLLINGS on the courage of his alternative. The outline he has presented has a long way to go. I believe, for example, it places a disproportionate burden on individuals. If we were to accept an austerity budget freezing both tax cuts and spending, all segments of society should contribute. Thus, a minimum tax on corporate income or some other similar measure might be added to insure that the burdens are shared by all. But Senator HOLLINGS' proposal is a serious one and I believe it unfortunate that Treasury Secretary Regan has dismissed it out of hand as "absolutely ridiculous." I hope that, over the recess, the members of the Budget Committees in both Houses will be able to develop an acceptable alternative with the administration.

Mr. President, I am concerned not only about the budget outlook but the process by which we in Congress deal with the budget. Last year was not a good year for any of us. While we used to have a "budget season," last year we had a "budget session" and did little else. In the absence of an alternative budget, we will repeat last year all over again. One of the attractive features of Senator HOLLINGS' bold proposal is that he has focused on the big ticket items—defense, entitlements, and taxes. He has not tried to come up with a nickle and dime solution to a hundred billion dollar problem. If we try to, we face the prospect of fighting over the budget line by line all over again all year long.

Mr. President, I again want to congratulate Senator HOLLINGS for the boldness of his wisdom. And Mr. President, I am particularly grateful to the distinguished majority leader and my Republican colleagues for not dismissing such alternatives out of hand as has the administration.

### S. 2022—EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR THE U.S. COAST GUARD

Mr. CANNON. Mr. President, I rise in support of S. 2022, which would provide emergency supplemental appropriations for the U.S. Coast Guard. The \$46.3 million in operating expense funding is intended as a stopgap measure to forestall the military personnel cutbacks, facility shutdowns, and vessel decommissionings necessitated by the 4-percent across-the-board cut in December's continuing resolution.

Most of these actions in response to the cut are scheduled to be completed by April 1. Already some 300 military personnel have been separated, with 3,400 more to come unless we enact this special supplemental. Vessel traffic service systems, innovative new approaches to controlling vessel traffic in our busiest ports, will cease in all but three of those ports. Two of the key district headquarters, including the 12th District in Long Beach which serves Nevada citizens, will be closed, along with stations for vessels and aircraft, boating safety detachments, and many other offices throughout the country. Ten more vessels will be decommissioned. Although on the average these vessels were built 37 years ago, the size of the Coast Guard fleet has shrunk to such an extent that these vessels are required for essential services. For example, without the icebreaker *Mackinaw*, commerce on the Great Lakes will be choked by ice a month early, with serious economic consequences for Great Lakes communities. Activities in boating safety, aids to navigation, oceanographic research, equipment maintenance, and training will be curtailed as well. Lives of our mariners could easily be lost because of diminished search and rescue services.

On the Commerce Committee over the past several years we have become very concerned about the consequences of a decade of underfunding for the Coast Guard. This agency has sailed bravely ahead in spite of the impact on services and morale brought about by a failure to recognize its needs.

The present administration, in spite of its fine rhetoric regarding law enforcement and national security, has shown little enlightenment in its budgetary proposals for Coast Guard. You will recall that in pressing for the across-the-board cut at the end of 1981 the administration proposed that defense and law enforcement agencies be exempted from the cut. One would think such a proposal would have exempted the Coast Guard, which is the principal maritime law enforcement agency and serves as part of the Navy in time of war. But no, the administration said the Coast Guard would not be exempted.

Remarkably, it would appear from this that the President does not view the maritime drug interdiction program as a law enforcement activity, even though armed Coast Guard cutters seize \$1.6 billion in illegal drugs and 100 vessels at sea every year. The fishery law enforcement program deters cheating by foreign fishermen permitted to fish in our waters. A failure to carry out this enforcement could mean that millions of dollars in U.S. fishery resources will go to other countries without benefits to the U.S. fishing industry or American seafood consumers.

How can the administration say that the Coast Guard is not of vital importance to our Nation's security? This organization has played an active part in all the wars of this century. In World War II, its ships and aircraft participated in convoy escort and anti-submarine warfare and its personnel formed the bulwark of the security for key maritime ports. In the Vietnam war, its units were readily integrated with naval riverine and coastal forces. And today the Navy is recognizing the special expertise of the Coast Guard in shallow water operations and will be relying heavily on it for security of our coastlines and ports, as well as the Gulf of Mexico and Caribbean.

Mr. President, this emergency measure will simply do what should have been done in December. Like other defense and law enforcement agencies the Coast Guard should be freed from the arbitrary effect of the across-the-board cuts. It is especially imperative because the Coast Guard—as authoritative study after authoritative study has stated—has no waste to trim away.

I wish this measure would be the only fiscal year 1982 money bill the Coast Guard will need to keep essential services going. But over \$100 million more in supplemental appropriations will be needed for pay raises, increases in military benefits, fuel cost increases, and other similar matters. Just as we have supported full supplemental appropriations for the pay raises of the Defense agencies, we should also do so for this important agency when the time comes later in the year.

### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

### EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore laid before the Senate messages from the President of the United States submitting sundry

nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

### HOUSE MESSAGE RECEIVED DURING THE RECESS

#### ENROLLED JOINT RESOLUTIONS SIGNED

Under the authority of the order of the Senate of February 10, 1982, the Secretary of the Senate on February 10, 1982, received the following message from the House of Representatives during the recess of the Senate announcing that the Speaker of the House has signed the following enrolled joint resolutions:

H.J. Res. 389. Joint resolution making an urgent supplemental appropriation for the fiscal year ending September 30, 1982, for the Department of Agriculture; and

H.J. Res. 391. Joint resolution making an urgent supplemental appropriation for the Department of Labor for the fiscal year ending September 30, 1982.

The enrolled joint resolutions were signed by the President pro tempore (Mr. THURMOND) on today, February 11, 1982.

### 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-2660. A communication from the Chief, Legislative Division, Office of Legislative Liaison, Office of the Secretary of the Air Force transmitting, pursuant to law, a report on experimental, developmental, and research contracts of \$50,000 or more, by company for the period July 1 through December 31, 1981; to the Committee on Armed Services.

EC-2661. A communication from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "Consolidated Space Operations Center Lacks Adequate DOD Planning"; to the Committee on Armed Services.

EC-2662. A communication from the Secretary of the Army transmitting, pursuant to law, notification that certain defense weapons systems have exceeded their baseline unit cost by more than 25 percent; to the Committee on Armed Services.

EC-2663. A communication from the Secretary of the Air Force transmitting, pursuant to law, notification that certain defense weapons systems have exceeded their baseline unit cost by more than 15 or 25 percent; to the Committee on Armed Services.

EC-2664. A communication from the Acting Secretary of the Navy transmitting, pursuant to law, notification that certain defense weapons systems have exceeded their baseline unit cost by more than 15 percent; to the Committee on Armed Services.

EC-2665. A communication from the Executive Director of the Neighborhood Reinvestment Corporation transmitting a draft of proposed legislation to authorize appropriations for the Corporation for fiscal year

1983; to the Committee on Banking, Housing, and Urban Affairs.

EC-2666. A communication from the Secretary of Commerce transmitting a draft of proposed legislation to authorize appropriations for the National Bureau of Standards for fiscal years 1983 and 1984; to the Committee on Commerce, Science, and Transportation.

EC-2667. A communication from the Chairman of the Consumer Product Safety Commission transmitting, pursuant to law, a report on the Commission's management controls and contractual arrangements for fiscal year 1981; to the Committee on Commerce, Science, and Transportation.

EC-2668. A communication from the Chairman of the Consumer Product Safety Commission transmitting, pursuant to law, the Commission's fiscal year 1983 budget request; to the Committee on Commerce, Science, and Transportation.

EC-2669. A communication from the Assistant Secretary of the Interior for Territorial and International Affairs transmitting, pursuant to law, the annual report on the Financial Condition of the Trust Territory of the Pacific Islands for the fiscal year ended September 30, 1980; to the Committee on Energy and Natural Resources.

EC-2670. A communication from the Administrator of the Energy Information Administration transmitting, pursuant to law, notice of the discontinuance of the reports "Market Shares: Report on Sales of Refined Petroleum Products", and "Market Shares: Report on Retail Sales of Motor Gasoline", with the publication of September 1981 data; to the Committee on Energy and Natural Resources.

EC-2671. A communication from the Chairman of the Board of the United States Synthetic Fuels Corporation transmitting, pursuant to law, the Corporation's Statement of Administrative Expenses; to the Committee on Energy and Natural Resources.

EC-2672. A communication from the Inspector General of the Agency for International Development transmitting, pursuant to law, his fiscal year 1981 Annual Report on the Agency; to the Committee on Foreign Relations.

EC-2673. A communication from the Attorney-Adviser, Department of State, transmitting, pursuant to law, international agreements other than treaties entered into by the United States within the previous 60 days; to the Committee on Foreign Relations.

EC-2674. A communication from the Acting Assistant Secretary of the Bureau of International Organization Affairs, Department of State, transmitting, pursuant to law, reports of the United Nations Joint Inspection Unit for the last quarter of 1981; to the Committee on Foreign Relations.

EC-2675. A communication from the Director of the Office of Personnel Management transmitting, pursuant to law, the annual report on activities respecting the Federal Equal Opportunity Recruitment Program; to the Committee on Governmental Affairs.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, without amendment:

H.R. 3782. An act to revitalize the pleasure cruise industry by clarifying and waiv-

ing certain restrictions in the Merchant Marine Act, 1936, and the Merchant Marine Act, 1920, to permit the entry of the steamship vessel *Oceanic Constitution* into the trade.

By Mr. ROTH, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute:

S. 864. A bill 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 (with additional views) (Rept. No. 97-312).

By Mr. PERCY, from the Committee on Foreign Relations, without amendment:

S. Res. 83. Resolution to express the sense of the Senate that the interpretation by the Office of Supreme Commander for the Allied Powers in the purge of Rikizo Hirano, was without basis or justification, improper and in violation of its own rules.

#### EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. TOWER, from the Committee on Armed Services:

Maj. Gen. Walter F. Ulmer, Jr., U.S. Army, 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 subsection (a) of section 601, in the grade of lieutenant general.

By Mr. PERCY, from the Committee on Foreign Relations, without amendment:

EX. W. 96-1. Treaty of Friendship between the Government of the United States and the Government of Tuvalu, signed at Fanafuti on February 7, 1979 (Ex. Rept. 97-47);

EX. A. 96-2. Treaty between the United States and the Republic of Kiribati, signed at Tarawa on September 20, 1979 (Ex. Rept. 97-48);

EX. P. 96-2. Treaty between the United States and the Cook Islands on Friendship and Delimitation of the Maritime Boundary between the United States and the Cook Islands, signed at Rarotonga on June 11, 1980 (Ex. Rept. 97-49); and

Treaty Doc. 97-5. Treaty Between the United States and New Zealand on the delimitation of the Maritime Boundary between the United States and Tokelau, signed at Tokelau on December 2, 1980 (Ex. Rept. 97-50).

#### 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. JOHNSTON:

S. 2099. A bill to amend section 20 of the Federal Meat Inspection Act, to require that imported beef which is capable of use as human food be labeled at all stages of distribution until preparation for ultimate consumption; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. GRASSLEY:

S. 2100. A bill to amend the Internal Revenue Code of 1954 to provide that the indexation of the individual income tax rates shall take effect on January 1, 1982; to the Committee on Finance.

By Mr. HAYAKAWA:

S. 2101. A bill for the relief of Jacquelin Ann Kaufman; to the Committee on the Judiciary.

By Mr. GOLDWATER:

S. 2102. A bill to authorize the Smithsonian Institution to construct a building for the Museum of African Art and a Center for Eastern Art together with structures for related educational activities in the area south of the original Smithsonian Institution building adjacent to Independence Avenue at 10th Street SW., in the city of Washington.

By Mr. PACKWOOD:

S. 2103. A bill for the relief of Kok Sjen Su and Grace Su, husband and wife; to the Committee on the Judiciary.

By Mr. INOUE:

S. 2104. A bill to amend title 10, United States Code, to authorize the Secretary of Defense to conduct studies and demonstration projects to develop incentives for economy in the administration of the civilian health and medical program of the Uniformed Services while maintaining or improving the quality of health and medical care available under such programs; to the Committee on Armed Services.

By Mr. CHAFEE:

S. 2105. A bill to provide for pension reform for State and local public employee retirement systems, to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to promote more efficient and satisfactory management of the functions of the Federal Government relating to employee benefit plans and to more effectively carry out the purposes of such act and such Code relating to such plans, and for other purposes; to the Committee on Finance and the Committee on Labor and Human Resources, jointly, by unanimous consent.

S. 2106. A bill to provide for pension reform for State and local public employee retirement systems, and for other purposes; to the Committee on Finance and the Committee on Labor and Human Resources, jointly, by unanimous consent.

By Mr. LEVIN (for himself, Mr. DODD, Mr. RIEGLE, Mr. WEICKER, and Mr. RANDOLPH):

S. 2107. A bill to extend from May 1982 to October 1982 the month before which children not otherwise entitled to child's insurance benefits under title II of the Social Security Act by reasons of the amendments made by section 2210 of the Omnibus Budget Reconciliation Act of 1981 must attend postsecondary schools in order to qualify under subsection (c) of such section for entitlement to such benefits, to extend from August 1985 to August 1986 the month before which any such entitlement terminates, and to require the Secretary of Health and Human Services to notify all individuals who are entitled to child's benefits under title II of the Social Security Act for the month in which this act is enacted of the changes made in the eligibility for, and the amount of, such benefits by reason of the provisions of section 2210 of the Omnibus Budget Reconciliation of 1981 and the provisions of this act; to the Committee on Finance.

By Mr. PRESSLER (for himself and Mr. DANFORTH):

S. 2108. A bill to amend the Railroad Revitalization and Regulatory Reform Act of 1976; to the Committee on Commerce, Science, and Transportation.

By Mr. HELMS (for himself and Mr. LUGAR) (by request):

S. 2109. A bill to extend the Commodity Exchange Act, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. MELCHER:

S. 2110. A bill to establish the Lee Metcalf Wilderness and Management Area in the State of Montana, and for other purposes; to the Committee on Energy and Natural Resources.

S. 2111. A bill to direct the management of certain lands on the Beaverhead National Forest, Montana, known as the West Pioneers, and for other purposes; to the Committee on Energy and Natural Resources.

S. 2112. A bill to direct the management of certain lands on the Deerlodge and Helena National Forests, Montana, known as the Elkhorns, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DECONCINI:

S. 2113. A bill to amend the Internal Revenue Code of 1954 to limit the deduction of living expenses by Members of Congress and to require substantiation of such living expenses; to the Committee on Finance.

By Mr. DECONCINI (for himself and Mr. GOLDWATER):

S. 2114. A bill to provide water to the Papago Tribe of Arizona, to settle Papago Indian water rights claims in portions of the Papago reservations, and for other purposes; to the Select Committee on Indian Affairs.

By Mr. THURMOND:

S. 2115. A bill to authorize the Secretary of the Navy to credit certain officers of the Medical Corps and Dental Corps of the Navy with certain military service performed by such officers before September 11, 1979, or with certain professional experience gained by such officers before such date; to the Committee on Armed Services.

By Mr. RIEGLE (for himself, Mr. DURENBERGER, Mr. SASSER, Mr. MOYNIHAN, Mr. METZENBAUM, Mr. DIXON, Mr. GLENN, Mr. BIDEN, Mr. LEVIN, Mr. BRADLEY, Mr. BAUCUS, Mr. CHILES, Mr. HUDDLESTON, and Mr. BENTSEN):

S.J. Res. 146. A joint resolution to require the Director of the Office of Management and Budget to prepare and transmit to the Congress a report specifying the geographic distribution in the United States of outlays by the Government; to the Committee on Governmental Affairs.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BAKER:

S. Res. 319. A resolution authorizing testimony by James Sourwine, and representation by the Senate Legal Counsel in the case of *David Richardson v. Raymond J. Donovan*, Civil Action No. 79-2053; considered and agreed to.

By Mr. DENTON:

S. Res. 320. A resolution expressing the sense of the Senate with respect to the assassination of Kemal Arkan, a consul general of the Government of Turkey assigned to the United States; considered and agreed to.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JOHNSTON:

S. 2099. A bill to amend section 20 of the Federal Meat Inspection Act, to require that imported beef which is capable of use as human food be labeled at all stages of distribution until preparation for ultimate consumption; to the Committee on Agriculture, Nutrition, and Forestry.

#### LABELING OF IMPORTED BEEF

● Mr. JOHNSTON. Mr. President, I am today introducing legislation to amend section 20 of the Federal Meat Inspection Act to require that imported beef and beef food products be labeled at all stages of distribution until preparation for ultimate consumption. The intent of this legislation is to assure that the consumer is fully aware of the source of the beef he is consuming to enable him to make as informed a choice as practical when he makes a purchase. The legislation does not extend the labeling requirement to restaurants; nor does it impose any new restrictions on imports. It simply requires full disclosure of the source of the beef to be purchased prior to preparation for final consumption.

During Senate debate on the Agriculture and Food Act of 1981, the problems encountered with the cleanliness and wholesomeness of imported meat were discussed in detail. The amendment offered by the distinguished senior Senator from Montana, which was adopted, and the subsequent language approved in conference take important steps to make sure that the beef purchased by the American consumer, whatever the source, is clean, wholesome, and free from contaminants. Section 1122 of the conference report provides that all imported carcasses, parts of carcasses, meat, and meat food products of cattle, sheep, swine, goats, horses, mules, or other equines, capable of use as human food, shall be subject to the same inspection, sanitary, quality, species verification, and residue standards as are applied to similar produce in the United States. Any imported meat which does not meet these standards will not be allowed to enter the United States. Moreover, significantly improved sampling and testing procedures are to be put into place to implement these provisions.

I support these new procedures, Mr. President, but I remain concerned about the ability of the Department of Agriculture to make certain that imported beef reaching the American market is clean and free from contaminants which have been banned in this country. Abroad, the United States has only a handful of inspectors to supervise over 1,000 foreign meat plants. Given the overall cuts in Federal services which are not taking place, it is unrealistic to expect that this number of inspectors and the amount of testing for pesticides and contaminants can be substantially increased to the level I believe necessary to fully pro-

tect both the American consumer and producer. At this point, I believe honesty is the best, if not the only, policy. Tell the buyer whether his beef is imported or domestic—and let him make the choice. A national beef-labeling law will allow consumers to decide if they wish to purchase foreign beef, beef which the USDA has certainly made an effort to certify as wholesome but which has not been subjected to the stringent standards required of beef produced in the United States: systematic inspection of plants and animals, the banning of harmful pesticides and additives, the removal of products from the market and punishment of fraud and abuse.

Acceptance of products is vital to any industry, Mr. President, and the cattle industry is no exception. Beef producers have invested years of hard work and millions of dollars to produce a nutritious, wholesome, reliable product and to promote its consumption. They have succeeded and domestic beef enjoys an unsoiled reputation. Yet, all this work can be undermined by the questionable quality of certain foreign imports, as was the case last year when kangaroo meat and horse meat was found in Australian beef imports.

In my view, the simplest and most effective way of protecting the efforts of the American cattle producer and the interest of the American consumer is to provide information of the source of the meat and allow the consumer to make a choice. An informed consumer is the best judge of his own needs and information is the service this legislation is intended to provide.

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

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

S. 2099

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 20 of the Federal Meat Inspection Act (21 U.S.C. 620) is amended by adding at the end thereof the following new subsection:*

"(g)(1) All carcasses, parts of carcasses, meat, and meat food products of cattle which is capable of use as human food (or the packages or containers thereof) shall be labeled as 'imported', 'imported in part', or 'may contain imported meat', as appropriate. This paragraph shall not apply if the meat or meat product (or its package or container) is marked and labeled to show the country of origin as required under regulations issued under subsection (a).

"(2) If a person cuts any carcass, part of a carcass, meat, or meat food product into pieces (or breaks its package or container), other than to prepare it for ultimate consumption, and the carcass, part of a carcass, meat, or meat food product (or its package or container) is marked or labeled under paragraph (1), the person shall mark or affix a label to each of the pieces (or to each of the packages or containers into

which it is separated) to provide the information which was so provided before it was cut (or broken)."

By Mr. GRASSLEY:

S. 2100. A bill to amend the Internal Revenue Code of 1954 to provide that the indexation of individual income tax rates shall take effect on January 1, 1982; to the Committee on Finance.

ACCELERATED INDEXING

Mr. GRASSLEY. Mr. President, the economy has reached a critical stage, and certain corrective measures should be taken immediately.

The No. 1 problem in this economy is the lack of long-term savings and investment that would improve cash balances and provide capital to stimulate productivity. The current economic slowdown, characterized by high unemployment and business inactivity, has caused projected Federal deficits to swell. As a result, the Federal Government is absorbing all the available credit in the credit markets, leaving none for private expansion.

The combination of large deficits, erratic monetary policy by the Federal Reserve, and widespread uncertainty about the short-term economy has caused interest rates to remain high and economic recovery to remain in question.

Mr. President, it seems to me that the commonsense solution to reversing the course of these swelling deficits is to address the underlying cause. It is current economic slowdown which is responsible for well over half of the projected deficits. Last summer, the fiscal year 1982 deficit was projected at \$45 billion. Latest estimates show a probable deficit of close to \$100 billion for fiscal year 1982. Unemployment and business inactivity accounted for nearly all of that increase. Clearly, then, the key to reversing the direction of these deficits is to start up the engine of our economy.

Increasing production is certainly the desired immediate goal of this Congress. I am happy to hear this goal being mentioned not only by Republicans but also by Democrats—and Keynesians at that.

Their common solution is to add fuel to the economy to get it moving. It seems to me, Mr. President, that what we need is not fuel, but rather to plug up the hole in the fuel tank.

Today I am introducing a bill that would prevent the Federal Government from cashing in on a windfall through inflation at a time when taxpayers should be given the tax relief voted for them in 1981. I am proposing that the indexing provision of the Economic Recovery Tax Act of 1981 be moved up from January 1, 1985, to January 1, 1982.

Simply put, this bill would prevent an erosion of the tax relief that Congress legislated in the form of a 25 percent rate reduction for individuals.

Without this bill, the effects of the legislated tax relief will have been neutralized by the time the full cut has taken place. Already, we have seen an erosion through inflation of that portion of the tax cut covering October 1981, to the present. There is no wonder, then, that personal savings has increased only marginally since October 1981, and that long-term investment and GNP are falling.

This bill would especially help those who are hurt most by inflation—the average worker, the small businessman, the small farmer, and the average saver. The bill would preserve their purchasing power, enabling them to save more real wealth for the future. The accumulation of this real wealth is the key to moving the engine of our economy toward recovery. It would provide the capital necessary to stimulate productivity and thereby reverse the trend of expanding deficits. It would also provide a larger pool of capital available for that shrinking Government debt.

Mr. President, I believe that this bill to accelerate tax indexing is a necessary step to take in order to bring about economic recovery. It is an approach which is justifiable and would have support among the American people. I urge my colleagues to join me in support of this measure to bring about stability in the midst of a troubled economy.

By Mr. GOLDWATER (for himself, Mr. GARN, and Mr. JACKSON):

S. 2102. A bill to authorize the Smithsonian Institution to construct a building for the Museum of African Art and a center for Eastern art together with structures for related educational activities in the area south of the original Smithsonian Institution Building adjacent to Independence Avenue at 10th Street SW., in the city of Washington; to the Committee on Rules and Administration.

AUTHORIZATION FOR CONSTRUCTION OF MUSEUM OF AFRICAN ART AND CENTER FOR EASTERN ART

Mr. GOLDWATER. Mr. President, I am introducing together with Senator GARN and Senator JACKSON, a bill to authorize the Smithsonian Institution to construct a building for the Museum of African Art and a Center for Eastern art together with structures for related educational activities, known as the Quadrangle Project.

This request for authorization was unanimously approved by the Board of Regents of the Smithsonian Institution at its September 1981 meeting. The Office of Management and Budget has approved this request, and has granted a budget allowance in the amount of \$36.5 million in the fiscal year 1983 budget in order to allow a construction contract to be awarded.

The Smithsonian has prepared a statement as to the purpose and need

relative to the Quadrangle Project. I ask unanimous consent that this statement appear in the RECORD.

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

STATEMENT OF PURPOSE AND NEED

For the past several years the Smithsonian Institution has been developing a plan for the improvement of the 4.2 acre quadrangle located between its original building and Independence Avenue. Major components of the Quadrangle proposal are two pavilions to display the history and culture of that vast arc of the world—Asia and Africa—that contains more than two-thirds of its population. Delicate in proportion and sensitive in style, these pavilions will enhance the historic character of their surroundings and combine with the landscaping to create within the Quadrangle a quiet garden enclave for the public. Located below grade will be approximately 95 percent of the overall structure, housing major exhibit galleries, an international gallery and conference center, and badly needed space for the Smithsonian's public service and educational outreach activities.

The project represents the single most significant effort to educate Americans about the cultural history of the non-Western world. It will provide a window on the Mall for those nations with whom we have diplomatic relations, but whose opportunities for dialogue with us are severely limited and whose historical background is largely unknown to us. Exhibits based on existing collections and on invaluable donations of African and Eastern art that can be anticipated will be created for display here as well as in other parts of the country.

From the outset the financing of the Quadrangle project has been viewed as a joint enterprise involving both appropriated and non-appropriated funds. If approval to begin construction in fiscal year 1983 is forthcoming, the total cost of the project is estimated at \$75 million, \$37.5 million of which is to be provided from appropriations and an equal share from non-appropriated sources. This financing concept has been endorsed by the House and Senate Appropriations Committees in their approval of \$1 million for planning in fiscal year 1982.

Efforts to raise non-Federal funds have been proceeding for more than three years. The Smithsonian has received substantial gifts from foreign governments, domestic and foreign corporations, foundations, and individuals, and significant additional contributions are expected in the near future.

In addition, the Institution anticipates setting aside between \$1.0 and \$2.0 million per year through fiscal year 1985 from the net revenues of its auxiliary activities for the project and applying proceeds from its sale of property currently occupied by the National Museum of African Art to the costs of the construction.

The proposed legislation provides general authorization for the Quadrangle project, as well as authorization for appropriations of \$36.5 million, the remainder of the Federal share. Full budget authority in the amount of \$36.5 million is required in fiscal year 1983 to allow a construction contract to be awarded. However, consistent with the need to hold down outlays, it should be noted that as construction proceeds these will be phased over three years with an estimated \$5 million in fiscal year 1983; \$15 million in

fiscal year 1984; and \$16.5 million in fiscal year 1985.

By Mr. INOUE:

S. 2104. A bill to amend title 10, United States Code, to authorize the Secretary of Defense to conduct studies and demonstration projects to develop incentives for economy in the administration of the civilian health and medical program of the uniformed services while maintaining or improving the quality of health and medical care available under such program; to the Committee on Armed Services.

INCENTIVES FOR ECONOMY IN ADMINISTRATION OF CHAMPUS PROGRAM

● Mr. INOUE. Mr. President, today I am introducing legislation that would provide the civilian health and medical program of the uniformed services (CHAMPUS) with broad legislative authority to conduct appropriate studies and demonstration projects.

For some time now, as a member of the Senate Defense Appropriations Subcommittee, I have been concerned that we have not provided the Department of Defense with sufficient administrative flexibility to develop as comprehensive and as cost-effective a health care program for our military personnel and their dependents as they deserve.

There is no question in my mind that the real strength and, in fact, the very backbone of our Armed Forces is not the sophisticated military hardware that is discussed daily in the national media, but instead is the men and women of our Nation who have chosen to spend precious years of their own lives serving our country in the military.

The CHAMPUS program, in particular, represents a very tangible commitment by the Congress of the United States to the health and well-being of these dedicated citizens.

In the private sector, it would be viewed as a most important "employee benefit." Through CHAMPUS, approximately 7.9 million dependents of retired, active duty, or deceased personnel obtain payment for those health care services that they have received through the private sector.

Over the years it has been my personal observation that in many areas, and especially in mental health, that CHAMPUS has been in the forefront in developing health benefit plans that are reasonable, cost-effective, and truly responsive to beneficiary needs.

Yet, again and again, it has also come to my attention that unlike the private sector, the Department of Defense does not have sufficient administrative flexibility to truly "test out" alternative or innovative health care approaches that eventually might very well turn out to be even more appropriate for our changing times.

For example, in 1979 the then-Surgeon General of the United States

issued his report "Healthy People." In this far-reaching document it was expressly stated that of the 10 leading causes of death in our Nation today, at least seven could be substantially reduced if persons at risk would improve just five habits: diet, smoking, lack of exercise, alcohol abuse, and use of antihypertensive medications.

I cannot help but believe that these statistics also have major implications for our Nation's military families, and accordingly, that we would be well served if the Department would consider paying for appropriate "wellness-oriented" programs.

Similarly, I also feel that the time has come for CHAMPUS to begin reimbursing for a limited "biofeedback package"—this innovative approach essentially substitutes patient learning for surgical intervention or drug reliance.

Perhaps, given the nontraditional nature of this approach, CHAMPUS should make this option available at first in only limited geographical regions of our Nation, so that an accurate estimate of its potential cost savings can be developed.

Yet, I understand that the Department simply does not have the legislative authority to conduct such a "phased-in" approach, no matter how logical it may seem.

Everyone of us in the Congress is rapidly becoming aware of the extent to which the basic costs of health care in this Nation have continued to escalate faster than almost any other segment of our economy.

Thus, it should come as no surprise that even in the Defense Department's budget that this has become a major issue.

For example, in fiscal year 1978, the total budget for CHAMPUS was approximately \$556.3 million; in fiscal year 1982, we appropriated nearly \$1 billion.

Partly in response to these fiscal pressures, our committee has felt that it is now especially important that CHAMPUS take a closer look at possible alternative modes of delivering health care.

For example, during our deliberations on the fiscal year 1981 appropriations bill (Public Law 96-527) our committee decided to direct CHAMPUS to take a careful look at the possibility of making prepaid, health maintenance organizations (HMO's) readily available to their beneficiaries.

We did so, fully aware not only of the expected cost-savings involved, but also of the fact that all other Federal employees, as well as all private sector employees working in firms with 25 employees or more, already have HMO's as a legislatively mandated option.

It is my understanding that the Department is presently conducting a 3-year pilot program and that they will

be presenting the Congress with a comprehensive report at the appropriate time.

Similarly, during our deliberations last year on the Department's fiscal year 1982 appropriations bill (Public Law 97-114), our committee again directed CHAMPUS to take a careful look at the possibility of establishing a new benefit; this time, a pilot dental care program.

Unfortunately, we were unable to retain this directive during our House-Senate conference; however, I fully expect that eventually we will be successful.

Yet, if the Department possessed the type of administrative flexibility that I am proposing today, I cannot help but feel that these important decisions would be based on sounder financial- and utilization-oriented data than is possible today.

Simply stated, Mr. President, given our national economy, we simply can no longer afford not to take a closer look at truly cost-effective approaches—whether we are talking about modifications in the delivery system, or the benefit package itself.

At the same time, we must continue to strive to provide our Department of Defense personnel and their dependents with the most comprehensive health care benefit program possible.

Mr. President, I request 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. 2104

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, (a) chapter 55 of title 10, United States Code, is amended by adding at the end thereof the following new section "§ 1090. Studies and demonstration projects relating to the delivery of health and medical care.*

*"(a) The Secretary of Defense, after consulting with the Secretary of Health and Human Services, shall carry on studies and demonstration projects and develop recommendations to be submitted to Congress from time to time relating to health care services provided under this title. Notwithstanding any other provisions of law, the Secretary of Defense may conduct studies and demonstration projects relating to sections 1079, 1080, and 1086 of this Act. Such studies and demonstration projects may include, but are not limited to: (1) methods of payment for health and medical care services (2) cost-sharing by eligible beneficiaries (3) methods of encouraging efficient and economical delivery of health and medical care services (4) innovative approaches to delivery and financing of health and medical care services (5) alternative approaches to reimbursement for the administrative charges of health care plans and (6) prepayment for medical care services provided to maintain the health of a defined population.*

*"(b) the Secretary of Defense may enter into contracts with public or private agencies, institutions, and organizations to devel-*

op and conduct studies and demonstration projects under subsection (a).

"(c) The Secretary of Defense may obtain the advice and recommendations of such advisory committees as the Secretary considers appropriate. Each such committee consulted by the Secretary under this subsection shall evaluate the proposed study or demonstration project as to the soundness of the objectives of such study or demonstration project, the likelihood of obtaining productive results based on such study or demonstration project, the resources required to conduct such study or demonstration project, and the relationship of such study or demonstration project to other ongoing or completed studies and demonstration projects."

(b) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following:

"1090. Studies and demonstration projects relating to the delivery of health and medical care."

Sec. 2. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of section 1090 of title 10, United States Code, as added by the first section of this Act.

Sec. 3. This Act becomes effective October 1, 1982. ●

By Mr. CHAFEE:

S. 2105. A bill to provide for pension reform for State and local public employee retirement systems, to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to promote more efficient and satisfactory management of the functions of the Federal Government relating to employee benefit plans and to more effectively carry out the purposes of such act and such code relating to such plans, and for other purposes; by unanimous consent, referred jointly to the Committee on Finance and the Committee on Labor and Human Resources.

S. 2106. A bill to provide for pension reform for State and local public employee retirement systems, and for other purposes; by unanimous consent, referred jointly to the Committee on Finance and the Committee on Labor and Human Resources.

PUBLIC EMPLOYEE RETIREMENT INCOME SECURITY LEGISLATION

● Mr. CHAFEE. Mr. President, today I am introducing S. 2105 and S. 2106, both bills entitled the "Public Employee Retirement Income Security Act of 1982." Identical legislation was introduced last year in the House by Representative JOHN ERLBORN and Representative PHILLIP BURTON, respectively. This is the first time, however, that PERISA has been sponsored in the Senate.

Both bills have the same objective: To require basic reporting, disclosure and fiduciary standards be met by all public employee pension plans; standards that will protect the rights and benefits of public employees, as well as the interests of the taxpayers who fund our Nation's public pension systems. The reason for introducing two bills, which are similar but differ in

several provisions, is to provide the Senate with an opportunity to consider more than one approach to the impending crisis in public pension funding.

As chairman of the Senate Finance Subcommittee on Savings, Pensions, and Investment Policy, as a former Governor, and as a citizen taxpayer, I have been concerned for a long time about the major problems facing State and local government retirement systems. Whether you look to the comprehensive report on public plans issued in 1978 by the House pension task force or to a host of other private and Government studies, it is clear that a crisis now exists in the operation of many State and local government pension plans.

Many plans are dangerously underfunded and have accumulated staggering amounts of unfunded liabilities.

All too frequently, important information on these plans' benefits and financial condition is not regularly disclosed to participants, to public officials, or to the taxpayers.

Fiduciary standards which guide the investment and management practices of many plans are wholly inadequate to safeguard assets; they come nowhere near what is expected, and in fact, required in the private-sector pension community.

As Representative ERLBORN remarked upon introducing his PERISA bill last November:

Since the time of the publication of the pension task force report, little progress has been made by the States in clarifying or initiating fiduciary standards. Plans maintained at the State level in over half of the States still lack any statutory guidance as to general fiduciary standards. Our bill contains generally recognized standards of fiduciary conduct which will conform public employee retirement systems' administrative and investment practices with the practices expected of other important financial enterprises.

Some pension experts have characterized the public pension situation as a "ticking time bomb." While that may sound dramatic, it is clear we can no longer ignore a major area of national concern. The deteriorating financial condition of many public plans threatens not only the benefits of future retirees, but the pocketbooks of the taxpaying public. Should a major State or municipal plan go broke, it is entirely possible that the Federal Government will be called upon for the bailout. We can avoid this situation if Congress will take steps now to establish the same minimum standards for public plans as it has set for private sector pension funds, in the areas of reporting, disclosure, and fiduciary conduct.

Such action was called for in the report of the President's Commission on Pension Policy, issued 1 year ago:

The Commission recommends that, because State and local government employees

deserve the same protection as employees in the private sector, a Public Employee Retirement Income Security Act (PERISA) should be enacted covering the same areas of concern as covered by ERISA.

During hearings my subcommittee held last May on the President's Commission Report, this position was strongly endorsed by the American Federation of State, County and Municipal Employees (AFSCME). Referring to State and local pension plans, AFSCME testified:

They face problems which threaten not only their own fiscal stability and the rights of plan participants and beneficiaries, but the fiscal integrity of the state and local governments as well. The benefit design of many of these plans is ill-conceived, and many are dangerously underfunded. No comprehensive and uniform set of legal principles exists to adequately regulate State and local government plans. Conflict of interest problems are pervasive, and the absence of meaningful reporting, disclosure and fiduciary standards is the order of the day. A coherent Federal regulatory framework which recognizes the unique problems and characteristics of State and local plans has yet to be established.

Mr. President, PERISA offers such a regulatory framework, but it also provides a way for State and local governments to opt out of PERISA's jurisdiction by enacting their own minimum pension standards.

What does PERISA do?

It requires an annual report by each fund disclosing the plan's assets, liabilities, funding policy, changes in such policy, and transactions with any parties in interest.

It requires that pension funds hire an actuary to evaluate the plan at least once every 3 years.

It requires the plan administrator to provide information, on request of plan participants, regarding accumulated benefits and the extent to which benefits are vested.

It establishes fiduciary responsibilities similar to those under private pension plans. Assets would have to be held for the exclusive purpose of providing benefits to plan participants and defraying reasonable administrative costs.

It also establishes prohibited transaction rules similar to those under private plans. Fiduciaries would be prohibited from dealing in self-interest or any other interest but that of the beneficiaries. All investments and transactions must meet an "adequate consideration" test. And plans would be prohibited from investing more than 5 to 10 percent of assets in the employer's securities.

Some of the PERISA issues I expect to be widely discussed by the Senate are laid out in the differences between the two bills I introduce today. One of those is the question of whether a single agency should be created to streamline the regulatory process which is now shared between the In-

ternal Revenue Service and the Labor Department. Another involves the kind of system we should establish for exempting State and local plans from PERISA jurisdiction. Should the States certify their own exemption or should the Labor Department retain that responsibility?

Mr. President, I expect to begin hearings on this highly important legislation in March. Already, the House Labor-Management Subcommittee has conducted 2 days of hearings this session.

PERISA and the goal of restoring health to the Nation's public employee pension funds has been given top priority by such distinguished organizations as the Service Employees International Union, the National Education Association, the AFL-CIO Public Employee Department and, as I have indicated, the American Federation of State, County & Municipal Employees.

The legislation I propose mandates no added financial burdens on State and local governments, such as requiring certain funding levels be met. That is clearly a decision to be made at the local level.

My bill simply requires that the financial condition of these funds be systematically reviewed and the information be made available to the public on a regular basis. It further requires that those who have management or administrative responsibility for public pension funds meet the same, widely accepted standards of conduct currently expected of private pension fiduciaries.

PERISA is not, nor should it be, a partisan issue. It is sponsored in the House by ranking Members on both sides of the aisle. It should be supported by Republicans and Democrats and by conservatives and liberals alike, because it clearly is in the best interest of State and local governments, their employees and the public at large.

I urge my colleagues to join me in seeing this legislation through the Senate this year. ●

By Mr. LEVIN (for himself, Mr. DODD, Mr. RIEGLE, Mr. WEICKER, and Mr. RANDOLPH):

S. 2107. A bill to extend from May 1982 to October 1982 the month before which children not otherwise entitled to child's insurance benefits under title II of the Social Security Act by reason of the amendments made by section 2210 of the Omnibus Budget Reconciliation Act of 1981 must attend postsecondary schools in order to qualify under subsection (c) of such section for entitlement to such benefits, to extend from August 1985 to August 1986 the month before which any such entitlement terminates, and to require the Secretary of Health and Human Services to notify all individuals who are entitled to

child's benefits under title II of the Social Security Act for the month in which this act is enacted of the changes made in the eligibility for, and amount of, such benefits by reason of the provisions of section 2210 of the Omnibus Budget Reconciliation Act of 1981 and the provisions of this act; to the Committee on Finance.

#### CHILD'S INSURANCE BENEFITS

● Mr. LEVIN. Mr. President, I am today introducing legislation which seeks to redress the injustice that is being done to hundreds of thousands of young social security student beneficiaries, whose education plans have been thwarted due to recent retroactive changes in law and due to the negligence of the Social Security Administration in not informing beneficiaries of changes in the Omnibus Reconciliation Act of 1981. That act contains a provision phasing out the postsecondary educational benefit under the social security program. Those students who would otherwise have been eligible to participate in the program will not qualify for eligibility unless they are enrolled in and attending classes as full-time students before May 1 of this year. Additionally, benefits are eliminated for any child that had not received a student's benefit by August of 1981, the month the act became law.

The intent of the legislation was to cover seniors in high school during the 1980-81 academic school year who would be entering college in the fall of 1981, excluding all future college entrants. All other recipients of the child's benefit, including those beneficiaries who are currently sophomores, juniors, and seniors in high school, have not been officially notified by the Social Security Administration of the eligibility changes, phase-out and subsequent elimination of benefits under the Reconciliation Act. It is estimated that 200,000 to 300,000 high school seniors are currently beneficiaries of the social security student benefit. An undetermined number of these young people received erroneous information relative to their eligibility for future benefits. In keeping with its practice of inquiring of the educational plans of student beneficiaries 5 months before their 18th birthday, social security "mistakenly" sent out its old brochures, containing previous law guidelines, which indicated beneficiaries would continue to be eligible for benefits upon attending a postsecondary institution. Thousands of incorrect brochures went out from the Social Security Kansas City Regional Office as late as December of this year, covering a broad area of the country, leading high school seniors to believe they were fully eligible for benefits. To date, this error has not been corrected. In fact, social security officials say they have no way of

tracking who actually received the erroneous information.

During a February 3, 1982, joint hearing of the Subcommittees on Postsecondary Education and Elementary, Secondary and Vocational Education on the effects of the cutback in social security benefits on the student aid programs, Social Security Associate Commissioner Sandy Crank when questioned on the matter said:

We did not discover it until after it had gone on for some time. . . . Unfortunately, through an error, the old stock of pamphlets were not destroyed . . . and unfortunately some of the old stock was used in notices to children after August 1981. We have no way of identifying which children received the incorrect pamphlet.

Mr. President, the proper characterization of the following remarks of Mr. Crank in summing up what Social Security Deputy Commissioner Paul Simmons referred to before the House Social Security Subcommittee hearing on the impact of the absence of proper notification upon affected students as a "bureaucratic snafu," I will leave up to my colleagues. And I quote Mr. Crank:

We have corrected that problem. We have destroyed all that old stock.

Mr. President, indeed, the problem has not been corrected. Thousands of young people made their educational plans based on the Social Security Administration's reassurance that promised benefits would continue to be available to them.

Mr. President, not only did high school seniors receive erroneous information by mail from the Social Security Administration—erroneous information was also given out by numerous social security offices across the country. Social security employees, as recent as a month ago, were answering questions and giving out information based on previous law. This practice was so widespread and complaints were so numerous that on January 14, just a few weeks ago, social security sent out special telegraphic messages to its regional and local offices indicating that the purpose of the communication was to insure that inquiries regarding the student benefit program should be answered correctly, in accordance with the phaseout provisions of the 1981 Omnibus Budget Reconciliation Act.

What I am saying here Mr. President, is that thousands of young people, perhaps as many as 150,000, have been under the impression that promised benefits would be forthcoming, and in fact were told very recently that they would continue to be eligible for benefits this coming fall.

Mr. President, this Government must bear the consequences of its own actions, or the lack thereof. These young people should not have their future education plans disrupted, only

months away, due to no fault of their own.

There is not sufficient time for these young people to investigate and apply for alternative resources. Last year the administration promised that other student aid, particularly Pell grants, guaranteed student loans, and campus-based work study would be available to help students who lost social security benefits. The administration last year obtained cuts in such programs, and in the fiscal year 1983 budget the President calls for the elimination of funding for two campus-based programs and reduced funding in the college work-study program by more than \$100 million. There will be little or no Pell grant funds for social security student beneficiaries with the administration urging a cut of more than \$1 billion below the amount Congress appropriated in fiscal year 1981.

Mr. President, what we have here is a situation analogous to the concept in the law of contracts known as promissory estoppel. Under this concept, when an individual is made a promise and relies on that promise, and that reliance subsequently results in that individual incurring a penalty, then the promisor is bound by the promise. That is what has occurred here. The Government sent out notices which in effect made a promise that benefits would be available under certain conditions. The students relied on that information and as a result incurred a penalty in the form of losing benefits. According to the principles underlying the concept of promissory estoppel, the Government should be bound by its original promise in those notices.

Mr. President, most of the young people about whom I speak are from marginal-income families. In 1981, over 60 percent were survivors of deceased workers. A sizable number were from families where both parents are deceased. Over 20 percent were from families where one or both parents are disabled.

Seventy-one percent of the beneficiaries were from families with incomes under \$15,000; 53 percent from families with income under \$8,000.

Mr. President, last year I argued vigorously against the phasing out of this benefit, particularly in the case of children of workers who are now deceased. Those workers cannot lobby us any more to keep commitments we made to them. The social security student benefit program has been an important means of educational and economic mobility, for this generally disadvantaged group of beneficiaries. The student benefit was intended to provide income security—insuring against the loss of earnings caused by the death of the working parent. The elimination of this benefit cancels the commitment to workers that their children, if orphaned, would be entitled to college benefits. That was a

commitment these workers had a right to rely on. It destroys the insurance protection that these children relied on after the death of the working parent.

The student benefit is an entitlement earned by the working parent through contributions paid by himself and his employer during his working years. The arrangement constitutes a compact between the worker and the Federal Government. The Government of the United States has seen fit to break this promise. The student payment is not a "fringe benefit." To the young person approaching his or her 18th birthday, the continuation of benefits to finish college is no more a "fringe benefit" than that of the elderly retiree living out his or her later years in the dignity and security of his or her promised income.

I would like to share with my colleagues the remarks of Mrs. Alice James of Chestertown, Md., the widowed parent of four children affected by the changes in the social security student benefit program. In testimony on February 3 before the Subcommittees on Postsecondary Education and Elementary, Secondary and Vocational Education, her remarks are as follows:

#### REMARKS OF ALICE JAMES

Mrs. JAMES. Mr. Chairman and members of the subcommittee, I am Alice James.

I appreciate the opportunity to appear before you to discuss the impact of the elimination of survivor benefits for college students. I shall read my testimony.

I teach in Chestertown, Md.—English to the Kent School, and writing at Washington College, and am the widow of a scholar who taught at Washington College for 25 years. But it is not as an educator that I am here today; it is as the parent of four students aged 15 to 21. As a widowed parent I must convey to you the plight of not just my own children, but of thousands like them who may be unjustly deprived of the benefits their dead parents earned for them, the benefits which would enable them to contribute their talents and skills to our society.

Let me explain the impact of the cuts on my own family. My oldest child will graduate from college in May. Until recently she had expected to go on to graduate school, preparing herself for a career in teaching or a related field. As a result of the extraordinary stress the cuts will impose on our family, she is shelving her plans and looking for a job. I pray that she will find one. Her father earned his Ph. D. I have an M.A. You can imagine how I feel about this derailment of her professional goals.

My second child is in her second year of college; she too wants to be a teacher. In the next year her annual income from social security will be reduced 50 percent. This year she received 12 checks for \$238. During her junior year she will receive eight checks for \$178. Her financial planning was predicated on the continued availability of both social security benefits and guaranteed student loans. She is to lose \$1,900 in social security, and perhaps \$2,000 in loans. How shall we compensate for the loss of \$3,900? Which of the other programs will cover our loss?

When she returned to college after Christmas she thought her funding would only be reduced by 25 percent of her annual total. I am ashamed to admit that although I have talked to her since this document arrived on Wednesday, January 27, I have not told her the enormity of her loss. We talked on her 20th birthday. She told me that she missed her father, that she needed him to give her a hug and say, "Your old man is proud of you." Which of you could have delivered another blow? What do you think I should say to her now?

My son is 17. He would be a senior in high school but for a back injury sustained in the spring of his sophomore year. It was misdiagnosed and mistreated for 4 weeks. Finally, he was hospitalized. After another week of painful testing and anxiety, the doctors discovered that their 15-year-old patient had ruptured a disc in his lower back. Summer study was not possible because of lingering pain and the distracting discomfort of a heavy brace. He needed to repeat his sophomore year. Consequently he is not among the high school seniors scrambling to enroll in college program before May 1.

Extend the deadline. Do all you can to help the multitude of youngsters who cannot help themselves. But even if the deadline is extended to June 1, my boy will be deprived of social security benefits for his college education. On the PSAT he scored in the 94th percentile. Which of you wants to tell him that his education is jeopardized by these cuts?

I must add that his hero is the late David K. E. Bruce, envoy to China, ambassador to many European countries, negotiator at the Paris peace talks. He wants to emulate that distinguished career of service to this country. Which of you wants to tell him that his country does not need his services?

And now my youngest daughter, at 15 an enthusiastic sophomore in a stiff college preparatory program. I worry that she will lose her motivation to excel. On the one hand, she knows that her father and I would want her to work as hard as she could to go on to the best college that would take her; on the other hand, she sees what the financial stress is doing to me. What can I do to assure her that somehow we will find a way for her to pursue a career in architecture?

There are thousands of children like mine around the country. There are students who are asking for the benefits their dead parents earned for them. They are asking for help with their education in order that they may contribute to society, not become a drain on it. I wish their mothers could join me here, for I am a weak spokesman for a group of citizens with so few votes. I wish these students themselves could march on Washington and demonstrate outside your doors. But the administration has picked on a silent minority devoid of political clout.

Must I remind you that the G.I. bill and other educational programs have proved that they are a wise investment that pays dividends through the increased productivity and wage-earning capacity of the recipient?

Must I remind you that responsible parents like my husband took the social security program into consideration when they examined their life insurance coverage? And just as they expected their insurance companies to honor their commitment to a pre-arranged program, so too they expected the government of their country to honor its commitment. Because my husband and his employer were compelled to contribute to

the social security program, he could not afford the additional life insurance that would otherwise compensate us for the loss of social security coverage.

Congress has robbed these children of the educational opportunities their parents earned for them. It has also robbed them of faith in their government. I beg of you—restore their funding; restore their faith in their country.

Mr. LEVIN. Mr. President, my proposal would provide some relief from the unfair treatment accorded current seniors in high school. The bill sets the enrollment deadline back from May to October 1982. It also delays the phaseout schedule to allow this fall's college entrants to complete 4 years of education with the aid of social security benefits. Their benefits would not be reduced by 25 percent until their sophomore year in college and each succeeding year. Additionally, the bill requires the Social Security Administration to notify all recipients of the child's benefit of the changes proscribed in the omnibus reconciliation of 1981 and the provisions of this bill. It will cover for 1 year at least the injustice we have perpetrated on our citizens.

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

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

S. 2107

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (c) of section 2210 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35; 95 Stat. 841) (relating to elimination of child's insurance benefits in the case of children aged 18 through 22 who attend postsecondary schools) is amended—*

(1) in paragraph (1)(D), by striking out "May 1982" and inserting in lieu thereof "October 1982";

(2) in the matter in paragraph (1) following subparagraph (D), by striking out "August 1985" and inserting in lieu thereof "August 1986";

(3) in paragraph (3)(A), by striking out "July 1982" and "August 1983" and inserting in lieu thereof "July 1983" and "August 1984", respectively;

(4) in paragraph (3)(B), by striking out "July 1983" and "August 1984" and inserting in lieu thereof "July 1984" and "August 1985", respectively; and

(5) in paragraph (3)(C), by striking out "July 1984" and "August 1985" and inserting in lieu thereof "July 1985" and "August 1986", respectively.

(b) The Secretary of Health and Human Services shall notify all individuals who are entitled to child's benefits under title II of the Social Security Act for the month in which this Act is enacted of the changes made in the eligibility for, and amount of, such benefits by reason of the provisions of section 2210 of the Omnibus Budget Reconciliation Act of 1981 and the provisions of this Act. The notification shall be made as soon as possible after the date of the enactment of this Act, but not later than 90 days after such date of enactment.●

● Mr. DODD. Mr. President, I rise to cosponsor S. 2107, extending the final

date by which the sons and daughters of retired, disabled, or deceased workers must attend college in order to qualify for student benefits before this program is phased out.

Mr. President, the Omnibus Budget Reconciliation Act of 1981 eliminated social security student benefits for new beneficiaries not enrolled in a postsecondary educational institution by May 1982. Those students directly affected by this change in the law, however, were never notified.

The results of the failure of the Secretary of Health and Human Services and the Social Security Administration to notify students in Connecticut and most other States of the deadline date have been disastrous. Thousands of those high school seniors who will receive benefits only if enrolled in colleges by May 1982 have panicked. In order to qualify for such benefits, many of them have already dropped out of high school to attend college classes on a full-time basis. Other have tried to enroll in local colleges, only to be turned away for lack of a high school diploma.

In short, Mr. President, the students affected had to learn of this change in the law on an ad hoc basis, either from reading a newspaper article or from listening to a well-informed guidance counselor. Because these students were not advised in time, many of them are now being forced to make very significant career choices without any chance for reasoned deliberation.

The bill we are introducing, Mr. President, addresses this injustice by extending the deadline date 5 months beyond that called for in the 1981 Reconciliation Act. S. 2107 also requires the Secretary of Health and Human Services to inform all individual students affected within 90 days of the date of its enactment.

We hear a great deal these days about cutting out waste and mismanagement in Government. Yet I can think of no greater mismanagement than wasting the talent of our youth by forcing them to make vital career decisions in an atmosphere of chaos and panic.

I ask unanimous consent that the following Connecticut Newspaper articles so aptly describing the need for this legislation be printed in the RECORD.

Mr. President, I urge the Senate to adopt S. 2107.

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

[From the Hartford Courant, Jan. 27, 1982]

STUDENTS GO TO COLLEGE EARLY TO BEAT SOCIAL SECURITY CUTS

(By Jan Tomas)

More than 40 Connecticut high school seniors have been rushed into college so they can beat new Social Security rules that cut financial aid for college students.

Among them are six South Windsor students who enroll today at Manchester Com-

munity College, skipping their last months of high school so they can collect monthly benefits Social Security pays to children of deceased, disabled or retired parents.

Congress cut the budget for the program last year and limited the payments severely for students who enroll in college after May 1. The change, which also reduces the amount of the monthly checks and cuts them from 12 to eight a year, can cost Connecticut students up to \$6,300 a year each if they're not in college by May 1.

At least five colleges have altered their normal admission procedures so students without high school diplomas may enter college now, although the University of Connecticut has declined to do so, saying it cannot make exceptions for the Social Security recipients, whose benefits are based on family incomes.

College administrators blame all the hair-tearing and frenzied phone calls on the government, saying Washington kept the cuts quiet, and some say the media failed to publicize the changes adequately. All agree solutions had to be found in a hurry.

The Social Security Administration printed 2 million copies of a pamphlet explaining the program change, but an official for the agency's district office in Hartford said too little money was available to mail the pamphlets to school officials.

Whatever the reasons, the situation produced chaos and probably will prove costly.

No one knows how many high school seniors will never get tuition aid because they won't be in college by May 1. Robert Johnston, manager of the Social Security Administration's district office in Hartford, says 10,134 college students in the state are getting aid this year.

The students get \$2.5 million each month, an average of \$247 per month for each student, Johnston said.

Manchester Community College has accepted about 20 high school seniors so they will be eligible to receive the tuition assistance.

The college accepted the students without diplomas because they were in the top half of their classes academically, their principals stated they are capable of doing college-level work and they are assured of graduation in June, Andrew Paterna, the community college's admissions director, said.

Paterna said Manchester got inquiries on behalf of students from South Windsor, Manchester, Tolland, and Rockville.

Six South Windsor students will register as full-time students at Manchester Community College today, South Windsor School Superintendent Robert Goldman said Tuesday.

The University of Hartford, South Central Community College in New Haven, Quinnipiac College in Hamden and Norwalk Community College also have enrolled high school seniors.

This is not the first time Quinnipiac College has accepted high school students who had completed almost all graduation requirements, but a special effort was made to accommodate Social Security recipients caught in the lurch this year, Admission Director Russell J. Ryan said.

"This was an emergency," Ryan said, although he said he still was uncertain how many high school students had been enrolled for the second semester.

He said courses the sudden freshmen take this semester will be applied to their high school requirements so they can get diplomas in June.

Allan Martin, Norwalk Community College admissions director, said the school has enrolled 15 students who have not received high school diplomas.

"If they can't start this semester, then in many cases, they can't begin at all" because Social Security is the only money they have for college, Martin said.

UConn was called, but decided not to let anyone in early.

Admissions director John Vlandis said UConn will not admit any full-time students without high school diplomas.

"It was a dilemma," he said. "If we did it for Social Security students, how could we deny anyone an early entrance?"

Vlandis also said he was "uncomfortable manipulating entrance requirements to combat federal regulations."

John Shea, registrar at Mattatuck College in Waterbury, called the situation "unfortunate and tragic," but said, "The bottom line is we can't help these people."

"Washington come with the information so late no one had a chance to react. If this had come out in the fall, we could have done something," Shea said.

Whether the dodge is legal apparently is unclear.

Shea said a state law requires a student under age 21 to have received a high school diploma or passed a state high school equivalency test to be granted admission as a full-time student at a state-supported college.

But a spokesman for the office of the Board of Trustees for the Regional Community Colleges said a college president may waive entrance requirements if the action is deemed appropriate.

Timing was also a problem in some cases.

Harry S. Godt, dean of student affairs at Greater Hartford Community College, said the school had received two formal requests for enrollment from students trying to ensure their Social Security benefits. The applications were denied because they arrived too late to permit proper counseling and completion of necessary paper work, he said.

Requirements of at least one high school prevented students from entering college before the May 1 deadline.

Daniel O'Brien, a guidance counselor at Danbury High School, said three Social Security recipients in Danbury could not enroll in college early because they were in full-year—as opposed to one-semester—high school courses that have to be completed before diplomas can be awarded.

U.S. Rep. William Ratchford, D-5th District, a member of the House Education and Labor Committee, criticized the Social Security Administration for not informing school officials and Social Security recipients of the change in the tuition assistance program.

He also charged that the lack of information on cuts in several Social Security programs is a deliberate attempt by the Reagan administration to downplay budget reductions.

At Social Security headquarters in Baltimore, press officer James M. Brown, said he "couldn't believe people haven't heard of" changes in the tuition program.

"I can't believe anyone who's concerned could go to school and not know of this," Brown said. "It was the intent of Congress for these benefits to be phased out."

Brown said 2 million pamphlets explaining revisions in Social Security programs were distributed to the agency's 1,344 regional offices in the country.

Also, information packets including press releases on the changes were mailed to district offices monthly, Brown said.

Under the program, eligible college students receive \$82.50 to \$525 per month this year, depending on their families' income, Johnston said.

The average monthly payment to a qualifying student who has one retired or disabled parent is \$207. An average monthly payment of \$311 would be made to a student if one parent has died, Johnston said.

[From the New London Day, Feb. 7, 1982]

#### NEW FEDERALISM

(By Sondra Liburd-Jordan)

Sherri Lynn Pratt would like to have a chat with President Reagan and tell him how the new Social Security laws are affecting her life.

"I'd tell him how unfair it all is . . . how I need that money for college . . . how some kids had planned to go to college with those checks," she said.

Those checks are monthly benefits that Social Security pays to children of deceased, disabled, or retired parents.

Last year Congress cut the program, limiting payments for those college dependents already receiving benefits, disqualifying many who would have been eligible and putting a May deadline for high school students to enter college face losing their payments.

The group most in jeopardy of losing those benefits are students like Sherri, a 17-year-old St. Bernard High School senior who began receiving payments a year and a half ago when her mother died.

Under the new rules, students between the ages of 18-22 will lose their benefits after May if they are not enrolled fulltime in a college or approved post-secondary school.

"I just heard about it a few days ago and I didn't really get all of the details. It seems as though they waited until the last minute to let us know," said Sherri, who is scheduled now to graduate in June.

One hope for many high school seniors is to enroll in one of the 12 community colleges around the state, which under certain conditions, is allowing seniors in good standing to take courses while completing their high school curriculum or in lieu of it.

Some educators and Social Security officials have expressed doubt about the granting of these admission exceptions because state law requires students under age 21 to have a high school diploma or an equivalent diploma to be admitted to a state school. Nevertheless, Sherri said she wants to enter Mohegan Community College's mid-semester program beginning March 1.

Beginning March 15, as part of its mid-semester offerings, the college is beginning its off-campus program at East Lyme High School. It will offer four 3-credit courses. Mohegan's acting-president, R. Wes Wright has waived the normal entrance requirements to accommodate certain high school students.

Sherri was not a year old in 1965 when Social Security checks were first paid to dependent students between the ages of 18 to 22. There was not an abundance of grants and loans available to students and the thought was that college-age dependents would probably still be reliant on and in need of benefit checks until either they graduated or turned 22.

But the program cuts fall to line with this administration's "New Federalism" proposals that either shift from its hands many of

the formerly federally-controlled programs to the states or cut them out all together.

The college-age Social Security checks will be cut, but the cut will be done gradually.

For example, if Sherri becomes eligible by enrolling in Mohegan, her checks this year will be cut by 25 percent starting with the September check. There will be a 50 percent reduction effective from the September 1983 payment, 75 percent reduction the following year, and no more checks after April 1985. Another change taking place this year, but one which won't affect Sherri or dependents like her because she's under 19 and still in high school, is there will be only eight checks issued a year instead of 12. College students will not get checks for the months for May, June, July, and August. According to Social Security officials in the state, this year about 10,250 of the 49,000 children receiving benefits, are college students. Their benefits vary and depend on the wages of their parents, but payments average around \$250 a month.

The changes are confusing to many students, some because they say they've received incorrect information, and others because they have heard nothing about them and are simply putting together bits and pieces from listening to others.

Henry J. Allsworth, manager of the New London Social Security office said no notification of the changes are being mailed out to recipients although there are pamphlets available at offices throughout the state.

"We're relying on newspapers and guidance counselors to let the students know," said Allsworth. He said some students and parents have called or stopped in the New London and Norwich offices to get information on the changes.

Even though some students may try to enroll in college to beat the May deadline, there is yet another qualification they must meet to ensure continuation of payments—a qualification that has eliminated Carla Gistad's chances. Carla, a 17-year-old senior at Fitch Senior High School in Groton, has been receiving benefits checks since last fall shortly after her father died. But because her father died in October of 1981 she will not be entitled to payments after her graduation in June. A student must have been entitled to a check in August of 1981 to qualify for benefits as a college student.

"It's a disappointment, but that's not going to stop her from going to college," said her mother, whose name is also Carla.

Jacquelyn Moody of Stonington is a 17-year-old senior at St. Bernard High School. She's been getting Social Security payments ever since her father died seven years ago.

The checks, along with part-time jobs, has helped pay for her books and put gasoline in the car she shares with her mother. She is undecided about enrolling in a community college before May in order to protect her benefits.

Elimination of the checks, she says, will not deter her plans to become a corporate lawyer.

"I feel that the benefits should be given to students who are enrolled in college. There are students who really need the money," said Jacquelyn.

A sampling of some colleges around the state showed that some high school students have enrolled and are taking courses.

Manchester Community College officials say they can't take anymore high school students for this semester. The University of New Haven, Connecticut College, and Quinnipiac College in New Haven, have also accepted students.

The University of Connecticut is not accepting high school students without diplomas. One official there said it was because notification of the changes became known too late. But another official in the admissions office said making exceptions for high school students would mean opening the door for people without diplomas as not affected by the Social Security cuts also seeking admission to the school.●

● Mr. WEICKER. Mr. President, I am pleased to join with my distinguished colleague from Michigan, Senator LEVIN, in introducing legislation to postpone the provisions of the recently passed Omnibus Budget bill dealing with social security student benefits. The effect of these provisions, which would eliminate benefits for high school seniors planning on attending college next fall and phase out benefits, beginning August 1982, for those currently in college, would effectively be postponed until the 1983-1984 school year.

Mr. President, in light of the unprecedented increases in the cost of a college education, and equally unprecedented reductions in the availability of student loans, the decision to phase out social security student benefits was, I believe, foolish and shortsighted.

But as troubled as I am by the elimination of these benefits, of more immediate concern to me is the lack of adequate notification for those affected by these changes. Many students eligible for these benefits were not made aware of the new policy governing student benefits until only a few weeks ago. In addition, it has come to my attention that many of those who were notified earlier were given erroneous information.

The net result of this inadequate notification process has been confusion and heartbreak for many high school seniors who were planning to attend college this fall. For those currently in college and receiving student benefits, and who may no longer be able to continue due to the recent changes, the pain may be even more acute.

It is, however, too late to gain anything by assessing blame for the lack of adequate notification of the student benefit changes. Instead I urge my colleagues to support S. 2107. While the bill would not repeal the student benefit provisions of the recent budget bill, it would at least give those affected by these changes a more reasonable length of time during which they would be able to reassess their college plans. Furthermore, the bill contains language calling for an adequate notification procedure to insure that the problems which arose this year do not reoccur.

Mr. President, I urge my colleagues to give their hasty approval to this vital piece of legislation.●

By Mr. PRESSLER (for himself and Mr. DANFORTH):

S. 2108. A bill to amend the Railroad Revitalization and Regulatory Reform Act of 1976; to the Committee on Commerce, Science, and Transportation.

RAIL REVITALIZATION AND IMPROVEMENT PROGRAM

● Mr. PRESSLER. Mr. President, today I am introducing a bill which extends authorization of the section 505 Rail Rehabilitation and Improvement Fund for another 3 years.

Section 505 was originally authorized in the Railroad Revitalization and Regulatory Reform Act of 1976. This authorization expires September 30 of this year. I believe that Congress must carefully consider the continued need for this particular form of rail assistance and the bill I introduce today will be a vehicle for this consideration.

The section 505 program involves funding through the purchase of redeemable preference shares issued by railroads. Last summer I successfully offered an amendment to the Budget Reconciliation Act which prioritizes section 505 assistance for rail lines in bankruptcy which do not have access to private financing but whose continued operation is determined to be in the public interest.

Section 505 funding is used primarily to finance facilities rehabilitation and improvement. It is one of several programs assisting private investors and State governments in solving problems resulting from rail deregulation and subsequent large-scale rail line abandonments. In the wake of widespread abandonments, State governments, regional rail authorities and shipper groups have had to react quickly and creatively in order to provide a continuation of essential rail service. In my home State of South Dakota, rail transportation is a crucial element in the total agricultural transportation picture. Carloadings have increased dramatically over the last 5 years and there are strong indications that grain unit trains will see increased use through the 1980's. Rail transportation is also a critical component in fuel shipments for midwestern powerplants.

Section 505 funding has provided important financial assistance as States like South Dakota address the ongoing rail transportation crisis. Under this program, the State of South Dakota has had access to over \$2 million for rail rehabilitation. This amount may seem minor in comparison to other budget figures being discussed these days, but to the farmers and shippers of my State, the money is critically important.

While the administration has indicated that section 505 funding is no longer needed, I believe that it is the duty of Congress to look closely at the benefits of this assistance. Congress did not intend these financial assistance programs to be used as long-range operational subsidies. However,

Congress must carefully assess the economic health of America's rail system before agreeing to terminate such a significant Federal program. In the heat of budget battles, we have a responsibility not to shortchange those States and shipper groups who are still struggling to find alternatives to traditional rail operations.

I am pleased that the Senate Surface Transportation Subcommittee has scheduled hearings next month on the 505 funding. I offer my bill today as the initial effort in a discussion of this important program.●

By Mr. HELMS (for himself and Mr. LUGAR) (by request):

S. 2109. A bill to extend the Commodity Exchange Act, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

FUTURES TRADING ACT OF 1982

● Mr. HELMS. Mr. President, on behalf of Senator LUGAR and myself, I introduce, at the request of the Commodity Futures Trading Commission, a bill to extend the Commodity Exchange Act and for other purposes.

I ask unanimous consent that a short summary of the bill, the transmittal letter from Philip Johnson, Chairman of the Commodity Futures Trading Commission, the bill, a section-by-section analysis, and a joint explanatory statement of the CFTC-SEC Agreement on Jurisdiction be printed in the RECORD at the conclusion of my remarks.

This bill extends the act which regulates commodity futures trading. I would mention at the outset that futures trading has become a very big enterprise. Eleven exchanges in five cities presently offer approximately 90 different types of futures contracts. Commodity trading on these exchanges amounted to more than 100 million contracts in 1981. This business was generated by less than 400 commodity brokerage houses, using approximately 30,000 sales personnel. These sales personnel serviced approximately 150,000 customer accounts—accounts ranging from those of individuals to large accounts held by more than 1,000 commodity mutual funds, or pools. All the orders comprising the 100 million contracts traded were executed on the exchanges by approximately 4,000 floor brokers and were cleared and guaranteed by the exchanges' clearing organizations.

There is every reason to believe that commodity futures trading will continue to grow. New and innovative contracts have recently begun to be traded and should directly benefit the economic sectors from which they are drawn. This industry is without doubt a good example of the free enterprise system in action.

Mr. President, there are many issues in this proposed legislation which we must carefully consider. The Subcom-

mittee on Agricultural Research and General Legislation, chaired by Senator LUGAR, will focus on these issues in hearings scheduled for February 26, March 1 and 2, and March 10 and 11. It is likely that matters not contained in this proposed legislation will also be considered during the course of the hearings. We welcome this and look forward to interesting and informative hearings. The committee is proceeding on a schedule that will enable us to meet our May 15 reporting date for this legislation.

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

S. 2109

*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 "Futures Trading Act of 1982."*

**DEFINITIONS, JURISDICTIONAL ACCORD WITH THE SECURITIES AND EXCHANGE COMMISSION, AND CERTAIN TECHNICAL AMENDMENTS**

SEC. 2. (a) Section 2(a) of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(1) by redesignating subsection 2(a)(1) as subsection 2(a)(1)(A);

(2) by inserting in the third sentence of subsection 2(a)(1)(A), as so redesignated, the words " , except to the extent otherwise provided in subparagraph (a)(1)(B) of this section," after the words "exclusive jurisdiction";

(3) by amending the definition of the term "commodity trading advisor" in subsection 2(a)(1)(A), as so redesignated, to read as follows: "The term 'commodity trading advisor' shall mean any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in any contract for future delivery of a commodity made or to be made on or subject to the rules of a contract market, any commodity option authorized under section 4c, or any leverage transaction authorized under section 19, of this Act, or who, for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing; but does not include (i) any bank or trust company, (ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant or teacher, (iii) any floor broker or futures commission merchant, (iv) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees, (v) the fiduciary of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974, (vi) any contract market, and (vii) such other persons not within the intent of this definition as the Commission may specify by rule, regulation or order: *Provided*, That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession: *And provided further*, That the Commission, by rule or regulation, may include within this definition, any person advising as to the value of commodities or issuing reports or analyses concerning commodities, if the Commission determines that such rule or regulation will effectuate the purposes of this provision."; and

(4) by adding a new subsection 2(a)(1)(B) to read as follows:

"(B) Notwithstanding any other provision of law—

"(i) This Act shall not apply to and the Commission shall have no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to such transaction acquires any put, call or other option on one or more securities (as defined in Section 2(1) of the Securities Act of 1933 or Section 3(a)(10) of the Securities Exchange Act of 1934 on the effective date of Public Law No. ), including any group or index of such securities, or any interest therein or based on the value thereof.

"(ii) This Act shall apply to and the Commission shall have exclusive jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guaranty," or "decline guaranty") and transactions involving, and may designate a board of trade as a contract market in, contracts of sale (or options on such contracts) for future delivery of a group or index of securities (or any interest therein or based upon the value thereof): *Provided, however*, That no board of trade shall be designated as a contract market with respect to any such contracts of sale (or options on such contracts) for future delivery unless the board of trade making such application demonstrates and the Commission expressly finds that the specific contract (or option on such contract) with respect to which the application has been made meets the following minimum requirements:

"(a) Settlement of or delivery on such contract (or option on such contract) shall be effected in cash or by means other than the transfer or receipt of any security, except an exempted security under Section 3 of the Securities Act of 1933 or Section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the effective date of Public Law No. (other than any municipal security, as defined in Section 3(a)(29) of the Securities Exchange Act of 1934 on the effective date of Public Law No. );

"(b) Trading in such contract (or option on such contract) shall not be readily susceptible to manipulation of the price of such contract (or option on such contract), nor to causing or being used in the manipulation of the price of any underlying security, option on such security or option on a group or index including such securities; and

"(c) Such group or index of securities shall be predominately composed of the securities of unaffiliated issuers and shall be a widely published measure of, and shall reflect, the market for all publicly traded equity or debt securities or a substantial segment thereof, or shall be comparable to such measure.

"(iii) Upon application by a board of trade for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery involving a group or index of securities, the Commission shall provide an opportunity for public comment on whether such contracts (or options on such contracts) meet the minimum requirements set forth in subparagraph (ii) hereof, and shall consult with the Securities and Exchange Commission with respect to such designation. If, within 15 days following the close of the public comment period, the Securities and Exchange Commission

shall object to the designation of a board of trade as a contract market in such contract (or option on such contract) on the ground that any minimum requirement of subparagraph (ii) hereof is not met, the Commission shall afford the Securities and Exchange Commission an opportunity for an oral hearing, to be transcribed, before the Commission, and shall give appropriate weight to the views of the Securities and Exchange Commission. Such oral hearing shall be held after the public comment period, prior to Commission action upon such designation, and not less than 30 nor more than 45 days after the close of the public comment period, unless both the Commission and the Securities and Exchange Commission otherwise agree. In the event that such an oral hearing is held and the Securities and Exchange Commission fails to withdraw its objections, and the Commission issues an order designating a board of trade as a contract market with respect to any such contract (or option on such contract), the Securities and Exchange Commission shall have the right of judicial review of such order in accordance with the standards of section 6(b) of this Act. In the event that, pursuant to section 6 of this Act, there is a hearing on the record with respect to such application for designation, the Securities and Exchange Commission shall have the right to participate in that hearing as an interested party.

"(iv) No person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under Section 3 of the Securities Act of 1933 or Section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the effective date of Public Law No. (other than any municipal security as defined in Section 3(a)(29) of the Securities Exchange Act of 1934 on the effective date of Public Law No. ); or except as provided in subparagraph (ii) hereof, any group or index of such securities or any interest therein or based on the value thereof."

(b)(1) by redesignating subsection 2(a)(7)(A) (7 U.S.C. 4a(f)(1)) as subsection 2(a)(7); and

(2) by striking out existing subsection 2(a)(7)(B) (7 U.S.C. 4a(f)(2)).

**UNLAWFUL FUTURES TRADING, FOREIGN FUTURES**

SEC. 3. Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended—

(a)(1) by redesignating Section 4 as Section 4(a);

(2) by striking out all those words following the word "to" the first time it appears, through and including the words "as herein-after provided,";

(3) by inserting after the word "to" the first time it appears the following: "offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States or its territories or possessions for the purpose of soliciting or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on a board of trade, exchange or market located outside the United States, its territories or possessions) unless: (1) such transaction is conducted on or subject to the rules of a board of trade which has been designated by the Commission as a "con-

tract market" for such commodity, (2) such contract is executed or consummated by or through a member of such contract market,"; and

(4) by striking out the word "if" and inserting in lieu thereof "(3)," and by striking out the word "board" after the words "Provided, That" and inserting in lieu thereof the words "contract market".

(b) by adding a new subsection (b) to read as follows:

"(b) In addition to its existing authority, the Commission may adopt rules and regulations governing the offer and sale by any person located in the United States, its territories or possessions, of any contract of sale of a commodity for future delivery which is made or to be made on a board of trade, exchange or market located outside the United States, its territories or possessions."

#### SPECULATIVE LIMITS

SEC. 4. Section 4a of the Commodity Exchange Act (7 U.S.C. 6a) is amended—

(a) by striking out the word "order's" in subparagraph (2);

(b) by inserting the words "rule, regulation, or order" before the semi-colon in subparagraph (2);

(c) by adding the words "rule, regulation, or" before the word "order" wherever it occurs;

(d) by striking out the words "within one hundred and eighty days after the effective date of the Commodity Futures Trading Commission Act of 1974" in subparagraph (3); and

(e) by adding a new subparagraph (5) to read as follows:

"(5) Nothing in this section shall prohibit or impair the adoption by any contract market or by any other board of trade licensed or designated by the Commission, of any bylaw, rule, regulation, or resolution fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery traded on or subject to the rules of such contract market, or under options on such contracts or commodities, traded on or subject to the rules of such contract market or such board of trade: *Provided*, That if the Commission shall have fixed limits under this section for any contract or under Section 4c of this Act for any commodity option, the bylaws, rules, regulations, and resolutions adopted by such contract market or such board of trade shall not differ from the limits fixed by the Commission except with the approval of the Commission. It shall be unlawful for any person to violate any bylaw, rule, regulation, or resolution of any contract market or other board of trade licensed or designated by the Commission fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery or under options on such contracts or commodities, if such bylaw, rule, regulation or resolution has been approved by the Commission."

#### OPTIONS ON FOREIGN CURRENCY, ROLE OF SECURITIES AND EXCHANGE COMMISSION

SEC. 5. Section 4c of the Commodity Exchange Act (7 U.S.C. 6c) is amended by adding a new subsection (f) to read as follows:

(f) Nothing in this Act shall be deemed to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange."

#### TECHNICAL AMENDMENTS

SEC. 6. Section 4f of the Commodity Exchange Act (7 U.S.C. 6f) is amended—

(a) by striking out the words "and of all correspondents and agents" and by striking out the words "after notice and hearing as prescribed in this Act" in subparagraph (1); and

(b) by adding at the end of subparagraph (1) the words "pursuant to the provisions of this Act".

SEC. 7. Section 4h of the Commodity Exchange Act (7 U.S.C. 6h) is amended—

(a) by striking out everything following the word "person" and including "(2)";

(b) by striking out the words "futures commission merchant registered" and by inserting in lieu thereof the word "registrant";

(c) by striking out the words "such registered futures commission merchant" and inserting in lieu thereof the words "any registrant"; and

(d) by adding the words "representative or" before the word "agent" the second time it appears in existing subparagraph (2).

#### RECORDKEEPING CONFORMED TO CURRENT SYSTEM

SEC. 8. Section 4i of the Commodity Exchange Act (7 U.S.C. 6i) is amended to read as follows: "It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market (1) if such person shall directly or indirectly make such contracts with respect to any commodity, or any future of such commodity, during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission, and (2) if such person shall directly or indirectly have or obtain a long or short position in any commodity or any future of such commodity, equal to or in excess of such amount as shall be fixed from time to time by the Commission, unless, such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions within the provisions of (1) and (2) hereof as the Commission may by rule or regulation require and unless, in accordance with rules and regulations of the Commission, such person shall keep books and records of all such transactions and positions and transactions and positions in any such commodity traded on or subject to the rules of any other board of trade, and of cash or spot transactions in, and inventories and purchase and sale commitments of, such commodity. Such books and records shall show complete details concerning all such transactions, positions, inventories and commitments, including the names and addresses of all persons having any interest therein, and shall be open at all times to inspection by any representative of the Commission or the United States Department of Justice. For the purposes of this section, the futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by such person.

#### REGISTRATION, ASSOCIATED PERSON STATUS

SEC. 9. Section 4k of the Commodity Exchange Act (7 U.S.C. 6k) is amended—

(a) by amending subsection 4k(1) as follows:

(1) by striking out the word "any" and inserting in lieu thereof the word "a" before the words "futures commission merchant" each time they appear;

(2) by inserting the word "been" before the word "revoked" each time it appears;

(3) by striking out the word "nor" and inserting in lieu thereof "and";

(4) by striking out the words "or with any agent of a futures commission merchant", "or any agent of a futures commission merchant", and "or agent";

(5) by striking out the word "or" before the word "employee" and adding the words "or agent" after the word "employee"; and

(6) by adding the word "is" before the word "registered" and the words "is an associated person of such futures commission merchant" after the word "registered";

(b) by redesignating existing subsection 4k(2) as subsection 4k(4);

(c) by adding a new subsection 4k(2) to read as follows:

"(2) It shall be unlawful for any person to be associated with any commodity pool operator as a partner, officer, employee or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged, unless such person is registered as an associated person of such commodity pool operator, under this Act, with the Commission and such registration shall not have expired, been suspended (and the period of suspension has not expired) or been revoked, and it shall be unlawful for any commodity pool operator to permit such a person to become or remain associated with him in any such capacity if such commodity pool operator knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired) or been revoked: *Provided*, That any individual who is registered as a floor broker, futures commission merchant, commodity pool operator, or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this provision: *And provided further*, That the Commission may exempt any person or class of persons from having to register under this provision by rule, regulation, or order."

(d) by deleting existing subsection 4k(3);

(e) by adding a new subsection 4k(3) to read as follows:

"(3) It shall be unlawful for any person to be associated with any commodity trading advisor as a partner, officer, employee or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of a client's or prospective client's discretionary account or (ii) the supervision of any person or persons so engaged, unless such person is registered as an associated person of such commodity trading advisor, under this Act, with the Commission and such registration shall not have expired, been suspended (and the period of suspension has not expired) or been revoked, and it shall be unlawful for any commodity trading advisor to permit such a person to become or remain associated with him in any such capacity if such commodity trading advisor knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired) or been revoked: *Provided*, That any individual who is registered as a floor broker, futures commission merchant, commodity trading advisor or as an associat-

ed person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this provision: *And provided further*, That the Commission may exempt any person or class of persons from having to register under this provision by rule, regulation, or order.”

(f) by amending subsection 4k(4) as so redesignated—

(1) by striking out “such” and “other” the first time they appear;

(2) by striking out the words “two years after the effective date thereof or”;

(3) by striking out the words “, not less than one year from the date of issuance thereof,” and everything after the word “prescribe”;

(4) by inserting the words “as an associated person of a futures commission merchant, of a commodity pool operator, or of a commodity trading advisor” after the word “registered” the first time it appears; and

(g) by adding a new subsection 4k(5) to read as follows:

“(5) It shall be unlawful for any registrant to permit a person to become or remain an associated person of such registrant, if the registrant knew or should have known, of facts regarding such associated person that are set forth as statutory disqualifications in section 8a(2) of this Act.”

#### SECURITIES AND EXCHANGE COMMISSION ROLE IN RESPECT TO COMMODITY POOLS

SEC. 10. Section 4m of the Commodity Exchange Act (7 U.S.C. 6m) is amended—

(a) by redesignating existing section 4m as subsection 4m(1); and

(b) by adding a subsection 4m(2) to read as follows:

“4m(2). Nothing in this Act shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Securities and Exchange Commission or any private party arising under the Securities Act of 1933 or the Securities Exchange Act of 1934 governing the issuance, offer, purchase or sale of securities of a commodity pool, or of persons engaged in transactions with respect to such securities, or reporting by a commodity pool.”

#### CONFORMING AMENDMENT

SEC. 11. Section 4n of the Commodity Exchange Act (7 U.S.C. 6n) is amended by striking out subsections 4n(5) and 4n(6) in their entirety.

#### EXTENSION OF ANTIFRAUD PROVISION

SEC. 12. Section 4o of the Commodity Exchange Act (7 U.S.C. 6o) is amended—

(a) by striking out the word “or” and inserting in lieu thereof the words “, associated person of a commodity trading advisor,” after the words “commodity trading advisor” each place such words occur; and

(b) by inserting the words “or associated person of a commodity pool operator,” after the words “commodity pool operator” each place such words occur.

#### EXTENSION OF AUTHORITY REGARDING PROFICIENCY EXAMINATIONS

SEC. 13. Section 4p of the Commodity Exchange Act (7 U.S.C. 6p) is amended—

(a) by striking out the words “futures commission merchants, floor brokers, and those persons associated with futures commission merchants or floor brokers” and by inserting in lieu thereof the words “persons registered with the Commission”;

(b) by striking out the words “as futures commission merchants, floor brokers, and those persons associated with futures commission merchants or floor brokers”;

(c) by striking out the word “the” before the word “customers” and by striking out the words “or futures commission merchants and floor brokers” after the word “customers”;

(d) by striking out the words “, clients, pool participants or other members of the public with whom such individuals deal” after the word “customers”.

#### CONTRACT MARKET RULES

SEC. 14. Section 5a of the Commodity Exchange Act (7 U.S.C. 7a) is amended as follows:

(a) by amending subsection 5a(8) to read as follows:

“(8) enforce all bylaws, rules, regulations, and resolutions, made or issued by it or by the governing board thereof or any committee, which (1) have been approved by the Commission pursuant to paragraph (12) of section 5a of this Act, (2) have become effective under such paragraph, or (3) must be enforced pursuant to any Commission rule, regulation or order; and revoke and not enforce any bylaw, rule, regulation, or resolution, made, issued, or proposed by it or by the governing board thereof or any committee, which has been disapproved by the Commission.”;

(b) by amending subsection 5a(11)—

(1) by striking out the comma before subparagraph (ii) and by striking out subparagraphs (ii) and (iii) in their entirety;

(2) by redesignating subparagraph (iv) as subparagraph (ii); and

(3) by striking out the words “a futures commission merchant or a floor broker” and inserting in lieu thereof the words “another member of the contract market” in subparagraph (ii) as so redesignated;

(c) by amending subsection 5a(12) to read as follows:

“(12) except as otherwise provided in this subsection, submit to the Commission for its prior approval all bylaws, rules, regulations, and resolutions (rules) made or issued by such contract market, or by the governing board thereof or any committee thereof, which are of major economic significance, or which relate to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market, as such terms and conditions are defined by the Commission by rule or regulation, except those rules relating to the setting of levels of margin. Each contract market shall submit to the Commission all other rules (except those relating to the setting of levels of margin) and shall not place such rules into effect if, within ten days of receipt by the Commission of such submission, the contract market requests review and approval thereof by the Commission or the Commission notifies such contract market in writing of its determination to review for approval such rules. At least thirty days before approving any rules of major economic significance, as determined by the Commission, the Commission shall publish in the Federal Register a notice of such rules. The Commission shall give interested persons an opportunity to participate in the approval process through the submission of written data, views, or arguments. The determination by the Commission whether any such rules are of major economic significance shall be final and not subject to judicial review. The Commission shall approve rules, within thirty days of their receipt if Commission approval is required or requested hereunder, within thirty days after the Commission determines to review for approval any other rules, or within sixty days of such determi-

nation if the Commission determines them to be of major economic significance, unless the Commission notifies the contract market of its inability to complete such approval or review within such period of time. The Commission shall approve such rules if such rules are determined by the Commission not to be in violation of this Act or the regulations of the Commission and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be in violation of the provisions of the Act or the regulations of the Commission. The Commission shall specify the terms and conditions under which a contract market may, in an emergency as defined by the Commission, make effective a rule on a temporary basis without prior Commission approval, or without compliance with the ten day notice requirement under this subsection, or during any period of review by the Commission. In the event of such an emergency, as defined by the Commission, requiring immediate action, the contract market by a two-thirds vote of its governing board may place into effect immediately a temporary rule dealing with such emergency if it notifies the Commission of such action with a complete explanation of the emergency involved.”

#### APPEALS

SEC. 15. Section 6(b) of the Commodity Exchange Act (7 U.S.C. 9) is amended by inserting after the words “doing business” the words “, or in the case of an order denying registration, the circuit in which the petitioner’s principal place of business listed on petitioner’s application for registration is located.”

#### RESTRAINING ORDERS, INJUNCTIONS, WRITS OF MANDAMUS

SEC. 16. Section 6c of the Commodity Exchange Act (7 U.S.C. 13a-1) is amended by adding after the words “restraining order” in the first proviso, the following words: “(other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission from inspecting when and as requested, any books, and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating or disposing of any funds, assets or other property)”.

#### CONFIDENTIALITY PROVISIONS—DISCLOSURE

SEC. 17. Section 8 of the Commodity Exchange Act (7 U.S.C. 12) is amended as follows:

(a) by adding the words “or data and information concerning or obtained in connection with any investigation of any person” at the end of subsection (a);

(b) by amending subsection (b) as follows—

(1) by inserting the words “concerning or obtained in connection with any investigation of any person or” after the word “information”;

(2) by striking out the word “or” before the words “in an administrative or judicial proceeding”; and

(3) by inserting the words “, in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under this Act, or in any bankruptcy proceeding in which the Commission has intervened or in which the Commission has the right to appear and be heard under the Bankruptcy Code” at the end of that subsection.

(c) by amending subsection (e) as follows—  
(1) by striking out the words "of the Executive Branch"; and

(2) by adding the following words at the end of that subsection "Upon the request of any department or agency of any State or any political subdivision thereof, acting within the scope of its jurisdiction or any department or agency of any foreign government or any political subdivision thereof, acting within the scope of its jurisdiction, the Commission may furnish to such department or agency any information in the possession of the Commission obtained in connection with the administration of this Act. Any information furnished to any department or agency of any State or political subdivision thereof shall not be disclosed by such department or agency except in connection with any action or proceeding brought under this Act or the laws of such State or political subdivision to which such State or political subdivision, or any department or agency thereof is a party. The Commission shall not furnish any information to a department or agency of a foreign government or political subdivision thereof unless the Commission is satisfied that the information will not be disclosed by such department or agency except in connection with any action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department or agency thereof is a party."

STATUTORY DISQUALIFICATION FROM REGISTRATION

SEC. 18. Section 8a of the Commodity Exchange Act (7 U.S.C. 12a) is amended as follows:

(a) existing subsection 8a(3) is redesignated as new subsection 8a(4) and existing subsection 8a(4) is added to subsection 8a(1);

(b) subsection 8a(1) is amended—

(1) by striking out the words "and persons associated therewith as described in section 4k of this Act";

(2) by inserting the words "associated persons of futures commission merchants," before the words "commodity trading advisors,";

(3) by inserting the words "associated persons of commodity trading advisors," before the words "commodity pool operators,";

(4) by striking out the word "and" after the words "commodity pool operators," and inserting in lieu thereof the words "associated persons of commodity pool operators, and";

(5) by inserting the word "the" before the words "form and manner"; and

(6) by adding a new proviso at the end of that subsection before the semi-colon, as follows: ", and in connection therewith to fix and establish from time to time reasonable fees and charges for registrations and renewals thereof: *Provided*, That notwithstanding any provision of this Act, the Commission may grant a temporary license to any applicant for registration with the Commission pursuant to such rules, regulations, or orders as the Commission may adopt: *And provided further*, That the term of any such temporary license shall not exceed six months from the date of its issuance";

(c) by amending subsection 8a(2) to read as follows:

"(2) upon notice, but without a hearing and pursuant to such rules, regulations, or orders as the Commission may adopt, to refuse to register, to register conditionally, to suspend, or to place restrictions upon the registration of, any person and with such a hearing as may be appropriate, to revoke the registration of any person—

"(A) if a prior registration of such person in any capacity has been suspended (and the period of such suspension has not expired) or has been revoked;

"(B) if registration of such person in any capacity has been refused under the provisions of section 8a(3) of this Act within five years preceding the filing of the application for registration or at any time thereafter;

"(C) if such person is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction (except that registration may not be revoked solely on the basis of such temporary order, judgment or decree), including an order entered pursuant to an agreement of settlement to which the Commission or any federal or state agency or other governmental body is a party, from (i) acting as a futures commission merchant, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company or affiliated person or employee of any of the foregoing or (ii) engaging in or continuing any activity involving any transaction in or advice concerning contracts of sale of a commodity for future delivery, or concerning activity subject to Commission regulation under Section 4c or 19 of this Act or concerning securities;

"(D) if such person has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony which (i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery, or any activity subject to Commission regulation under Section 4c or 19 of this Act, or concerning a security; or (ii) arises out of the conduct of the business of a futures commission merchant, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing; or (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling; or (iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25, 47, 95 or 96 of title 18, United States Code;

"(E) if such person, within ten years preceding the filing of the application or at any time thereafter, has been found by any court of competent jurisdiction, by the Commission or any federal or state agency or other governmental body, or by agreement of settlement to which the Commission or any federal or state agency or other governmental body is a party, (i) to have violated any provision of this Act, the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Securities Investors Protection Act of 1970, the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking

Board where such violation involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling; or (ii) to have willfully aided, abetted, counseled, commanded, induced or procured such violation by any other person;

"(F) if such person is subject to an outstanding order of the Commission denying trading privileges on any contract market to such person, denying, suspending or revoking such person's membership in any contract market or registered futures association, or barring or suspending such person from being associated with a registrant under this Act or with a member of a contract market or with a member of a registered futures association;

"(G) if, as to any of the matters set forth in paragraphs (A) through (F) of this subsection, such person willfully made any material false or misleading statement or omitted to state any material fact in his application; or

"(H) if refusal, suspension or revocation of the registration of any principal of such person would be warranted because of a statutory disqualification listed in this subsection: *Provided*, That for the purposes of Sections 8a (2) and (3) of this Act, principal shall mean, if the person is a partnership, any general partner or, if the person is a corporation, any officer, director or beneficial owner of at least ten percent of the voting shares of the corporation, and any other person that the Commission by rule, regulation, or order determines has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of such person which are subject to regulation by the Commission: *Provided*, That such person may appeal from a decision to refuse registration, condition registration, suspend, revoke or to place restrictions upon registration made pursuant to the provisions of this subsection in the manner provided in paragraph (b) of section 6 of this Act; and "

(d) by adding new subsection 8a(3) to read as follows:

"(3) to refuse to register or to register conditionally any person, if it is found, after opportunity for hearing, that

"(A) such person has been found by the Commission or by any court of competent jurisdiction to have violated or has consented to findings of a violation of, any provision of this Act, or any rule, regulation, or order thereunder (other than a violation set forth in subsection (2) of this section), or to have willfully aided, abetted, counseled, commanded, induced or procured the violation by any other person of any such provision;

"(B) such person has been found by any court of competent jurisdiction or by any federal or state agency or other governmental body, or by agreement of settlement to which any federal or state agency or other governmental body is a party, (i) to have violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Securities Investors Protection Act of 1970, the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board; or (ii) to have willfully aided, abetted, coun-

seled, commanded, induced or procured such violation by any other person:

"(C) such person failed reasonably to supervise another person, who is subject to such person's supervision, with a view to preventing violations of this Act, or of any of the statutes set forth in paragraph (B) of this subsection, or of any of the rules, regulations, or orders thereunder, and the person subject to supervision committed such a violation: *Provided*, That no person shall be deemed to have failed reasonably to supervise another person, within the meaning of this paragraph if (i) there have been established procedures, and a system for applying such procedures which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and (ii) such person has reasonably discharged the duties and obligations incumbent upon that person, as supervisor, by reason of such procedures and system, without reasonable cause to believe that such procedures and system were not being complied with;

"(D) such person was convicted of a felony other than a felony of the type specified in Section 8a(2)(D) of this Act within ten years preceding the filing of the application or at any time thereafter, or was convicted of a felony, including a felony of the type specified in Section 8a(2)(D) of this Act, more than ten years preceding the filing of the application;

"(E) such person was convicted within ten years preceding the filing of any application for registration or at any time thereafter of any misdemeanor which (i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery or any activity subject to Commission regulation under Section 4c or 19 of this Act or concerning a security; or (ii) arises out of the conduct of the business of a futures commission merchant, floor broker, commodity trading adviser, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing; or (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling; or (iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25, 47, 95 or 96 of title 18, United States Code;

"(F) such person was debarred by any agency of the United States from contracting with the United States;

"(G) such person willfully made any material false or misleading statement or willfully omitted to state any material fact in his application or in any report required to be filed with the Commission by this Act or the regulations thereunder, or in any proceeding before the Commission;

"(H) such person has pleaded nolo contendere to criminal charges of felonious conduct, or has been convicted in a State court or in a foreign court of conduct which would constitute a felony under Federal law if the offense had been committed under Federal jurisdiction;

"(I) in the case of an applicant for registration in any capacity for which there are minimum financial requirements prescribed under this Act or under the rules or regulations of the Commission, such person has not established that he meets such minimum financial requirements;

"(J) such person is subject to an outstanding order denying, suspending or expelling him from membership in a contract market, a registered futures association, or in any other self-regulatory organization, or barring or suspending him from being associated with any member or members of such contract market, association, or self-regulatory organization;

"(K) such person has been found by any court of competent jurisdiction or by any federal or state agency or other governmental body, or by agreement of settlement to which any federal or state agency or other governmental body is a party, (i) to have violated any statute or any rule, regulation, or order thereunder which involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling; or (ii) to have willfully aided, abetted, counseled, commanded, induced or procured such violation by any other person;

"(L) such person has associated with him any person and knows, or in the exercise of reasonable care should know, of facts regarding such other person that are set forth as statutory disqualifications in section 8a(2) of this Act;

"(M) there is other good cause; or

"(N) any principal, as defined in section 8a(2) of this Act, of such person has been or could be refused registration: *Provided*, That pending final determination under this subsection 8a(3), registration shall not be granted: *And provided further*, That such person may appeal from a decision to refuse registration or to condition registration made pursuant to the provisions of this subsection in the manner provided in paragraph (b) of section 6 of this Act; and";

(e) by amending subsection 8a(4), as so redesignated—

(1) by striking out the word "or," before the word "revoke" the first time it appears and inserting in lieu thereof a comma;

(2) by inserting the words "or to place restrictions upon" after the word "revoke" the first time it appears;

(3) by striking out the words "subparagraph (2) (B) or (C)" and inserting in lieu thereof the words "section 8a(3)"; and

(4) by adding the following proviso at the end thereof: "*Provided*, That such person may appeal from a decision to suspend, revoke or to place restrictions upon registration made pursuant to the provisions of this subsection in the manner provided in paragraph (b) of section 6 of this Act; and";

(f) by amending subsection 8a(6)—

(1) by inserting the words "registered futures association, or self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934," before the word "notwithstanding";

(2) by striking out the word "and" before the word "consumers"; and

(3) by inserting the following before the semi-colon: "or investors or which is necessary or appropriate to effectuate the purposes of this Act: *Provided, however*, That any information furnished by the Commission under this subsection shall not be disclosed by such contract market, registered futures association or self-regulatory organization except in any self-regulatory action or proceeding";

(g) by striking out the period at the end of subsection 8a(9) and inserting in lieu thereof "; and"; and

(h) by adding a new subsection 8a(10) to read as follows: "(10) to authorize any person to perform any portion of the regis-

tration functions under this Act, in accordance with rules approved by the Commission, and subject to the provisions of this Act applicable to registrations granted by the Commission."

#### CERTAIN PROHIBITED TRANSACTIONS

SEC. 19. Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended as follows:

(a) by amending subsection (a)—

(1) by striking out the words "futures commission merchant" and inserting in lieu thereof the words "person registered or required to be registered under this Act";

(2) by striking out the words "commission merchant" and inserting in lieu thereof "person or any employee or agent thereof";

(3) by striking out the words "of such futures commission merchant"; and

(4) by inserting the words "or which otherwise was received from any customer, client or pool participant in connection with the business of such person" after the word "contracts" the second time it appears;

(b) by amending subsection 9(d)—

(1) by inserting the following after "decline guaranty": "or any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract,";

(2) by inserting the following at the end of the first proviso after the words "at least three months": "nor to any transaction entered into by the trustee of a trust established by such person over which such person exercises no control if such transaction is entered into solely to hedge against adverse price changes in connection with such farming or ranching operations or is a transaction for the lease of oil or gas or other mineral rights or interests owned by such person"; and

(3) by adding a new proviso at the end thereof to read as follows: " : *And, provided further*, That such prohibition against any investment transaction in an actual commodity shall not apply to a transaction in which such person buys or sells, directly or indirectly (except by means of an instrument regulated by the Commission), a United States Government security, a certificate of deposit or similar financial instrument if no non-public information is used by such person in such transaction"; and

(c) by inserting after the words "decline guaranty," in each place they appear in subsection 9(e) the following: "or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract";

#### REAUTHORIZATION; OFF-EXCHANGE JURISDICTION

SEC. 20. Section 12 of the Commodity Exchange Act (7 U.S.C. 16) is amended—

(a) by amending subsection 12(d) to read as follows: "(d) There are hereby authorized to be appropriated to carry out the provi-

sions of this Act such sums as may be required for each of the fiscal years beginning October 1, 1982 and ending September 30, 19—; and

(b) by adding a new subsection 12(e) to read as follows: "(e) Nothing in this Act shall supersede or preempt: (1) any Federal criminal statute; (2) any Federal or State statute, including any rule or regulation thereunder, that is applicable to any transaction in or involving any commodity, product, right, service or interest which is not conducted on or subject to the rules of a contract market or subject to regulation by the Commission under Section 4c or 19 of this Act; or (3) the application of any Federal or State statute, including any rule or regulation thereunder, to any person required to be registered or designated under this Act who shall fail or refuse to obtain such registration or designation. The Commission is authorized to refer any transaction or matter subject to such other Federal or State statutes to any department or agency administering such statutes for such investigation, action or proceedings as the department or agency shall deem appropriate."

#### AIDING AND ABETTING

SEC. 21. Section 13 of the Commodity Exchange Act (7 U.S.C. 13c) is amended as follows:

(a) by striking out the words "in administrative proceedings under this Act" in subsection 13(a);

(b) by redesignating existing subsection (b) as subsection (c); and

(c) by adding a new subsection (b) to read as follows: "(b) Any person who, directly or indirectly, controls any person who violates any provision of this Act or any of the rules, regulations, or orders issued pursuant thereto may be held responsible for such violation as a principal, unless the controlling person did not know or, in the exercise of reasonable care, did not have reason to know, of the facts constituting the violation."

#### REPARATIONS PROCEDURE

SEC. 22. Section 14 of the Commodity Exchange Act (7 U.S.C. 18) is amended as follows:

(a) by striking out existing subsections (b), (c) and (e);

(b) by redesignating subsections (d) as (c); (f) as (d); (g) as (e); (h) as (f); and (i) as (g);

(c) by amending subsection (a)—

(1) by striking out the words "or required to be registered under section 4d, 4e, 4k or 4m of" and inserting in lieu thereof the word "under" and by striking out everything after the words "to the Commission" before the period;

(2) by inserting at the end thereof the words "for an order awarding actual damages proximately caused by such violation";

(3) by adding a new subsection 14(b) to read as follows: "(b) The Commission may promulgate such rules, regulations and orders as it deems necessary or appropriate for the efficient and expeditious administration of this section. Notwithstanding any other provision of law, such rules, regulations, and orders may prescribe without limitation, the form, filing and service of pleadings or orders; the nature and scope of discovery; counterclaims; motion practice (including the grounds for dismissal of any claim or counterclaim); hearings (including the waiver thereof, which may relate to the amount in controversy); rights of appeal, if any; and all other matters governing proceedings before the Commission under this section."

(4) by changing the reference in subsection (d), as so redesignated, from "(g)" to "(e)"; and

(5) by amending subsection (f), as so redesignated, to read as follows: "(f) Unless the party against whom a reparation order has been issued shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for compliance with such order that either an appeal as herein authorized has been taken or payment of the full amount of the order (or any agreed settlement thereof) has been made, such party shall be prohibited automatically from trading on all contract markets and, if the party is registered with the Commission, such registration shall be suspended automatically at the expiration of such fifteen day period until such party shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made: *Provided*, That if on appeal the appellee prevails or if the appeal is dismissed the automatic prohibition against trading and suspension of registration shall become effective at the expiration of thirty days from the date of judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied."

#### TECHNICAL AND CONFORMING AMENDMENTS

SEC. 23. Section 16 of the Commodity Exchange Act (7 U.S.C. 20) is amended by inserting the words "or market positions" after the word "transactions" in subsection (d).

SEC. 24. Section 17 of the Commodity Exchange Act (7 U.S.C. 21) is amended as follows:

(a) by amending paragraph (10) of subsection (b) —

(1) by striking out the words "a customer's" and inserting in lieu thereof "customers";

(2) by striking out the comma before subparagraph (ii) and by striking out subparagraphs (ii) and (iii) in their entirety;

(3) by redesignating subparagraph (iv) as subparagraph (ii); and

(4) by striking out the words "a futures commission merchant or floor broker" and inserting in lieu thereof the words "another member of the association";

(b) by changing the reference in subsection (h) from subsection (k) to subsection (i);

(c) by striking out the last sentence in subsection (j) and by inserting in lieu thereof the following: "A registered futures association shall submit to the Commission any change in or addition to its rules and shall not place such rules into effect if, within ten days of receipt by the Commission of such submission, the registered futures association request review and approval thereof by the Commission or the Commission notifies such registered futures association in writing of its determination to review for approval such rules. The Commission shall approve such rules, within thirty days of their receipt if Commission approval is requested hereunder or within thirty days after the Commission determines to review for approval any other rules, unless the Commission notifies the registered futures association of its inability to complete such approval or review within such period of time. The Commission shall approve such rules if such rules are determined by the Commission to be consistent with the requirements of this section and not otherwise

in violation of this Act or the regulations of the Commission and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be inconsistent with the requirements of this section or in violation of the provisions of the Act or the regulations of the Commission."; and

(d) by adding a new subsection (o) to read as follows:

"(o) The Commission is authorized to require any futures association registered pursuant to this section to perform any portion of the registration functions under this Act with respect to each member of the association other than a contract market and with respect to each associated person of such member, in accordance with rules approved by the Commission, and subject to the provisions of this Act applicable to registrations granted by the Commission."

#### LEVERAGE TRANSACTIONS

SEC. 25. Section 19 of the Commodity Exchange Act (7 U.S.C. 23) is amended by adding a new subsection (e) to read as follows: "(e) Notwithstanding the provisions of subsections (b), (c), or (d) of this section, no person shall offer to enter into, or confirm the execution of, any transaction subject to the provisions of subsection (b) of this section, who was not engaged in that business on June 1, 1978, and no person shall offer to enter into, or confirm the execution of, any transaction subject to the provisions of subsection (c) of this section, who was not engaged in that business on February 2, 1979: *Provided*, That such prohibitions shall terminate on September 30, 1984: *And provided further*, That within two years following the effective date of this subsection (e), the Commission shall conduct a study of such transactions and shall submit a report of the results of such study to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. Such report shall include the Commission's recommendations concerning whether the national public interest, if any, to be served by such transactions requires that they be federally regulated, whether the national public interest, if any, to be served by such transactions overrides any State interest in their regulation, whether such transactions should be prohibited, whether any such transaction is a contract for future delivery within the meaning of this Act, the appropriate regulatory scheme to govern any such transaction that the Commission determines is not a contract for future delivery within the meaning of this Act, and any proposals for additional legislation that the Commission believes should be enacted with respect to such transactions."

#### USER FEES; TECHNICAL AMENDMENT

SEC. 26. (a) Section 26 of the Futures Trading Act of 1978 (7 U.S.C. 16a) is amended by striking out the existing language.

(b) The Commodity Exchange Act is amended by adding a new section 22 to read as follows:

#### TRANSACTION FEES

"SEC. 22. (a) Each contract market, or other board of trade licensed by the Commission shall remit to the Treasury of the United States, with written verification thereof to the Commission, by March 15 of each year, a fee in the following amounts for each contract for the purchase or sale of a commodity for future delivery and for each commodity option subject to the provisions of section 4c of this Act entered on or

subject to the rules of such contract market or board of trade during the preceding calendar year or portion thereof following the effective date of this section:

"(1) 12 cents for each such contract or option which is made or executed for the account or benefit of a person who is not a member of such contract market or board of trade or of a registered futures association; and

"(2) 6 cents for each such contract or option which is made or executed for the proprietary account (as defined by the Commission) of a person who is a member of such contract market, board of trade or of a registered futures association.

"(b) Each person who grants a commodity option pursuant to section 4(c)(d) of this Act, or who is engaged in the business of offering any leverage transaction pursuant to section 19 of this Act, shall remit to the Treasury of the United States, with written verification thereof to the Commission, by March 15 of each year, a fee of three dollars for each such option granted or leverage contract entered during the preceding calendar year or portion thereof following the effective date of this section.

"(c) The fees assessed hereunder for any calendar year are intended not to exceed the funds appropriated by the Congress for the Commission's activities for the fiscal year in which remittance of the fees is due. In the event that the total fees remitted to the Treasury of the United States pursuant to this section for any calendar year or portion thereof exceed the funds appropriated for the Commission for the fiscal year in which remittance of the fees is due, the Commission shall, by rule, regulation or order, suspend the assessment of fees in the current calendar year for such period as the Commission determines, to the extent practicable and based on current market volume, would otherwise generate an amount equal to excess fees remitted in the preceding calendar year. No fees shall be required to be remitted for transactions effected during such period of suspension determined by the Commission; provided that at the conclusion of such period, the obligation to assess fees to be remitted under this section shall resume.

"(d) Notwithstanding any other provision of this section, the Commission, after notice and opportunity for hearing, may by rule, regulation or order reduce, suspend, or waive the application to any person or class of persons, of the fees or any portion thereof upon a finding that such action is necessary to present or correct any significant adverse effect upon any market or person occasioned by such fee.

"(e) The Commission shall create, prior to or after the effective date of this section, an advisory committee pursuant to the Federal Advisory Committee Act, comprised of persons materially affected by the operation of this section. Such advisory committee shall remain in existence until June 30, 1985. The advisory committee shall be empowered to advise the Commission with respect to the efficacy of the fee system created by this section, to consult with the Commission with respect to actions taken under subsection (d) hereof, to prepare a report containing its assessment and recommendations with respect to the fee system, and to perform such other duties and functions as the Commission may prescribe. Such report, together with the views and recommendations of the Commission, shall be submitted to the Committee on Agriculture of the House of Representatives and to the Committee on

Agriculture, Nutrition, and Forestry of the United States Senate no later than June 30, 1985."

**SUMMARY OF FUTURES TRADING ACT OF 1982**  
[Prepared by the Staff of the Committee on Agriculture, Nutrition, and Forestry]

The proposals made by the Commodity Futures Trading Commission in the Futures Trading Act of 1982 are summarized as follows. These proposals:

Modify the definition of the term "commodity trading advisor" (1) to include those who utilize electronic media in the transmission of trading advice and (2) to limit the definition to those who give advice as to the advisability of (a) trading in contracts executed on a contract market or (b) entering into any option or leverage transaction authorized under the Act. The modification also permits the Commission to include by regulation other persons within the definition of "commodity trading advisor" if the Commission determines that this will effectuate the purposes of the Act.

Implement the Commodity Exchange Act provisions of the CFTC-SEC agreement on the jurisdiction of the agencies.

Delete the 1-year ban precluding Commissioners and certain CFTC employees from appearing before the agency subsequent to their employment with the Commission.

Explicitly prohibit off-exchange futures and give the Commission authority to make rules regulating the offer and sale, by any person located in the U.S., of commodity futures contracts executed on markets located outside the U.S.

Give the Commission authority to set speculative limits through the promulgation of regulations rather than just by orders.

Give the Commission authority to enforce speculative limits set by contract markets, if such speculative limits have been approved by the Commission.

Make explicit that the Commodity Exchange Act does not apply to transactions in options on foreign currencies traded on a national securities exchange.

Require each agent of a futures commission merchant to register as an associated person of that futures commission merchant.

Make it unlawful for persons to misrepresent their registration or representative status when soliciting or handling customers' orders.

Require large traders to file such reports as the Commission may, by rule or regulation, require.

Require that all persons who are associated with a commodity pool operator (CPO) or a commodity trading advisor (CTA) in any capacity involving the solicitation of funds or other property or the supervision of persons engaged in solicitation be registered as an associated person of the CPO or CTA. This provision does not apply to (1) persons registered with the Commission in some other capacity and (2) persons or classes of persons exempted by the Commission.

Leave the length of the associated person registration period to be established by the Commission through rule, regulation or order.

Clarify that the SEC may regulate the issuance, offer, purchase or sale of the securities of a commodity pool, under the provisions of the Securities Act of 1933 or the Securities Exchange Act of 1934. Any rights of private parties arising under these Acts are not affected by the provisions of the Commodity Exchange Act.

Make associated persons of commodity trading advisers and commodity pool operators subject to the antifraud provisions applicable to CTAs and CPOs.

Extend the Commission's discretionary authority to prescribe standards with respect to training, experience, and other qualifications to all persons registered with the Commission.

Require contract markets to enforce rules (1) which have been approved by the Commission or not disapproved, or (2) which must be enforced pursuant to any Commission rule, regulation or order.

Change exchange arbitration procedures by deleting (1) the present \$15,000 ceiling on claims subject to arbitration, and (2) the present provision which bans binding arbitration.

Require contract markets to submit rules which are of major economic significance or which relate to contract terms and conditions to the Commission for its prior approval. All other contract market rules (except those relating to the setting of margin) must also be submitted to the Commission but may be put into effect by the exchange unless (1) the Commission notifies the exchange that it wished to review the rule or (2) the exchange requests that the Commission review the rule.

The Commission shall approve contract market rules (1) within 30 days of their receipt if Commission approval is required or requested, (2) within 30 days after the Commission determines to review other rules for approval, or (3) within 60 days for rules of major economic significance, unless the Commission notifies the contract market of the Commission's inability to complete approval or review within the applicable time period. The Commission shall specify terms and conditions pursuant to which a contract market may make a rule effective on a temporary basis without complying with the 10 day notice provision.

Permit an individual denied registration by the Commission to appeal the decision in the Federal judicial circuit in which the individual's principal place of business, as listed on the registration application, is located.

Permit the Commission to seek ex parte court orders prohibiting persons from (1) destroying books and records, (2) refusing to permit authorized Commission representatives to inspect books and records, or (3) withdrawing, transferring, dissipating or disposing of any funds, assets or other property.

Allow disclosure by the Commission of information obtained in connection with an investigation of any person in (1) proceedings involving receivers appointed under the Act and (2) bankruptcy proceedings in which the Commission has intervened or in which the Commission has authority to appear. The Commission may also disclose any information within its possession to any State or foreign government, or any department, agency, or political division thereof. The requesting entity must be acting within the scope of its jurisdiction and may not disclose the information, except in an action or proceeding brought under the Commodity Exchange Act or the laws of the State or political subdivision which requested the information. The Commission may not furnish any information to a foreign government or political subdivision thereof unless the Commission is satisfied that the information will be disclosed only in connection with an action or proceeding brought under

the laws of the foreign government or the political subdivision thereof.

Permit the Commission to grant temporary registration, not to exceed six months in duration, pursuant to such rules, regulations or orders as the Commission may adopt.

Permit the Commission, without a hearing, to refuse to register, to register conditionally, to suspend, or to place restrictions on the registration of any person; or with a hearing, to revoke the registration of any person; if (1) a prior registration has been suspended and the suspension period has not expired, (2) registration has been refused within the last five years, (3) such person is permanently or temporarily enjoined by any court of competent jurisdiction from performing certain specified functions or engaging in certain specified activities, (4) during the past 10 years, such person has been convicted of a felony specified in the Act, has been convicted of a felony arising out of certain conduct specified in the Act, or has violated the provisions of the Act or certain other enumerated Acts, (5) such person is subject to a Commission order denying trading privileges or denying, suspending, or revoking such person's membership in any contract market or registered futures association, or (6) the refusal, suspension, or revocation of the registration of any principal of such person would be warranted because of a disqualification listed in this provision.

Permit the Commission, after opportunity for hearing, to refuse to register a person or to register said person conditionally if:

(1) Such person has been found to have violated or has consented to a finding of violation of the Act or regulations or has willfully aided or abetted such violation;

(2) Such person has been found to have violated or has agreed to (i) a finding of any violation of a number of listed Federal securities laws or any similar statute enacted by a State or foreign government or (ii) to have willfully aided or abetted such violation;

(3) Such person has failed reasonably to supervise another person subject to his direction with a view toward preventing violation of this Act or any of the securities statutes, and the person subject to supervision has committed a violation. No person shall be deemed to have failed to supervise another if (i) there is a system in place which would reasonably be expected to prevent and detect violations on the part of the person supervised and (ii) such supervisor has reasonably discharged his supervisory responsibilities.

(4) Such person was convicted of a felony other than those for which registration may be refused without hearings;

(5) Such person has been convicted within the past 10 years of any misdemeanor (1) involving commodity futures contracts, option contracts, leverage contracts or securities, (2) involving the conduct of any registrant under this Act of the Securities Acts or (3) involving embezzlement, fraud or fraudulent conversion;

(6) Such person has willfully made false or misleading statements to the Commission; or

(7) Such person has not established that he meets those minimum financial requirements prescribed in the Act or by Commission regulation.

Permit the Commission to disclose information to a registered futures association or self-regulatory organization (as defined in the Securities Exchange Act of 1934) when such disclosure is necessary or appropriate

to effectuate the purposes of the Act. Such information shall not be disclosed by the recipient, except in a self-regulatory action or proceeding.

Permit the Commission to authorize any person to perform any portion of the registration functions pursuant to the provisions of the Act, subject to rules approved by the Commission.

Extend the criminal provisions pertaining to embezzlement, theft, or criminal conversion to all persons registered or required to be registered under the Act and to their employees and agents.

Extend the criminal provisions applicable to insider trading and the use of inside information on the part of any Commissioner of the Commission or any Commission agent or employee to leverage transactions, but exempts from these provisions hedging transactions entered into by trustees and certain transactions in U.S. government securities and certificates of deposit.

Extend the authorization of appropriations under the Act.

Provide for shared jurisdiction with other Federal agencies and the States over (1) transactions involving any commodity, product, right, service or interest which is not conducted on or subject to the rules of a contract market, except dealer options and leverage, and (2) over persons who are required to but who do not register under the Act. The Commission is authorized to refer any matter which is subject to other Federal or State statutes to the department or agency enforcing or administering such statutes.

Permits the prosecution as a principal in any variable forum of any person who aids or abets a violation of the Act or regulations.

Permit the prosecution as a principal of any person who, directly or indirectly, controls any person who violates any provision of the Act or regulations, unless the controlling person did not know or, in the exercise of reasonable care, did not have reason to know of the facts constituting the violation.

Restrict the applicability of reparations procedures to persons registered under the Act.

Restrict reparations awards to actual damages proximately caused by violations of the Act.

Deletes the requirement that the Commission investigate reparations complaints and make a determination as to whether the conduct complained of violates the Act or regulations.

Permit the Commission to issue regulations to provide for the expeditious administration of the reparations process.

Delete existing statutory provisions pertaining to the issuance of orders mandating the payment of partial reparations awards when the awards are not contested.

Provide for automatic prohibition of trading and suspension of registration for failure to pay a reparations award.

Prohibit disclosure by the Commission of the market positions of individual traders in market reports.

Permit a registered futures association to provide a forum for compulsory arbitration of customers' claims.

Subject a registered futures association to the same rule review procedures proposed by the Commission for contract markets.

Authorize the Commission to require a registered futures association to perform any portion of the Commission's registration function.

Restrict until September 30, 1984, those leverage firms that are permitted to do busi-

ness to those that were engaged in the leverage business on June 1, 1978, and provide that the Commission shall conduct a study to determine (1) whether leverage transactions serve a national public interest and if so, (2) the manner in which such transactions should be regulated.

Provide for a system of user fees, pursuant to which each contract market shall remit to the U.S. Treasury, on a yearly basis, fees collected for each commodity futures or commodity option contract entered into on the contract market. The fee shall be:

(a) 12 cents for each such contract entered into for the benefit of a person who is not a member of the contract market or of a registered futures association, and

(b) 6 cents for each such contract entered into for the benefit of a person who is a member of the contract market or of a registered futures association.

Require persons who grant dealer options or offer to enter into leverage contracts to pay to the Treasury, on a yearly basis, fees equal to \$3 for each option granted or leverage contract entered into.

Provide that the fees assessed are not intended to exceed the monies appropriated by Congress for the operation of the Commission. If the fees collected exceed the amount of monies appropriated, the Commission is to suspend the collection of fees for such period as would generate an amount equal to the excess fees.

Authorize the Commission to waive or suspend the collection of fees if such action is necessary to correct adverse effects caused by such fees upon any market or person.

Require the Commission to create an advisory committee composed of persons materially affected by user fees to (1) advise the Commission with respect to the fee system, (2) prepare a report containing its assessment of and recommendations on the fee system, and (3) perform such other duties and functions as the Commission may prescribe.

COMMODITY FUTURES  
TRADING COMMISSION,

Washington, D.C., February 1, 1982.

HON. JESSE HELMS,  
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Russell Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The Commodity Futures Trading Commission is pleased to transmit to you proposed legislation which we are recommending to Congress in connection with its consideration of the Commission's reauthorization. We are today transmitting to you three documents: (1) a bill to amend the Commodity Exchange Act, (2) the changes in existing law contemplated by this legislation and (3) the legislation which will implement the jurisdictional agreement between the Commission and the Securities and Exchange Commission, as well as an accompanying joint explanatory statement. Within three days, we will also be transmitting to you a section by section analysis of the bill to amend the Commodity Exchange Act which the Commission is recommending.

The Commission is concurrently transmitting this legislation and materials to the House Committee on Agriculture and the Office of Management and Budget.

Sincerely,

PHILIP MCBRIDE JOHNSON,  
Chairman.

SECTION-BY-SECTION ANALYSIS OF THE  
FUTURES TRADING ACT OF 1982

## SECTION 1

Section 1 contains the short title.

## SECTION 2

7 U.S.C. 2: Makes certain definitional changes.

Section 2(a)(3) narrows the definition of the term "commodity trading advisor" contained in Section 2(a)(1) of the Act to include only those persons offering advice concerning commodity futures contracts traded on contract markets, commodity options authorized under Section 4c of the Act, and leverage transactions authorized under Section 19 of the Act. The current definition of "commodity trading advisor" includes certain persons who give advice concerning the value of commodities or who issue reports or analyses concerning commodities for compensation or profit and as part of a regular business. Under this amendment, those who confine their advice to the cash market would not be considered to be commodity trading advisors, although the Commission retains the authority to issue regulations which include within this definition any person advising as to the value of commodities or issuing reports or analyses concerning commodities, if the Commission determines that such action will effectuate the purposes of this provision. This amendment also clarifies that the exemptions from the definition of "commodity trading advisor" include news reporters, columnists, and editors who give advice through the electronic media as well as those who provide advice through publications or writings, provided that, as under current law, the furnishing of such advice is solely incidental to the conduct of their business or profession. Finally, under these amendments, the fiduciary of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") who renders commodity trading advice is excluded from the definition of "commodity trading advisor," provided that the furnishing of such advice is solely incidental to the conduct of its business as a fiduciary of such a plan. Because participation by employees in a defined benefit plan is generally compulsory and non-contributory, trading advice is not directly marketed to the participants therein. In addition, a fiduciary of such a plan is subject to extensive regulation under ERISA.

7 U.S.C. 4a: Section 2(b) deletes Section 2(a)(7)(B) of the Act. Section 2(a)(7)(B), which was added to the Act by the Futures Trading Act of 1978, is a post-government employment restriction applicable to Commissioners and Commission employees classified as GS-16 or above who hold positions excepted from the competitive service by reason of being of a confidential or policy making character. The restriction generally bars representative appearances before the Commission and other communications by such persons for a period of one year after they leave the Commission.

At the time Section 2(a)(7)(B) was under consideration in 1978, the Commission and certain members of Congress opposed its enactment in light of the pendency of government-wide ethics legislation which included a general one-year bar applicable to former senior officials. Subsequently, Congress enacted Title V of the Ethics in Government Act of 1978, which amended 18 U.S.C. § 207, effective July 1, 1979. One of the amendments which then became effective was 18

U.S.C. § 207(c), a one-year post-government employment restriction, with certain narrow exceptions, applicable to former senior government officials. At the Commission, the Commissioners and most Senior Executive Service employees are subject to this one-year bar. With the passage and effectiveness of this government-wide ethics legislation, there is no longer any purpose to be served by Section 2(a)(7)(B) of the Act and therefore, it is proposed to be repealed. Commissioners and senior Commission employees would, of course, remain subject to the one-year bar as set forth in 18 U.S.C. § 207(c).

## SECTION 3

7 U.S.C. 6: Section 3(a) amends Section 4 by creating a new Section 4(a) which combines the provisions of existing Section 4 and 4h(1) into a single, simplified provision. Section 4(a) specifies that all transactions in commodity futures contracts in the United States must be effected on boards of trade that have been designated as contract markets through members of such contract markets. As such, no change in existing law is intended. Section 4(a), however, does not prevent non-contract market members from engaging in the business of offering and selling futures contracts traded on foreign exchanges directly to the American public. (By contrast, the language of existing Section 4h(1) may be read to prohibit such activity.) The offer and sale by any person located in the United States, its territories or possessions of futures contracts made on foreign exchanges is the subject of new Section 4(b).

Section 3(b) adds a new Section 4(b) to the Act which concerns the Commission's existing authority to regulate the offer and sale of futures contracts made on foreign exchanges by any person located in the United States, its territories or possessions. The domestic offer and sale of such contracts is affected with a national public interest in that, among other things, such transactions take place and are entered into and executed by persons within the jurisdiction of the United States by the use of the mails and other means and instrumentalities of interstate commerce and occur in such volume as to affect interstate commerce substantially. Under existing Commission regulations, it is illegal for any person to use the channels of interstate commerce to engage in fraudulent activities in connection with transactions in contracts for future delivery traded or executed on any foreign exchange. This provision is not intended to affect those regulations.

## SECTION 4

7 U.S.C. 6a: Sections 4(a), (b) and (c) are intended to confirm the Commission's existing authority to adopt speculative position or daily trading limits under Section 4a of the Act by rule or regulation in a rule-making proceeding, as well as by order.

Section 4(d) deletes a reference to the Commodity Futures Trading Commission Act of 1974 which has become obsolete.

Section 4(e) adds a new Section 4a(5) to the Act. The purpose of this Section is to make clear that contract markets may adopt limits on the amount of speculative trading which may be done or speculative positions which may be held by any person under contracts of sale of any commodity for future delivery traded on or subject to the rules of that contract market. Similar authority is confirmed regarding the adoption of such limits with respect to commodity options traded on contract markets or other boards of trade licensed by the Commission.

In cases where the Commission has fixed limits for any futures contract under Section 4a or for any commodity option under Section 4c of the Act, however, limits adopted by contract markets or boards of trade could not differ from any limits fixed by the Commission without the approval of the Commission. Section 4a(5) also provides that it is unlawful for any person to violate the limits adopted by contract markets or boards of trade which have been approved by the Commission. A violation of such a limit would constitute a violation of the Act, and would be actionable as if such limit had been adopted by the Commission.

## SECTION 6

7 U.S.C. 6f: Section 6 amends Section 4f(1) of the Act by deleting the word "agents" from this provision, inasmuch as the amendments to Section 4k make clear that all agents who function as associated persons must register as associated persons of futures commission merchants. In this connection, it is intended that any group of associated persons operating together would be a "branch office" for purposes of applying this provision. An applicant for registration as a futures commission merchant must continue to disclose the names and addresses of the managers of all branch offices engaged in soliciting or accepting customers' orders on behalf of such applicant, and thus will be required to disclose the names and addresses of the heads of offices which may formerly have been treated as "agents" rather than branch offices. The word "correspondents" also is deleted because the Commission does not believe it has any need to collect information on the correspondents of a futures commission merchant in connection with such futures commission merchant's application for registration.

This Section also amends Section 4f(1) by deleting the reference to a hearing for a suspension or revocation of a license so as to be consistent with the proposed addition of new Section 8a(2) of the Act which, among other things, provides for refusal, suspension or revocation of the registration of any person because of a statutory disqualification listed in that Section.

## SECTION 7

7 U.S.C. 6h: Section 7 amends Section 4h of the Act by deleting paragraph (1) of Section 4h, inasmuch as a prohibition on conducting an office or place of business anywhere in the United States or its territories that is used for dealings in commodities for future delivery unless such dealings are executed or consummated by or through a member of a contract market is now contained in new Section 4(a). The prohibition on false representations contained in existing Section 4h(2) is retained in Section 4h, as proposed to be amended. That Section, however, is broadened to prohibit false representations that a person is registered with the Commission in any capacity, and not only as a futures commission merchant, as under current Section 4h(2).

## SECTION 8

7 U.S.C. 6i: Section 8 amends Section 4i of the Act to make clear that the Commission and the Department of Justice retain their authority to inspect the books and records of any trader whose trades or positions in any cash commodity or commodity future equal or exceed the level set by the Commission for contracts in that commodity, regardless of whether the trader is required by the Commission to file reports of his trading activity. In addition, such a trader

continues to be required to keep books and records relating to that trading activity. Of course, the Commission retains the authority to require the filing of reports regarding such transactions or positions. This amendment merely makes the duty of a trader to make and keep books and records available for inspection by appropriate governmental authorities independent of any Commission requirement concerning the filing of trading reports by such a trader. Such large traders are also required to make available for inspection information relating to their activities on any other board of trade.

## SECTION 9

7 U.S.C. 6k: Section 9 contains significant amendments to Section 4k of the Act which are intended to accomplish a number of important objectives.

Section 9(a) amends Section 4k(1) of the Act to resolve the existing uncertainty as to the status of agents, by making clear that an agent of a futures commission merchant who functions as an associated person must register as an associated person of such futures commission merchant. This revision recognizes the fact that most agents of futures commission merchants function as associated persons, in that they solicit or accept customers' orders or supervise persons who are so engaged.

Section 9(c) contains new Section 4k(2) of the Act (existing Section 4k(2) would be redesignated as Section 4k(4) of the Act by Section 8(b) of the bill) which extends the provisions for registration of associated persons to include the partners, officers, employees, and agents of commodity pool operators who solicit funds, securities, or property for participations in commodity pools or who supervise persons so engaged. Such persons are required by new Section 4k(2) to register as associated persons of commodity pool operators, both to assure that their activities are supervised by the commodity pool operator with which they are associated, and to prevent unfit persons from engaging in such activities. An associated person of a commodity pool operator may not, however, solicit funds, securities or property to margin, guarantee, or secure the trades of any customer unless he is also registered as an associated person of a futures commission merchant.

Section 9(d) deletes existing Section 4k(3) of the Act which, with certain revisions, is transferred to new Section 8a(10) of the Act by Section 17(h) of the bill.

Section 9(e) adds a new Section 4k(3) of the Act which extends the provisions for registration of associated persons to include the partners, officers, employees, and agents of commodity trading advisors who solicit discretionary accounts. Such persons are required by new Section 4k(3) to register as associated persons of commodity trading advisors, both to assure that their activities are supervised by the commodity trading advisor with which they are associated, and to prevent unfit persons from engaging in such activities. This Section would permit a person who is registered as an associated person of a commodity trading advisor to solicit discretionary accounts, but would not permit such a person to manage such accounts. An associated person of a commodity trading advisor may not solicit funds, securities or property to margin, guarantee, or secure the trades of any customer unless he is also registered as an associated person of a futures commission merchant.

Section 9(f) amends existing Section 4k(2) of the Act which, as previously noted, is redesignated as Section 4k(4). New Section

4k(4) provides, among other things, that the registration of an associated person expires at such time as the Commission may by rule, regulation, or order prescribe. New Section 4k(4) is also made applicable to associated persons of commodity pool operators and commodity trading advisors.

Section 9(g) adds a new Section 4k(5) to the Act which makes it unlawful for any registrant to permit any person to become or remain associated with it as an associated person if the registrant knew or should have known of facts regarding such associated persons that are set forth as statutory disqualifications in new Section 8a(2). A futures commission merchant, commodity pool operator or commodity trading advisor, therefore, is subject to a duty to make reasonable inquiry into the background of any person who becomes or remains associated with it as an associated person. Although "reasonable inquiry" is a concept which depends on particular facts and circumstances, it is intended to include, at a minimum, a check of the person's background with the Commission and with prior employers. Under Section 4k(5), a registrant would jeopardize its own registration by hiring or retaining a person subject to a statutory disqualification and, moreover, under Section 9(c) of the Act, would commit a misdemeanor or punishable by a fine of up to \$100,000 or imprisonment for up to one year, or both, together with the costs of prosecution. This provision creates a substantial disincentive for a registrant to hire or retain an associated person who is subject to a statutory disqualification. By imposing greater statutory responsibility on employers for the fitness of their employees than currently exists, Section 4k(5) should lead to an upgrading of the level of employees in the industry.

## SECTION 11

7 U.S.C. 6n: Section 11 deletes Sections 4n(5) and (6) of the Act, inasmuch as new Sections 8a(2), (3), and (4) of the Act contain the grounds for refusal, suspension or revocation of registration for applicants and for registrants with the Commission in each of the various categories of registration. The bases set forth in Sections 4n(5) and (6) are listed as statutory disqualifications in Section 8a(2) or are grounds for refusal, suspension or revocation of registration under Sections 8a(3) and (4). It is, therefore, not intended that by eliminating a specific reference to operations of a person which tend to disrupt or disrupt orderly market conditions, or cause or tend to cause sudden or unreasonable fluctuations or unwarranted changes in the price of commodities that such activities would not be cause for refusal, suspension or revocation of registration under new Section 8a(3)(M), that is, "other good cause shown."

## SECTION 12

7 U.S.C. 6o: Section 12 amends Section 4o of the Act to make the prohibitions on fraud and misrepresentation by commodity trading advisors and commodity pool operators contained in Section 4o applicable as well to associated persons of commodity trading advisors and associated persons of commodity pool operators, two new categories of registrants which would be established by new Sections 4k(2), (3) and (4).

## SECTION 13

7 U.S.C. 6p: Section 13 amends Section 4p of the Act by extending the Commission's authority to establish appropriate standards with respect to training, experience and other qualifications as the commission finds necessary or desirable to insure the fitness

of all persons registered with the Commission. Currently, section 4p limits the Commission's authority in this area to futures commission merchants, floor brokers, and their respective employees.

## SECTION 14

7 U.S.C. 7a: Section 14(a) amends Section 5a(8) of the Act to provide that each contract market is required to enforce all by-laws, rules, regulations, and resolutions, made or issued by it or by the governing board or any committee thereof, which have been approved by the Commission pursuant to Section 5a(12), which have become effective under that provision, or which must be enforced pursuant to any Commission rule, regulation or order. As under current law, each contract market is prohibited from enforcing any bylaw, rule, regulation or resolution which has been disapproved by the Commission. This Section is intended to conform Section 5a(8) with the revisions to Section 5a(12) in Section 13(c) of the bill and to make clear that contract markets must enforce all rules which currently are effective under Commission regulation 1.53.

Section 14(b) amends Section 5a(11) of the Act to continue the obligation of each contract market to provide a fair and equitable procedure through arbitration or otherwise (such as by delegation to a registered futures association having rules providing for such procedures) for the settlement of customers' claims and grievances against any member or employee thereof. This Section, however, makes certain changes and clarifications. Specifically, the \$15,000 limit on claims which may be arbitrated in contract market arbitration proceedings is removed, in order to provide an alternative forum for customers' claims in excess of \$15,000. Also, the provision requiring an agreement for compulsory payments in Section 5a(11)(iii) is removed. This revision is intended to ensure that arbitration awards on counterclaims are binding upon both parties. Finally, the definition of the term "customer" is broadened by this Section to include any person for or on behalf of whom a member of a contract market effects a transaction on such contract market, except another member of that contract market. Thus, the definition includes futures commission merchants or floor brokers who have a claim based on a customer relationship with such member, provided they are not members of the same contract market.

Section 14(c) amends Section 5a(12) of the Act to reduce the types of contract market rules which require prior approval of the Commission before they may be implemented. Under this revision, only those rules of a contract market which are of major economic significance or which relate to terms and conditions in commodity contracts would require prior Commission approval. All other rules of a contract market (except those relating to the setting of levels of margin) must be submitted to the Commission but may be put into effect ten days after receipt if the Commission determines that review and approval of such rules is not required. However, a contract market could request that any such rule be reviewed and approved by the Commission. To facilitate these changes, the Commission is given authority to define the "terms and conditions" of a contract of sale for future delivery. This new procedure for reviewing contract market rules would eliminate the necessity for the "operational and administrative" category of rules now contained in the Act.

It is intended that the standard to be applied to contract market rules reviewed by the Commission pursuant to this Section would be the same standard already announced by the Commission. See 45 Fed. Reg. 34873 (May 23, 1980). Under that standard, the Commission may disapprove contract market rules which conflict, or are inconsistent, with the policies, purposes and public interests embodied in the Act. Lastly, in cases of "major economic significance," only a notice of the rule (rather than in its entire text) need be published in the Federal Register. The objective of these amendments is to streamline the rule review process by: (1) allowing contract markets to put rules that are neither of major economic significance nor terms and conditions of a contract of sale for future delivery into effect after ten days if the Commission does not believe that it is necessary to review such rules; and (2) removing the confusion associated with the distinction between "other trading requirements" and "operational and administrative" rules.

## SECTION 15

7 U.S.C. 9: Section 15 amends Section 6(b) of the Act to provide that a petitioner aggrieved by a Commission order denying registration may appeal that order to the United States Court of Appeals for the circuit in which the petitioner's principal place of business, as set forth in the registration application, is located. Under the present provisions of Section 6(b), appeal is required to the circuit in which the petitioner is "doing business." In certain instances, an applicant who has not previously engaged in business will be denied registration by the Commission. In such circumstances, it might be argued under the present language of Section 6(b) that, since the petitioner is not doing business, no Court of Appeals has venue to review the Commission's order and review therefore should be had in the district court. This amendment will clarify that review of all Commission orders in registration cases will be had in the Courts of Appeals.

## SECTION 16

7 U.S.C. 13a-1: Section 16 amends Section 6c of the Act to permit the ex parte issuance, by courts of competent jurisdiction, of restraining orders which prohibit any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission from inspecting when and as requested, any books, records or other documents, or which prohibit withdrawals, transfers, removals, dissipations or disposals of funds, assets or other property. Such power is deemed to be necessary to prevent possible removal or destruction of potential evidence or other impediments to legitimate law enforcement activities and to prohibit movement or disposal of funds, assets and other property which may be subject to lawful claims of customers.

## SECTION 17

7 U.S.C. 12: Sections 17 (a) and (b)(1) together amend Sections 8 (a) and (b) of the Act to prohibit the Commission from publicly disclosing data or information concerning or obtained in any investigation of any person unless such disclosure is made in connection with a Congressional proceeding, in an administrative or judicial proceeding under the Act or in certain receivership or bankruptcy proceedings in which the Commission may intervene or appear and be heard. The Commission receives many requests, under the Freedom of Information Act ("FOIA") and otherwise, for such infor-

mation. Often these requests are made by targets of investigations who seek information under the FOIA as an alternative to discovery during litigation. The Commission's staff is compelled to divert its time from the investigation and to expend its already limited resources to examine investigatory files in order to determine what information may be disclosed under the FOIA and under the existing confidentiality provisions of Section 8(a) concerning market positions and other trading data. Once the judicial or administrative proceeding has commenced, the defendants have adequate access to the information through the exercise of existing discovery rights.

It is intended that under this amendment the confidential nature of the Commission's investigatory files and records would continue if the Commission closes the investigation without a judicial or administrative action having been instituted. The FOIA presently exempts from disclosure investigatory records, but generally only if disclosure would adversely affect an ongoing investigation or if an individual's privacy would be implicated. The disclosure of investigatory records serves no meaningful public purpose where no enforcement action has been commenced. Moreover, disclosure of these records in such circumstances could injure the reputation of persons or businesses who, for example, have been investigated but against whom no violations of law have been alleged.

Sections 17(b) (2) and (3) together amend Section 8(b) of the Act to permit the Commission to disclose otherwise confidential information in certain receivership proceedings or in certain bankruptcy proceedings in which the Commission may intervene or appear and be heard. Such disclosure is now expressly authorized only if the judicial proceedings is brought under the Act. On many occasions the Commission has successfully brought proceedings under the Act to enjoin a firm from further violations of law and to have the firm's assets placed in the hands of an equity receiver. In other instances, a firm or its creditors may file a petition under the bankruptcy law and a trustee in bankruptcy will be appointed. Under the present language of Section 8(b), it might be argued that the Commission may not disclose to the receiver or to the trustee in bankruptcy the names of customers or other relevant data since, technically, such disclosure would not be "in a proceeding brought under the Act." The amendment would make clear that the Commission is not prevented from making such disclosures.

Section 17(c)(1) contains a technical amendment to Section 8(e) of the Act which would explicitly authorize the Commission to disclose any information in its possession to any agency or department of the United States, acting within the scope of its jurisdiction. Section 8(e) presently permits such disclosure to "Executive Branch" agencies and departments. This arguably could be read to limit the Commission's ability to share information with, for example, the Securities and Exchange Commission. This presumably was not intended. (Compare Section 2(a)(8)(B) of the Act, 7 U.S.C. § 4a(g)(2), which expressly contemplates the sharing of information with the Securities and Exchange Commission.)

Section 17(c)(2) amends Section 8(e) of the Act to enable the Commission to aid the commodity-related enforcement efforts of State and local officials and foreign governments. Since 1978, the Commission has received numerous requests from State and

local law enforcement agencies seeking to establish a cooperative enforcement relationship through the sharing of data and information. Generally, these officials ask the Commission to provide names of customers of particular firms and, to a lesser extent, data concerning business records and market positions. However, Section 8 of the Act provides that, except in certain circumstances, the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers. None of the exceptions in Section 8 to this general prohibition on disclosure explicitly apply to the disclosure of this type of information to State or local or foreign government officials.

Nonetheless, the Commission desires to maintain a close, cooperative relationship with other law enforcement agencies and, in most instances, would be amenable to sharing certain of the data and information it has obtained with State, local, and foreign government officials. Accordingly, Section 8(e) of the Act is amended expressly to authorize disclosure by the Commission to State or local and foreign government agencies and departments of any information obtained by the Commission in the administration of the Act. This should enhance the ability of these enforcement officials to ensure fair and honest dealings in commodity-related matters and should also greatly enhance the ability of the States and local officials to bring enforcement proceedings authorized by the Act.

The Commission also believes that, in certain circumstances, joint investigations by the Commission and foreign governmental agencies with regulatory jurisdiction over foreign exchanges are warranted. Since United States citizens may lawfully purchase or sell the futures contracts traded on these foreign exchanges—such as those which exist, for example, in Canada and Great Britain—the Commission has an interest in ensuring that these foreign markets do not become a haven or refuge for those persons or firms who engage in unscrupulous and abusive sales practices. Through a cooperative information-sharing policy, the Commission will be able to provide valuable assistance to the officials of foreign agencies who are seeking to discipline firms that engage in the fraudulent solicitation of United States customers. Moreover, this cooperative policy will facilitate the Commission's ability to prosecute those firms who engage in unlawful practices on both United States and foreign markets.

Under the bill, the decision to disclose information is a matter of Commission discretion. In deciding if disclosure is warranted in a given situation, the Commission will evaluate whether the need to take prompt enforcement action or to conduct an expeditious investigation outweighs the general need to preserve the confidentiality of market information.

The bill also prohibits State and local government agencies and departments from disclosing any confidential information furnished except in any legal action that may be instituted. In this regard, the bill generally parallels the existing provisions of Section 8(e). The bill also limits disclosure of confidential information to foreign government agencies unless the Commission is satisfied that the information will not be disclosed by the foreign government officials, except in connection with any legal action that may be instituted.

## SECTION 18

7 U.S.C. 12a: These amendments to existing Sections 8a(1) through 8a(4) constitute a major and much needed revision of the Commission's registration authority.

Section 18(b) (1)-(5) amends Section 8a(1) of the Act to authorize the Commission to register two new categories of commodity professionals: associated persons of commodity pool operators and associated persons of commodity trading advisors, as described in new Sections 4k(2) and 4k(3), respectively. The provisions of existing Section 8a(4) with respect to the charging of fees for registration have also been moved to Section 8a(1).

Section 18(b)(6) amends Section 8a(1) of the Act by adding a new proviso at the end of that subsection which authorizes the Commission to grant a temporary license to an applicant for registration with the Commission. Such a temporary license has a maximum duration of six months from the date of its issuance. This permits an applicant for registration to begin operations during the time in which its application is being considered, thereby facilitating the registration process. The decision to grant a temporary license may be made by the Commission, in accordance with such rules, regulations, or orders as the Commission may issue. New Section 8a(10) of the Act (Section 17(h) of this bill) also permits the Commission to delegate the performance of any portion of its registration functions, including the granting of such temporary licenses, to a registered futures association.

The grant of a temporary license under this provision is not intended to constitute a registration nor to confer any right or create any presumption in favor of registration with the Commission. Thus, if subsequent to the issuance of a temporary license, the Commission determines that the applicant is subject to a statutory disqualification under the Act, as described below, registration will not be granted. Similarly, the refusal of a temporary license does not necessarily mean that registration ultimately will be refused. For example, further investigation of the grounds which led to a refusal of a temporary license may disclose that they are insufficient to refuse registration to the applicant under the Act. Regardless of whether registration is granted, the temporary license is not valid for more than six months. In this connection, certain provisions of the Act specify that registration shall not be granted for less than a certain period of time, e.g., one year from the date of issuance in the case of futures commission merchants and floor brokers. See section 4f(1) of the Act (7 U.S.C. § 6f(1)). Section 8a(1) does not conflict with such provisions, inasmuch as section 8a(1) concerns the grant of a temporary license, and not registration.

It is anticipated that the Commission will adopt regulations to establish standards and procedures for granting a temporary license. For example, such regulations may provide for the grant of a temporary license where the applicant's registration application is complete and does not on its face indicate any statutory disqualification. Such a regulatory framework therefore will enable apparently qualified applicants to commence operations during the sometimes lengthy process of completing a full fitness check, but without conferring any right to continue in business if they are unfit for registration with the Commission.

Section 18(c) amends Section 8a(2) of the Act to establish a system of statutory dis-

qualifications for registration. Under this system, the Commission is authorized without a prior hearing to refuse to register, to register conditionally, to suspend or to place restrictions upon the registration of any person (that is, any applicant or registrant) pursuant to such rules, regulations, orders and procedures as the Commission may adopt, if such person is subject to a statutory disqualification listed in Section 8a(2). The amendment thus expands existing law under which the Commission may deny registration without a hearing if the applicant is subject to an outstanding order of the Commission imposing various sanctions. See Sections 4n(5) and 8a(2)(A). In addition, for such statutory disqualifications, the Commission is authorized to revoke the registration of any person registered with the Commission upon such a hearing as may be appropriate.

There are eight conditions listed as statutory disqualifications in Section 8a(2), each of which will be discussed below. These conditions are modeled after existing provisions of the Act, Commission regulation 1.10e, 17 C.F.R. § 1.10e (1981), the Commission's interpretative statement regarding good cause for denial of registration, 17 C.F.R. Part 1 Appendix A, and certain analogous provisions of the Securities Exchange Act of 1934. Each statutory disqualification is based upon a previous finding or order by the Commission, a court, or another governmental body. The reasons for enumerating several bases for finding applicants or registrants unfit for registration are to permit the Commission to develop an expedited procedure for registration, to provide notice of the most important fitness standards which the Commission will apply, and to promote uniformity of treatment of applicants and registrants. The Commission also retains the discretion, in appropriate cases, to register a person, notwithstanding the existence of a statutory disqualification.

As under current law, the applicant or registrant may obtain judicial review of any Commission action under Section 8a(2) in an appropriate Federal Court of Appeals, pursuant to the provisions of Section 6(b) of the Act. The applicant or registrant, however, generally will be limited to contesting before the Commission the fact of the statutory disqualification. Once the fact of the statutory disqualification is shown, refusal of registration, conditional registration, suspension, revocation or the placing of restrictions upon its registration follows as a matter of law. As a consequence, the Commission may promptly exclude and remove from the industry any person who is subject to a statutory disqualification. Accordingly, Section 8a(2) should result in a substantial savings of Commission resources and in a significant improvement in registration processing. Under this amendment, the absence of a statutory disqualification is a precondition of doing business unless the Commission determines otherwise in its discretion. Of course, it is contemplated that the Commission will develop procedures pursuant to Section 8a(2) which will provide adequate notice to an applicant or registrant that the Commission had information which indicates that he is subject to a statutory disqualification, and which also will afford him an opportunity to reply or explain in writing (e.g., advise the Commission of a clerical error or a case of mistaken identity). Moreover, the Commission can conduct such further proceedings as it deems necessary if, despite a statutory disqualification, it deems it appropriate not to deny the application.

Paragraph (A) makes a person subject to a statutory disqualification if a prior registration of such person with the Commission in any capacity has been suspended (and the period of such suspension has not expired) or has been revoked. This provision makes clear that the disqualification applies if a prior registration with the Commission in any capacity is under suspension or has been revoked, regardless of the category of registration for which application is being made.

Paragraph (B) makes a person subject to a statutory disqualification if an application for registration by such person in any capacity with the Commission has been refused (after opportunity for hearing under Section 8a(3)) within five years preceding the filing of the present application for registration. This amendment eliminates the possibility under current law that a person recently refused registration may immediately reapply to the Commission for registration in the same or another category. Further, if after his registration, registration is refused in another capacity, such refusal would also be a statutory disqualification for continuing the prior registration.

Paragraph (C) makes an applicant for registration subject to a statutory disqualification if such person is permanently or temporarily enjoined by court order, including a court order entered pursuant to an agreement of settlement to which the Commission or any Federal or state agency or other governmental body is a party, from (i) acting as a Commission registrant or as any of certain specified securities professionals, or as an affiliated person or employee of any of the foregoing, or (ii) engaging in or continuing any activity involving transactions or advice concerning commodity interests subject to Commission regulation or concerning securities. This provision, however, does not permit revocation of an existing registration solely on the basis of a temporary order, judgment or decree, such as a temporary restraining order or a preliminary injunction. It would permit revocation of an existing registration based on a permanent injunction which is a decision on the merits.

Paragraph (D) makes a person subject to a statutory disqualification if such person has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of a felony which involves: (i) any transactions or advice concerning any commodity interest subject to Commission regulation or concerning a security, (ii) the conduct of the business of any Commission registrant or specified securities industry professional or an affiliated person or employee of any of the foregoing, (iii) certain enumerated offenses of particular gravity which bear a close relationship to a person's fitness to be registered with the Commission, e.g., bribery, misappropriation of funds, securities or property, or theft, or (iv) the violation of the following provisions of Title 18 of the United States Code: section 152 (concealment of assets in a bankruptcy proceeding, making a false or fraudulent oath in a bankruptcy proceeding, perjury in connection with a bankruptcy proceeding, etc.), sections 1341, 1342, 1343 (mail frauds and swindles, the use of fictitious names and addresses, frauds perpetrated through use of the wires, radio, or television), chapter 25 (counterfeiting and forgery), chapter 47 (fraud and false statements), chapter 95 (racketeering), and chapter 96 (racketeer influenced and corrupt organizations).

Paragraph (E) makes a person subject to a statutory disqualification if such person, within ten years preceding the filing of the application or at any time thereafter, has been found by any court of competent jurisdiction, by the Commission or by any Federal or state agency or other governmental body, or by agreement of settlement to which the Commission or any Federal or state agency or other governmental body is a party, (i) to have violated any provision of the Act, the Federal securities laws, or any similar state or foreign statute, or any rule, regulation or order under any such statutes where the violation involves the same serious offenses as those enumerated in subparagraph (D)(iii), or (ii) to have willfully aided, abetted, counseled, commanded, induced or procured such violation by any other person. Violations occurring more than ten years prior to the date of application, however, are not statutory disqualifications, but may be considered in a proceeding conducted under Section 8a(3), discussed later.

Paragraph (F) makes a person subject to a statutory disqualification if such person is subject to an outstanding order of the Commission denying him trading privileges on any contract market, denying, suspending or revoking his membership in any contract market or registered futures association, or barring or suspending him from being associated with a registrant, with a member of a contract market, or with a member of a registered futures association.

Paragraph (G) makes a person subject to a statutory disqualification if such person willfully made any material false or misleading statement or omitted to state any material fact in his application as to any of the matters set forth in paragraphs (A) through (F) of this subsection, that is, as to the existence of the other statutory disqualifications. This provision is consistent with Commission decisions which create a rebuttable presumption that any material inaccuracy with respect to such matters is willful.

Paragraph (H) makes a person subject to a statutory disqualification if refusal, suspension or revocation of the registration of any of its principals would be warranted because of a statutory disqualification listed in this Section. The term "principal" is defined in this paragraph for purposes of both Sections 8a(2) and (3). Specifically, the term "principal" is defined to mean a general partner in the case of a partnership, or an officer, director or beneficial owner of at least ten percent of the voting shares of a corporation, and any other person which the Commission finds to be in a position to exercise actual control of the entity. It is intended that both the Commission and the courts construe the term "principal" flexibly to effectuate the remedial and deterrent purposes of this provision.

Section 18(d) adds a new Section 8a(3), and existing Section 8a(3) has been redesignated as Section 8a(4). This Section authorizes the Commission to refuse to register or to register conditionally any person, after opportunity for hearing, based upon certain conditions, acts or omissions which are enumerated in paragraphs (A) through (N) of Section 8a(3). These factors have the same derivation as the statutory disqualifications listed in Section 8a(2). Unlike each of the statutory disqualifications listed in Section 8a(2), however, the issues of mitigation and rehabilitation may be appropriate for Commission consideration so that the factors listed in Section 8a(3) are not intended to constitute automatic disqualifications to

doing business. Under this Section, it is contemplated that the Commission may by regulation establish a denial procedure similar to the procedure that it uses under existing Commission regulation 1.10e (17 C.F.R. § 1.10e). As under current law, an applicant for registration is entitled to a hearing before the Commission and may obtain review of any Commission decision to refuse or to condition registration made under Section 8a(3) in an appropriate Federal Court of Appeals, pursuant to the provisions of Section 6(b) of the Act.

Paragraph (A) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that the person has been found by the Commission or by any court of competent jurisdiction to have violated or has consented to findings of a violation of any provision of the Act, or any rule, regulation, or order thereunder, other than those set forth in Section 8a(2), or to have willfully aided, abetted, counseled, commanded, induced or procured the violation by any other person of such provisions. Unlike Section 8a(2)(E), violations occurring more than ten years prior to the date of application may be considered.

Paragraph (B) parallels paragraph (E) of Section 8a(2), except that there is no ten-year limitation on the use of such violations, no restriction as to the type of securities-related violations involved, and commodities-related violations, which are referred to in paragraph (A), are not included.

Paragraph (C) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that such person failed reasonably to supervise another person, who is subject to the person's supervision, with a view to preventing violations of the Act, any of the statutes enumerated in paragraph (B), or any of the rules, regulations, or orders thereunder, and the person, subject to supervision committed such a violation. No person, however, is deemed to have failed reasonably to supervise another person, within the meaning of this paragraph, if (i) there have been established procedures, and a system for applying such procedures which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and (ii) such person reasonably discharged the duties and obligations incumbent upon that person, as supervisor, by reason of such procedures and system, without reasonable cause to believe that such procedures and system were not being complied with. This paragraph contains the same standard of supervision as is used in Section 15(b)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(b)(4)(E)).

Paragraph (D) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that such person has been convicted of a felony other than a felony enumerated in Section 8a(2)(D) within ten years preceding the filing of the application, or has been convicted of any felony (including those in Section 8a(2)(D)) more than ten years preceding the filing of the application. Moreover, if an applicant is convicted of such a felony after his registration, this also is a basis for suspension or revocation of his existing registration.

Paragraph (E) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that such person

has been convicted within ten years preceding the filing of the application of a misdemeanor of the nature described in the parallel paragraph for felony convictions, that is, paragraph (D) of Section 8a(2).

Paragraph (F) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that such person has been debarred by any agency of the United States from contracting with the United States. This provision already is contained in current Section 8a(2)(B)(i) of the Act.

Paragraph (G) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that such person willfully made any material false or misleading statement or willfully omitted to state any material fact in his application (other than a misstatement or omission under Section 8a(2)(G)) or in any report required to be filed with the Commission by the Act or the regulations thereunder, or in any proceeding before the Commission.

Paragraph (H) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that such person pled *nolo contendere* to criminal charges of felonious conduct, or has been convicted in a State court or in a foreign court of conduct which would constitute a felony under Federal law if the offense had been committed under Federal jurisdiction. This paragraph is derived from a factor listed in the Commission's interpretative statement regarding good cause for denial of registration.

Paragraph (I) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that an applicant for registration in a capacity for which there are minimum financial requirements prescribed under the Act or under the Commission's rules and regulations has not established that he meets those requirements. This paragraph parallels existing Section 8a(2)(C) which, however, is limited to applicants for registration as futures commission merchants. This amendment is intended to reflect the possibility that the Commission may establish minimum financial requirements for additional categories of registrants in the future.

Paragraph (J) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that such person is subject to an outstanding order denying, suspending or expelling him from membership in a contract market, a registered futures association, or in any other self-regulatory organization, (e.g., a stock exchange or the National Association of Securities Dealers) or barring or suspending him from being associated with any member or members of such contract market, association, or self-regulatory organization.

Paragraph (K) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that such person has been expressly found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party, (i) to have violated any statute or any rule, regulation, or order thereunder where such violation involves the offenses enumerated in subparagraph

(D)(iii) of Section 8a(2); or (ii) to have willfully aided, abetted, counseled, commanded, induced or procured such violation by any other person.

This paragraph is designed to make the violation of Federal and state regulatory statutes other than those dealing with commodity futures trading or securities a basis for refusal or registration or conditional registration under the Act. Inasmuch as regulatory schemes and standards for different industries and professions undoubtedly vary, an opportunity for hearing is provided before a determination concerning registration is made by the Commission on this basis.

Paragraph (L) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that such person has associated with him any person and knows, or in the exercise of reasonable care should know, of facts regarding such other person that are set forth as statutory disqualifications in Section 8a(2).

This paragraph, which is modeled after Sections 15(b)(1)(B) and 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. §§780(b)(1)(B), 780(b)(4)), is designed to discourage persons in the commodity industry from hiring (or from permitting to remain employed) unfit persons, since employment of such persons may result in a refusal of registration to their employer under this paragraph, or in the suspension or revocation of such employer's registration under new Section 8a(4). By using a "know or should know" standard, this paragraph imposes a duty of reasonable inquiry on the part of the employer. This provision, in conjunction with new Section 4k(5), should lead to increased responsibility by employers for, and a consequent upgrading of the level of, employees in the industry. The term "associated" should be construed broadly in order to effectuate the remedial and deterrent purposes of this paragraph.

As under current law, Paragraph (M) authorizes the Commission to refuse to register or to condition the registration of any person for other good cause shown. This provision is intended to duplicate existing Section 8a(2)(B)(ii) of the Act and confirms that the Commission may continue to seek to refuse or to condition registration upon other reasonable grounds which are not explicitly set forth in the Act.

Paragraph (N) authorizes the Commission to refuse to register or to condition the registration of any person, if it is found, after opportunity for hearing, that any principal of such person has been or could be refused registration under Section 8a(3). It should be noted that this paragraph parallels Paragraph (H) of Section 8a(2) and that the definition of the term "principal" contained in that paragraph applies here as well.

Section 18(e) merely redesignates existing Section 8a(3) as new Section 8a(4), with conforming amendments to refer to new Section 8a(3).

Section 18(h) adds a new Section 8a(10) pursuant to which the Commission may authorize any person (such as a registered futures association) to perform any portion of its registration functions, in accordance with rules approved by the Commission, and subject to the applicable provisions of the Act. It is intended that any decision made with respect to registration by a person so authorized will be reviewable by the Commission. Further, regardless of who performs the registration functions, registrants will continue to be deemed to be registered with the Commission.

## SECTION 19

7 U.S.C. 13: Section 19(a) amends Section 9(a) of the Act by expanding it to make it a felony for any person registered or required to be registered under the Act or any employee or agent thereof, to embezzle, steal, purloin or convert with criminal intent money, securities or property having a value of more than \$100 which belongs to customers, clients, or pool participants, if such funds were received in connection with that person's business. Currently, Section 9(a) applies only to futures commission merchants and their employees and agents. Since other persons registered or required to be registered under the Act may have access to the money, securities, or property of their customers, clients or pool participants, there should be comparable criminal liability for the unlawful taking of such assets.

Section 19(b) contains three amendments to Section 9(d) of the Act, which was added to the Act as part of the amendments enacted by the Commodity Futures Trading Commission Act of 1974. Section 9(d) currently bars Commission members and employees from engaging in commodity futures and commodity option transactions and further prohibits them from participating in investment transactions in actual commodities, subject to certain exceptions.

Section 19(b)(1) contains the first of these three amendments. Heretofore, Section 9(d) has not prohibited Commission members and employees from engaging in leverage transactions even though such transactions are, like commodity futures and commodity option transactions, subject to the exclusive jurisdiction of the Commission pursuant to Section 2(a)(1) of the Act. The Commission has already barred its members and employees from participating in such transactions under its Code of Conduct (see 17 C.F.R. §140.735-4(b)(1)) and this amendment would conform the Act to that standard.

Section 19(b)(2) contains the second amendment to Section 9(d) of the Act which will permit trustees of trusts established by Commissioners and Commission employees, over which such Commissioners or employees exercise no control, to engage in (i) hedging transactions in connection with permitted farming and ranching operations and (ii) transactions for the lease of oil and gas and other mineral rights and interests owned by the Commissioner or employee. This amendment will permit the Commission to attract qualified personnel while at the same time avoiding conflicts of interest through the use of independent trustees.

Section 19(b)(3) contains the last amendment to Section 9(d) of the Act, which supplements the existing exception in Section 9(d) which allows Commission members and employees to engage in investment transactions in agricultural commodities or livestock (if the latter is owned at least three months) for use in their own farming or ranching operations, provided that they notify the Commission in accordance with its regulations. At the time that exception was enacted in 1974, futures contracts designated for trading under the Act involved only those domestic agricultural commodities specifically enumerated in Section 2(a)(1). Since 1975, however, boards of trade have been designated to trade futures contracts in financial instruments, including United States Government securities, such as Treasury bills and notes, and bank certificates of deposit. In 1974, Congress did not, therefore, specifically address the question of whether investments by Commission

members and employees in United States Government securities, bank certificates of deposit or similar financial instruments, which are generally available to the public, either directly or through vehicles such as money market funds, should be allowed. The Commission believes that such investment transactions by Commission members and employees should be permitted. Under this bill, Commission members and employees will be expressly authorized to invest in such government securities and financial instruments, so long as the investment is effected other than through an instrument regulated by the Commission and if no non-public information is used in reaching their investment decisions.

Section 19(c) amends Section 9(e) of the Act which currently forbids Commission members and employees from imparting non-public information which may affect the price of any commodity futures or commodity with the intent to assist another in any transaction in commodity futures, commodity options or actual commodities. That provision also prohibits the acquisition and use by any person of such non-public information in any such transaction. Consistent with the amendment to Section 9(d) to include leverage transactions within the investment prohibitions applicable to Commission members and employees, Section 9(e) is also being amended to include within its prohibitions specific reference to leverage transactions.

## SECTION 20

7 U.S.C. 16: Section 20(a) amends Section 12(d) of the Act relating to the authorization of funds to administer the Act. [Text to follow.]

Section 20(b) adds a new section 12(e) to the Act which is designed to permit the application of the Federal and state laws to activities and persons who unlawfully engage in commodity transactions outside the Act's regulatory structure. Under this provision, for example, state law enforcement agencies will be able to proceed under their own laws and through local courts or administrative proceedings against persons who engage in commodity futures transactions other than on or subject to the rules of contract markets designated by the Commission. Similarly, persons engaged in commodity option or leverage transactions not authorized by the Act or Commission regulations will not be able successfully to defend their activities based on the Commission's exclusive jurisdiction over these transactions. In this connection, Section 12(e) expressly permits the application of other laws to persons who operate businesses without obtaining registrations and designations required by the Act and by the Commission's regulations. The Commission would be explicitly authorized to refer any such suspected activity to appropriate Federal and state authorities for investigation or prosecution. This amendment, together with existing Section 6d of the Act, which permits state law enforcement authorities to proceed in Federal court against persons who violate the Act, will enable the Commission to call upon the assistance of other law enforcement bodies in order to foster a coordinated and effective program to detect and prosecute those who engage in unlawful conduct.

## SECTION 21

7 U.S.C. 13c: Section 21(a) amends Section 13(a) of the Act by making that subsection apply to all legal proceedings arising under the Act. At present, the provision is applicable only to administrative proceedings

under the Act. It is intended that persons who intentionally aid, abet, counsel, command, induce or procure the commission of violations of the Act or rules, regulations and orders thereunder, irrespective of evil motive or reliance on erroneous advice, or who act with careless disregard of statutory requirements, will be responsible for such violations in both court proceedings and administrative proceedings.

Section 21(c) adds a new Section 13(b) to the Act (Section 20(b) of the bill having redesignated existing Section 13(b) of the Act as new Section 13(c)) which provides that any person who directly or indirectly controls any person who violates any provision of the Act or the rules, regulations, or orders issued thereunder shall be liable as a principal, unless the controlling person did not know, or in the exercise of reasonable care, did not have any reason to know of the fact constituting the violation. This provision is intended to supplement existing principles of liability under the Act and common law, and in no way limits or modifies such principles. The purpose of this provision is to reach situations in which there arguably may be technical legal barriers which might prevent the imposition of liability on persons responsible for violative conduct, by, for example, piercing the corporate veil in appropriate circumstances.

The term "control" as used in this Section is intended to include actual control as well as legally enforceable control. It is well known, for example, that actual control sometimes may be exerted through ownership of less than a majority interest in any entity, either through ownership alone, or in combination with other factors. It would be difficult, if not impossible, to enumerate or to anticipate the many ways actual control may be exerted, since ultimately the existence of control is a factual question which must be determined on a case-by-case basis.

#### SECTION 22

7 U.S.C. 18: Section 22 contains several amendments to Section 14 of the Act which are designed to enable the Commission to administer its reparations program more efficiently and with a greater assurance that the Congressional purposes underlying reparations will be served. Under the amendments, claims may be entertained in reparations only against those respondents registered by the Commission as required by law. It has been the Commission's experience that many claims have been brought against persons engaged in fraudulent conduct who have failed to seek and obtain registration with the Commission as required by law. Since it is common that these violators default in the reparations proceeding and cannot be located, there is little likelihood that a customer will ever receive payment of a reparations award entered by the Commission in such cases. In these circumstances, the reparation process actually operates as a disservice to those who have already been harmed, by apparently promising recovery, which as a practical matter cannot be had.

Moreover, the efficient administration of the reparations program, to assure speedy results, necessitates that the Commission assign resources to the program as intelligently as possible. Sudden surges in new claims, precipitated by activity of persons or firms previously unknown to the Commission, and on whom the Commission has had no opportunity to impose sound business practices or conduct meaningful surveillance, impede the expeditious resolution of claims generally, including those asserted

against Act registrants. The amendment is intended to render the reparations program more manageable than at present.

Another facet of the proposed amendments would delete several procedural provisions in the existing law which the Commission has found to be unduly cumbersome. The amendment will permit the Commission to fashion fair procedures that should facilitate and expedite the handling of claims before the Commission. In this connection, the Commission would not be required to ensure that its procedures conform to those that might ordinarily be required for more typical forms of agency actions by the Administrative Procedure Act. Of course, the Commission would remain subject to the constitutional duty to provide fundamental fairness to all parties to the proceeding.

One technical amendment to Section 14 would provide that the trading privileges of a customer against whom an award was rendered on a respondent's counterclaim could be terminated if payment of the award was not made. Existing law permits trading privileges to be terminated only when the respondent fails to pay an award rendered on the customer's claim.

#### SECTION 23

7 U.S.C. 20: Section 23 contains a technical amendment to Section 16 of the Act. In 1978, Section 8 of the Act was amended to include express reference to the "market positions" of any person in the general prohibition on separate disclosure of certain information by the Commission. The wording of Section 16(d) of the Act concerning the non-disclosure of confidential information in Commission market reports, which basically tracks the wording of Section 8, was inadvertently not similarly amended at that time. This amendment will conform Section 16(d) to Section 8.

#### SECTION 24

7 U.S.C. 21: Section 24(a) contains an amendment to Section 17(b)(10) of the Act which conforms this subsection to amended Section 5a(11), the parallel arbitration provision for contract markets. Specifically, the \$15,000 limit on claims which may be arbitrated in futures association arbitration proceedings is removed, in order to provide an alternative forum for customers' claims in excess of \$15,000. Also, the provision requiring an agreement for compulsory payments in section 17(b)(10)(iii) is removed. This revision is intended to ensure that arbitration awards on counterclaims are binding upon both parties. Finally, the definition of the term "customer" is broadened by this Section to include any person except another member of the association.

Section 24(b) contains a technical amendment to Section 17(h) of the Act which replaces a current incorrect reference to subsection (k) with the correct reference to subsection (i).

Section 24(c) contains an amendment to Section 17(j) of the Act, which principally deals with Commission approval of changes in or additions to the rules of any registered futures association. The amendment conforms Section 17(j) to amended Section 5a(12), a parallel rule review and approval provision for contract markets.

Section 24(d) amends Section 17 of the Act by adding a new Section 17(o) pursuant to which the Commission may require any registered futures association to perform any portion of its registration functions under the Act with respect to each member of the association other than a contract

market and with respect to each associated person of any such member. The performance of such functions must be in accordance with rules approved by the Commission, and subject to the provisions of this Act applicable to registrations granted by the commission. It is intended that any decision made regarding registration by a futures association will be appealable to the Commission. Moreover, it is intended, as under the current system, that this amendment not affect the fact that registrants are deemed to be registered with the Commission.

#### SECTION 25

7 U.S.C. 23: Section 25 amends Section 19\* of the Act by adding a new Section 19(e) Congress first addressed the subject of leverage transactions when it enacted Section 217 of the Commodity Futures Trading Commission Act of 1974. That provision was confined to leverage transactions in gold and silver bullion and bulk coins, and, together with Section 2(a)(1) of the Commodity Exchange Act, gave the commission exclusive authority to regulate these types of leverage transactions so as to prevent manipulation or fraud. Section 217 also provided that, if the Commission determined any gold or silver leverage transaction to be a contract for future delivery, the Commission was to regulate the transaction as a futures contract under the Commodity Exchange Act.

In 1978, as part of the Futures Trading Act of 1978, Congress expanded the federal role in the area of the regulation of leverage transactions. In that legislation, Congress repealed Section 217 of the 1974 Act and replaced it with Section 19 of the Commodity Exchange Act. Under Section 19, Congress banned all leverage transactions in the agricultural commodities enumerated in Section 2(a)(1) of the Act. Congress also continued the Commission's existing authority over gold and silver leverage transactions and, with a companion amendment to Section 2(a)(1) of the Act, gave the Commission exclusive regulatory authority to prohibit leverage transactions in all other commodities or to regulate these transactions, either separately or, if the Commission determined any of these transactions to be a contract for future delivery, as futures contracts.

Pursuant to its original authority under Section 217 of the 1974 Act, the Commission in 1975 adopted a broad antifraud rule which generally prohibited any fraudulent or deceptive conduct in or in connection with the offer or sale of gold or silver leverage transactions (17 C.F.R. §30.03 (1976)). After passage of the Futures Trading Act of 1978, the Commission expanded this rule to proscribe fraudulent activity in connection with leverage contracts involving any commodity over which Section 19 vested the Commission with regulatory authority (17 C.F.R. §31.03 (1981)).

In addition, on November 30, 1978, the Commission adopted a temporary moratorium on persons entering the business of offering or selling gold or silver leverage transactions who were not engaged in such a business on June 1, 1978 (17 C.F.R. §31.1 (1981)). Similarly, on September 25, 1979, the Commission adopted a temporary moratorium on the entry of new firms into the business of offering or selling leverage

\*This amendment is to the Section 19 which refers to leverage transactions and not to the Section 19 which was added to the Act by Section 302 of the Bankruptcy Reform Act of 1978.

transactions involving commodities other than gold or silver who were not engaged in such a business on February 2, 1979 (17 C.F.R. §31.2 (1981)). The Commission believes that it requires additional time in order to make an informed determination whether any of the leverage transactions that are the subject of Section 19 are futures contracts and, if not, what type of regulatory structure would be appropriate to protect the public. Accordingly, a new Section 19(e) has been added to the Act which would codify, for a two-year period, the Commission's existing moratoria prohibiting new firms from engaging in the leverage business and new products from being the subject of leverage contracts. The amendment also requires the Commission to study leverage transactions and report to Congress within two years on various questions concerning leverage transactions, including whether the national public interest, if any, necessitates federal regulation, either exclusively or concurrently with the states, and whether an appropriate regulatory scheme to govern this activity on a permanent basis should be adopted by the Commission. It is anticipated that during the interim period the Commission will adopt regulations governing the offer and sale of leverage contracts by existing leverage firms.

#### SECTION 26

7 U.S.C. 16a: A provision for user fees will replace Section 26 of the Futures Trading Act of 1978 which permits the assessment of user fees by the Commission.

#### COMMODITY FUTURES TRADING COMMISSION— SECURITIES AND EXCHANGE COMMISSION

##### JOINT EXPLANATORY STATEMENT

As announced on December 7, 1981, the Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC") have come to an agreement on a range of issues regarding their respective jurisdictions. In connection with this effort, the agencies have prepared draft legislation which, among other things, would clarify the statutes administered by the two agencies. The CFTC and the SEC are transmitting the draft legislative proposals to their respective Congressional committees, with this Statement, which explains a number of issues relating to the agreement. The two agencies urge that these statutory changes be enacted as promptly as possible.

The desirability of a resolution by the two agencies of the issues between them has become increasingly clear. The growing demand for new products related to securities or financial instruments, either as investments or as price hedging tools, has magnified the importance of removing the jurisdictional confusion that has hampered the development of the markets for such instruments. The confusion is a result essentially of amendments in 1974 to the Commodity Exchange Act (the "CEA") that (1) expanded the definition of "commodity" to embrace not only tangible goods but to reach intangible rights and interests, (2) gave the CFTC "exclusive jurisdiction" over agreements and transactions "involving" futures trading in commodities, and (3) inserted in the CEA a qualified proviso to preserve the SEC's pre-existing authority over securities trading and the securities markets.

#### SUMMARY

The two agencies have agreed that the SEC will regulate options on securities and on certificates of deposit (and on all groups or indices of securities or certificates of de-

posit) and the CFTC will regulate futures contracts on exempted securities (other than municipal securities) and on broad-based groups or indices of any securities, as well as options on any such futures contracts. No futures contracts (or options on futures contracts) on individual corporate and municipal securities will be permitted to trade. The SEC may also allow options on foreign currency to trade on national securities exchanges, while the CFTC will have jurisdiction to regulate the trading of options on foreign currency in the commodities markets. The attached legislative proposals would specifically codify the agreement of the two agencies by clarifying current law in certain areas.

#### OPTIONS ON SECURITIES

Since 1973, national securities exchanges have traded options on securities under the regulatory structure administered by the SEC. The proposals to amend the federal securities laws would relate to the SEC's authority to regulate trading in options on securities. The SEC's authority over such trading on exempted securities has been challenged in the United States Court of Appeals for the Seventh Circuit.<sup>1</sup> Thus, one proposal would clarify the definition of "security" in the federal securities laws to include explicitly any option on a security.<sup>2</sup> In addition, options on foreign currency traded on a national securities exchange and options on certificates of deposit<sup>3</sup> would be included within that definition. Under the proposals, the SEC's authority over the trading of securities options also would be clarified by an amendment to Section 9(f) to establish specifically that the SEC's plenary options authority in Section 9(b) of the Exchange Act extends to options on exempted securities and by the addition of Section 9(g) which confirms the SEC's authority to regulate the trading of options on all securities and on certificates of deposit. The same legislative proposal would provide that only the SEC, and not the CFTC, has authority with respect to options directly on underlying securities and securities groups or indices.

Under a series of proposed amendments to the federal commodity laws, the CEA would not apply to options on securities or securities aggregates, and the CFTC would not be permitted to designate a board of trade as a contract market for the trading of such instruments. Nevertheless, the CFTC would have exclusive jurisdiction over all permissible futures contracts as well as options on those futures contracts, and would regulate options directly on foreign currencies traded in the commodity markets (but not on a national securities exchange).

#### FUTURES ON INDIVIDUAL CORPORATE OR MUNICIPAL SECURITIES

Pending further review of appropriate regulatory systems for trading in such futures, the legislative proposal would foreclose the trading of futures (and options on futures) on individual corporate or municipal securities, or contracts based on the value of such a security. Nevertheless, the two agencies intend to study further the issues raised by such trading with a view toward a future recommendation to lift this restriction. This temporary foreclosure of trading does not apply to futures (or options on futures) on exempted securities, except municipal securities.

#### FUTURES ON SECURITIES INDICES

The CFTC would be permitted under proposed amendments to the CEA to designate a board of trade as a contract market for contracts (or options on such contracts) of sale for future delivery of a securities group or index, but only if the contract (or option on such contract) meets certain specific minimum requirements set forth in the draft legislation as well as other requirements currently in the CEA.

With respect to a futures contract on a securities group or index (or option on such contract), settlement must be effected in cash or by means other than a security on which a futures contract could not be authorized. That is, such a contract could be settled by delivery of an exempted security, such as a security issued or guaranteed by the United States government, but could not be settled by the transfer or receipt of a corporate or municipal security.

Separate and apart from the present statutory requirement that any contract market have rules to prevent manipulation, the CFTC also would be required to find that trading in the contract under consideration would not be likely to produce manipulation in the futures markets or in related markets, i.e., those for any underlying security, option on such security, or option on a group or index including such securities.<sup>4</sup>

A securities group or index underlying a futures contract must be predominantly composed of the securities of unaffiliated issuers and, in addition, would be required to be a widely published measure of, and to reflect, the market for all publicly traded equity or debt securities or a substantial segment of such market, or be comparable to such a measure. This standard is intended to provide adequate flexibility for the market to respond to the needs of participants, while assuring that only broad-based securities index futures contracts that are not conducive to manipulation could be authorized.<sup>5</sup>

In view of the SEC's strong regulatory concern with respect to the trading of futures on securities groups and indices, that agency would be provided a specific role in the process of CFTC designation of a contract market for the trading of such instruments.<sup>6</sup> The CFTC would be required to consult with the SEC with respect to designation of any board of trade as a contract market for any futures contract involving a securities group or index. Following a mandatory public comment period, the SEC would be provided with a specific time period during which it could object to the designation on the ground that any minimum requirement was not met. If the SEC objected, the CFTC would, if the SEC requested, afford it an opportunity, after the public comment period, for an oral hearing prior to action upon the designation. After the oral hearing, if the SEC continued to maintain its objections, the CFTC would be required to give appropriate weight to the SEC's views in deciding whether to authorize the contract. If, nonetheless, the CFTC designated a board of trade as a contract market for such a futures contract,<sup>7</sup> the SEC would have the right to judicial review of such order, at which time the court would consider the CFTC's action and the SEC's views. In reviewing the CFTC action, the court would be required to determine, in accordance with the standards of Section 6(b) of the CEA, whether the agency action was supported by the weight of the evidence.

Footnotes at end of article.

## COMMODITY POOLS

While the CFTC has adopted extensive regulations governing the activities of commodity pool operators and has exclusive jurisdiction with respect to "accounts \* \* \* involving" futures, the SEC has taken the position that the activities of a commodity pool as a company, i.e., its formation, capital-raising, and continued corporate existence, are subject to the federal securities laws. The draft legislative language would make this result explicit by stating that nothing in the CEA affects the applicability of the Securities Act and the Exchange Act with respect to securities issued by commodity pools and transactions therein. Of course, the proposed language would not affect the exclusive jurisdiction granted by the CEA with respect to state regulation. Moreover, in appropriate circumstances, commodity pools and persons managing them may be subject to the Investment Advisers Act of 1940 and, if a pool conducts not only a commodities business but also acts as an investment company, the Investment Company Act of 1940.

## FOOTNOTES

<sup>1</sup> Board of Trade of the City of Chicago v. Securities and Exchange Commission, et al., No. 81-1660 (7th Cir., petition for review filed April 24, 1981), (No. 81-2587 (7th Cir., petition for review filed October 5, 1981); and No. 82-1097 (7th Cir., petition for review filed January 21, 1982).

<sup>2</sup> As a result, an option on an exempted security would expressly be a separate, non-exempted security. Accordingly, a person in the business of effecting transactions in such instruments would, absent an applicable exemption, be required, pursuant to Section 15 of the Securities Exchange Act of 1934 (the "Exchange Act"), to register with the SEC as a broker or dealer. To the extent, however, that such a requirement would impose an unnecessary burden on government securities dealers effecting transactions in options on government securities, the SEC has the authority administratively to provide an exemption from that requirement and currently intends to do so.

<sup>3</sup> Although the status of certificates of deposit as securities under the Securities Act of 1933 (the "Securities Act") and the Exchange Act is not free from doubt, certificates of deposit have consistently been considered "securities" for the purposes of the Investment Company Act of 1940. In order to emphasize that no change in current law is contemplated, the legislative language used in the two circumstances differs. Thus, for investment company purposes, the relevant portion of the definition of security would read " \* \* \* option \* \* \* on any security including a certificate of deposit," while the corresponding language proposed in the Securities and Exchange Act would read " \* \* \* option \* \* \* on any security, or certificate of deposit \* \* \*."

<sup>4</sup> In order to address concerns relating to the general possibility of inter-market manipulation, the agencies have recommended the CEA be amended to authorize the CFTC to provide trade information to securities self-regulatory organizations and to registered futures associations, as well as to contract markets.

<sup>5</sup> In practice, the two agencies believe that these standards will raise few substantial questions with respect to trading futures on established, widely-used indices containing a number of securities sufficient so that the indices will not be subject to manipulation. As one example, an index of most of the securities traded on a major national securities exchange would appear unlikely to present difficulties. Such indices also would seem more likely to be useful to the marketplace, since they would permit persons such as underwriters or portfolio managers to hedge the risk of overall market movements. However, it appears unlikely that indices not now, in existence, based on bonds issued by a group of affiliated companies or on small industry groups, would meet such standards.

<sup>6</sup> Section 2(a)(8) of the CEA provides a procedure for CFTC solicitation of comments from the U.S. Department of the Treasury and the Board of Governors of the Federal Reserve System ("FRB") with respect to futures contracts involving securities issued or guaranteed by the U.S. government. As agencies concerned with the issuance of such se-

curities and with monetary policy and debt management, the Treasury Department and the FRB clearly have an interest in the CFTC's designation of a market for futures on such instruments. Nevertheless, the SEC, as the regulator of trading markets in municipal and corporate securities, has an even more direct interest in the authorization of a related futures market. Thus, the involvement of the SEC in the designation process is intended to go beyond the relatively informal communications procedure established for the Treasury Department and the FRB.

<sup>7</sup> If the CFTC refused to grant the application for designation and, pursuant to the CEA, afforded the board of trade an opportunity for a hearing on the record, the SEC would have the right to participate in that hearing as an interested party. Thus, the SEC would be permitted to present evidence and its views and to challenge the arguments advanced by the board of trade in support of its application.

## AMENDMENTS TO COMMODITY EXCHANGE ACT—FEBRUARY 1, 1982

(Submitted by CFTC in connection with its reauthorization.)

## COMMODITY EXCHANGE ACT

[New language in italic]

## Section 2(a)(1)(A)

\* \* \* The word "commodity" shall mean \* \* \* all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in: Provided, That the Commission shall have exclusive jurisdiction, except to the extent otherwise provided in subparagraph (a)(1)(B) of this section, with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guaranty," or "decline guaranty"), and transactions involving contracts of sale of a commodity for future delivery, traded or executed on a contract market designated pursuant to Section 5 of this Act or any other board of trade, exchange, or market, and transactions subject to regulation by the Commission pursuant to section 19 of this Act: And provided further, That, except as hereinabove provided, nothing contained in this section shall (i) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the United States or of any State, or (ii) restrict the Securities and Exchange Commission and such other authorities from carrying out their duties and responsibilities in accordance with such laws. Nothing in this section shall supersede or limit the jurisdiction conferred on courts of the United States or any State. Nothing in this Act shall be deemed to govern or in any way be applicable to transactions in foreign currency, security warrants, security rights, re-sales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade.

## Section 2(a)(1)(B)

Notwithstanding any other provision of law—

(i) This Act shall not apply to and the Commission shall have no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to such transaction acquires any put, call or other option on one or more securities (as defined in Section 2(1) of the Securities Act of 1933 or Section 3(a)(10) of the Securities Exchange Act of 1934 on the effective date of Public Law No. ), including

any group or index of such securities, or any interest therein or based on the value thereof.

(ii) This Act shall apply to and the Commission shall have exclusive jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, in "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guaranty," or "decline guaranty") and transactions involving, and may designate a board of trade as a contract market in, contracts of sale (or options on such contracts) for future delivery of a group or index of securities (or any interest therein or based upon the value thereof), provided, however, that no board of trade shall be designated as a contract market with respect to any such contracts of sale (or options on such contracts) for future delivery unless the board of trade making such application demonstrates and the Commission expressly finds that the specific contract (or option on such contract) with respect to which the application has been made meets the following minimum requirements:

(a) Settlement of or delivery on such contract (or option on such contract) shall be effected in cash or by means other than the transfer or receipt of any security, except an exempted security under Section 3 of the Securities Act of 1933 or Section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the effective date of Public Law No. (other than any municipal security, as defined in Section 3(a)(29) of the Securities Exchange Act of 1934 on this effective date of Public Law No. );

(b) Trading in such contract (or option on such contract) shall not be readily susceptible to manipulation of the price of such contract (or option on such contract), nor to causing or being used in the manipulation of the price of any underlying security, option on such security or option on a group or index including such securities;

(c) Such group or index of securities shall be predominately composed of the securities of unaffiliated issuers and shall be a widely published measure of, and shall reflect, the market for all publicly traded equity or debt securities or a substantial segment thereof, or shall be comparable to such measure.

(iii) Upon application by a board of trade for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery involving a group or index of securities, the Commission shall provide an opportunity for public comment on whether such contracts (or options on such contracts) meet the minimum requirements set forth in subparagraph (ii) hereof, and shall consult with the Securities and Exchange Commission with respect to such designation. If, within 15 days following the close of the public comment period, the Securities and Exchange Commission shall object to the designation of a board of trade as a contract market in such contract (or option on such contract) on the ground that any minimum requirement of subparagraph (ii) hereof is not met, the Commission shall afford the Securities and Exchange Commission an opportunity for an oral hearing, to be transcribed, before the Commission, and shall give appropriate weight to the views of the Securities and Exchange Commission. Such oral hearing shall be held after the public comment period, prior to Commission action upon such designation, and not less than 30 nor more than 45 days after the close of the public comment period, unless both the Commission and the Securi-

ties and Exchange Commission otherwise agree. In the event that such an oral hearing is held and the Securities and Exchange Commission fails to withdraw its objections, and the Commission issues an order designating a board of trade as a contract market with respect to any such contract (or option on such contract), the Securities and Exchange Commission shall have the right of judicial review of such order in accordance with the standards of Section 6(b) of this Act. In the event that, pursuant to Section 6 of the Act, there is a hearing on the record with respect to such application for designation, the Securities and Exchange Commission shall have the right to participate in that hearing as an interested party.

(iv) No person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under Section 3 of the Securities Act of 1933 or Section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the effective date of Public Law No. (other than any municipal security as defined in Section 3(a)(29) of the Securities Exchange Act of 1934 on the effective date of Public Law No. ); or except as provided in subparagraph (ii) hereof, any group or index of such securities or any interest therein or based on the value thereof.

#### Section 4c

Section 4c(f). Nothing in this Act shall be deemed to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange.

[Current Section 4m renumbered 4m(1).]

Section 4m(2). Nothing in this Act shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Securities and Exchange Commission or any private party arising under the Securities Act of 1933 or the Securities Exchange Act of 1934 governing the issuance, offer, purchase or sale of securities of a commodity pool, or persons engaged in transactions with respect to such securities, or reporting by a commodity pool.

#### Section 8a

The Commission is authorized—

(6) to communicate to the proper committee or officer of any contract market, registered futures association, or self-regulatory organization as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, notwithstanding the provisions of Section 8 of this Act, the full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgment of the Commission disrupts or tends to disrupt any market or is otherwise harmful or against the best interests or producers, [and] consumers or investors or which is necessary or appropriate to effectuate the purposes of this Act: Provided however, any information furnished by the Commission under this subsection shall not be disclosed by such contract market, registered futures association or self-regulatory organization except in any self-regulatory action or proceeding; and

#### AMENDMENTS TO THE SECURITIES LAWS, FEBRUARY 1, 1982

##### SECURITIES ACT OF 1933

#### Section 2

(1) The term "security" means any note, stock treasury stock, bond, debenture, evidence of indebtedness, certificate of interest

or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security or certificate of deposit or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, warrant or right to subscribe to or purchase any of the foregoing.

##### SECURITIES EXCHANGE ACT OF 1934

#### Section 3(a)

(10) The term "security" means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, any put, call, straddle, option, or privilege on any security, or certificate of deposit, or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant or right to subscribe to or purchase any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

#### Section 9

(f) The provisions of [this section] subsection (a) shall not apply to an exempted security.

(g) Notwithstanding any other provision of law the Commission shall have the authority to regulate the trading of any option on a security or on a certificate of deposit (but not an option on a contract for future delivery).

##### INVESTMENT COMPANY ACT OF 1940

#### Section 2(a)

(36) "Security" means any note, stock treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security including a certificate of deposit, or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, warrant or right to subscribe to or purchase any of the foregoing.

##### INVESTMENT ADVISERS ACT OF 1940

#### Section 202(a)

(19) "Security" means any note, stock, treasury stock, bond, debenture, evidence of

indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security including a certificate of deposit or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to a foreign currency, or, in general, any interest or instrument commonly known as a "security", certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, warrant or right to subscribe to or purchase any of the foregoing.●

● Mr. LUGAR. Mr. President, today I am pleased to join the chairman of the Senate Committee on Agriculture, Nutrition, and Forestry, Mr. HELMS, in introducing, by request, a bill to reauthorize the Commodity Futures Trading Commission. This proposed legislation addresses many of the key issues in the regulation of this Nation's commodity futures markets.

Today, there are actively traded futures markets in products as diverse as corn, lumber, heating oil, gold, and Treasury bills. It is vital to this Nation's economy that the futures industry continue to receive regulatory oversight from a strong, professional, and independent agency.

Two provisions of this proposed legislation require special mention. First, in accord with the President's budget request, user fees are being proposed to defray regulatory expenses of the CFTC. Second, this proposed legislation contains language which reflects the jurisdictional agreement between the Commodity Futures Trading Commission and the Securities and Exchange Commission. I am certain that these and many other issues will be thoroughly reviewed and considered during the 5 days of hearings which begin at the end of this month.●

By Mr. DECONCINI:

S. 2113. A bill to amend the Internal Revenue Code of 1954 to limit the deduction of living expenses by Members of Congress and to required substantiation of such living expenses; to the Committee on Finance.

##### REPEALING CONGRESSIONAL TAX BREAKS

Mr. DECONCINI. Mr. President, on September 24 of last year, the very date on which the President announced on the national networks his new fall budget for fiscal year 1982 calling for 12.5-percent cuts in most discretionary accounts, the Senate approved two changes to existing law that together substantially augmented the disposable income of every Member of Congress. The first removed the \$3,000 limitation on the congressional deduction for away-from-home expenses. The second eliminated the \$25,000 cap on outside

earnings insofar as payments for speeches, articles, books, or other forms of intellectual, professional, or cultural expression are concerned. This honorarium income is, let it be clear, in addition to the regular congressional salary which is now \$60,200. The consequences of these two changes alone were a substantial increase in Member after-tax income, in effect a real raise on the order of several thousand dollars—depending, of course, on how prolific the Member and his staff are as authors.

I opposed both of these changes, Mr. President, and at that time pointed out the outrageous irony inherent in the Congress voting itself a big increase in effective compensation on the same day the President was proclaiming the need for further sacrifices, especially by the most vulnerable of our fellow citizens—the poor, the sick, the elderly, and the unemployed. I stated then that I would try to kill the provision in the House-Senate conference and that I was “confident that many of those who supported these provisions (would), upon reflection, realize \* \* \* that this is the wrong place to be taking care of our own financial needs, real or imagined.”

Subsequent developments have shown this assessment to be somewhat optimistic. Not only did it prove impossible to restore the caps on the business expense deduction and honoraria income, later amendments adopted at the end of last session compounded their effect. The unlimited deduction for congressional away-from-home expenses under the terms of the original amendment would have taken effect in taxable years starting with 1982. The financial advantage was just too tempting, though, and a change of the effective date to January 1, 1981, was attached to the first available vehicle, and what more available vehicle than a measure necessary to the continued operation of a considerable portion of the Federal Government, the third continuing resolution for fiscal year 1982.

There then remained only certain technical and administrative obstacles to reaping the full benefit of these outrageous changes. They were taken care of with amendments to, of all things, the Black-Lung Benefits Revenue Act. The ironic incongruity in tidying up a tax bonanza for Congressmen on a bill relating to black lung benefits was not lost on the public, judging from my mail.

The first problem had to do with the deductibility of housing expenses. Ordinary taxpayers may not take a business deduction for the costs of operating and maintaining a dwelling if it is used “for personal purposes by the taxpayer \* \* \* or by any members of the family \* \* \* of the taxpayer” for more than 14 days during a taxable year (Internal Revenue Code, section

280A(a) (1), (2)). But Members usually bring their wives and children with them when they come to Washington where they reside together as a family unit in the same dwelling, in the typical case for more than 14 days per taxable year. Hence the untoward effect of section 280—only Members living alone could take complete advantage of the now unlimited away-from-home deduction. Such an invidious discrimination could not be tolerated, and the leadership of the Senate majority was quick to propose language exempting Congressmen and Senators from the strictures of section 280A when the black lung benefits bill came to the floor.

The second set of technical-administrative refinements was designed to enhance the convenience and simplicity of the new unlimited congressional deduction. A sort of embarrassment of riches was involved. It was hard to know how much to deduct for expenses. It was even harder to predict IRS audit policy with respect to such claims. The solution, framed and adopted with singular dispatch, was to require the Secretary of the Treasury to publish guidelines prescribing the amounts Members may claim without documentation—and thus fear of IRS audit—for living expenses. Members, of course, would also be allowed to deduct larger sums, but these would have to be substantiated in the usual manner.

The Secretary has recently issued the pertinent regulations. They establish two methods by which Members may calculate the deduction for living expenses without worrying unduly about recordkeeping and a possible audit.

In either case, the value of the tax preference derived is not inconsiderable. A Senator using the first method could claim \$12,800 plus interest and taxes for this Washington residence during the last taxable year. Using the second method, the deduction would come to \$19,200. And in neither case would a Senator have to concern himself with the possibility of an IRS audit.

It should not go unnoticed, either, that the size of these deductions alone approaches the median income for a family of four in this country. Can anyone be surprised that the American people have reacted with anger and indignation as the details of this bonanza have come to light? Little wonder that the public holds the Congress in such low esteem.

I still find it hard to believe, Mr. President, that a majority of this body and of the other House voted for this back-door pay raise at a time when the specter of unemployment, want, and misery once again stalks the Nation, and further unprecedented cuts in support for education, health, and

social services programs are in the offing.

I am, therefore, introducing legislation to repeal this entire mess of self-serving tax provisions and restore the status quo insofar as the tax treatment of congressional away-from-home expenses is concerned. I ask unanimous consent that the bill be printed in the RECORD.

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

S. 2113

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

SECTION 1. DEDUCTION OF LIVING EXPENSES BY MEMBERS OF CONGRESS.

(a) DOLLAR LIMITATION ON DEDUCTION.—The last sentence of section 162(a) of the Internal Revenue Code of 1954 is amended by inserting “, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of \$3,000” after “home”.

(b) SUBSTANTIATION OF LIVING EXPENSES.—Paragraph (4) of section 280A of such Code (relating to coordination with section 162(a)(2)) is amended to read as follows:

“(4) COORDINATION WITH SECTION 162(A)(2).—Nothing in this section shall be construed to disallow any deduction allowable under section 162(a)(2) (or any deduction which meets the tests of section 162(a)(2) but is allowable under another provision of this title) by reason of the taxpayer’s being away from home in the pursuit of a trade or business (other than the trade or business of renting dwelling units).”

(c) CONFORMING AMENDMENT.—Subsection (a) of section 139 of the Act of October 1, 1981 (95 Stat. 967) is hereby repealed.

SEC. 2. EFFECTIVE DATES.

(a) DOLLAR LIMITATION.—The amendment made by section 1(a) shall apply to taxable years beginning after December 31, 1980.

(b) SUBSTANTIATION.—The amendment made by section 1(b) shall apply to taxable years beginning after December 31, 1975, except that in the case of taxable years beginning after December 31, 1975, and before January 1, 1980, the amendment made by section 1(b) shall apply only to taxable years for which, on the date of the enactment of this Act, the making of a refund, or the assessment of a deficiency, was not barred by law or any rule of law.

By Mr. DECONCINI (for himself and Mr. GOLDWATER):

S. 2114. A bill to provide water to the Papago Tribe of Arizona, to settle Papago Indian water rights claims in portions of the Papago Reservations, and for other purposes; to the Select Committee on Indian Affairs.

SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT ACT OF 1982

Mr. DECONCINI. Mr. President, I am today introducing legislation, together with my distinguished colleague, the senior Senator from Arizona, Senator GOLDWATER, which has as its objective the settlement of Papago Indian water rights claims in portions

of the Papago Indian Reservation of Arizona.

Mr. President, one of the most difficult and complex problems facing the people of the West, Indians and non-Indians alike, is the question of how much water we have—how much water we really have—and to whom that water belongs. A big part of that question, and a part of its answer, is the principle of how it should be used.

In the case of the Papago Indians, neither the questions nor the answers have been simple ones. But through years of determined effort by a small but intelligent and patient group of individuals, we believe we now have legislation which will avoid the many years of expensive, time-consuming and debilitating litigation that at one time seemed inevitable. This proposal has been hammered out word by word, line by line, by the Pima County Water Resources Coordinating Committee. The committee is comprised of individuals representing the interests of the Papago Tribe, the city of Tucson, Pima County, the agriculture industries, the mining industries, the individual landowners and the Federal Government. These are the people who deserve the credit for believing that a legislative settlement, a negotiated settlement, is possible, and for sticking to that goal through some very hard times. But I must also say, Mr. President, that it has been the leadership and hard work of MORRIS UDALL, the Representative of the Second District, and his dedicated staff, which could be thought of as the glue that has held this effort together. His dedication to a fair and reasonable settlement of the Papago water claims goes back many years. He has introduced legislation in the House of Representatives, H.R. 5118, which is very similar to the legislation we are introducing today and which will soon be considered by that body. There are, however, some differences.

Through the years of discussion and debate on the quality and quantities of the water resources which are now available and which will be made available through the central Arizona project, the word "conservation" is one that makes frequent appearances. However, the truth is that conservation is easier to advocate than it is to achieve, or even define. The heart of every westerner is willing. But the use of water resources is mandated by economic conditions beyond the control of the individual farmer, the individual urban dweller, and to a great extent beyond the control of the region.

Those of us who live in the vast desert areas of the Southwest have a great amount of respect for the characteristics of that region, its resources, its possibilities and its limitations. For that reason, I have introduced S. 1462 which has also been cosponsored by

Senator GOLDWATER and by Senator CANNON of Nevada. That bill is currently being considered by the Commerce Committee. I will not take the time to describe S. 1462 now, Mr. President, except to say that it would establish a quasi-Federal corporation which would promote the development of arid land agriculture. Over 80 percent of our water consumption in the Southwest is agricultural. And a substantial conversion to arid land crops, plants native to the desert region, is our single best hope to achieve any dramatic decrease in water consumption—without suffering economic disaster.

Studies have indicated that there is a great potential for arid land agriculture on the Papago Reservation, and I believe we have an opportunity to collectively demonstrate that we are truly serious about water conservation. It is a responsibility we all share—not just the Papagos, not just the people of Pima County, and not just the people of the Southwest.

Under the provisions of the bill, the Papagos have the option of receiving priority assistance from the Arid Lands Corp., pending, of course, its approval and funding by Congress. In exchange for taking the lead on conservation, the Papagos receive some assurances. They receive some guarantees of economic support. They can proceed, if they choose, to develop arid land crops, which will in turn provide thousands of new jobs, and with some assurance of success. I believe this concept has application to the resolution of other Indian water rights claims and is not limited to this situation. Because the mechanism is based on purchase agreements, price guarantees, and loan guarantees, there are small up-front costs for the Federal Government, but at the same time, a promise of economic self-sufficiency for the Indian people. It is the goal of economic self-sufficiency that is all important to the Indian people and the driving force behind the water rights claims. Water represents to them a means, not an end.

I have also included language in the bill, Mr. President, which directs the Secretary to carry out a study to determine the requirements and availability of energy which will result from the enactment of the act. The study would also determine the feasibility of constructing a solar powerplant or perhaps some other alternative energy-producing facility.

Under the terms of this act, the Papago Tribe is guaranteed an annual supply of water from specified sources. To coordinate water resource planning and management with other water users in the area, the Secretary will establish a water management plan for the Papago Tribe that is consistent with State planning and management.

Acquisition and delivery of water to the Papago Tribe is contingent upon the tribe's taking action to petition for dismissal of pending legal action, and releasing claims to water from the Tucson and eastern Pima County area other than water as provided in the act. This settlement will remove the uncertainty title of non-Indian water users and improve regional water resource planning and management.

The San Xavier Papago Reservation and the Schuk-Toak District of the Sells Papago Reservation are located in eastern Pima County, adjacent to the Tucson metropolitan area. The San Xavier Reservation lies primarily within the Upper Santa Cruz Basin, and the Schuk Toak District is located in the Avra-Altar Valley Basin.

The San Xavier Papago Reservation occupies approximately 70,000 acres immediately southwest of the Tucson metropolitan area. The reservation was established by Executive order signed by Ulysses S. Grant on July 1, 1874.

This settlement provided for acquisition and delivery of a firm annual water supply to the Papago Reservations from several specific sources. These sources include the central Arizona project (CAP), a limited amount of groundwater pumping, and reclaimed water acquired from the city of Tucson.

Twenty-seven thousand acre-feet of water will be delivered from the CAP to the southern boundary of the San Xavier Reservation and 10,800 acre-feet of water from the same source will be delivered to the Schuk Toak District.

The CAP is a Federal reclamation project that will deliver Colorado River water from Parker Dam at Lake Havasu to central and southern Arizona. CAP water will be delivered to Indian tribes, agricultural users, and municipal and industrial users.

In 1980, former Secretary of the Interior Cecil Andrus announced allocations of CAP water to 12 Arizona Indian tribes. Pursuant to those allocations, the San Xavier Papago Tribe received an annual allocation of 27,000 acre-feet and the Schuk Toak District received 10,800 acre-feet per year for tribal homeland use.

Contracts for delivery of those amounts were signed in December 1980. The contracts give the Papago CAP water allocations a priority equal to that assigned to municipal and industrial uses. Non-Indian agricultural uses are assigned a lesser priority. In times of shortage non-Indian agricultural uses will be reduced first. When those uses are exhausted, Indian tribal homeland water allocations and allocations for municipal and industrial uses will share shortages on a pro rata basis.

In addition to the water acquired from the CAP and delivered to the tribe, the Secretary shall acquire and deliver 23,000 acre-feet of water suitable for agricultural use to the San Xavier Reservation and 5,200 acre-feet of water of the same quality to the Schuk Toak District.

The Secretary's obligations, to deliver water is contingent upon an agreement being reached by the Secretary, the tribe and the city of Tucson regarding acquisition and delivery of reclaimed water, and action by the tribe to dismiss the pending lawsuits and to waive claims to water other than that provided in the act.

This action by the tribe is required because it is the intent of the sponsors that the settlement by a final resolution of the tribe's claims of water rights in the Santa Cruz River Basin and the Avra/Altar Valley Basin, and remove the cloud to title created by the pending lawsuits.

Mr. President, I ask that the text of the bill be printed in its entirety.

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

#### S. 2114

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

#### CONGRESSIONAL FINDINGS

SECTION 1. The Congress finds that—

(1) water rights claims of the Papago Tribe with respect to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation are the subject of existing and prospective lawsuits against numerous parties in southern Arizona, including major mining companies, agricultural interests, and the city of Tucson;

(2) these lawsuits not only will prove expensive and time consuming for all participants, but also could have a profound adverse impact upon the health and development of the Indian and non-Indian economies of southern Arizona;

(3) the parties to the lawsuits and others interested in the settlement of the water rights claims of the Papago Indians within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area have diligently attempted to settle these claims and the Federal Government, by providing the assistance specified in this Act, will make possible the execution and implementation of a permanent settlement agreement;

(4) it is in the long-term interest of the United States, the State of Arizona, its political subdivisions, the Papago Indian Tribe, and the non-Indian community of southern Arizona that the United States Government assist in the implementation of a fair and equitable settlement of the water rights claims of the Papago Indians respecting certain portions of the Papago Reservation; and

(5) the settlement contained in this Act will—

(A) provide the necessary flexibility in the management of water resources and will encourage allocation of those resources to their highest and best uses; and

(B) insure conservation and management of water resources in a manner consistent

with the goals and programs of the State of Arizona and the Papago Tribe.

#### DEFINITIONS

SEC. 2. For purposes of this Act the term—

(1) "acre-foot" means the amount of water necessary to cover one acre of land to a depth of one foot;

(2) "Central Arizona Project" means the project authorized under title III of the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 887; 43 U.S.C. 1521, et seq.);

(3) "Papago Tribe" means the Papago Tribe of Arizona organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476);

(4) "Secretary" means the Secretary of the Interior;

(5) "subjugate" means to prepare land for the growing of crops through irrigation; and

(6) "Tucson Active Management Area" means the area of land corresponding to the area initially designated as the Tucson Active Management Area pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1.

(7) "December 12, 1980, agreement" means the Central Arizona Project water delivery contract between the United States and the Papago Tribe.

#### WATER DELIVERIES TO TRIBE FROM CAP; MANAGEMENT PLAN; REPORT ON WATER AVAILABILITY; CONTRACT WITH TRIBE

SEC. 3. (a) As soon as is possible but not later than ten years after the date of the enactment of this Act, if the Papago Tribe has agreed to the conditions set forth in section 6, the Secretary acting through the Bureau of Reclamation, shall—

(1) in the case of the San Xavier Reservation—

(A) deliver annually from the main project works of the Central Arizona Project twenty-seven thousand acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 4(a); and

(B) improve and extend the existing irrigation system on the San Xavier Reservation and design and construct within the reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

(2) in the case of the Schuk Toak District of the Sells Papago Reservation—

(A) deliver annually from the main project works of the Central Arizona Project ten thousand eight hundred acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 4(a); and

(B) design and construct an irrigation system in the Eastern Schuk Toak District of the Sells Papago Reservation, including such canals, laterals, farm ditches, and irrigation works, as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

(3) establish a water management plan for the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation which, except as is necessary to be consistent with the provisions of this Act, will have the same effect as any management plan developed under Arizona law.

(b)(1) In order to encourage the Papago Tribe to develop sources of water on the Sells Papago Reservation, the Secretary shall, if so requested by the tribe, carry out

a study to determine the availability and suitability of water resources within the Sells Papago Reservation but outside the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area.

(2) The Secretary shall, in cooperation with the Secretary of Energy, or, with the appropriate agency or officials, carry out a study to determine—

(A) the availability of energy and the energy requirements which result from the enactment of the provisions of this Act, and

(B) the feasibility of constructing a solar power plant or other alternative energy producing facility to meet such requirements.

(c) The Papago Tribe shall have the right to withdraw ground water from beneath the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation subject to the limitations of section 6(a).

(d) Nothing contained in this Act shall diminish or abrogate any obligations of the Secretary to the Papago Tribe under the December 12, 1980, agreement.

#### DELIVERIES UNDER EXISTING CONTRACT; ALTERNATIVE WATER SUPPLIES; OPERATION AND MAINTENANCE

SEC. 4. (a) The water delivered from the main project works of the Central Arizona Project to the San Xavier Reservation and to the Schuk Toak District of the Sells Papago Reservation as provided in section 3(a), shall be delivered in such amounts, and according to such terms and conditions, as are set forth in the December 12, 1980, agreement, except as otherwise provided under this section.

(b) Where the Secretary, pursuant to the terms and conditions of the agreement referred to in subsection (a), is unable, during any year, to deliver from the main project works of the Central Arizona Project any portion of the full amount of water specified in section 3(a)(1)(A) and section 3(a)(2)(A), the Secretary shall acquire and deliver an equivalent quantity of water from the following sources or any combination thereof:

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the subcontractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress;

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area in the State of Arizona:

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands or interest referred to in subparagraph (A) shall be only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(c) Where the Secretary finds he is unable to acquire and deliver quantities of water adequate to fulfill his obligation under subsection (a), he shall pay damages to the tribe in the amount of the actual replacement costs of such quantities of water as are not acquired and delivered.

(d) No land, water, water rights, contract rights or reclaimed water may be acquired under subsection (b) without the consent of the owner thereof. No private lands may be acquired under subsection (b)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water right the use of which is recognized by State law. In acquiring any private lands under subsection (b)(3)(A), the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community.

(e) To meet the obligation referred to in section 3(a)(1)(A) and section 3(a)(2)(A), the Secretary shall, acting through the Bureau of Reclamation as part of the main project works of the Central Arizona Project—

(1) design, construct, operate, maintain, and replace such facilities as are appropriate including any aqueduct and appurtenant pumping facilities, treatment plants, power-plants, and electric power transmission facilities which may be necessary for such purposes; and

(2) deliver the water to the southern boundary of the San Xavier Reservation, and to the boundary of the Schuk Toak District of the Sells Papago Reservation, at points agreed to by the Secretary and the tribe which are suitable for delivery to the reservation distribution systems.

(f) To facilitate the delivery of water to the San Xavier and the Schuk Toak District of the Sells Papago Reservation under this Act, the Secretary is authorized—

(1) to enter into contracts or agreements for the exchange of water, or for the use of aqueducts, canals, conduits, and other facilities for water delivery, including pumping plants, with the State of Arizona or any of its subdivisions, with any irrigation district or project, or with any authority, corporation, partnership, individual, or other legal entity; and

(2) to use facilities constructed in whole or in part with Federal funds.

#### RECLAIMED WATER; ALTERNATIVE WATER SUPPLIES

SEC. 5. (a) As soon as possible, but not later than ten years after the date of enactment of this Act, the Secretary shall purchase reclaimed water in accordance with the agreement described in section 7(a)(1) and deliver annually twenty-three thousand acre-feet of water suitable for agricultural use to the San Xavier Reservation and deliver annually five thousand two hundred acre-feet of water suitable for agricultural use to the Schuk Toak District of the Sells Papago Reservation.

(b) The obligation of the Secretary referred to in subsection (a) to deliver water suitable for agricultural use may be fulfilled by any additional treatment, including land filtration, of the reclaimed water acquired by the Secretary as provided herein, by any other means which renders such reclaimed water suitable for agricultural use, or by voluntary exchange of that reclaimed water for any other water suitable for agricultural use. To make available and deliver such water, the Secretary acting through the Bureau of Reclamation shall design, construct, operate, maintain, and replace such facilities as are appropriate.

(c) The Secretary may, as an alternative to, and in satisfaction of the obligation to deliver the quantities of water to be deliv-

ered under subsection (a), acquire and deliver pursuant to agreements authorized in section 7(b), an equivalent quantity of water from the following sources or any combination thereof—

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the subcontractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress;

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area in the State of Arizona and that part of the Upper Santa Cruz Basin not within the area—

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands referred to in subparagraph (A) shall be only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(d) If the Secretary is unable to purchase reclaimed water or to acquire other water provided for herein and deliver the quantities of water suitable for agricultural use as set forth in subsections (a), (b), or (c), he shall pay damages to the tribe in the amount of the actual replacement cost of such quantities of water suitable for agricultural use as are not acquired and delivered.

(e) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (c) without the consent of the owner thereof. No private lands may be acquired under subsection (c)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water right the use of which is recognized by State law. In acquiring said private lands, the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group or community.

#### LIMITATION ON PUMPING FACILITIES FOR WATER DELIVERIES; DISPOSITION OF WATER

SEC. 6. (a) The Secretary shall be required to carry out his obligation under sections 4(b)(C), and (e) and under section 5 only if the Papago Tribe agrees to—

(1) limit pumping of ground water from beneath the San Xavier Reservation to not more than ten thousand acre-feet per year;

(2) limit the quantity of ground water pumped from beneath the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area to those quantities being withdrawn on January 1, 1981; and

(3) comply with the management plan established by the Secretary under section 3(a)(3).

Nothing contained in paragraph (1) shall restrict the tribe from drilling wells and withdrawing ground water therefrom on the San Xavier Reservation if such wells have a capacity of less than thirty-five gallons per minute and are used only for domestic and livestock purposes. Nothing contained in

paragraph (2) shall restrict the tribe from drilling wells and withdrawing ground water therefrom in the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area if such wells have a capacity of less than thirty-five gallons per minute and which are used only for domestic and livestock purposes.

(b) The Secretary shall be required to carry out his obligations with respect to distribution systems under section 3(a)(1)(B) and section 3(a)(2)(B) only if the Papago Tribe agrees to—

(1) subjugate the land for which those distribution systems are to be planned, designed, and constructed by the Secretary; and

(2) assume responsibility, through the tribe or its members or an entity designated by the tribe, as appropriate, following completion of those distribution systems and upon delivery of water under this Act, for the operation, maintenance, and replacement of these systems in accordance with sections 1 and 3 of chapter 140 of the Act of April 4, 1910 (36 Stat. 270, 272; 25 U.S.C. 385).

(c) The Papago Tribe shall have the right to devote all water supplies under this Act, whether delivered by the Secretary or pumped by the tribe, to any use, including but not limited to agriculture, municipal, industrial, commercial, mining, and recreational use whether within or outside the Papago Reservation so long as such use is within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within such area. The Papago Tribe may sell, exchange, or temporarily dispose of water, but the tribe may not permanently alienate any water right. In the event the tribe sells, exchanges, or temporarily disposes of water such sale, exchange, or temporary disposition shall be pursuant to a contract which has been accepted and ratified by a resolution of the Papago Tribal Council and approved and executed by the Secretary as agent and trustee for the tribe. Such contract shall specifically provide that an action may be maintained by the contracting party against the United States and the Secretary for the breach thereof.

#### OBLIGATION OF THE SECRETARY; CONTRACT FOR RECLAIMED WATER; DISMISSAL AND WAIVER OF CLAIMS OF PAPAGO TRIBE AND ALLOTTEES

SEC. 7. (a) The Secretary shall be required to carry out his obligations under section 4 (b), (c), and (e) and under section 5 only if—

(1) before December 31, 1982—

(A) the city of Tucson, the Secretary, and the Papago Tribe agree, after the enactment of this Act, that the city will make available at no profit to the city such quantity of reclaimed water as is adequate to deliver annually, as contemplated in section 5(a), twenty-eight thousand two hundred acre-feet of water;

(B) the Papago Tribe agrees to file with the United States District Court for the District of Arizona a stipulation for voluntary dismissal with prejudice, in which the Attorney General is authorized and directed to join on behalf of the United States, and the allottee class representatives petition for dismissal of the class action with prejudice in the United States, the Papago Indian Tribe, and others, civil numbered 75-39 TUC (JAW); and

(C) the Papago Tribe executes a waiver and release in a manner satisfactory to the Secretary of—

(i) any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from time immemorial to the date of the execution by the tribe of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation or municipal corporation, arising under the laws of the United States or the State of Arizona; and

(ii) any and all future claims of water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from and after the date of execution of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation or municipal corporation, under the laws of the United States or the State of Arizona; and

(2) the suit referred to in paragraph (1)(B) is finally dismissed.

(b) After the conditions referred to in subsection (a) have been met the Secretary shall be authorized and required, if necessary or desirable, to enter into agreements with other individuals or entities to acquire and deliver water from such sources set forth in section 5(c) if through such contracts, as exercised in conjunction with the contract required in subsection (a)(1)(A), it is possible to deliver the quantities of water required in section 5(a).

(c) Nothing in this section shall be construed as a waiver or release by the Papago Tribe of any claim where such claim arises under this Act.

(d) The waiver and release referred to in this section shall not take effect until such time as the trust fund referred to in section 9 is in existence and the full amount authorized to be appropriated to the trust fund under section 9 has been appropriated by the Congress.

(e) The settlement provided in this Act shall be deemed to fully satisfy any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) of all individual members of the Papago Tribe that have a legal interest in lands of the San Xavier Reservation and the Schuk Toak District of the Sells Reservation located within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, as of the date the waiver and release referred to in this section takes effect. Any entitlement to water of any individual member of the Papago Tribe shall be satisfied out of the water resources provided in this Act.

**STUDY OF LANDS WITHIN THE GILA BEND RESERVATION; EXCHANGE OF LANDS AND ADDITION OF LANDS TO THE RESERVATION; AUTHORIZED APPROPRIATIONS**

SEC. 8. (a) The Secretary is hereby authorized and directed to carry out such studies and analysis as he deems necessary to determine which lands, if any, within the Gila Bend Reservation have been rendered unsuitable for agriculture by reason of the operation of the Painted Rock Dam. Such study and analysis shall be completed within one year after the date of the enactment of this Act.

(b) If, on the basis of the study and analysis conducted under subsection (a), the Sec-

retary determines that lands have been rendered unsuitable for agriculture for the reasons set forth in subsection (a), and if the Papago Tribe consents, the Secretary is authorized to exchange such lands for an equivalent acreage of land under his jurisdiction which are within the Federal public domain and which, but for their suitability for agriculture, are of like quality.

(c) The lands exchanged under this section shall be held in trust for the Papago Tribe and shall be part of the Gila Bend Reservation for all purposes. Such lands shall be deemed to have been reserved as of the date of the reservation of the lands for which they are exchanged.

(d) Land exchanged under this section which, prior to the exchange, were part of the Gila Bend Reservation, shall be managed by the Secretary of the Interior through the Bureau of Land Management.

**ESTABLISHMENT OF TRUST FUND; EXPENDITURES FROM FUND**

SEC. 9. There is hereby authorized to be established a trust fund for the benefit of the Papago Tribe in the amount of \$15,000,000 to be invested by the Secretary in interest bearing deposits and securities including deposits and securities for the United States. The income accruing on such deposits and securities may only be used, pursuant to appropriations legislation, for the subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities (including pumping and power transmission facilities) on the Papago Reservations which are not the obligation of the United States under this or any other Act of Congress.

**ARID LAND RENEWABLE RESOURCE ASSISTANCE**

SEC. 10. If a Federal entity is established to provide financial assistance to undertake arid land renewable resources projects and to encourage and assure investment in the development of domestic sources of arid land renewable resources, such entity shall give first priority to the needs of the Papago Tribe in providing such assistance. Such entity shall make available to the Papago Tribe—

- (1) price guarantees, loan guarantees, or purchase agreements,
- (2) loans, and
- (3) joint venture projects, at a level to adequately cultivate—acres at a maximum of—acre feet of water per acre, or to provide that quantity of water determined by such entity to be necessary to cultivate arid land crops.

**AUTHORIZATION OF APPROPRIATIONS**

SEC. 11. Effective October 1, 1982, there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

**COMPLIANCE WITH BUDGET ACT**

SEC. 12. No authority under this Act to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this Act which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1982.

**SHORT TITLE**

SEC. 13. This Act may be cited as the "Southern Arizona Water Rights Settlement Act of 1982".

By Mr. THURMOND:

S. 2115. A bill to authorize the Secretary of the Navy to credit certain officers of the Medical Corps and Dental Corps of the Navy with certain military service performed by such officers before September 11, 1979, or with certain professional experience gained by such officers before such date; to the Committee on Armed Services.

**SERVICE OF CERTAIN MEDICAL AND DENTAL OFFICERS IN THE NAVY**

Mr. THURMOND. Mr. President, I rise to introduce a bill to correct an inequity being experienced by certain medical and dental officers in the Navy. This measure is strongly supported by the Navy.

It has come to my attention that the Army and Air Force give prior service and professional training credit to doctors and dentists. This credit permits Army and Air Force doctors and dentists to be authorized longer periods of service and to have dates of rank higher than their contemporaries in the Navy. Therefore, they receive more pay and they are eligible for promotion sooner than their Navy counterparts.

Mr. President, this inequity was corrected for the Navy doctors and dentists who entered the Naval service after September 11, 1979. However, the Navy doctors and dentists who entered the naval service before September 11, 1979, are still not being treated fairly. Consequently, I am introducing a bill which will equalize this credit imbalance.

Mr. President, the inequity addressed in this issue has its roots back in the late 1960's and early 1970's. When the draft of doctors was terminated, the three military services started scholarship programs under which active duty officers and others could attend civilian medical schools. The Army and Air Force sent their officers to medical school with whatever ranks they held at the time. There were allegedly many 04's (majors) attending medical schools on active duty and at least one 05 (lieutenant colonel). The Army and Air Force also give credit for professional training. In order to participate in the Navy program, an officer had to accept a discharge and reappointment as an 01 (ensign).

In addition, the Department of Defense for many years has prescribed unified policy under which medical officers are offered initial appointments in the three military services. Under this policy, officers with active officer service, prior to entering medical school, were awarded half credit for that service in determining rank. The Navy adhered to this policy. The other services did not offer new medical corps appointments to the officers concerned, but simply changed the officer's military operational specialty

(MOS) designator. Therefore, these Army and Air Force doctors retained their rank and lineal position.

Mr. President, this situation has resulted in many naval medical officers serving on active duty in ranks below those held by those otherwise similarly situated in the other services. This has never been completely acceptable to the Navy officers affected by this inequity. However, this policy became untenable to these officers when the Secretary of the Navy Instruction 1421.5A, September 11, 1979, gave full credit for prior service to officers appointed after that date, but did not make the provision retroactive to doctors serving before September 11, 1979.

In addition to the prior service discrepancy, Army and Air Force doctors were given credit for professional medical experience. However, there are naval dental officers and medical officers who were appointed prior to September 11, 1979, with less than full entry grade credit for professional experience. After September 11, 1979, new officers could receive full credit for that experience, but no provision was made for retroactive credit.

Mr. President, this bill does not mean that the affected officers will receive immediate or automatic promotions. Under this measure, the Secretary of the Navy may convene boards of officers to review the records and compute the service of each officer of the Medical Corps or the Dental Corps of the Navy appointed before September 11, 1979, who had active commissioned service or professional civilian medical or dental experience in the United States before his appointment. These boards are necessary in order to adjust the service credited to each such officer to reflect the total active service actually performed by such officer as a commissioned officer of the Armed Forces, or as a civilian practitioner, if that service is in excess of the service or experience already credited to such officer.

When that adjustment is made, such officers will be given precedence for promotion purposes or advanced to a position to the active-duty list in accordance with their adjusted dates of rank. Additionally, the Secretary of the Navy may convene promotion boards to consider for promotion those officers who become eligible under the new criteria established by the Secretary of the Navy pursuant to this proposed change in the law.

No officer promoted under this section will be entitled to increased pay and allowances or other compensation under title 37, United States Code for the grade to which promoted prior to the date of appointment to the higher grade. Nor will an officer be entitled to retroactive pay in his current grade because the records have been changed to reflect a date of rank or

position on the active-duty list that is earlier than that held before the change. Failure of an officer for selection for promotion under this bill shall not count as a failure of selection for promotion for any other purpose. These restrictions will allow the bill to correct this inequity in crediting time served without seriously impacting normal promotion procedures.

It is estimated that there are approximately 200 Naval Medical and Dental Corps doctors adversely affected by the inequity in the current law. This has caused a severe morale problem and many of these doctors are planning resignations, unless relief is forthcoming. Costs for removing this discrimination would be nominal and cost effective, especially when compared to replacing these medical doctors if they resign. It would be funded through normal promotion entitlement programs.

The Navy has estimated that the costs, as a result of promotion for most of these medical officers coming sooner than programmed, would be about half a million dollars over a period of 1982-86. This cost figure does not include the salary differential for affected dental officers, Naval Reserve medical and dental officers not on active duty and a minor cost differential due to credit for a longer period of service. However, the combined costs of these categories which are not included in the half million dollar estimate would be nominal over the next 4 years.

Mr. President, I urge my distinguished colleagues to join me in removing this inequity and discrimination against a limited number of naval medical and dental officers. I ask unanimous consent that this bill be printed in the RECORD.

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

S. 2115

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of the Navy may convene boards of officers to review the records of each officer of the Medical Corps or the Dental Corps of the Navy who was appointed in either such corps before September 11, 1979, and may adjust the service credited to any such officer to reflect any active commissioned service performed by such officer before such appointment or to reflect any professional civilian medical or dental experience gained by such officer in the United States before such appointment if that service or experience has not been credited to such officer.*

*(b) If an officer is credited under the authority of subsection (a) with additional service or experience, the Secretary of the Navy shall adjust the date of rank of such officer accordingly, and such officer shall be given precedence for promotion purposes or advanced to a position on the active-duty list (or to a position on a corresponding list in the case of a Reserve officer not on the*

active-duty list) in accordance with such adjusted date of rank.

*(c) If, as the result of an adjustment of his service credit under subsection (a), an officer in the Medical Corps or Dental Corps of the Navy attains precedence for promotion purposes over any other officer on the active-duty list or attains a position on the active-duty list equivalent to another officer who—*

*(1) is a member of the same corps as the officer whose service is adjusted under subsection (a);*

*(2) is serving in a grade (not above captain) higher than the grade of the officer whose service is adjusted under subsection (a); and*

*(3) has not been selected for early promotion to such higher grade or is on a promotion list to the next grade higher than his current grade and has not been selected for early promotion to such higher grade,*

*then the officer whose service is adjusted under subsection (a) may be promoted to the higher grade appropriate to his adjusted credit if he is recommended for promotion to such grade by a board of officers convened under subsection (a), and, upon promotion to such higher grade, may be assigned a position on the active-duty list (or to a position on a corresponding list in the case of a Reserve officer not on the active-duty list) commensurate with his adjusted service credit.*

*(d) An officer whose date of rank has been changed by virtue of service credited to him under this Act shall not be entitled to any increase in pay or allowances or other compensation for any period before the date of that change, and an officer who is credited with additional service under this Act and is promoted to a higher grade pursuant to the recommendation of a board convened under this Act shall not be entitled to any increase in pay or allowances or other compensation for the grade to which promoted for any period before the date of the promotion.*

*(e) Failure of an officer for selection for promotion under the procedures provided for in this Act shall not count as a failure of selection for promotion for any other purpose.*

*(f) As used in this Act, the term "active-duty list" means the active-duty list for the Navy provided for in section 620 of title 10, United States Code.*

By Mr. RIEGLE (for himself, Mr. DURENBERGER, Mr. SASSER, Mr. MOYNIHAN, Mr. METZENBAUM, Mr. DIXON, Mr. GLENN, Mr. BIDEN, Mr. LEVIN, Mr. BRADLEY, Mr. BAUCUS, Mr. CHILES, Mr. HUDDLESTON, and Mr. BENTSEN):

S.J. Res. 146. A joint resolution to require the Director of the Office of Management and Budget to prepare and transmit to the Congress a report specifying the geographic distribution in the United States of outlays by the Government; to the Committee on Governmental Affairs.

GEOGRAPHIC DISTRIBUTION OF FEDERAL FUNDS

● Mr. RIEGLE. Mr. President, I am today introducing a joint resolution to require the Office of Management and Budget to inform Congress and the American public about the geographic

distribution of Federal funds in fiscal years 1981 and 1982.

As Congress considers further sweeping changes in Federal spending and in Federal-State relations, it is more important than ever that the American people be informed of how the Federal Government affects the economies of States and regions.

Since 1968, the United States has compiled data on the distribution of Federal outlays by State, county, and large city. Reports entitled "Geographic Distribution of Federal Funds" have been published annually by the Community Services Administration for the Executive Office of the President. These reports have been an invaluable resource for Members of Congress and others who want to understand the regional impact of Federal activity.

For the past year, it has been clear that OMB is hostile to the collection of such data. The facts disprove OMB's claims that the Reagan budget cuts are fair to all regions.

Late last year, the date for fiscal year 1981 was already prepared by Federal agencies and ready to be submitted. Then, on December 14, Federal agencies were ordered not to report the date for fiscal year 1981. A copy of that order is attached, and I ask unanimous consent that it be printed in the RECORD following my remarks. OMB proposes to develop the Federal Assistance Award Data System instead. This alternative would at best provide a less comprehensive report that excludes salary and expense payments to Federal employees, Federal procurements, and virtually all spending by the Department of Defense.

We believe the OMB decision is a serious mistake that, if unchallenged, would greatly harm the ability of Congress to understand the economic impact of congressional budgetary decisions in regions, States, and localities. We intend to propose legislation that would assure Congress of uninterrupted access to comprehensive and objective information on the distribution of Federal funds.

Our resolution today would simply order OMB to compile the data for fiscal year 1981, which is already prepared, and make it available to the Congress in a timely manner. To reduce printing costs, the resolution would require a full report to be made available on computer tape. A printed summary report would aggregate data by State.

Mr. President, I have received a letter from Prof. Thomas Anton, of the University of Michigan which describes the importance of this data. I ask unanimous consent that the Joint Resolution and the letter be printed in the RECORD.

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

S.J. RES. 146

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Director of the Office of Management and Budget shall prepare a report specifying the geographic distribution within the United States of outlays made by the Government for each of the fiscal years 1981 and 1982. Each such report shall contain information and analyses similar to the information and analyses contained in the report entitled "Geographic Distribution of Federal Funds", which was prepared for fiscal year 1980 and previous fiscal years, and shall include categories of information and analyses for States, counties, and large cities. Each such report shall be made available to the Congress and the public on computer tape.*

*(b) The Director of the Office of Management and Budget shall prepare and transmit to the Congress a summary of the information included in each report required under subsection (a). Each such summary shall contain a list specifying the total amount of outlays made by the Government in each State under each Federal program and a list of the total amount of Federal assistance awarded to each local government under each Federal program. Each such summary shall be published and made available to the public.*

*(c) The Director of the Office of Management and Budget shall require Federal agencies to submit the data necessary for the preparation of each report required under subsection (a). The Director may designate a Federal agency to compile such data and report. The data collected to prepare such report shall also be made available to the Congress and the public on computer tape.*

*(d) The Director of the Office of Management and Budget shall make available the report required under subsection (a) for fiscal year 1981 within 90 days after the date of enactment of this joint resolution, and for fiscal year 1982 on or before the 90th day after the first day on which 98th Congress meets. Within 30 days after the date of enactment of this joint resolution, Federal agencies shall submit to the Director of the Office of Management and Budget the data necessary for the report required under subsection (a) for fiscal year 1981.*

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,

Washington, D.C., December 14, 1981.

MEMORANDUM FOR ASSISTANT SECRETARIES/DIRECTORS FOR MANAGEMENT

From: Edwin L. Harper, Deputy Director.

Subject: Discontinuation of the Geographic Distribution of Federal Funds.

As a result of recent evaluations of certain reporting requirements, it has been decided to discontinue the compilation and publication of the "Geographic Distribution of Federal Funds," effective immediately. Data should not be submitted for fiscal year 1981.

The Office of Management and Budget will continue to assess existing reporting systems such as the Federal Aid to States and the Federal Assistance Award Data System in addition to the various Census Bureau publications to determine the best approach for providing information on the geographic distribution of federal funds.

UNIVERSITY OF MICHIGAN,

Ann Arbor, Mich., December 18, 1981.

Hon. DONALD W. RIEGLE, Jr.,  
Washington, D.C.

DEAR SENATOR RIEGLE: In response to your request for my assessment of OMB's recent decision to terminate the "Geographic Distribution of Federal Funds" series, I have read Deputy Director Harper's letter to your colleague, Senator Durenberger, with some care. Since the letter does not reveal the activities carried out by OMB to evaluate either the GDFF or the Federal Assistance Awards Data System (FAADS), it is impossible to assess the quality of that evaluation. However, I can offer an assessment of the decision itself, as well as some rather important issues it has raised.

Apart from budgetary considerations, which I take it are purely political, the only stated reason for terminating the GDFF series is "... concern about the quality of the information contained in GDFF in the past." Arbitrary techniques for estimating county and city spending, diverse data bases, and gaps in coverage are cited as irreparable defects, leading OMB to prefer further development of the FAADS system and, in the meantime, continued reliance on data currently being compiled by Treasury (presumably the information contained in its publication, "Federal Aid to States"). Having worked with the GDFF data system quite extensively, I can readily agree that the system has serious problems of accuracy and coverage. These problems have been well-known for some time, they are solvable for the most part, and we have made some progress toward solutions. Eliminating this data system leaves us with Treasury and Census data systems that are in fact less specific, less comprehensive, less accurate and thus less valuable than the GDFF system. Indeed, it was the more serious deficiencies of existing Census, Treasury and OMB data systems that recently led us to prefer the GDFF system as a vehicle for tracking federal spending in states, counties and cities—our reasoning and our evidence are contained in the enclosed copies of pages 10-21 of our recent book, "Moving Money."

As I think you may know, we have been able to demonstrate the utility of the GDFF system in our recent efforts to estimate the state and local impact of President Reagan's budget proposals. Because GDFF reports outlays by program, to which a Treasury account number is attached, we have been able to use past spending by program, agency and function to estimate future spending under President Reagan's program in states such as Michigan or Illinois. That process involved a direct account-to-account match between outlays reported in GDFF and "actual" 1980 expenditures reported in the Appendix to the Budget of the United States Government for 1982. That effort produced a match that was 80 to 85 percent accurate. While hardly perfect, this level of agreement between official budget figures and outlay figures strongly suggests that complaints about data quality in GDFF reports tend to be quite exaggerated. There are problems in the data, but in my judgment they are not nearly sufficient to justify elimination of the only system in existence that attempts to provide comprehensive data on federal program expenditures in American states, counties and cities.

OMB's stated preference for further development of the FAADS system seems to me to raise some important issues. For one thing, FAADS is a much more limited

system, confined to "federal assistance" payments. Operationally, these payments have been defined as programs listed in the "Catalog of Federal Domestic Assistance", with the ultimate intention of producing reports of expenditures from all programs listed in the Catalog. This is a perfectly laudable goal, for an information system that seems to me to have been well-designed, but it excludes salary and expense payments to federal employees, federal procurements, and virtually all spending by the Department of Defense, whose activities do not fall under the conceptual heading of "federal domestic assistance." (Payments to states to support the National Guard are an exception.) A federal procurement data system is being developed that ultimately will provide an important supplement to FAADS, but even with that procurement system, a very large fraction of total federal spending, more than \$200 billion at present, does not and will not appear in FAADS data. This seems to me to be a serious step away from the goal of comprehensiveness aspired to by the GDFP system.

FAADS is also a developing rather than an established system. Data must be compiled from agency records by people who have not previously compiled such data, according to an entirely new format, for submission through different channels. Not surprisingly, agency responses have been varied. Interior, Commerce, HUD, Treasury and other agencies report only a fraction of the assistance payments they make, while Agriculture leaves out some rather large components, including the Farmers Home Administration. As time goes on and officials become more comfortable with this new system, coverage and accuracy presumably will increase. For the moment, however, the five quarterly reports of FAADS data can only be regarded as seriously incomplete and probably inaccurate. As the Michigan Department of Commerce recently stated, in a report called "Determining the Need for FAADS" (October 1981): "At this point in time, FAADS data have been released for three quarters and are of limited accuracy and completeness. They, therefore, should not be utilized."

For those of us who are interested in understanding the consequences of federal spending patterns in state and local jurisdictions, elimination of GDFP creates a very serious intellectual and political gap. By eliminating the GDFP system before either the FAADS or the procurement data systems are fully operational, we eliminate any possibility of tracking the fiscal impact of federal spending during 1981, 1982, and probably 1983. I believe this decision would be unwise under most normal circumstances. Under present conditions, when a new President is seeking the most significant changes in federal budget policies since the 1930's, the decision strikes me as particularly shortsighted. If this data system is allowed to expire at this juncture in our history, an important and possibly indispensable tool for evaluating the nature and consequences of federal budget changes will be lost. The tool is admittedly flawed, but imperfection seems to me to be a poor excuse for throwing away the only tool we presently have.

In general, then, Mr. Harper's letter seems to me to represent a significant movement away from earlier federal commitments to

provide comprehensive, accurate and timely information regarding who gets what from the federal treasury. Quite frankly, the letter leads me to wonder whether OMB now has any commitment at all to producing these kinds of data. Although the second paragraph states a commitment to "an improved FAADS system," the fifth paragraph indicates that OMB does "not believe that reliable data on federal spending at the county and city level can be produced on a comprehensive basis at any cost, and we would not attempt to do so." I have underlined the last phrase because detailed and comprehensive data on federal spending at the county and city level is precisely what FAADS is supposed to provide (see the FAADS Reporting Instructions of July 1980). It should be recalled that one of the major purposes of the FAADS system is creation of data to inform states of federal funds flowing into their county and municipal subdivisions. In fact FAADS is explicitly thought of as a potential replacement for information collected through processes associated with OMB Circular A-95. Taken literally, the sentence quoted above, particularly the underlined phrase, suggests that the "improvement" in FAADS will take the form of eliminating the city and county reports that are currently required. I would hope that no such intention exists within OMB, but this language certainly is confusing, at best.

Quite obviously I share the concern you express in your letter. I would certainly support whatever action you can take that might lead OMB to reconsider a decision that I consider to be both unwise and shortsighted.

Sincerely,

THOMAS J. ANTON,  
Professor, Political Science.

[Excerpt]

MOVING MONEY—AN EMPIRICAL ANALYSIS OF  
FEDERAL EXPENDITURE PATTERNS

(By Thomas J. Anton, Jerry P. Cawley, and  
Kevin L. Kramer)

Consider, as an example, federal grants-in-aid, which are often said to have grown so large and become so numerous that they defy analysis. In fact it can be shown, however, that grant expenditures are highly concentrated in a modest number of programs. Figure 1.2, based on O.M.B.'s 1979 Catalog of Federal Domestic Assistance, reveals that 80 percent of federal grant expenditures are made by only 50 programs, and that the largest 100 programs account for some 95 percent of all grants-in-aid. Learning enough about 50 to 100 programs to make sensible statements about origins, development, and distribution can hardly be regarded as an easy task, but surely it should not be seen as an impossible undertaking. Grants or other federal assistance may well be provided through 1,100 or so different programs, but only a fraction of those need be investigated to understand the basic contours of the grant system.

As federal allocations are patterned into a recognizable structure so, too, are recipients of those allocations. Indeed, despite enormous recent growth in federal grants, there is a striking stability in the recipient structure that dates back for decades. Since at least the mid-1920s most federal grants have been concentrated in a handful of states,

typically those with the largest populations, and these have generally been the same states.

Thus when the distribution patterns of federal grants are correlated across years, the relationships show a powerful stability within periods of a single decade, and surprisingly powerful stability across a half century (Table 1.3). States receiving the largest amounts of federal aid decades ago, in short, are the states receiving the largest amounts today. Since total grant funds distributed have increased so much, one consequence of this stability is a much larger dispersion, in per capita dollars, around the state average per capita grant.

TABLE 1.3. CORRELATIONS OF FEDERAL GRANTS RECEIVED  
BY STATE, 1924-78

Time period	Correlation	Time period	Correlation
1924-30	.77	1924-30	.77
1930-40	.87	1924-40	.65
1940-50	.93	1924-50	.72
1950-60	.98	1924-60	.76
1960-70	.94	1924-70	.55
1970-78	.98	1924-78	.55

In 1924 the difference between the biggest state "winner" and biggest state "loser" was only \$21 per person. By 1960 this difference had increased to \$200, and it expanded further to \$312 in 1970 and \$759 in 1978. States that were "losers" decades ago are losing more relative to the mean and states that were "winners" decades ago are now winning much more relative to the mean per capita grant. Never a redistributive system, federal grants can more accurately be thought of as a "prodistributive" system following the principle, "winners win, losers lose." Accounting for such stability during a period of rapid social change is a major intellectual puzzle, to which we return below. We note it here primarily to emphasize the existence of intelligible patterns in federal spending, rather than the "incomprehensible chaos" that has often been alleged.

As barriers to understanding, ideology and alleged complexity must be regarded as trivial compared to the most significant barrier of all: lack of consistent and unambiguous data. Leaving aside the important but unmanageable question of how 50 states and thousands of local governments account for federal expenditures in their jurisdictions, the more important fact is that the federal government itself has not clear understanding of how much money it spends, where, or in what form. Senator Moynihan of New York, among others, has been repeatedly frustrated in his efforts to understand federal expenditure patterns and for several years has urged the federal government to "... give some concentrated attention to finding out just what it is doing." Judging from his most recent report to his constituents, however, not much progress has been made. Referring to the pattern of federal resources distribution, Moynihan argues that

"... no one much understands it, and no one seems responsible for it. New Yorkers sometimes seem to look upon the Federal fisc in much the manner of a cargo cult. Every so often the great planes fly in, laden with bounty. Then, unpredictably, they fly away, and none can know whether or when they will return."

TABLE 1.4. COMPARISON OF GRANTS-IN-AID TOTALS FOR THE 50 STATES AND D.C. REPORTED BY TREASURY AND CENSUS, FISCAL YEAR 1969-78

Fiscal year:	(Millions of dollars)		
	Grants-in-aid totals reported by		
	Treasury	Census	Difference
1978	75,293	69,592	5,701
1977	66,084	62,610	3,474
1976	57,719	55,587	2,131
1975	48,570	46,994	1,576
1974	45,092	41,831	3,261
1973	43,057	39,256	3,801
1972	35,217	31,253	3,964
1971	29,272	26,146	3,126
1970	23,717	21,858	1,859
1969	19,742	19,153	589

Sources: Data calculated from the Department of the Treasury, Federal Aid to States (Washington, D.C.: U.S. Government Printing Office, 1969-1979); and Bureau of the Census, Department of Commerce, Government Finances (Washington, D.C.: U.S. Government Printing Office, 1970-1980)

Moynihan's typical eloquence is, in our view, an exaggeration, but a review of major federal data sources leaves little doubt that his main point is valid. Analysts typically assume, for example, that authoritative data on federal aid to states are available either from official Census publications, from the Treasury Department publication, Federal Aid to States, or from O.M.B.'s "Federal Aid to State and Local Governments" report, published annually as a special analysis appended to the federal budget.

These publications do not report all federal spending in state areas, focusing only on grants-in-aid to state and local governments, but they do purport to report the same flow of funds. Yet when numbers from these sources are arrayed for comparison, rather large differences appear. Federal grants to state and local governments as reported by Treasury for the period 1969 through 1978 differ from Census reports by as much as \$5.7 billion (FY 1978), and average nearly \$3 billion annually for that 10-year period alone (Table 1.4). Worse yet, these total differences are derived from individual state area differences of impressive magnitude.

For fiscal 1977, Treasury reports \$7.45 billion in federal grants to New York; Census reports \$6.52 billion. For fiscal 1976, Treasury reports \$5.80 billion to California; Census reports \$6.23 billion. For fiscal 1974, Treasury reports \$2.13 billion to Texas; Census reports \$1.90 billion, and so on. Although small from the perspective of national totals, differences that can exceed \$1 billion for a single state in a single year (New York, FY 1972) clearly raise questions about how to interpret such data.

Year to year differences of this magnitude, furthermore, render it virtually impossible to judge whether Census or Treasury provide "better" numbers for cross-time analysis. Table 1.5 underlines this evaluative problem. From 1969 through 1978 the

average annual difference between Census and Treasury figures for a single state was never less than \$7.7 million, was often over \$100 million, and reached as much as \$631 million for the state of New York alone. Serious analyses of changes in the flow of funds into states clearly would require a judgment about the appropriateness of either data base for such analyses, but how would such a judgment be made? And if a choice were not made, what meaning or significance could be attached to the result?

Questions of interpretation become even more pointed when we compare Treasury and O.M.B. numbers (Table 1.6). Annual O.M.B. analyses provide national totals for programs and functions, without disaggregating these total figures into state or lower-level figures. Disaggregation by state is done by Treasury, whose officials work closely with O.M.B. staff to produce a Federal Aid to States document that is specifically designed to provide the financial detail absent from O.M.B. totals.

Close inter-agency cooperation appears to produce national totals that are reasonably close, portrayed in Columns A. Apart from the transition quarter, when accounting procedures were confused, and fiscal 1970, when a discrepancy of \$240 million is shown, annual totals are quite similar or identical. A glance at reported spending by agency, however, reveals that close national totals are produced from agency spending totals that are vastly different (Columns B).

For fiscal 1978, when Treasury and O.M.B. differ by only \$12 million nationally, O.M.B. reports \$119 million more for Department of Agriculture expenditures than does Treasury, \$84 million more for Labor, and \$103 million more for Transportation.

Treasury reports \$98 million more than O.M.B. lists for H.E.W. and \$222 million more than O.M.B. reports for H.U.D. in the same year. Table 1.6 makes clear that fiscal 1978 is no isolated case but is instead the normal pattern found in these reports. In fiscal 1972, for example, the negligible \$1 million national difference conceals differences in reported agency spending of as much as \$133 or \$138 million.

Some of the differences between O.M.B. and Treasury numbers are almost certainly due to differences in accounting and reporting procedures. O.M.B. figures are based on reports of "expenditures" submitted by agency budget officers while Treasury figures are based on reports submitted by agency accounting division officers.

Although both information channels utilize the same definition of "grants" (based on O.M.B. Circular A-11) they are nevertheless different channels, often producing very different sums for the same agency or program. O.M.B. and Treasury officials meet each year to attempt to reconcile such differences, but time and resource constraints often preclude reconciliation at the level of agency or program expenditure.

Amounts that cannot be reconciled in detail are nevertheless reported, usually under the rubric "Adjustments undistributed to States," producing the similar national totals without affecting the different program or agency totals.

Similarity in national totals is thus largely an artificial accounting similarity, driven by the need to prepare these documents in time for submission with the federal budget. Both differences in detail and relative similarity of national sums are therefore understandable consequences of the processes through which these data are produced.

Understanding the processes, however, does not eliminate discrepancies in the data.

TABLE 1.5.—CUMULATIVE TOTAL AND YEARLY DIFFERENCES IN STATE-AREA GRANTS-IN-AID TOTALS REPORTED BY TREASURY AND CENSUS, FISCAL YEARS 1969-78

Area	Absolute differences	
	Cumulative	Yearly average
Alabama	805,266	80,527
Alaska	188,268	18,827
Arizona	504,869	50,487
Arkansas	646,901	64,690
California	3,172,968	317,297
Colorado	258,731	25,873
Connecticut	978,798	97,880
Delaware	77,290	7,729
District of Columbia	888,975	88,897
Florida	1,024,150	102,415
Georgia	1,591,552	159,155
Hawaii	382,582	38,258
Idaho	185,220	18,522
Illinois	1,756,705	175,671
Indiana	665,656	66,566
Iowa	196,260	19,626
Kansas	221,313	22,131
Kentucky	821,527	82,153
Louisiana	958,642	95,864
Maine	335,759	33,576
Maryland	363,604	36,360
Massachusetts	1,452,611	145,261
Michigan	496,042	49,604
Minnesota	380,373	38,037
Mississippi	1,338,275	133,827
Missouri	749,681	74,968
Montana	225,007	22,501
Nebraska	209,563	20,956
Nevada	118,506	11,851
New Hampshire	193,253	19,325
New Jersey	1,810,787	181,079
New Mexico	369,657	36,966
New York	6,315,437	631,544
North Carolina	930,578	93,058
North Dakota	121,819	12,182
Ohio	1,756,669	175,667
Oklahoma	507,257	50,726
Oregon	301,996	30,200
Pennsylvania	2,887,722	288,772
Rhode Island	176,762	17,676
South Carolina	606,895	60,689
South Dakota	213,315	21,331
Tennessee	895,787	89,579
Texas	1,612,908	161,291
Utah	147,062	14,706
Vermont	77,629	7,763
Virginia	442,020	44,202
Washington	644,418	64,442
West Virginia	702,517	70,252
Wisconsin	573,289	57,329
Wyoming	101,446	10,145

TABLE 1.6.—COMPARISON OF INITIAL GRANTS-IN-AID TOTALS REPORTED BY OMB AND TREASURY, FISCAL YEARS 1969-78

Year	(In millions of dollars)							
	Columns A—Initial grants-in-aid totals reported by			Columns B—Differences <sup>1</sup> in agency totals reported by OMB and Treasury				
	OMB	Treasury	Difference <sup>1</sup>	DOA	HEW	HUD	DOL	DOT
1978	77,889	77,901	-12	119	-98	-222	84	103
1977	68,396	68,437	-41	62	249	-166	87	-192

TABLE 1.6.—COMPARISON OF INITIAL GRANTS-IN-AID TOTALS REPORTED BY OMB AND TREASURY, FISCAL YEARS 1969-78—Continued

[In millions of dollars]

Year	Columns A—Initial grants-in-aid totals reported by			Columns B—Differences <sup>1</sup> in agency totals reported by OMB and Treasury				
	OMB	Treasury	Difference <sup>1</sup>	DOA	HEW	HUD	DOL	DOT
Transition quarter	15,909	16,444	-535	75	-228	-235	6	-107
1976	59,037	59,112	-75	83	235	-12	1	-345
1975	49,723	49,723	0	-2	4	1	1	5
1974	46,040	46,040	0	9	22	-13	-10	-4
1973	43,963	43,964	-1	13	209	1	5	-6
1972	35,940	35,941	-1	6	133	-15	-138	10
1971	29,844	29,845	-1	-59	-51	-3	1	9
1970	23,955	24,194	-239	-152	86	-10	0	-59
1969	20,255	20,287	-32	34	6	52	-93	-3

<sup>1</sup> "+" indicates OMB number is greater; "-" indicates Treasury number is larger.

Sources: Office of Management and Budget, "Federal Aid to State and Local Governments," in Special Analyses Budget of the U.S. Government for fiscal years 1971-80 (Washington, D.C.: U.S. Government Printing Office, 1970-79); Department of the Treasury, Federal Aid to States for fiscal years 1969-78 (Washington, D.C.: U.S. Government Printing Office, 1969-79).

TABLE 1.7.—COMPARISON OF YEARLY GRANTS-IN-AID EXPENDITURES REPORTED IN THE ANNUAL AND HISTORICAL TABLES IN F.A.T.S.L.G.

[Dollars in millions]

Fiscal year	Yearly reported actual expenditure	Actual expenditures reported in historical tables in F.A.T.S.L.G. for fiscal year budget						
		1980	1979	1978	1977	1976	1975	1974
1978	\$77,889	\$77,889						
1977	68,396	68,415	\$68,396					
Transition quarter	15,909		15,909	\$15,909				
1976	59,037	59,094	59,037	59,037				
1975	49,723	48,832	49,723	49,723	\$49,723			
1974	46,040	43,354	43,308	43,308	43,308	\$46,040		
1973	43,963	41,832				43,963	\$43,963	
1972	35,940	34,372				35,940	35,940	\$35,940
1971	29,844	28,109				29,849	29,844	29,844
1970	23,955	24,018				23,954	23,954	23,954
1965		10,904	10,904	10,904	10,904	10,904	10,904	10,904
1960		7,020	7,020	7,020	7,020	7,040	7,040	7,040
1955		3,207	3,207	3,207	3,207			
1950		2,253	2,253	2,253	2,253			

Sources: "Federal Aid to States and Local Governments," in Office of Management and Budget (previously the Bureau of the Budget), Special Analyses, Budget of the United States Government, fiscal years 1972-80, the annual detailed listing of grants-in-aid and the annual historical tables.

Table 1.8.—COMPARISON OF REVISED NATIONAL TOTALS FOR GRANTS-IN-AID TO STATE AND LOCAL GOVERNMENTS REPORTED BY OFFICE OF MANAGEMENT AND TREASURY, FISCAL YEARS 1969-78

[Millions of dollars]

Fiscal year	Grants-in-aid totals reported by—		Difference
	Office of Management and Budget	Treasury	
1978	77,889	77,901	12
1977	68,415	68,437	22
Transition quarter	15,909	16,444	535
1976	59,094	59,112	18
1975	48,832	49,723	891
1974	43,354	46,040	2,686
1973	41,832	43,964	2,132
1972	34,372	35,941	1,569
1971	28,109	29,845	1,736
1970	24,018	24,194	176
1969	20,255	20,287	32

Sources: "Federal Aid to States and Local Governments," in Office of Management and Budget, Special Analyses, Budget of the U.S. Government (Washington, D.C.: U.S. Government Printing Office, 1971, 1978, 1979). Historical Trend of Federal Grant-In-Aid Outlay tables from 1980 budget report, 1971 budget report for the 1969 data and 1979 budget report for the Transition quarter data; and The Department of the Treasury, Federal Aid to States (Washington, D.C.: U.S. Government Printing Office, 1969-79).

An important additional complication arises from annual changes made by O.M.B. to improve the process of budget preparation. As such changes are introduced, O.M.B. updates its grants-in-aid figures to conform to the most recent reporting conventions. The result, depicted in Table 1.7, is that national grant totals for specific years are changed from one year to another. In 1976 "F.A.T.S.L.G." reported \$46,040 billion in grants for fiscal 1974, but the historical table shown in the 1980 "F.A.T.S.L.G."

analysis lists \$43,354 million for fiscal 1974. Differences between grant totals listed in the 1980 historical table and grant totals reported in previous annual reports vary from \$63 million more in fiscal 1970 to \$2,686 million less in fiscal 1974. Depending on the table and report used, therefore, as many as three different totals can be obtained for the same year, from the same source. O.M.B. refers to this as a "living system."

These procedures, of course, further complicate comparisons between different data sources. Table 1.8 illustrates the point by contrasting O.M.B.'s "revised" grant-in-aid totals for fiscal years 1970-1978 with Treasury's Federal Aid to States year-end figures, as reported earlier in Table 1.6. Recall that table 1.6 reported differences of no more than \$1 billion between Treasury and O.M.B. annual totals for fiscal years 1971 through 1975. The "revised" figures in Table 1.8, however, now show an average annual difference of more than \$1 billion between O.M.B. and Treasury totals. Whereas Treasury and O.M.B. reported identical year-end sums for fiscal 1974 and 1975, the "revised" sums now show differences to \$2.7 billion and \$891 million, respectively. Unravelling the sources of these kinds of differences would itself be an undertaking of some magnitude.

The data systems we have briefly reviewed—Census, O.M.B., Treasury—are typically regarded as "authoritative," yet it is apparent that conclusions regarding trends in nothing more than federal grants to states since 1969 would be vastly different, depending on which source were used, or indeed depending on which report from the same source were used. Because national totals mask state totals that are even more varied, furthermore, conclusions about

grants to individual states are subject to even more confusion. Differences amounting to billions of dollars in national totals and hundreds of millions in state-by-state totals obviously are subject to interpretive hazards, particularly since there is no consistency in the magnitude of year-to-year reporting discrepancies. Readers interested in specific state discrepancies are invited to find their own examples in Appendix Table 1.2, which reports totals from Census and Treasury (thus O.M.B.) data for all states and the District of Columbia from 1969 through 1978. In no year, for no state, do any of the grant figures reported by these sources match. Census, Treasury and O.M.B. reports all show vast increases in federal aid to state and local governments over the past decade, but beyond that it is extraordinarily difficult to know how to draw reliable conclusions from these data.

Although analysts can only regard these varying numbers and the confusion they inevitably produce as perverse, the absence of a single, comprehensive and consistent record of federal spending seems to us quite understandable. No great insight is required to appreciate the enormous diversity of purposes pursued, and the heterogeneity of the agencies created to pursue them, by the entity referred to as "the federal government." It seems perfectly reasonable to suppose, therefore, that information needs will be as diverse as agency purposes require and that, absent a strong demonstration of need, there will be no consistent and comprehensive data base. Data systems, in short, do not exist in a vacuum; data are "created" because someone wants or needs information. If federal expenditures are as important to the national economy as we have suggested,

and if such expenditures are a product of political processes rather than "objective" social or economic forces, and if presently available data systems seem inadequate, we must answer the question, "What data do we want or need in order to better understand the American political economy?"

Posing this question forces us to confront conceptual and theoretical issues since, if "data" are not simply "out there" but are always "created," it follows that all data systems are based on some theory or theories that define what is or is not significant. From this perspective each of the major data systems we have reviewed suffers from an even more fundamental defect: lack of articulation between the "data" and a plausible image of the political processes through which such data are produced. Federal expenditures are organized by program, within agency. A considerable literature on national budgeting, furthermore, makes clear that federal resource allocation takes place through a fragmented process of program-by-program calculation, involving individual program managers, agency and department leaders, O.M.B. officials, relevant congressional committees, and often supportive clientele groups. The data required for such calculations typically include some record of historical accomplishment, a record of prior-year spending and service to clientele groups, and a proposal to improve program operations in the forthcoming year by expanding expenditures. These data are presented in great detail in agency budget proposals, and in somewhat less detail in the federal budget appendix—which is nonetheless a huge document. Use of such data makes clear that the politics of federal spending is very much a politics of individual federal program.

In summarizing these activities, however, the major federal data systems aggregate these program data into department or functional totals that have little to do with program politics. O.M.B. summaries by function and agency provide useful information for decisions on national budget totals, but spending decisions are not made by "function." The Treasury break-out of grants to states, apart from its other difficulties, aggregates hundreds of programs into fewer than 120 purposive categories, few of which form the bases of expenditure decisions. Even Census, which provides the most comprehensive record of federal spending in states and local jurisdictions, summarizes federal activity in no more than 12 categories, aggregating program decisions through techniques difficult to unravel. These reporting systems are all useful enough for some purposes, despite their inconsistencies. But they are designed to provide statistics for national total calculations, or generally summarize state and local distribution of federal dollars, rather than provide information on program expenditures. If the most important component of the American political economy is federal expenditures, understanding that component clearly requires a data system capable of handling federal program decisions.

It is also important that such a data system be comprehensive in its coverage. As noted above, much of the recent public debate of federal spending has focused on federal grants to state and local governments, and much of our attention here has been drawn to information about grants. Yet, as we also have noted, alternative spending mechanisms such as loans or tax expenditures are increasing more rapidly than grants. Ideally we would like a system

that would permit us to track such mechanisms, we well as direct expenditures for federal government operations, or federal purchases from the private sector. Is there a data system both comprehensive enough in its coverage and "political" enough in its conceptual focus to provide an adequate analytic tool? Or, short of canvassing each federal program for budget and expenditure information can such a system be created to provide a single source of reliable information? The answer to both questions is "yes." Such a system exists, and it can be improved. We refer, of course, to a fourth data source, known earlier as "Federal Outlays" and now published annually by the Community Services Administration as Geographic Distribution of Federal Funds.●

● Mr. SASSER. Mr. President, I rise as an original cosponsor of Senate Joint Resolution 146, to commend this legislation to my colleagues and urge its early passage.

On February 4, 1982, I questioned David Stockman, Director of the Office of Management and Budget (OMB), about a recent OMB decision to discontinue publication of the "Geographic Distribution of Federal Funds," one of the primary sources of information regarding Federal aid to State and local governments in the country.

THE PRESIDING OFFICER. Without objection, it is so ordered. See Exhibit 1.)

Mr. SASSER. Mr. President, now this is a very disturbing directive, for it means that the American people, the Congress, and State and local officials will not have full and complete information about the fiscal dimensions of the administration's New Federalism proposals. And that, Mr. President, is not the correct way to increase public understanding about the New Federalism.

Already, there are many, many State and local officials who want to know more about the fiscal specifics of the New Federalism. They want to know how State taxes will be affected by the swap of medicaid and AFDC/food stamp services. They want to know the funding levels for the various Federal grant-in-aid programs that will be included in the "turnback" of Federal programs to State and local governments.

They want to know how these various programs will be funded for 1981, 1982, 1983, and 1984. They need this information so they can make their budgetary plans for dealing with the New Federalism. In short, they want a fair shake from these federalism proposals, and they want to have access to unbiased, unmessage data that will permit them to draw their own conclusions about whether to support the various elements of the administration's New Federalism proposals.

Mr. President, the Congress should require the Office of Management and Budget to honor that request. There should be truth-in-packaging with the

New Federalism and Senate Joint Resolution 146 aims at providing Federal, State, and local officials the information they need in order to make intelligent and informed decisions about the administration's New Federalism proposals.

I urge prompt passage of Senate Joint Resolution 146.

#### EXHIBIT 1

EXECUTIVE OFFICE OF THE  
PRESIDENT,

OFFICE OF MANAGEMENT AND BUDGET,  
Washington, D.C., December 14, 1981.

MEMORANDUM FOR ASSISTANT SECRETARIES/  
DIRECTORS FOR MANAGEMENT

From: Edwin L. Harper, Deputy Director.  
Subject: Discontinuation of the Geographic Distribution of Federal Funds.

As a result of recent evaluations of certain reporting requirements, it has been decided to discontinue the compilation and publication of the *Geographic Distribution of Federal Funds*, effective immediately. Data should not be submitted for FY 1981.

The Office of Management and Budget will continue to assess existing reporting systems such as the Federal Aid to States and the Federal Assistance Award Data System in addition to the various Census Bureau publications to determine the best approach for providing information on the geographic distribution of federal funds.●

#### ADDITIONAL COSPONSORS

S. 671

At the request of Mr. PELL, the Senator from Massachusetts (Mr. TSONGAS) was added as a cosponsor of S. 671, a bill to amend section 402 of title 23, United States Code, relating to establishment by each State of comprehensive alcohol-traffic safety programs as part of its highway safety program.

S. 1215

At the request of Mr. PROXMIER, the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1215, a bill to clarify the circumstances under which territorial provisions in licenses to distribute and sell trademarked malt beverage products are lawful under the antitrust laws.

S. 1634

At the request of Mr. COCHRAN, the Senator from Connecticut (Mr. WEICKER), the Senator from Maine (Mr. COHEN), the Senator from North Dakota (Mr. BURDICK), the Senator from Georgia (Mr. NUNN), and the Senator from Kansas (Mrs. KASSEBAUM) were added as cosponsors of S. 1634, a bill to incorporate the National Federation of Music Clubs.

S. 1701

At the request of Mrs. HAWKINS, the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 1701, a bill to amend title 28, United States Code, to authorize the Attorney General to acquire and exchange information to assist Federal, State, and local officials in the identification of certain decreased individuals and in

the location of missing children and other specified individuals.

S. 1814

At the request of Mr. JEPSEN, the Senator from Maine (Mr. COHEN) was added as a cosponsor of S. 1814, a bill to amend title 10, United States Code, to require the Secretary concerned to comply with the terms of certain court orders in connection with the divorce, dissolution, annulment, or legal separation of a member or former member of a uniformed service and which affect the retired or retainer pay of such a member or former member, and for other purposes.

S. 1844

At the request of Mr. JOHNSTON, the Senator from Oklahoma (Mr. BOREN) was added as a cosponsor of S. 1844, a bill to facilitate the national distribution and utilization of coal.

S. 1932

At the request of Mr. BENTSEN, the Senator from West Virginia (Mr. ROBERT C. BYRD) was added as a cosponsor of S. 1932, a bill to amend the Inspector General Act of 1978 to establish offices of inspector general in certain departments and agencies, and for other purposes.

S. 1943

At the request of Mr. SCHMITT, the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of S. 1943, to increase the penalties for smuggling quantities of marijuana exceeding 1,000 pounds.

S. 1992

At the request of Mr. MATHIAS, the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 1992, a bill to amend the Voting Rights Act of 1965 to extend the effect of certain provisions, and for other purposes.

S. 2016

At the request of Mr. LUGAR, the Senator from North Dakota (Mr. ANDREWS), the Senator from Wyoming (Mr. WALLOP), and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. 2016, a bill to amend title II of the Social Security Act to provide generally that benefits thereunder may be paid to aliens only after they have been lawfully admitted to the United States for permanent residence, and to impose further restrictions on the right of any alien in a foreign country to receive such benefits.

S. 2094

At the request of Mr. DANFORTH, the Senator from Oklahoma (Mr. BOREN) was added as a cosponsor of S. 2094, a bill to amend the Trade Act of 1974 to insure reciprocal trade opportunities, and for other purposes.

#### SENATE JOINT RESOLUTION 127

At the request of Mr. COCHRAN, the Senator from Connecticut (Mr. WEICKER) was added as a cosponsor of

Senate Joint Resolution 127, a joint resolution to grant official recognition to the International Ballet Competition.

#### SENATE JOINT RESOLUTION 138

At the request of Mr. ROBERT C. BYRD, the Senator from Minnesota (Mr. BOSCHWITZ) was added as a cosponsor of Senate Joint Resolution 138, a joint resolution to authorize and request the President to designate the week of April 18, 1982, through April 24, 1982, as "National Coin Week."

#### SENATE JOINT RESOLUTION 140

At the request of Mr. MATHIAS, the Senator from Kentucky (Mr. FORD) was added as a cosponsor of Senate Joint Resolution 140, a joint resolution designating February 11, 1982, "National Inventors' Day."

#### SENATE JOINT RESOLUTION 144

At the request of Mr. DODD, the Senator from California (Mr. CRANSTON) was added as a cosponsor of Senate Joint Resolution 144, a joint resolution declaring that it should be the policy of the U.S. Government to encourage unconditional negotiations for the purpose of achieving a ceasefire and a political settlement to the conflict in El Salvador.

#### SENATE RESOLUTION 231

At the request of Mr. PERCY, the Senator from Indiana (Mr. LUGAR), the Senator from Wisconsin (Mr. KASTEN), the Senator from Kentucky (Mr. HUDBLESTON), the Senator from Colorado (Mr. ARMSTRONG), the Senator from North Carolina (Mr. HELMS), the Senator from Florida (Mrs. HAWKINS), the Senator from Nevada (Mr. LAXALT), the Senator from New Mexico (Mr. DOMENICI), the Senator from South Dakota (Mr. PRESSLER), and the Senator from Utah (Mr. GARN) were added as cosponsors of Senate Resolution 231, a resolution regarding the management of U.S. assets.

#### SENATE RESOLUTION 317

At the request of Mr. CANNON, the Senator from Nebraska (Mr. EXON), and the Senator from Maine (Mr. MITCHELL) were added as cosponsors of Senate Resolution 317, a resolution urging an Interstate Commerce Commission moratorium on new grants of authority to foreign carriers.

#### SENATE RESOLUTION 319—AUTHORIZING TESTIMONY BY JAMES SOURWINE

Mr. BAKER submitted the following resolution; which was considered and agreed to:

#### S. Res. 319

Whereas, in the case of *David Richardson v. Raymond J. Donovan*, Civil Action No. 79-2053, pending in the United States District Court for the District of Columbia, counsel for the defendant has requested the testimony of James Sourwine, an employee of the Senate;

Whereas, Title VII of the Ethics in Government Act of 1978, Public Law 95-521

("the Act"), establishes the Office of Senate Legal Counsel and provides that the Senate may direct its Counsel to represent the Senate, its committees, Members, officers, or employees;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that testimony of an employee of the Senate is needful for use in any court for the promotion of justice and, further, that such testimony may involve communications, conversations, and matters related to the official business of the Senate, the Senate will take such action thereon as will promote the ends of justice consistently with the privileges and rights of the Senate: Now, therefore, be it

*Resolved*, That pursuant to section 704(a)(2) of the Act, the Senate Legal Counsel is directed to represent James Sourwine in connection with his testimony in the case of *David Richardson v. Raymond J. Donovan*, Civil Action No. 79-2053;

Sec. 2. That James Sourwine is authorized to testify in the case of *David Richardson v. Raymond J. Donovan*, Civil Action No. 79-2053, except concerning matters for which the Senate Legal Counsel or his representative determines are privileged from disclosure.

#### SENATE RESOLUTION 320—RELATIVE TO THE ASSASSINATION OF KEMAL ARIKAN

Mr. DENTON submitted the following resolution; which was considered and agreed to:

#### S. Res. 320

Whereas Kemal Arikan, the consul general for the mission of the Government of Turkey in Los Angeles, was shot to death on January 28, 1982, in Los Angeles,

Whereas acts of terrorism daily cause suffering and death in the world;

Whereas the gravity of attacks against representatives of foreign governments and the universal abhorrence of such attacks has been expressed repeatedly by the international community; and

Whereas free people should condemn such brutality wherever it appears and should take all lawful steps to prevent it and to bring to justice those who commit such acts of terrorism: Now, therefore, be it

*Resolved*, That the Senate hereby—

(1) condemns in the strongest terms the vicious and brutal act of assassination of Kemal Arikan, a consul general of the Government of Turkey and a guest of the of the United States, on January 28, 1982, in Los Angeles;

(2) expresses its deepest sympathy with the family of Kemal Arikan and with the Government of Turkey and the people of Turkey in their time of sorrow; and

(3) calls upon Federal, State, and local law enforcement authorities of the United States to conduct, to the maximum extent practicable, an unceasing investigation of this case, to engage in the prosecution of the offenders to the maximum extent that the law permits, and to take appropriate steps to deter future attacks.

Sec. 2. The Secretary of the Senate shall transmit a copy of this resolution to the

President with the request that he transmit such copy to the Government of Turkey.

#### AMENDMENTS SUBMITTED FOR PRINTING

##### CRIMINAL CODE REFORM ACT

AMENDMENTS NOS. 1285 THROUGH 1304

(Ordered to be printed and to lie on the table.)

Mr. McCLURE submitted 20 amendments intended to be proposed by him to the bill (S. 1630) to codify, revise, and reform title 18 of the United States Code, and for other purposes.

##### HOME HEALTH SERVICES

AMENDMENT NO. 1305

(Ordered to be printed and to lie on the table.)

Mr. PRESSLER submitted an amendment intended to be proposed by him to the bill (S. 234) to amend the Public Health Service Act to encourage the establishment of home health programs and to amend the Social Security Act to provide expanded coverage of home health services under the Medicare and Medicaid programs.

● Mr. PRESSLER. Mr. President, I am today offering an amendment to the health service's bill, S. 234, to facilitate better coordination between home health care agencies and hospital discharge planners.

One of the difficulties with the home health care delivery system as we now know it is that the necessary link between them and one of the major suppliers of clients—hospitals—is not well developed. This state of affairs is at least partially due to a simple lack of knowledge about existing alternatives, on the part of hospital personnel. Often, a discharge planner will receive orders from a patient's doctor on the same day that a patient is to be released. The physician may recommend discharge to a nursing home, because that is the option with which he or she is most familiar. The discharge planner faced with the need to make arrangements quickly, is often forced to simply follow the recommended course of action.

In other cases, even when the doctor and discharge planner realize that home care would be more appropriate than institutional care, the link with the home health provider is so poorly developed that the patient spends additional, costly, and unnecessary days in the hospital, while the details of the transfer of care are being worked out.

Specifically the amendment directs that the Secretary of Health and Human Services shall require that all home health care agencies which qualify for Medicare and/or Medicaid reimbursement shall establish a regular

working relationship with area hospital discharge planners, in order to insure efficient and timely transfer of patients from hospitals to home health care.

I hope that adoption of this amendment will insure that working relationships are better developed, so that hospital personnel is better informed about the options available, and crucial time and dollars are not wasted in the making of arrangements. If we truly wish to make home health care cost effective and more beneficial for the patient, I believe this is a necessary addition to the bill. ●

##### ADMISSION OF CERTAIN CHILDREN OF U.S. SERVICEMEN

AMENDMENT NO. 1306

(Ordered to be printed and referred to the Committee on the Judiciary.)

Mr. DENTON (for himself and Mr. LEVIN) submitted an amendment intended to be proposed by them to the bill (S. 1698) to amend the Immigration and Nationality Act to provide preferential treatment in the admission of certain children of U.S. Armed Forces personnel.

Mr. DENTON. Mr. President, I am pleased to submit, with my distinguished colleague, the junior Senator from Michigan, an amendment in the form of a substitute to S. 1698, a bill to provide preferential treatment in the admission to the United States of certain children of U. S. Armed Services personnel.

People who are aware of the plight of Amerasian children must feel compassion for these unwanted children in Southeast Asia. Everyone agrees that we must find a solution to the hideous problems faced daily by these offspring of American men and Asian women. However, the complexity of the issue with regard to immigration policy, and the lack of hard information about the numbers and whereabouts of the Amerasians in all seven nations mentioned in S. 1698, complicated our efforts to aid the Amerasians.

With this in mind, the amendment offered today adopts an incremental approach by allowing immigration preference to one group of Amerasians: Those fathered in Korea by a U.S. citizen between 1950 and the date of enactment of the bill. The amendment defines a group of children who suffer severe, institutionalized discrimination in the country of their birth. The number of these children who would require immigration preference would be manageable by the State Department and the immigration and Naturalization Service.

I believe that this pilot program would be workable with sufficient stringency to discourage fraud. The program, when demonstrated to be successful, could easily be expanded to

include children from any of the other countries where there is discrimination against those with American blood. I invite all the current cosponsors of S. 1698, as well as my other colleagues, to join Senator LEVIN and me in cosponsoring this amendment.

I commend to my colleagues an article by William Drozdiak in the December 14, 1981, issue of Time magazine. It poignantly describes the problems faced by the Amerasian children who are unfortunate victims of our involvement in Southeast Asia. I ask unanimous consent that the article be printed in the RECORD.

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

##### STRANGERS IN THEIR OWN LAND

"In the dead of night, I sometimes find myself wondering what I am," said Cha Mi Sun. For Cha, a 27-year-old Korean acupuncturist, the acute identity crisis began the day he was born. In school, his classmates derided him as a twig, a half-breed. Later, he found that his patients loathed being touched by him because of his "outlandish" looks. Like thousands of other youths spawned by liaisons between American servicemen and Asian women, Cha has blue eyes and brown hair that brand him a pariah condemned to a life of shame and ridicule in his native land, proud of its long history of ethnic purity.

From Thailand and the Philippines to Japan and Korea, there are perhaps 170,000 such Amerasians. Viet Nam alone has an estimated 25,000 to 50,000, who represent one of the most poignant legacies of the U.S. involvement there. The victorious Vietnamese consider mixed-descent youths an unwelcome reminder of a hated foe. As a result, the Amerasians are denied education and rights of citizenship. In Thailand, a recreational playground during the war years, street urchins with names like Charlie and Woody often must survive by hustling coins from tourists and running errands for massage parlors.

"For those forgotten American children in Asia, life is just misery," says Father Alfred V. Keane, an American priest who runs a home for Amerasians in Inchon, Korea. "The harassment never seems to end. Sometimes they are beaten, stoned, kicked and reduced to a subhuman status in ways I could never begin to describe."

In some countries where an American presence has been tolerated for generations, Amerasians have attained a measure of acceptance. In the Philippines and Japan, where they were once scorned as "Madama Butterfly tots" or "souvenir babies," mixed-descent children have capitalized on their exotic looks and gained success in the entertainment and fashion worlds. Two of the most popular Filipino movie stars, Hilda Koronel and Elizabeth Oropesa, are daughters of American fathers. But in Korea, most Amerasian children and their mothers are still treated as outcasts. In the bars and discos near the military bases, where more than 37,000 U.S. troops are stationed, the underclass perpetuates itself in a sad cycle: children of prostitutes who once plied their trade at the same bases now cater to another generation of American G.I.s.

Trapped between two cultures, Amerasians receive little sympathy from local governments. "Sometimes officials refuse to be-

lieve the children are Thai citizens because of the way the child looks," says Janjira Wongsopa, a medical counselor with the Pearl S. Buck Foundation, which aids more than 12,000 Amerasians in five countries. "They will put American or Negro as the nationality on the birth certificate, which means the child cannot attend a government school." Roughly 98 percent of Thailand's Amerasians (variously estimated to number between 4,000 and 11,000) are illegitimate progeny, many of them ostracized by their mothers' families. Says a Bangkok social worker: "That alone will deprive them of many job opportunities, which are often obtained through relatives or friends of relatives."

As elsewhere, the degree of Asian prejudice is often dictated by skin color. "In many ways the white Amerasian is better off," says Michael Nebeker, Bangkok director of the Pearl S. Buck Foundation. "Although he is teased, the Thais sometimes find his light hair and features exotic. But with blacks there is definitely maliciousness. Teachers call them 'nigger' in front of other kids and openly discuss how their mothers were just prostitutes and their fathers soldiers." Pearl S. Buck Foundation officials believe that every effort should be made to integrate the mixed-descent child into local society before adoption is contemplated. But the vicious treatment of Amerasian blacks has convinced Nebeker that for them, going to the U.S. might be the best thing.

Even if there is an American couple willing to adopt them, the peculiar status of Amerasian children often makes it impossible for them to emigrate. To qualify for adoption, a child is required by Thai law to have written consent from his mother, something many Amerasians find impossible to obtain since they were abandoned shortly after birth. In the Philippines, 99% of Amerasians are born out of wedlock and are thus considered Filipinos, which forces them to compete with some 300,000 other Filipinos who have applied for the 20,000 U.S. immigrant visas allotted to the Manila embassy.

The wrenching ordeal of the Amerasians has induced Representative Stewart B. McKinney, a Connecticut Republican, to propose a bill that would provide preferential admission into the U.S. for some of the children of American soldiers born abroad. Under McKinney's bill, an alien born in Korea, Viet Nam, Laos or Thailand after 1950 who was fathered by a U.S. serviceman on active duty would be granted high preference under U.S. immigration laws, provided that the child could prove American paternity and find a sponsor to guarantee financial support for five years. The bill languished in one previous Congress but is now picking up enough backers to stand a chance of passage. Says McKinney: "This act does not carelessly throw open the gates to allow mass immigration. It allows Amerasians the opportunity they deserve as sons and daughters of U.S. citizens."

Not all Amerasians would rush to apply for visas to the U.S. "A lot of the children are curious about their fathers," says a Pearl S. Buck Foundation worker, "but they are Thai and their lives will be here." Pearl S. Buck Foundation officials believe that an offer of U.S. citizenship to Amerasians is a necessary first step in recognizing moral responsibility. Says Executive Director John Shade: "they are Americans. The Amerasians have more right to be citizens of this country than Cubans and Haitians."

## TELEVISION AND RADIO COVERAGE OF SENATE PROCEEDINGS

AMENDMENT NO. 1307

(Ordered to be printed and to lie on the table.)

Mr. HOLLINGS (for himself and Mr. LEVIN) submitted an amendment intended to be proposed by them to the resolution (S. Res. 20) providing for television and radio coverage of proceedings of the Senate.

Mr. HOLLINGS. Mr. President, I have listened with great interest to the debate considering television and radio coverage of Senate proceedings. I feel my colleagues have done an outstanding job in defining the major advantages and disadvantages of this proposal. But as is too often the case in formal debate, and I do not intend my remarks as criticism of any of my colleagues, the affirmative team fails to recognize the merits in the negative team's arguments and vice versa.

For me, in this particular matter, each side has presented compelling arguments. The most compelling argument against gavel-to-gavel television and radio coverage of Senate proceedings is that such may have an intrusive effect on how this body conducts itself—its business and its duties. It is not so much that we would be competing with "General Hospital," "All My Children," "Let's Make A Deal," or reruns of "I Love Lucy" that concerns me; it is that we would be competing with ourselves and against the best interest of the voters who put us here.

There was a time when most of the Senate's business was conducted in this Chamber and a Senator's office was his desk. But, that is not the case today. Due to the everincreasing demands placed on us by our constituents and by a myriad of new and complex issues, we can no longer fulfill our obligations as Senators from these desk tops alone. We have and need staffs to help meet the demands for constituent services, and we have and need committees and committee staffs to aid us in the consideration of complicated legislation and issues. I do not say this to provide excuse for empire-building. I only state it as a fact in a more advanced age where we have telephones, television, telecommunications, high technology and a better informed public. As a people become better informed, the greater interest there exists in the affairs of state. And the greater the interest in the affairs of state, the more that will be expected, or least requested, of those who govern that state. That is the psychology of open political systems like our own and I doubt that psychology, if ever, can be broken easily.

So, Mr. President, what we have today is a legislative body which is primarily run by the actions and deliberations of its committees. I would go so far to say that more than 90 percent of the Senate's primary duty,

that of legislating the laws of the land, is conducted in those committees. It is there where many of our Nation's great issues are initiated, contemplated and decided. It is there where we see more votes and longer debate. And it is there where we find television and radio.

In general, during the last three decades the Senate has allowed the televising of committee hearings, especially those in which there was widespread interest. Virtually whenever the television networks have requested to come into the committee room, unless sensitive national security matters were involved, their crews have been allowed to film the proceedings. So, in fact, we now have broadcast coverage of the majority of Senate business—that is when the networks deem us worthy of such coverage. The networks obviously find Watergate hearings and big budget battles more titillating than the Services Industries Development Act or the documentation of the vessel *Oceanic Constitution*. As former network executive Fred Silverman was likely to say, "We simply give them what they want."

Mr. President, with that background in my mind, I have severe reservations about what gavel-to-gavel coverage of the Senate Chamber might do to this body. It might take us out of our committees away from more important work. It may mean because Senator THURMOND has made a speech regarding the confirmation of Sandra Day O'Connor to the Supreme Court, that Senator HOLLINGS may feel compelled to leave a Budget Committee markup to speak to the television cameras, and to the people of South Carolina, to give his thoughts about this historic event. And one will be compelled in similar circumstances for want to avoid such questions as: Why did you not make a statement? Are you not concerned about this issue? Or, were you out playing tennis again? If a great number of us feel compelled to avoid such, I fear our ability to carry out the people's business will be severely compromised.

On the other hand, there is a most compelling argument for television and radio coverage of the Senate's proceedings. In a free and open system of government such as ours coverage of political events and the workings of government is not only common place, it is expected. As Justice Felix Frankfurter once wrote: "Freedom of the press is a means to the end of a free society." Indeed the right of the public to know about its government, if not stated, is an implicit fundamental of the American form of government.

Claims that this or that Senator will be more telegenic pale as effective argument in contrast to the notion that a citizenry in a free society should

know, or at the very least have the ability to know, how its government works and how its legislators deliberate. Despite how some political pundits have interpreted the results of the 1980 election, the American people do not elect actors to public office. We are sent here not to perform, but to contribute our energies to the formulation of national policy. The public understands that and we should, too.

It is just this sort of open door government that led the Senate to open the galleries to all citizens and the print media in 1794. Today the definition of communications has changed dramatically as a result of technology. We are a nation that receives the bulk of its information via radio or television broadcast. And, indeed, since this is one of our mainstays of communication the omission of radio and television coverage seems an obstacle to the open door government notion the Senate of 1794 proclaimed in opening the galleries.

This brings me now, Mr. President, to my main concern. I believe the public does have a right to know, but I also believe the public deserves to have Senators perform their duties as efficiently and thoughtfully as possible. It is for these reasons, that I and Senator CAROL LEVIN of Michigan believe a compromise is in order. A compromise which opens this body to the camera's eye and the radio's sound level and yet does so with the least disruption of this body's primary duty of legislating laws. The amendment that we offer today to Senate Resolution 20 would allow the majority and minority leaders to determine when coverage of the Senate is appropriate. It is our hope that such an amendment would allow the leadership to select the subjects of truly national interest. Such a system would allow the broadcast of major national debates over the Panama Canal treaties, the sale of the AWACS, the building of the B-1 bomber, the President's budget and tax programs, and like issues. I think there is a valuable purpose and need for greater coverage of the deliberations of this body. I believe the American people have a genuine interest in what happens here. And I hope the amendment offered here today by Senator LEVIN and myself, will allow the American people to see our deliberations with the least instructive effect on our legislative process.

Mr. President, I ask unanimous consent that the amendment offered by Senator LEVIN and myself be printed in the RECORD.

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

AMENDMENT No. 1307

On page 2, line 1, strike out "continuously at all times" and insert in lieu thereof "at such times as the Majority and Minority Leaders agree are appropriate".

On page 2, lines 3 and 4, strike out "Committee on Rules and Administration" and insert in lieu thereof "Majority and Minority Leaders".

On page 2, line 13, strike out "committee" and insert in lieu thereof "Majority and Minority Leaders".

On page 2, lines 16 and 17, strike out "committee on Rules and Administration" and insert in lieu thereof "Majority and Minority Leaders".

CRIMINAL CODE REFORM ACT

AMENDMENT NOS. 1308 THROUGH 1329

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted 22 amendments intended to be proposed by him to the bill (S. 1630) to codify, revise, and reform title 18 of the United States Code, and for other purposes.

PROHIBITING TAX EXEMPTION FOR SCHOOLS WITH A POLICY OF RACIAL DISCRIMINATION

AMENDMENT NO. 1330

(Ordered to be printed and referred to the Committee on Finance.)

Mr. HELMS submitted an amendment intended to be proposed by him to the bill (S. 2024) to amend the Internal Revenue Code of 1954 to prohibit the granting of tax-exempt status to organizations maintaining schools with racially discriminatory policies.

NOTICES OF HEARINGS

COMMITTEE ON SMALL BUSINESS

Mr. WEICKER. Mr. President, I would like to announce that the hearing date for the Senate Small Business Committee's hearing on "Influencing Small Business Investment in Enterprise Zones" has been rescheduled from February 23, 1982 to February 25, 1982, 9:30 a.m., room 424 of the Russell Senate Office Building. For further information contact Bob Wilson, 224-5175. Senator WEICKER will chair.

Mr. President, I would like to announce that the Senate Small Business Committee will conduct a hearing on February 23, 1982, at 9:30 a.m., room 424 of the Russell Senate Office Building, to review the President's first annual "Report on Small Business and Competition." For further information contact Mike Haynes, 224-5175. Senator WEICKER will chair.

Mr. President, I would like to announce that the Senate Small Business Committee will conduct a hearing on March 4, 1982, at 10 a.m., room 424 of the Russell Senate Office Building, to consider S. 1947, a bill to improve small business access to Federal procurement information. For further information contact Kim Elliott, 224-3840. Senator HAYAKAWA will chair.

Mr. President, I would like to announce that the Senate Small Business

Committee will conduct a hearing on March 11, 1982, at 9:30 a.m., room 424 of the Russell Senate Office Building, on the SBA surety bond guarantee program. For further information contact Mike Haynes, 224-5175. Senator WEICKER will chair.

Mr. President, I would like to announce that the Senate Small Business Committee will conduct a hearing on March 2, 1982, at 9 a.m., room 424 of the Russell Senate Office Building, on "Safe Harbor Leasing: Usability by Small Business." For further information contact Brian Hartman, 224-5175. Senator D'AMATO will chair.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. COHEN. Mr. President, I would like to announce for the information of the Senate and the public, the scheduling of a public hearing before the Select Committee on Indian Affairs.

The hearing is scheduled for March 5, 1982, beginning at 9:30 a.m., in room 6226 of the Dirksen Senate Office Building. Testimony is invited regarding the review of the "Report of the Commission on Fiscal Accountability of the Nation's Energy Resources."

For further information regarding the hearing you may wish to contact Timothy Woodcock of the committee staff on 224-2251. Those wishing to testify or who wish to submit a written statement for the hearing record should write to the Select Committee on Indian Affairs, U.S. Senate, Washington, D.C. 20510.

SUBCOMMITTEE ON SOIL AND WATER CONSERVATION

Mr. JEPSEN. Mr. President, I wish to announce that the Senate Agriculture Subcommittee on Soil and Water Conservation has scheduled a hearing on S. 1825. S. 1825 would prohibit eligibility for the price support program on certain western lands which have not been used for agricultural purposes in the past 10 years except in cases where the owner or operator has entered into a long-term agreement with the Secretary of Agriculture to carry out conservation practices on such lands. The bill was introduced by Senator ARMSTRONG, and the hearings are being held at his request.

The hearing will be held on Wednesday, February 24, beginning at 9 a.m. in room 324, Russell Building.

Anyone wishing further information should contact Denise Alexander or John Cozart of the Agriculture Committee staff at 224-2035.

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

Mr. WARNER. Mr. President, I would like to announce for the information of the Senate and the public that the hearings to consider the capacity, distribution and status of the Nation's strategic petroleum reserve previously scheduled for Monday, February 8 and Friday, February 26 have

been rescheduled for Monday, March 8 at 2 p.m. in room 3110 of the Dirksen Senate Office Building.

In addition, the subcommittee will hold a field hearing in Billings, Mont., to consider the Federal coal leasing effect in Montana. The hearing will be held on Monday, February 22, beginning at 9 a.m. in the Yellowstone County Courthouse, room 510, Billings, Mont.

Those wishing to testify or who wish to submit written statements for the record should write to the Committee on Energy and Natural Resources, Subcommittee on Energy and Mineral Resources, 3104 Dirksen Senate Office Building, Washington, D.C. or, to Mr. Scott Donnelly, office of Senator JOHN MELCHER, Federal Building, room 1016, Billings, Mont. 59101. Testimony should be submitted no later than close of business on Friday, February 19.

For further information regarding this hearing you may wish to contact Mr. Roger Sindelar of the subcommittee staff at 202-224-4236 or Mr. Scott Donnelly, office of Senator MELCHER, at 406-657-6644.

#### SUBCOMMITTEE ON NUTRITION

Mr. DOLE. Mr. President, I wish to announce that hearings have been scheduled before the Senate Agriculture Subcommittee on Nutrition concerning the status of nutrition programs administered by the U.S. Department of Agriculture. Specifically, the subcommittee will be looking at the impact which the President's budget proposals would have on the food stamp, child nutrition, and the special supplemental feeding program for women, infants, and children, (WIC) programs.

The hearings will be held on Monday, February 22, and on Tuesday, February 23, beginning both days at 10 a.m., in room 324, Russell Building.

Anyone wishing further information should contact Denise Alexander or John Cozart of the Agriculture Committee staff at 224-2035.

#### SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY

Mr. QUAYLE. Mr. President, after consultation with the White House and the Department of Labor, Congressman GUS HAWKINS and I have announced that the hearings for training and employment legislation scheduled for February 22 to 26, 1982, will be postponed until March 15 to 18, 1982.

Accordingly, it has been agreed that Secretary of Labor Raymond Donovan will testify March 15.

### ADDITIONAL STATEMENTS

#### THE UNEMPLOYMENT URGENT SUPPLEMENTAL

● Mr. QUAYLE. Mr. President, yesterday the Senate passed an urgent supplemental appropriations bill for the Department of Labor and I supported this bill because it will undo the drastic cut in employment service funding that was unintentionally included in the continuing resolution. I am pleased that today the supplemental resolution is on its way to the White House for President Reagan's signature.

The impact of these cuts in my home State of Indiana is described in graphic terms in a letter I have received from Indiana employment security division. It makes no sense to me to close offices that are designed to help the unemployed get jobs at the very time that the unemployed need help most. I am pleased that this legislation will prevent these additional closings of employment service offices. I ask that the letter from the Indiana State Employment Service with the enclosures be inserted in the RECORD at this point.

The letter follows:

INDIANA EMPLOYMENT SECURITY DIVISION, INDIANA STATE EMPLOYMENT SERVICE,  
*Indianapolis, Ind., January 27, 1982.*

HON. DAN QUAYLE,  
Member, U.S. Senate,  
Washington, D.C.

DEAR SENATOR QUAYLE: I know you are concerned about the cuts in services to Unemployment Insurance and Employment Service applicants throughout the State. We too are concerned.

Because you are receiving complaints and inquiries from your constituents, I thought it important for you to have as much information as possible regarding the closing of eleven offices and the elimination of Employment Service activities in twelve offices. I am enclosing some background material for you so that you can better understand the scope of the problem and the process that was used in making these difficult decisions.

I will be glad to answer any questions. Please contact me or my office if we can be of assistance.

Sincerely,

JOHN R. HAMMOND III,  
Acting Director,  
Indiana Employment Security Division.

INDIANA EMPLOYMENT SECURITY DIVISION  
FISCAL YEAR 1982 BUDGET REDUCTION  
*Definition of problem*

In December 1981 Congress passed a Continuing Resolution which cut grants to states for Employment Service and Unemployment Insurance operations by \$263,544,000 retroactive to October 1, 1981.

On January 11, 1982 the Indiana Employment Security Division was notified that Indiana's share of the cut would be 3.8 million dollars retroactive to October 1, 1981. Nearly all of the cut was to be made in the Employment Service Program. This cut was on top of a previous 2 million dollar cut which had been implemented in September 1981.

Employment Service staff reduction required in local offices was determined to be 265 positions. This reduced ES staff in local offices from 466 to 206. In addition, a reduction of 80 positions representing various program areas had to be made in the Administrative Office.

#### *Staff allocation and office closings*

The decision making process of the Indiana Employment Security Division began at the end of November 1981 when our agency was advised of possible additional budget reductions for the Federal fiscal year 1982.

Our agency proceeded on the basis of these budget cuts becoming reality and began an in-depth assessment of all of our local offices and their operations using the following factors: 1) initial claims; 2) placement transactions; 3) placement productivity; 4) covered employment in the area served by each office.

Additional factors taken into consideration were location of the office in relation to surrounding offices, size of the operation and its ability to accommodate additional workload generated from other locations.

An Employment Service Staff Allocation Model was developed which divided the State of Indiana into fourteen (14) economic areas. This Employment Service Staff Allocation Model was designed to insure that all areas of the state would have a fair and equitable share of employment service staff based on their workload in comparison to the workload in other areas. (See Attachments 1 and 2).

Subsequently, an area's total employment service staffing was then allocated to each individual office using the same model only individualized to a particular county or area's workload in proportion to that area's workload. From that information it became obvious that some offices would not have adequate staffing to maintain even minimal service.

Add to the fact that available employment service staff was inadequate for our current 49 offices, the fact that we also had reduced funding for non-personal services such as rent, heat, lights, water, etc., it became obvious that some local office would have to be closed. It was at this point that 11 local offices were selected for closing. In addition to those factors contained in the Employment Service Staff Allocation Model, placement productivity and office location were also considered in the selection of offices to be closed. At the same time, 12 offices were selected for the termination of employment service but would remain open to provide unemployment insurance service.

The agency will establish one day per week or more frequent if required, unemployment insurance service in those communities where an office is being closed. However, this service is contingent on locating required space in the community. These part time offices plus our mail-in claims service should result in no loss of service in the unemployment insurance program.

The Indiana Employment Security Division fully realizes the impact of this budget cut on communities. The agency's major goal is the effective utilization of remaining employment service staff so that maximum service to the public be provided from those operations where we will maintain a full time, full service local office. ●

**CRIMINAL CODE REFORM—  
QUESTIONS AND ANSWERS ON  
S. 1630**

● Mr. BAUCUS. Mr. President, a number of people have written to me concerning certain provisions of the proposed criminal code. I thought it would be useful to include in the RECORD a response to those questions:

Question. How much of the proposed criminal code retains current law?

Answer. From all reports, it appears that the majority of the proposed code, probably about 90 percent of it, simply brings forward current law.

Question. Why is this proposed bill being handled secretly?

Answer. This bill is not being handled secretly. It has been an ongoing project for the past 15 years and has generated well over 13,000 pages of supporting legislative history, all of which is available for public inspection.

Question. Why is it necessary to pass a 500 page bill? Wouldn't it be better to be dealt with on a piecemeal basis?

Answer. It would be practically impossible to reform the criminal code on a piecemeal basis. The whole point is to bring about uniformity in existing laws, particularly regarding the sentencing process. You cannot amend the sentencing provisions without amending the substantive criminal provisions and vice versa.

Question. Doesn't S. 1630 make it possible to waive bail simply by designating the accused as being dangerous, and isn't that the same as preventative detention?

Answer. A judge will still have a bail hearing. Bail is imposed to insure that the individual will show up for trial. But in the past, bail has been shown to be discriminatory because those who are accused who have a lot of money, or who have ties to organized crime are able to get off easily while those who do not have money are detained. Most criminals in Southern Florida who are being arrested as part of a narcotics ring have been able to quickly pay bail and get free, in most instances, to return to their criminal activities. Under the proposed changes, if an individual indicates he cannot meet the bail imposed, the judge must hold a hearing to determine "whether or not that criminal is a danger to the community." If it is determined that he is, the judge has the prerogative to detain him without looking at other factors such as third party custody. This kind of evidentiary hearing can afford ample civil libertarian safeguards. Our communities like Great Falls and Missoula have a right to be protected from criminals who have committed crimes and who are likely to go right back out and commit more.

Question 5. How can you support a bill that raises maximum sentences for all Federal crimes? Or alternatively: How can you support a bill that lowers maximum sentences for all Federal crimes?

Answer. Sentencing reform is the other essential feature of the Criminal Code. The current sentencing system is not working and has no consistency. Judges are sentencing criminals to 30 years, but due to the flaws in the system, criminals are only serving perhaps five years of a 30 year sentence. The proposed sentencing reforms would require criminals to actually serve the time that is imposed in their sentences. The parole system would be eliminated. In its place would be a fixed amount of "good time" which would be credited toward a criminal's sentence only if he has behaved

properly. In this way, a judge knows when he imposes the sentence exactly how much time that person will spend in jail. It will eliminate the unpredictability and uncertainty of sentencing. It is my belief that this kind of fixed term sentencing will increase the public's faith in our criminal justice system.

Question. 6. How can you support a bill when it makes protesting or demonstrating against nuclear power a Federal crime?

Answer. The provisions in the proposed Criminal Code do not prohibit protesting against nuclear power. What the code provisions do cover is arson or aggravated property destruction at an energy facility.

Question 7. How can you support a bill that makes it a crime to protest undeclared wars?

Answer. The provisions in the proposed Criminal Code do not prohibit protests of undeclared wars. There are provisions which deal with obstruction of draft recruitment and also provisions which deal with the impairment of the government from operating. These provisions, however, do not prohibit protesting or limit the exercise of free speech.

Question 8. Why can't we get a copy of the bill to read ourselves, or isn't it our right as citizens of the U.S. to see what legislation is being passed by Congress?

Answer. The 425 page Criminal Code bill is available on request from the Senate Documents Room, U.S. Capitol, Washington, D.C. 20510 Ask for S. 1630.

Question 9. This 425 page bill was approved by the Senate Judiciary Committee on November 18 after a mere 90 minute session at which no testimony was taken. Why was more time not spent?

Answer. The Senate Judiciary Committee held two full days of hearings of S. 1630 prior to its vote on November 18. The Committee has held dozens of hearings on the bill since 1971 and the record is compiled in 19 volumes.

Question 10. On November 18, Baucus backed the current Criminal Code revision which tosses out his previous amendments.

Answer. All of Baucus' amendments but for one are contained in S. 1630. The one amendment that was dropped would reverse a Supreme Court holding on the law of contempt. On that point, S. 1630 in its current form, brings forward current law.

Question 11. As S. 1630 hits the floor of the Senate, won't many amendments be offered to make it more draconian.

Answer. Many of those amendments were offered and defeated in Committee by a bipartisan coalition ranging from Senators Thurmond and Hatch to Kennedy. There is a risk that in the current political climate such changes might be adopted on the floor. That is why I did not co-sponsor the bill this year. If such amendments were to pass on the Senate floor, I would oppose final passage of the bill. But, for the time being, I can continue to support the effort until such actions take place.

Question 12. Why are you supporting enactment of the criminal code?

Answer. The proposed new Code is monumental. It is monumental not only in size, but more significantly, in its potential effect. It brings an unprecedented degree of clarity and certainty to the Federal criminal law that should result in judicial economies. It contains hundreds of specific improvements in the current penal and procedural statutes.

**LEGISLATIVE QUESTIONNAIRE**

● Mr. PRESSLER. Mr. President, my annual legislative questionnaire produced some 9,000 responses. The responses contained some surprises and some strong statements by concerned South Dakotans. I think that my colleagues will find the tabulation of the poll to be of interest.

Mr. President, I thank the many people who took the time and effort to respond to my legislative questionnaire. It was obvious, from reading their comments, that people had been very careful and thoughtful in their answers.

For the benefit of my colleagues who may wish to further examine the results of my questionnaire, I ask that a copy of the tabulation be printed at this point in the RECORD.

The tabulation follows:

	Percent
(1) Should the United States return to the policy of backing dollars with gold?	
(a) Yes, the United States should back our dollars with gold.....	66
(b) No, the United States should not back our dollars with gold.....	29
(c) No opinion .....	5
(2) Should Congress extend the period of Daylight Savings Time for an additional two months?	
(a) Yes, Daylight Savings Time should have an additional two months.....	30
(b) No, Daylight Savings Time should stay the way it is.....	63
(c) We should get rid of daylight savings time altogether.....	7
(3) Do you feel that the Congress should provide for right of way across private land for the construction of interstate coal slurry pipelines?	
(a) Yes, Congress should provide a right of way on private land for the construction of interstate coal slurry pipelines .....	22
(b) No, Congress should not have the right to provide a right of way on private land for coal slurry pipelines.....	74
(c) No opinion .....	4
(4) Should the Congress set the rate of personal income tax at a fixed percentage, applicable across the board at all income levels, rather than retain the present graduated system?	
(a) Yes, Congress should set the rate of personal income tax at a fixed percentage.....	42
(b) No, Congress should not set the rate of personal income tax at a fixed percentage.....	51
(c) No opinion .....	7
(5) Should Congress adopt legislation prohibiting the sale of grain for export at a price below the domestic cost of production?	
(a) Yes, Congress should adopt legislation prohibiting the sale of grain at a price below the domestic cost of production .....	67
(b) No, Congress should not adopt legislation prohibiting the sale of grain at a price below the domestic cost of production .....	30

(c) No opinion .....	3
(6) Do you favor building a new B-1 bomber fleet at a cost of \$30 billion, or should we seek acceleration of cruise missile and "Stealth" bomber technology?	
(a) Build B-1's .....	25
(b) New technology .....	57
(c) Neither .....	18
(7) Would you favor a constitutional amendment which would permit individual states to determine abortion laws?	
(a) Yes, we would like the states to determine abortion .....	43
(b) No, it should be a federal decision .....	48
(c) No opinion .....	9
(8) Should the Congress adopt uniform laws to restrict the possession of hand guns by criminally convicted and mentally disturbed persons?	
(a) Yes, Congress should adopt legislation that would restrict the possession of handguns by criminally convicted or mentally disturbed persons .....	73
(b) No, Congress should not adopt laws to restrict the possession of hand guns by the criminally convicted and mentally disturbed persons .....	21
(c) No opinion .....	9
(9) Do you favor arms control agreements with the Soviet Union, given the present state of our military affairs?	
(a) Yes, we would favor arms control agreement with the Soviet Union .....	47
(b) No, we would not favor an arms control agreement with the Soviet Union .....	48
(c) No opinion .....	5
(10) Should the federal government require airbags in automobiles for crash protection?	
(a) Yes, they should require air bags .....	14
(b) No, they should not require air bags .....	82
(c) No opinion .....	4
(11) Should Congress extend the period for ratification of the Equal Rights Amendment beyond the present June 1982 expiration date?	
(a) Yes, Congress should extend the ratification period .....	24
(b) No, Congress should not extend the ratification period .....	73
(c) No opinion .....	3
(12) Should the federal government ease restrictions on the control of coyotes which prey on lambs and calves?	
(a) Yes, the federal government should ease restrictions on the control of the coyotes .....	68
(b) No, the federal government should not ease restrictions .....	28
(c) No opinion .....	4

controversy continues to rage in many areas of the country.

Several self-proclaimed consumer advocates have characterized the waiver package—particularly the provision for consumer prebilling—as a consumer "ripoff." We have repeatedly heard the charge made that consumers would be billed for gas they may never receive. We have also heard the charge that the prebilling waiver is a means to shift all of the risk of non-completion from the sponsors to the consumers. These so-called consumer advocates have failed to tell the American people that the project sponsors and gas producers are placing in excess of 6 billion dollars' worth of equity capital at risk—an investment on which no return will be realized until the pipeline is complete and gas is flowing. Since prebilling could only occur after an expected date of project completion set by the Federal Energy Regulatory Commission (FERC), and since no return on equity is allowed from prebilling on the Alaskan portion of the pipeline, the sponsor companies have a tremendous incentive to complete the project on time. Therefore, prebilling is extremely unlikely. In fact, the risk of prebilling is immeasurably small.

While there were honest differences of opinion about this waiver package, much of the controversy has been precipitated by exaggerated, simplistic, one-sided accounts of this complicated issue. Consequently, it is refreshing to find a few accounts that present an evenhanded description of this matter.

For the benefit of my colleagues, I am inserting into the CONGRESSIONAL RECORD an article by Curtis B. Gans, a journalist with the Baltimore Sun. This article reveals the unfair coverage that this issue received, and also points to the fact that this waiver package was a "close call" for most Congressmen and Senators.

The article follows:  
[From the Baltimore (Md.) Sun, Dec. 29, 1981]

**SIMPLISTIC, CYNICAL AND ONE-SIDED**  
(By Curtis B. Gans)

The 1981 Nadir Award for the lowest in television journalism goes to Bill Moyers, CBS's usually thoughtful commentator, for his simplistic, cynical and one-sided account of the congressional debate on the Alaska natural gas pipeline.

On the eve of the final House of Representatives vote on the issue, Mr. Moyers began his report:

"Dan (Rather), if you want to know why so many people are fed up with both political parties and have stopped voting and if you have a strong stomach, I have a case in point."

Mr. Moyers then related how John McMillian, chairman of the Northwest Alaska Pipeline Company, was awarded a \$10 billion government contract in 1977 to build a pipeline to transport natural gas from Alaska to 42 consuming states, on the proviso that he would finance construction from private funds.

Mr. Moyers then reported that in the ensuing four years Mr. McMillian had failed to raise the necessary capital, was now seeking to "change the rules" and was asking Congress to force consumers to foot the bill—by billing them for the pipeline before any gas is pumped or delivered.

Mr. Moyers provided time for two opponents of pre-billing consumers for the pipeline, Senator Howard Metzenbaum, a Democrat, and Representative Thomas Corcoran, a Republican, to vent their outrage at this unusual procedure.

Mr. Moyers then spent the bulk of his report describing the campaign Mr. McMillian waged to get congressional approval of his financing package.

Mr. Moyers documented how Mr. McMillian and his co-investors contributed \$80,000 to members of Congress and congressional campaign committees. He showed how Mr. McMillian lobbied Congress—using, among others, former Vice President Mondale, former Democratic Party chairman Robert Strauss, the law firm of present Democratic Party chairman Charles Manatt and the public relations firm of Peter Hannsford, whose most prominent client was Ronald Reagan and whose most prominent alumnus is Michael Deaver, White House aide.

The implication of Mr. Moyers' report was that Congress passed a pernicious piece of legislation because of political influence. It was made explicit in the final sentence of his report:

"The two-party system is not only up for grabs—it's up for sale."

The truth of this tale is somewhat more complex.

The Carter administration sought to build the pipeline because President Carter himself feared the domestic supply of natural gas might someday run out, because he wanted to reduce American dependence on foreign sources of oil and because a large and plentiful gas supply might keep prices low.

Mr. McMillian was awarded the contract, in part because of political influence and because he promised not to use either public or major oil company funds in financing the pipeline, but also, in a larger measure, because the route he proposed for the pipeline was favored by most environmentalists.

Since part of that route went through Canada, Mr. Carter promised the Canadian government that the United States would underwrite the costs of the Canadian segment.

President Reagan, on taking office, reaffirmed the government's commitment of both building the pipeline and covering Canadian costs.

After four years, Mr. McMillian was unable to raise the money to complete the pipeline. Accordingly, he sought waivers from his original agreement to, among other things, permit oil companies to invest in the project and to entice bank investment by, if necessary, billing consumers for part of the cost of the project.

Under the terms of the waivers, consumers might be billed for part of the construction costs, but only after 1987, only if the project was partially but not fully completed and only if the Federal Energy Regulatory Commission specifically approved such billing.

The problem for Congress, which had to approve the waiver package, was made more difficult by the procedure written into the original legislation governing congressional consideration of any waivers. Congress had

**ALASKA NATURAL GAS TRANSPORTATION SYSTEM**

● Mr. MURKOWSKI. Mr. President, although several weeks have passed since Congress approved the President's recommendation for a waiver of certain laws governing the Alaska Natural Gas Transportation System, the

only 60 days to consider the waivers and could not amend them.

On the one hand, legislators were being asked to accept a dubious scheme for pre-billing consumers for services not yet rendered. On the other, if they refused to vote the waiver package, they were jeopardizing America's relations with Canada, voting certain death for the pipeline and with it the opportunity to provide a new, large supply of natural gas. A close call.

The actual vote, however, was not close. By a vote of 17-1 the Senate Energy Committee passed the waivers. By a vote of 75-19, the full Senate supported them. The waiver package passed the House Interior Committee by a vote of 32-7, the House Energy and Commerce Committee by a vote of 27-14 and the full House of Representatives by a 50-vote margin.

All of which brings us back to Mr. Moyer's story.

Why, if the vote was as one-sided in favor of the waiver package as it was, did he allow only opponents to speak?

Why did he fail to present any of the complexities of the issue?

Why did he choose explicitly to leave the impression that anyone who voted for the waivers had been bought by Mr. McMillian?

Why did he choose to impugn the integrity of the overwhelming majority of both houses of Congress who voted for the waiver package.

Why did he fail to show how broad the congressional consensus on behalf of the waivers really was?

The story of Mr. McMillian's lobbying activities and their supposed impact on the outcome originated with Ralph Nader, a fierce opponent of the waivers. Mr. Moyers bought the story lock, stock and barrel.

But while it is legitimate for Mr. Nader, the lobbyist, to engage in propaganda, it is not legitimate for Mr. Moyers to act as a non-critical conduit. The journalist's role is to act as a filter which separates the truth from fiction.

There were undoubtedly some in Congress who were persuaded to vote for the waivers by campaign contributions, actual or promised. (Although even here, it behooves the serious journalist to document who and how.)

But for the overwhelming majority of Congress this issue was typical of many Congress is called upon to adjudicate, a close judgment call with some right on both sides. The final vote was along neither party nor ideological lines.

Would not the nation have been better served if the actions of Congress had been accurately reported? Would not the public have been better informed had they been presented with the complexity of the decisions their legislators faced?

In a larger sense, is it the conduct of the parties and elected office-holders alone which is responsible for voter disaffection or does the characterization of that conduct in reports such as Mr. Moyer's contribute to public cynicism?

Mr. Moyers has shown he can be a fine journalist. This was not, however, his finest hour.

#### THE SPIRIT OF THE THUNDERBIRDS CANNOT BE ALLOWED TO DIE

● Mr. LAXALT. Mr. President, the recent loss of the four members of the Air Force Thunderbirds is a tragedy that will be felt by all Americans for

many years to come. It is a painful, but moving reminder of the bravery and valor of all of the Americans that serve in our Armed Forces.

I ask that an article by Ned Day, which recently appeared in the Las Vegas Review Journal, entitled "The Spirit of the Thunderbirds Cannot be Allowed To Die," be printed in the RECORD.

The article follows:

#### SPIRIT OF THUNDERBIRDS CANNOT BE ALLOWED TO DIE (By Ned Day)

You couldn't help but notice his eyes. It's as close to crying in public as a major general comes.

But at the last moment Monday, Maj. Gen. James Gregory choked back his emotion, sucked up his gut, faced the assembled TV cameras, and made his awful announcement with dignity, decorum and simplicity.

"Four members of the demonstration team were killed today," the general said.

A disaster at Indian Springs had claimed the lives of the Air Force's most cherished fliers, the gallant men of the Thunderbirds precision flying team. It was an occasion for grief not only at Nellis Air Force Base, where the group is headquartered, but throughout the Las Vegas community, which identifies so closely with the Thunderbirds.

Almost immediately, Gregory was hit with a barrage of questions which seemed impossible to answer Monday. How could it happen that all four planes went down within seconds of each other? Was it an equipment malfunction, or pilot error? Were they involved in a particularly dangerous maneuver?

Maybe the stickiest question came from a reporter who asked Gregory about the future of the Thunderbirds. After all, two pilots were killed within months of each other last year. Now, four more are gone.

Are the vicarious thrills and chills supplied by these young men really worth the toll in human carnage?

In the wake of Monday's tragedy, the answer of many observers would be "of course not." And, in the weeks to come, you'll hear a Cassandra chorus of critics who will call for the Thunderbirds to be disbanded, charging that the group's antics are an unnecessary folly, a dangerous display of military hubris.

A case against the Thunderbirds also can be made on other grounds, primarily the annual \$3.5 million cost of keeping the team in the air. Moreover, the six jet planes which have gone down in recent months cost taxpayers well more than \$18 million in lost equipment. Given the Pentagon's continuing lament about budget constraints, this aerial circus would seem expendable, especially now.

These all are arguments easily made: Save the pilots' lives; save the taxpayers' money.

But if you saw Gregory in action Monday, you got the distinct impression that neither he, nor the men and women at Nellis, are going to accept an end to the Thunderbirds.

Oh, they feel as badly as anyone about the four downed airmen. You could see the pain etched in their faces; they mourn their comrades. But Gregory and his troops also understand that the Thunderbirds perform an important service, one that's worth the financial burden, one that may well be worth the lives of four courageous young men.

What the Thunderbirds provide to all of us is pride in our collective abilities (which they stretch to the limit) and pride in our collective courage (which they demonstrate daily).

These men knowingly put themselves at risk to give Americans a sense of self-esteem that cannot be measured in terms of dollars and cents, or even in lives lost. After all, what good is a society where the members are afraid to soar like eagles, where they dare not play fast and loose with fate, where they turn away from the risks of passion for the safety of frigid logic?

Not all of us can fly in fancy jet planes, swerving, dipping, climbing and diving. In fact, this unique sensation is reserved for a special few.

But this passion reflects a drive deep within the soul of any human being who relishes freedom. And it's the Thunderbirds who, each year, give millions of us the chance to drill vicariously, the chance to glory in patriotic fervor, the chance to be free. They are, in short, a symbol.

To deny the Thunderbirds is to deny something central to the American Spirit, albeit something so spiritual as to be virtually indefinable.

Granted, a decision to ground the Thunderbirds would make life a lot safer for the Air Force pilots involved. It certainly would save the rest of us a lot of money. But the trade-off inherent in this seems intolerable to me.

Men must look at the stars. They must challenge Cape Hatteras, despite the thunderous storms. They must venture into the darkest jungle and yearn to walk on the moon. That's why the lion-hearted men of the Thunderbird team just continue to put themselves at risk by stretching their technology and their personal abilities to the limit. They must do this for all of us.

Thanks to them, we all soar like eagles. ●

#### TRAILSIDE MURDERS SOLVED

● Mr. HAYAKAWA. Mr. President, I am pleased to have the opportunity to acknowledge the humanitarian efforts of a group of local, State and Federal law enforcers. They are the men and women whose unflinching efforts led to the capture and arrest of the suspected "Trailside Murderer."

After investigating over 21,000 potential suspects, 400 of whom were thoroughly investigated, the suspect was arrested last May at his San Francisco home. More than 30 agencies and approximately 100 lawmen from San Francisco and Santa Cruz took part in the 21-month hunt. The Pacific Telephone Co. alone spent more than \$100,000 tracing and taping phone calls.

At the annual peace officer's dinner of the San Rafael Elks Lodge, the 39 who formed the Marin segment of the task force were collectively honored with the "Peace Officer of the Year" award in April of last year. Those honored were:

Marin County Sheriff's Department—Retired Captain Sidney Stinson, Lt. Donald Besse, Sgt. Richard Keaton, Sgt. Dennis Finnegan, Sgt. William "Buzz" Keaton, Ret. Sgt. Ed Levine, Sgt. Charles Prandi, Sgt. Anthony Russo, Sgt. Joe Fitzgerald, Deputy

Richard Laden, Deputy Lisa Caceres, Deputy Linda Schmid, Deputy Ray Maynard, Deputy Eric Bendura, and Deputy Steve Nash.

San Rafael Police Department—Detective Fred Castillo, Detective John Childress, Detective Gary Frugoli, and Detective John Nunez.

Those agents honored from the Federal Investigation Bureau—Mike Dooher, Robert Tucker, Paul Schumacher, Robert Casper, Robert Goldman, John Conway, and Tom Hopkins.

Others honored were—Detective Gordon Card, Detective Jerry Harman, and Reserve Detective Dick Fountaine, all of the Mill Valley Police Department, Detective Brooks Blaskower of the Tiburon Police Department; Deputy District Attorney Ernest Zunino, Inspector Don Rose and Inspector Charles Numark, all of the Marin District Attorney's Office; William Bennett of the State Department of Justice; state park rangers Jim Neider and Ron Angiers; federal park rangers Leroy Brock and Herb Gercke and agents Larry Williams and George Henderson of the Federal Bureau of Alcohol, Tobacco and Firearms.

I, along with every other American, should be proud of these law enforcement officials. I commend them for their efforts.●

#### THE DAUGHTERS OF MIRIAM CENTER FOR THE AGED

● Mr. BRADLEY. Mr. President, the Daughters of Miriam Center for the Aged recently celebrated their 60th anniversary. I extend my congratulations to all who have devoted their time and energy to this outstanding institution. The citizens of northern New Jersey are truly lucky to have a facility of such high caliber available to them.

My visit to the center gave me a firsthand look at the genuine warmth and compassion of their staff and the comfort and contentment of those they care for. I was truly impressed by the emphasis placed on maximizing the independence of each patient, allowing them to live fuller, more productive lives. I applaud their efforts and accomplishments.

I am confident that the Daughters of Miriam Center for the Aged will continue to live up to its high standards and national reputation for outstanding health care of the elderly for years to come.●

#### ABILITIES DEMONSTRATED BY THE DISABLED

● Mr. HAYAKAWA. Mr. President, 1981 was the International Year of Disabled Persons. I am gratified about the results of this year of handicapped recognition because it provided a forum for the disabled to demonstrate their potential, a potential which is often underestimated.

My colleagues and I began working on behalf of the International Year of Disabled Persons (IYDP) in November 1980, when we sponsored Senate Con-

current Resolution 73, which proclaimed 1981 as the official year of recognition for handicapped persons in America and around the world. Early in 1982, I sponsored Senate Concurrent Resolution 4, which expressed congressional support for the International Year of Disabled Persons and related projects throughout the year. In addition, on July 8, 1981, I joined my colleagues in commending the handicapped climbers who successfully scaled Mount Rainier, by sponsoring Senate Concurrent Resolution 167. This legislation paid tribute to the 11 climbers who demonstrated the meaning of true courage and dedication in overcoming disabilities. I continue to encourage groups of disabled persons in their efforts to promote the theme of IYDP, "Full Participation and Equality." It is active participation, such as the Mount Rainier climb that will encourage social and economic advancement of the handicapped.

Recently, I have had the pleasure of working with a group of handicapped pilots in their efforts to become involved in IYDP. Their organization is known as Abilities Demonstrated by the Disabled (ADD). I first became familiar with ADD when its president, Mr. Zane Myers from Laverne, Calif., visited my Washington office in September. Mr. Myers explained ADD's proposed aviation event and asked for my assistance in obtaining either White House or official Government recognition. ADD has received authorization from Federal Aviation International and the National Aeronautics Association to attempt to set a series of 20 new national and world ultralight aviation records.

The purpose of this event is to publicize and demonstrate the abilities of the disabled. ADD firmly believes that the disabled can successfully compete in a fair and open job market if the public and employers are confident of their abilities. As Sherman E. Roodzant, national commander of the Disabled Veterans, said:

It (the event) will not only bring high visibility to the abilities of disabled persons; but it will open up whole new avenues of independence, opportunity and recreation of thousands of disabled persons.

I believe ADD's aviation event exemplifies the theme of IYDP, full participation.

I am also impressed by ADD's support of the administration's policies regarding the handicapped, especially in the area of employment. They agree with President Reagan that there should be no special treatment or consideration given to the handicapped in hiring. ADD opposes numerical requirements in hiring and believes the handicapped should be employed solely on the basis of their qualifications. Like President Reagan and myself, ADD believes that equal employment opportunity programs

(EEO) hinder the traditional American practice of hiring persons according to individual merit. Rather, EEO programs allow quota systems and numeric equality to override the abilities of individuals.

I believe the goal of all Americans should be a commitment to social and economic advancement for all. The event proposed by ADD would be a tribute to the outstanding accomplishments of handicapped pilots and exemplify the positive abilities and potential of the disabled. I hope that other handicapped groups will follow the example of Abilities Demonstrated by the Disabled as they demonstrate the theme of the International Year of Disabled Persons, "Full Participation and Equality".

#### INDIVIDUAL RETIREMENT ACCOUNTS

● Mr. SCHMITT. Mr. President, I would like to take a moment to recognize the contributions of our colleague, Senator JOHN H. CHAFEE, for all of his efforts to improve the individual retirement account program. Before the changes which he proposed last year were enacted into law, IRA's were not permitted for those who were covered by current pension plans. The Senator from Rhode Island foresaw that this approach to individual retirement accounts would cause difficulties, because the mobility of our work force means that workers depending upon pensions for the future rather than savings may face financial disaster if they change jobs and lose vital pension benefits. Unfortunately, this predicament exists for the majority of those who are at one time enrolled in pension plans. As a result, he began efforts to create changes in legislation to create benefits for those excluded from the IRA program.

In January of 1981, Mr. CHAFEE first introduced legislation to improve the individual retirement account program by allowing those already covered by pensions to also save through an IRA account, and to increase the amount exemptable each year from \$1,500 to \$2,000 for each qualified wage earner. The public response to this change in the law has been enthusiastic, although few are aware that Senator CHAFEE has been primarily responsible for the expanded individual retirement account. The result of these actions has been to make the IRA available to 44 million more people in the work force than before, and is estimated to have stimulated \$28 billion in new IRA savings in 1981 alone. Such new investment will have a widespread positive impact on our economy to stimulate productivity and business investment.

Mr. CHAFEE's program has helped to encourage millions of Americans to

begin saving for the future as a way of life. Such a change in the psyche of Americans will help all sectors of the economy. It will be particularly helpful in easing the financial situation of senior citizens in the future, at a time when the value of the entire Social Security System for future generations is questionable. Senator CHAFEE'S IRA program offers a great deal of assistance to the American people, for which his efforts should be widely recognized and applauded.●

#### FOOD STAMPS

● Mr. LEAHY. Mr. President, in his state of the Union address on January 26, 1982, President Reagan said the following:

Contrary to some of the wild charges you may have heard, this administration has not and will not turn its back on America's elderly or America's poor.

Unfortunately, charges that the Reagan administration is turning its back on elderly and poor Americans, and most especially elderly poor Americans, are anything but wild. Such charges are, in my opinion, indisputable. The President's proposed fiscal year 1983 food stamp cutbacks provide a case in point.

Currently there are about 2.2 million food stamp households with elderly and disabled members. While there have been many serious criticisms leveled at this program, overutilization of this program by elderly and disabled persons has never been one of them. In fact, elderly participation has been historically low, at least in part due to the ordeal of applying and qualifying for the program and due to the stigma of utilizing stamps in public view. Thus, it is widely accepted that only the truly needy among the elderly and disabled—who must also meet strict income and assets tests—actually participate.

Yet according to preliminary Congressional Budget Office estimates, the Reagan budget proposals would reduce or terminate food stamp assistance for 92 percent of all households with elderly or disabled members. Over 26 percent of all elderly and disabled households, or about 760,000 people, would be thrown off the program or have their benefits reduced to such a small amount that they would no longer participate. Altogether, the Congressional Budget Office estimates that about 25 percent of the food stamp dollars now paid to elderly and disabled participants would be taken away. The average loss for all elderly households would be about \$16 a month, or \$192 a year.

I, for one, find it astounding that the President believes that 92 percent of elderly and disabled food stamp households can afford to have their subsistence, and in some cases, less than subsistence, benefits cut. To me,

such proposals indicate a frightening lack of awareness as to the reality of the lives of those who will be affected. Can the President really believe that millions of elderly and disabled persons already living at or near poverty levels can afford a substantial reduction in their food budgets? Does he realize that a loss of \$16 a month could mean that many elderly and disabled persons will run out of food before the end of each month?

The President would cut benefits in several ways. For starters, he would cut all food stamp recipients' benefits by an amount equal to 5 percent of their disposable incomes. So, for instance, an elderly couple whose sole income is social security payments of \$425 a month—or less than 90 percent of the poverty line—would have its food stamp benefits cut 62 percent—from \$312 to \$120 a year. Another Reagan proposal, to eliminate the \$10 minimum benefit that applies to most elderly and disabled households, would reduce this couple's food stamp benefits further, to \$108 a year.

If, in addition, this couple were to receive any Government aid to help with high fuel bills in the winter months, the Reagan budget proposals would cut their food stamps by an amount equal to 35 to 50 percent of the fuel assistance received. If this hypothetical couple received as little as \$30 a month in fuel assistance, they would be eliminated from the food stamp program for those months. For them, the "heat or eat" dilemma could be very real. In my home State of Vermont, where it is not unusual for winter fuel bills to run \$300 to \$400 a month, the President's proposal on fuel assistance could have a devastating effect.

That the President would propose such sharp reductions for elderly and disabled persons is deeply disturbing. These are, after all, persons least likely to be able to augment their income from outside sources in order to make up for a loss in food stamp benefits. What is even more disturbing are increasing reports of starvation and malnutrition among our senior citizens, the vast majority of whom are women. A recently published book, "Starving in the Shadow of Plenty," by Loretta Schwartz-Nobel, Putnam Publishers, documents widespread hunger among elderly Americans, even before last year's budget reductions were enacted. Today's newspapers are full of stories about private charities and feeding programs being swamped beyond their capacity due to the high rate of unemployment and social program cutbacks. If these reports are accurate, and I believe they are, a new round of budget cutbacks would impose an unconscionable degree of human suffering on low-income Americans.

Of course, it is not only the elderly and disabled who would be harshly affected by the President's food stamp proposals. Nearly all participants—about 85 percent—would be cut and it appears that low wage or part-time working households—mostly female-headed—with children would face more severe reductions than anyone else. They stand to lose about 40 percent of the food stamp benefits they now receive if the new Reagan proposals are enacted.

Last year, Congress cut the food stamp program by \$2.3 billion, a reduction of about 20 percent. Eligibility was limited to persons who meet the President's definition of "truly needy." It should come as no surprise that the additional \$2.8 billion the President seeks to cut this year cannot be achieved without harsh effects on millions of poor people. His proposals have nothing to do with cutting fraud and abuse. They are benefit cutbacks, plain and simple.

The Reagan budget on social programs is being justified by a recitation of sweeping national statistics on expenditures and meaningless and false generalizations about the comfortable status of low income people, without any evaluation of the real life effects these budget reductions would have. The President proposes such widespread and severe reductions for those most in need that it can indeed be charged that the President is turning his back on the poor and elderly in this country.●

#### BOB KABEL

● Mr. LUGAR. Mr. President, I would like to take a moment to say a few words about one of my staff members, Bob Kabel. As some of my colleagues already know, Bob has accepted a position at the White House and will be assuming his new duties there very soon.

Bob has served on my staff throughout the entire period in which I have been a Member of the Senate. Most of this time he has served as my legislative director, coordinating all aspects of my legislative work. Bob's counsel has been most important to me, as has his dedication to the many and varied responsibilities he has undertaken.

In his new position, Bob will be serving as White House liaison to the Senate. In this capacity, Bob will be working closely with all Members of the Senate and their staffs. I am confident that my colleagues will find in Bob the same qualities of insight, objectivity, and integrity from which I have benefited over the past 5½ years. I am equally confident that Bob's thorough understanding of the Senate will provide a valuable contribution to a close and strong relationship between the President and the Congress.

I wish Bob every success in his new assignment and I look forward to continuing to benefit from Bob's understanding and friendship.●

#### THE ASSASSINATION OF THE TURKISH CONSUL GENERAL IN LOS ANGELES

● Mr. HAYAKAWA. Mr. President, I offer my condolences to the family of Mr. Kemal Arikan, the Turkish Consul General, who was brutally gunned down by Armenian terrorists in Los Angeles. I am appalled by this latest act of terrorism which is a repetition of the 1973 killing of the Turkish Consul and Consul General, also in Los Angeles.

I commend the fine work of the Los Angeles Police Department in apprehending the assailants, and I hope that the other is soon in custody.

The Turkish Government has lost 21 diplomatic officials or family members to Armenian terrorism during the past 9 years. What we are facing here is international terrorism. The Justice Commandos of Armenian Genocide has already claimed credit for the assassination of Turkish diplomats in Australia and Western Europe. It forms one of the two Armenian terrorist organizations operating, strangely enough, not in Turkey but in Western Europe, Australia, and the United States. The second group, ASALA [Armenian Secret Army for the Liberation of Armenia] is strictly Marxist, and wants to incorporate Eastern Anatolia into the Soviet Socialist Republic of Armenia.

In view of the increasing terrorist activities throughout the world, I strongly recommend that an investigation be made into the workings of the Justice Commandos of Armenian Genocide in California and other parts of the United States.●

#### ANNIVERSARY OF THE INDEPENDENCE OF LITHUANIA

● Mr. DOMENICI. Mr. President, February 16 Lithuanians everywhere will be commemorating the 16th anniversary of the reestablishment of an independent state of Lithuania, and the 731st anniversary of the founding of the Lithuanian State in 1251. It is a day of joy, for the Lithuanian people have a proud heritage; but is also a day of sadness, since the sovereign nation of Lithuania continues to suffer brutal oppression at the hands of the Soviet Union.

The history of that oppression is plain for all to see. After 120 years of domination by czarist Russia, and occupation by the German and Russian armies during World War I and in its aftermath, Lithuania signed a peace treaty with the Soviet Union on July 12, 1920. In that treaty, the Soviet Union recognized Lithuania's inde-

pendence and renounced "forever" all rights of sovereignty. However, the Soviets honored Lithuania's independence for less than 20 years.

In 1939, after the Germans and Soviets had taken Poland, Hitler occupied the city of Klaipeda in eastern Lithuania. A few months later, Stalin forced a mutual assistance treaty on the Lithuanians, and stationed garrisons on Lithuanian soil. In June of 1940, demanding a "friendly" government, the Soviet Union occupied all of Lithuania. In July of that year, a fixed election produced a congress which "requested" that Lithuania be incorporated as part of the Soviet Union—a request which was, of course, all to readily accepted. The Nazis occupied Lithuania in 1941 and colonized the nation. At the end of the war, instead of being liberated, Lithuania was again placed under the domination of the Soviet Union.

The imprisonment of Lithuania and her Baltic sisters, Latvia and Estonia, ranks as one of the great crimes of history. The United States has never recognized this imprisonment. We have continued to grant official recognition of the diplomatic corps established by independent Lithuania, as we should.

Despite the shadow of Soviet oppression, the Lithuanian people are a shining example to all nations. For centuries they have consistently stood for freedom, peace, and culture. In the Middle Ages they lead Eastern Europe in promoting individual liberties. During the domination by czarist Russia, they steadfastly fought to preserve their own language and culture. During the independent years of the 20th century, they took great strides in improving agriculture and education, and music and literature flourished. While under the heel of the Soviet Union, they have courageously held to the spirit of independence, and the hope of liberation for their homeland. Lithuanian-Americans have continued this example, preserving their heritage as well as contributing greatly to our own society in almost every field of endeavor.

Mr. President, I share the hopes of all Lithuanians on this day. We have seen time and again, most recently in Afghanistan and Poland, that oppression is the cornerstone of political rule in the Soviet bloc. I call on every American to join the Lithuanian people in celebrating their independence, and in working for the day when all nations of the world will be truly free.●

#### PRELIMINARY NOTIFICATION PROPOSED ARMS SALES

● Mr. PERCY. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of \$25 million,

or in the case of major defense equipment as defined in the act, those in excess of \$7 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the RECORD in accordance with previous practice.

I wish to inform Members of the Senate that eight such notifications have been received.

Interested Senators may inquire as to the details of these preliminary notifications at the office of the Committee on Foreign Relations, room 4229, Dirksen Building.

The notification follows:

DEFENSE SECURITY ASSISTANCE AGENCY,  
Washington, D.C., 9 Feb. 1982.

In reply refer to: I-13053/81ct

Dr. HANS BINNENDIJK,

Professional Staff Member, Committee on  
Foreign Relations, U.S. Senate, Wash-  
ington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Middle Eastern country tentatively estimated to cost in excess of \$50 million.

Sincerely,

WALTER B. LIGON,  
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,  
Washington, D.C., 9 Feb. 1982.

In reply refer to: I-13319/81ct

Dr. HANS BINNENDIJK,

Professional Staff Member, Committee on  
Foreign Relations, U.S. Senate, Wash-  
ington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Southeast Asian country for major defense equipment tentatively estimated to cost in excess of \$14 million.

Sincerely,

WALTER B. LIGON,  
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,  
Washington, D.C., February 9, 1982.

In reply refer to: I-00001/82ct

Dr. HANS BINNENDIJK,  
Professional Staff Member, Committee on  
Foreign Relations, U.S. Senate, Wash-  
ington, D.C.

DEAR DR. BINNENDIJK: By letter dated February 18, 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Southeast Asian country for major equipment tentatively estimated to cost in excess of \$14 million.

Sincerely,

WALTER B. LIGON,  
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,  
Washington, D.C., 9 Feb. 1982.

In reply refer to: I-00104/82ct

Dr. HANS BINNENDIJK,  
Professional Staff Member, Committee on  
Foreign Relations, U.S. Senate, Wash-  
ington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Southeast Asian country for major defense equipment tentatively estimated to cost in excess of \$14 million.

Sincerely,

WALTER B. LIGON,  
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,  
Washington, D.C., February 9, 1982.

In reply refer to: I-00255/82ct.

Dr. HANS BINNENDIJK,  
Professional Staff Member, Committee on  
Foreign Relations, U.S. Senate, Wash-  
ington, D.C.

DEAR DR. BINNENDIJK: By letter dated February 18, 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Middle Eastern country tentatively estimated to cost in excess of \$50 million.

Sincerely,

WALTER B. LIGON,  
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,  
Washington, D.C., 9 Feb. 1982.

In reply refer to: I-00417/81ct

Dr. HANS BINNENDIJK,  
Professional Staff Member, Committee on  
Foreign Relations, U.S. Senate, Wash-  
ington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act.

At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Middle Eastern country tentatively estimated to cost in excess of \$50 million.

Sincerely,

WALTER B. LIGON,  
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,  
Washington, D.C., February 9, 1982.

In reply refer to: I-01398/81ct

Dr. HANS BINNENDIJK,  
Professional Staff Member, Committee on  
Foreign Relations, U.S. Senate, Wash-  
ington, D.C.

DEAR DR. BINNENDIJK: By letter dated February 18, 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Northeast Asian country tentatively estimated to cost in excess of \$50 million.

Sincerely,

WALTER B. LIGON,  
Acting Director.

DEFENSE SECURITY ASSISTANCE AGENCY,  
Washington, D.C., February 9, 1982.

In reply refer to: I-12911/81ct

Dr. HANS BINNENDIJK,  
Professional Staff Member, Committee on  
Foreign Relations, U.S. Senate, Wash-  
ington, D.C.

DEAR DR. BINNENDIJK: By letter dated February 18, 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Middle Eastern country tentatively estimated to cost in excess of \$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 \$25 million or, in the case of major defense equipment as defined in the act, those in excess of \$7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulated that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

In keeping with the committee's intention to see that such information is available to the full Senate, I ask unanimous consent to have printed in the RECORD at this point the notifica-

tions 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., January 29, 1982.

In reply refer to I-12207/81ct.

HON. CHARLES H. PERCY,  
Chairman, Committee of 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. 82-16, concerning the Department of the Navy's proposed Letter of Offer to Saudi Arabia for defense articles and services estimated to cost \$56 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

JAMES AHMANN,  
Acting Director.

#### TRANSMITTAL No. 82-16

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act

- (i) Prospective purchaser: Saudi Arabia.  
(ii) Total estimated value:

	Millions
Major defense equipment <sup>1</sup> .....	\$0
Other .....	56
<b>Total .....</b>	<b>56</b>

<sup>1</sup> As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of articles or services offered: This case provides for the amendment of an existing foreign military sales agreement under which ship-related spares, repair parts, consumables, and uniform items may be requisitioned directly from U.S. military supply sources by the Royal Saudi Naval Forces.

(iv) Military department: Navy (RAH, Amendment No. 1).

(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: None.

(vii) Section 28 report: Included in report for quarter ending 31 December 1981.

(viii) Date report delivered to Congress: 29 Jan. 1982.

#### POLICY JUSTIFICATION

##### SAUDI ARABIA—SAUDI NAVAL EXPANSION PROGRAM SUPPORT

The Government of Saudi Arabia has requested the amendment of an existing foreign military sales agreement to provide an additional \$56 million with which ship-related spares, repair parts, consumables, and uniform items may be requisitioned directly from U.S. military supply sources by the Royal Saudi Naval Forces (RSNF). Approval of this request will increase the value of the sales agreement to \$80 million.

This sale is consistent with the stated U.S. policy of assisting friendly nations to provide for their own defense by allowing the transfer of reasonable mounts of defense articles and services. It will demonstrate the continuing willingness of the United States to support the Saudi Arabian effort to im-

prove the security of the country through RSNF modernization. In a regional context, enhancement of the defensive capabilities of Saudi Arabia will also contribute to overall Middle East security and stability.

The United States is assisting the RSNF to enlarge and modernize its forces through the Saudi Naval Expansion Program (SNEP). This program began in 1972 and is scheduled to be completed in the mid-1980's. The SNEP includes the purchase of 29 ships and craft, shore facilities, equipment, logistical support, and training.

The sale of these items will not affect the basic military balance in the region.

Procurement of these items will be from the many contractors providing similar items to the U.S. forces.

Implementation of this sale will not require the assignment of any additional U.S. Government or contractor personnel to Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

DEFENSE SECURITY ASSISTANCE AGENCY,  
Washington, D.C., January 29, 1982.  
In reply refer to I-12605/81ct.

Hon. CHARLES H. PERCY,  
Chairman, Committee on Foreign Relations,  
U.S. Senate, Washington D.C.

DEAR MR. CHAIRMAN: Pursuant to the requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 82-23, concerning the Department of the Army's proposed Letter of Offer to the Philippines for defense articles and services estimated to cost \$36 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

JAMES AHMANN,  
Acting Director.

TRANSMITTAL No. 82-23

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act

- (i) Prospective purchaser: Philippines.
- (ii) Total estimated value:

	Millions
Major defense equipment <sup>1</sup> .....	\$28
Other .....	8
<b>Total .....</b>	<b>36</b>

<sup>1</sup>As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of articles or services offered: Fifteen UH-1H utility helicopters, three spare turbine engines, and quality assurance services.

(iv) Military department: Army (UJM).

(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: None.

(vii) Section 28 report: Included in report for quarter ending 31 December 1981.

(viii) Date report delivered to Congress: 29 Jan. 1982.

POLICY JUSTIFICATION

PHILIPPINES—UH-1H UTILITY HELICOPTERS  
The Government of the Philippines has requested the purchase of 15 UH-1H utility helicopters, three spare turbine engines, and quality assurance services at an estimated cost of \$36 million.

This sale is consistent with the U.S. Government policy of assisting the Philippines

in its force modernization program. Further, the sale will be viewed by neighboring friendly countries as evidence of the U.S. interest in maintaining regional peace and stability.

The Philippine Air Force (PAF) will use the UH-1H as a multi-purpose aircraft, primarily for troop lift and administrative support. The current PAF fleet of helicopters is aging. New replacement aircraft are imperative for mission accomplishment. The PAF has an established logistical support system capable of maintaining the UH-1H.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Bell Helicopter Textron of Ft. Worth, Texas.

Implementation of this sale will require the assignment of five U.S. Government personnel to the Philippines for two weeks.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

DEFENSE SECURITY ASSISTANCE AGENCY,  
Washington, D.C., January 29, 1982.  
In reply refer to I-12803/81ct.

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. 82-24 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Army's proposed Letter of Offer to Thailand for defense articles and services estimated to cost \$23 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,

JAMES AHMANN,  
Acting Director.

TRANSMITTAL No. 82-24

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act

- (i) Prospective purchaser: Thailand.
- (ii) Total estimated value:

	Millions
Major defense equipment <sup>1</sup> .....	\$18
Other .....	5
<b>Total .....</b>	<b>23</b>

<sup>1</sup>As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of articles or services offered: Six AN/TPQ-36 mortar locating radars with support equipment, spare parts, and support services.

(iv) Military department: Army (UZV).

(v) Sales commission, fee, etc., paid, offered, or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: See annex under separate cover.

(vii) Section 28 report: Included in report for quarter ending 31 December 1981.

(viii) Date report delivered to Congress: 29 Jan. 1982.

POLICY JUSTIFICATION

THAILAND—MORTAR LOCATING RADARS  
The Government of Thailand has requested the purchase of six AN/TPQ-36 mortar locating radars with support equipment, spare parts, and support services at an estimated cost of \$23 million.

This sale will contribute to the foreign policy and national security objectives of the United States by helping to improve the security of a friendly, moderate nation which is an important force for peace and regional stability in Southeast Asia. Recent events have underscored the need for the Thai armed forces to maintain well-equipped military units to deter potentially hostile forces now operating in neighboring countries.

The purchase of the radars and support will provide the Thai ground forces with an automated capability for locating mortars. As such, it will enhance the effectiveness of Thai counter-mortar fire.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Hughes Aircraft Corporation of Fullerton, California.

Implementation of this sale will require the assignment of ten contractor technical representatives to Thailand for approximately six months.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

DEFENSE SECURITY ASSISTANCE AGENCY,  
Washington, D.C., 29 January 1982.  
In reply refer to I-12949/81ct.

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. 82-25, concerning the Department of the Army's proposed Letter of Offer to Thailand for defense articles and services estimated to cost \$23 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

JAMES AHMANN,  
Acting Director.

TRANSMITTAL No. 82-25

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act

- (i) Prospective purchaser: Thailand.
- (ii) Total estimated value:

	Millions
Major Defense Equipment <sup>1</sup> .....	\$19
Other .....	4
<b>Total .....</b>	<b>23</b>

<sup>1</sup>As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of articles or services offered: Twenty-four M167A1 towed VULCAN air defense guns with support equipment, spare parts, training, and support.

(iv) Military department: Army (VAK).

(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: None.

(vii) Section 28 report: Included in report for quarter ending 31 December 1981.

(viii) Date report delivered to Congress: 29 Jan. 1982.

POLICY JUSTIFICATION

THAILAND—VULCAN AIR DEFENSE GUNS  
The Government of Thailand has requested the purchase of 24 M167A1 towed VULCAN air defense guns with radar, ap-

appropriate communications equipment, spare parts, training, and support at an estimated cost of \$23 million.

This sale will contribute to the foreign policy and national security objectives of the United States by helping to improve the security of a friendly, moderate nation which is an important force for peace and regional stability in Southeast Asia. Recent events have underscored the need for the Thai armed forces to maintain well-equipped military units to deter potentially hostile forces now operating in neighboring countries.

The VULCAN systems will be used to provide a tactical air defense capability for the Thai ground forces against attacking aircraft. As a primarily defensive weapon, it is not considered to be destabilizing to the military balance of the region. The Thai ground forces will experience no difficulties in operating or maintaining the VULCAN system after receiving the training included in the proposed sales program.

The prime contractor will be the General Electric Company of Burlington, Vermont.

Implementation of this sale will not require the assignment of any additional U.S. Government or contractor personnel to Thailand.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

DEFENSE SECURITY ASSISTANCE AGENCY,  
Washington, D.C., 29 January 1982.  
In reply refer to I-12283/81ct.

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. 82-27, concerning the Department of the Army's proposed Letter of Offer to Turkey for defense articles and services estimated to cost \$34 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

JAMES AHMANN,  
Acting Director.

TRANSMITTAL NO. 82-27

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act

- (i) Prospective purchaser: Turkey.
- (ii) Total estimated value:

	Millions
Major Defense Equipment <sup>1</sup> .....	\$24
Other .....	10
<b>Total .....</b>	<b>34</b>

<sup>1</sup> As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of articles or services offered: Ten search and rescue and four electronic warfare configured UH-1H helicopters with concurrent spare parts, ancillary equipment, and support.

(iv) Military department: Army (UMZ and UNB).

(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: None.

(vii) Section 28 report: Included in report for quarter ending 30 June 1981.

(viii) Date report delivered to Congress: 29 Jan. 1982.

POLICY JUSTIFICATION

TURKEY—UH-1H HELICOPTERS

The Government of Turkey has requested the purchase of ten search and rescue and four electronic warfare (EW) configured UH-1H helicopters with concurrent spare parts, ancillary equipment, and support at an estimated cost of \$34 million.

This sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Turkey in fulfillment of its NATO obligations; furthering NATO rationalization, standardization, and interoperability; and enhancing the defense of the Western Alliance.

The sale of these helicopters will enhance both the search and rescue and EW capabilities of the Turkish Armed Forces. Turkey will have no difficulty in absorbing these helicopters. These items will be provided in accordance with and subject to the limitations on use and transfer provided for under the Arms Export Control Act, as embodied in the terms of the sale. The sale of this equipment and support will not adversely affect either the basic military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The prime contractors will be Bell Helicopter, TEXTRON of Fort Worth, Texas, and AVCO-Lycoming of Stratford, Connecticut.

Implementation of this sale will require the assignment of one U.S. Government or contractor representative to Turkey for approximately 40 days for the helicopters and two U.S. Government or contractor representatives for the EW equipment for approximately 60 days.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

U.S. DEPARTMENT OF STATE,  
Washington D.C., November 23, 1981.

Pursuant to section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), and the authority vested in me by Department of State Delegation of Authority No. 145, I hereby certify that the provision to Turkey of 14 UH-1H helicopters is consistent with the principles contained in section 620(b) of the Act.

This certification will be made part of the certification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and is based on the justification accompanying said certification, and of which such justification constitutes a full explanation.

JAMES L. BUCKLEY.

DEFENSE SECURITY ASSISTANCE AGENCY,  
Washington, D.C., 5 February 1982.  
In reply refer to I-12901/81ct.

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. 82-20 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Army's proposed Letter of Offer to Saudi Arabia for defense articles and services estimated to cost \$40 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.

TRANSMITTAL NO. 82-20

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act

- (i) Prospective purchaser: Saudi Arabia.
- (ii) Total estimated value:

	Millions
Major defense equipment <sup>1</sup> .....	\$36
Other .....	4
<b>Total .....</b>	<b>40</b>

<sup>1</sup> As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of articles or services offered: A quantity of 2,111 I-TOW missiles; 2,163 practice missiles; and 106,000 blast simulators.

(iv) Military department: Army (VDR and WES).

(v) Sales commission, fee, etc., paid, offered, or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: See Annex under separate cover.

(vii) Section 28 report: Included in report for quarter ending December 31, 1981.

(viii) Date report delivered to Congress: February 5, 1982.

POLICY JUSTIFICATION

SAUDI ARABIA—IMPROVED-TOW MISSILES, PRACTICE MISSILES, AND BLAST SIMULATORS

The Government of Saudi Arabia has requested the purchase of 2,111 Improved-TOW (I-TOW) missiles; 2,163 practice missiles; and 106,000 blast simulators at an estimated cost of \$40 million.

This sale is consistent with the stated U.S. policy of assisting other nations to provide for their own defense by allowing the transfer of reasonable amounts of defense articles and services. It will demonstrate the continuing willingness of the U.S. to support Saudi Arabia which is an important force for moderation in the region.

The I-TOW missiles will be used to maintain war reserve stock levels and replace expended training ammunition stocks by the Saudi Arabian National Guard (SANG). The practice missiles and blast simulators will be used by the Saudi Arabian Land Forces (SALF) and the SANG for training personnel in the use of the TOW guided missile system. This training will improve the defense posture of Saudi Arabia. The SALF and SANG will have no difficulty in absorbing these items.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Hughes Aircraft Company of Canoga Park, California.

Implementation of this sale will not require the assignment of any additional U.S. Government or contractor personnel to Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

DEFENSE SECURITY ASSISTANCE AGENCY,  
Washington, D.C., 3 February 1982.  
In reply refer to I-12208/81ct.

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. 82-22 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter of Offer to Greece for defense articles and services estimated to cost \$98 million. Shortly after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

JAMES AHMANN,  
Acting Director.

TRANSMITTAL NO. 82-22

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act

- (i) Prospective purchaser: Greece.  
(ii) Total estimated value:

	Millions
Major defense equipment <sup>1</sup> .....	\$85
Other .....	13
<b>Total .....</b>	<b>98</b>

<sup>1</sup> As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of articles or services offered: Two hundred eighty AIM-7M SPARROW missiles with support.

(iv) Military department: Navy (AIY).

(v) Sales commission, fee, etc., paid, offered, or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: See Annex under separate cover.

(vii) Section 28 report: Included in report for quarter ending 31 December 1981.

(viii) Date report delivered to Congress: 3 Feb. 1982.

POLICY JUSTIFICATION

GREECE—AIM-7M MISSILES

The Government of Greece has requested the purchase of 280 AIM-7M SPARROW missiles with support at an estimated cost of \$98 million.

This sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Greece in fulfillment of its NATO obligations; furthering NATO rationalization, standardization, and interoperability; and enhancing the defense of the Western Alliance.

Greece wishes to arm the air defense system it is procuring from Switzerland with AIM-7M missiles. The sale would be a major step in the modernization of the Hellenic Air Force's air defense capability. Absorption would be no problem, since other models of the AIM-7 are being used by the Hellenic Navy. These defense articles will be furnished in accordance with, and subject to, the limitations on use and transfer provided for under the Arms Export Control Act, as embodied in the contract of sales. The sale will not adversely affect either the basic military balance in the region or the

U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The prime contractor will be either the Raytheon Company of Lowell, Massachusetts, or the General Dynamics Company of Pomona, California.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel to Greece; however, contractor personnel will be required for approximately three months to provide training and for approximately one year to provide technical services.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

UNDER SECRETARY OF STATE FOR SECURITY ASSISTANCE, SCIENCE AND TECHNOLOGY  
Washington, D.C., December 14, 1981.

Pursuant to section 620(d) of the Foreign Assistance Act of 1961, as amended (the Act), and the authority vested in me by Department of State Delegation of Authority No. 145, I hereby certify that the provision to Greece of 280 AIM-7M missiles is consistent with the principles contained in section 620C(b) of the Act.

This certification will be made part of the certification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and is based on the justification accompanying said certification, and of which such justification constitutes a full explanation.

JAMES L. BUCKLEY.

SAFE-HARBOR LEASING AND SMALL BUSINESS

● Mr. BAUCUS, Mr. President, as a member of the Senate Finance Committee, I put a high priority on how the Tax Code and tax policy affect economic development.

The so-called tax expenditures that dot the landscape of the Tax Code all were enacted at some time or other for a specific purpose. Many were designed to spur some type of investment activity by business. Others, such as the homeowner mortgage interest provisions, were designed to encourage desirable personal, individual goals.

But many of the provisions are incompatible and, together, these have an enormous effect—some good and some bad—on the economy.

If I were to choose my top priority in this Congress, it would be to take as serious a look at these tax provisions as we gave the budget last year. The tax bill we enacted last year demonstrates just how important we consider tax incentives as a tool for stimulating economic growth. The growing Federal deficit shows, however, the need to be more selective in the use of tax breaks, making sure that they can produce what was intended.

Last year's bill should not stand in concrete. We must continue to examine and assess the usefulness and value of the tax incentives and stimuli we approved.

One step in this process is to look more critically at the safe-harbor leasing provisions. On January 25, 1982, I

introduced S. 2011 to abolish these provisions because I do not believe they are working the way we intended.

One of the major weaknesses in these provisions is that they do not aid smaller firms that need capital to expand and grow.

The function of a safe-harbor lease is to sell tax benefits that cannot be used by one company to another company which has a tax liability the benefits could offset. For practical reasons, small businesses without tax liabilities do not get a good deal when they sell tax benefits; the transaction costs are relatively larger for a small business than for a large corporation.

Those transaction costs include the fees charged by brokers and attorneys to structure the deal. They also include a profit for the lessors who buy the tax benefits. For a small business, the transactions lack economy of scale. In fact, the smaller the value of the tax benefits, the less likely it is that a deal will be consummated at all.

Most small businesses are prohibited from participating as buyers of tax benefits. The safe-harbor leasing provision requires that the lessor, not the lessee, must be a corporation other than a subchapter S corporation or a personal holding company. The lessor may also be a partnership of covered corporations or a grantor trust whose beneficiaries are such corporations or partnerships of corporations. This excluded partnerships of individuals and other unincorporated businesses.

IRS regulations also exclude closely held corporations, most of which are small businesses.

Safe-harbor leasing transfers only the tax breaks provided for the purchase of depreciable property. As such, it provides an unevenness of subsidies across industries. While the primary beneficiaries of leasing are large capital-intensive companies which are in trouble, tax leasing also subsidizes large capital-intensive companies which are not in trouble. In fact, it also benefits large profitable companies, which are not in trouble and which are not capital-intensive—when they buy the tax credits. Tax leasing does not provide much help to newer industries, such as high-technology companies and the service industries, which represent a large proportion of small businesses.

Leasing not only fails to deliver equitable benefits to small business, it works with ACRS to increase the Federal deficit, make credit harder to get for business, and increase high interest rates. Lacking the clout of large corporations, small businesses and new businesses suffer more from such tight credit situations.

I have been told by a number of attorneys, tax advisers, economists, and businessmen that the leasing benefits, and ACRS, were of far more use to big

business than small business. I have been told that the biggest benefit of leasing is going to those who do not need those tax incentives and to corporations which buy tax incentives but are not investing enough themselves in new equipment.

Still another has told me that "tax benefits for leasing are being distributed inefficiently. The big companies are coming off much better. \* \* \* The strong benefit more than the weak; a direct grant to the weak would be more effective in helping them at less cost to the Government.

According to reports, last year business bankruptcies were up 46 percent, 90 percent of which were small firms. Small firms reportedly produced 35 percent of GNP and 50 percent of private sector jobs. Small business has provided much of the innovation which has helped keep us competitive. They provide the greatest hope for reducing unemployment.

Safe-harbor leasing sets out to help small business. It fails to do that effectively. It points, instead, to the need for alternative means of dealing with the problems of ACRS.

I ask that the New York Times Magazine article "In Praise of Small Business" be printed in the RECORD.

The article follows:

[From the New York Times Magazine, Dec. 6, 1981]

IN PRAISE OF SMALL BUSINESS  
(By Arthur Levitt, Jr.)

As with most people who buy their own businesses, the odds against Robert Johnson were high. He was confronted at the start with an intimidating list of problems. He had no money, after laying out the purchase price, with which to start building up the business; he had no business experience or training, and he didn't know where to go for advice (beyond the help offered by the local Internal Revenue Service office on how to fill out 10 different Government reporting forms). There were no tax breaks, no Government loans, no expense accounts. Although he purchased the company from his uncle for what he thought was a good price, most everyone else would not have regarded it as a bargain. The Chicago business—Gamecraft of Illinois, which designed and produced board games—had been barely surviving since it was founded in 1968. Sales were declining, and stacks of bills were unpaid.

What Johnson did have was a strong conviction that his energy and imagination would make the business succeed. "My sense of my own worth became tied up in it," he says, "Could I keep it going, make it work?"

With this commitment, Johnson moved the business to his home in suburban Champaign, and began living the double life familiar to many American small-business people. After working full time as a university administrator, he would come home at night and "often put in a second eight-hour day, taking care of every little detail of the business, even boxing the games myself and sending them out."

Now, two years later, the bearded, 37-year-old, soft-spoken Robert Johnson has not precisely been transformed into the popular image of the American businessman at the

helm of his company—that dynamic, jet-hopping capitalist in three-piece, pin-stripe suit rushing, briefcase in hand, into a Wall Street conference room to swing the deal of deals. but Gamecraft is making money. No immense profits, to be sure. Johnson, still at the university, has turned the business around, revitalizing its marketing effort, expanding its product line (a quarter of its sales are now in computer games) and recruiting a business manager. And, he has been sufficiently bitten by the "business bug" to have begun planning a second company.

Johnson has thus become one of a growing number of Americans who have left the routine of wage earning to try to assert their own vision of making it on their own, of trying to succeed in small businesses—from flower shops to print shops, from pizza parlors to Chinese takeouts, from small manufacturing plants to small service companies. In many ways he is a good deal more representative of the people who run America's 11 million businesses—10.8 million of which are small businesses—than the man with the flying briefcase and pin-stripe suit.

Contrary to the popular notion that American business is concentrating and contracting, with multinationals and conglomerates gobbling up everything in sight, there has been during the last few years an astonishing growth in the United States in the birth rate of small businesses. Since 1976, nearly a million Americans have become their own bosses, bringing the total number of self-employed to an all-time high of more than 6.8 million. For 1980, the Dun & Bradstreet Corporation estimated that 533,500 companies were incorporating annually, and that the number of new incorporations in 1980 was 63 percent greater than in 1975.

To grasp the importance of these entrepreneurs consider that three major economic crises of the 1980's are a lack of jobs, a dearth of industrial innovation and flagging productivity. Then consider that approximately 60 million Americans out of a work force of 97 million find their livelihoods in small businesses. A recent Massachusetts Institute of Technology study found that 66 percent of all new jobs in the private sector were provided by businesses with 20 or fewer employees. In contrast, the National Federation of Independent Business has stated that over the last decade Fortune magazine's top 1,000 firms, as measured by revenue, created only 10.6 percent of all jobs. Additionally, I understand that small companies provide more than 80 percent of the jobs for young blacks and other disadvantaged groups.

Consider, too, a recent National Science Foundation study: It found that small firms produce four times as many industrial innovations per research dollar as medium-sized firms do and 24 times as many innovations as the largest firms. Finally, consider, with regard to flagging productivity, that small businesses quite literally can't afford to be unproductive. They have no margin for slack: Productivity is essential to survival.

Indeed, Johnson and other small-business people are beginning to understand their own collective importance. They are realizing that they have interests in common, that they can and should help each other out and that it is to the nation's—and their own—benefit that they do so. They are getting organized in important ways, and developing a sense of unity that I believe will soon make them one of the most potent influences in the economic history of the United States.

It must be said at the start that the small-is-beautiful economic strategy is not as unqualifiedly romantic as it seems to be: Establishing a business is immensely risky. According to a study soon to be published by the Small Business Administration, as many as three out of four new enterprises fail within their first five years, and nine out of 10 fail within 10 years. And the failures are believed to be increasing to a higher rate than at any time during the past decade. It is ironic, therefore, that in the midst of the current recession, small-business people in general continue to back the Reagan Administration's economic policy of tight money and punishing interest rates. They do so out of a belief that inflation is their most pernicious long-term enemy—and so they are willing to try to cope with the short-term tribulations.

The roadblocks are rugged. The biggest is, of course, lack of money. To start a business and to keep it going, the vast majority of entrepreneurs must turn, as Johnson did, to personal savings, or to parents, aunts, uncles, friends. Small companies often cannot get loans when they need them, and when they do, they must often pay significantly higher interest rates than the bigger operations that are granted the prime rate. The National Federation of Independent Business recently asked this question of small-business owners: What was the most important resource for your financing? Forty-five percent answered personal savings; 13 percent said friends, and 4 percent cited private investors. Only 29 percent were financed through banks and other financial institutions, while 1 percent were financed by the Government. Also, less than 1 percent were financed by the unfortunately few venture-capital firms that are in business to make funds available to new enterprises.

If the venture is an entirely new undertaking, the idea behind it must be a good one to begin with or the money to back it won't make much difference. And, especially if the business is new, another major problem with entering afresh into the small-business world is what Leo Wolk, a Minneapolis insurance agent, terms "a severe lack of sound advice." Dun & Bradstreet estimates that a majority of all business failures are due to management inadequacies—from poor long-range planning to errors in accounting. And it is often not that the business owners don't recognize their lack of skills or competence in particular areas; there just appears to be nowhere to turn to for reliable information or counsel.

Then there is the enormous hassle of government regulation and paper work. Many people believe that any expression of frustration over the level of Federal regulation, for example, is merely big business crying in its beer, or dry martini. But it is truly no exaggeration to say that the labyrinth of horrors of Federal regulations and paper work confronting some small businesses would fire the imagination of a contemporary Kafka.

Yet the renaissance of the entrepreneurial spirit is occurring in spite of these obstacles. Why? How does one explain it? One reason is simply population increase, the baby-boom; another is the nation's shift from a manufacturing economy to a service-oriented one. But there may be a deeper, more compelling reason, having to do with a change in national attitude.

After the Depression, the word "entrepreneur" often conjured up something roughly on the order of a scheming promoter or un-

scrupulous tycoon. Now, however, "entrepreneurial spirit" seems to suggest at once a more down-to-earth figure and a more romantic one. The phrase invokes independence, self-reliance, risk taking, courage—with overtones, perhaps, of Emerson and Thoreau as much as Adam Smith or 19th-century moguls. And these attitudes can be seen time and time again among these new down-to-earth romantics.

Robert Johnson is a member of what might be called "new wave entrepreneurs," younger people who grew up in a generation that viewed business with contempt, but who now find starting a business a way to gain fulfillment and satisfaction. Although Johnson is uncomfortable with being called a "capitalist," he says that at a certain point he realized that "if you're not involved in the capitalistic system in some way in which you have control, you feel victimized by it."

A similar view is expressed by Kate and Rob Pulleyn of Asheville, N.C. "We were sociology majors in the 1960's and rejected out of hand the thought of 'going into business,'" says Rob Pulleyn. Opportunity presented itself, however, in the form of one of their favorite handicraft shops going up for sale. The Pulleyns used their own private capital for financing and their own guesswork and initiative to build their business. They were becoming moderately successful when Rob had an idea: a newsletter to be distributed free as a promotional device for the handicrafts they sold. At the time they only half realized that they were reaching a small but untapped market of dedicated handicraft enthusiasts. The newsletter was an immediate success, and it led to another idea which has become *Fiberarts* magazine.

The Pulleyns took a large risk in pursuing their business goal. After moving from New Mexico to North Carolina, Rob recalls that they "proceeded to live the life of the totally desperate. But we were lucky. And young." Both were in their late 20's. "We could live in two rooms and eat beans. That was, in a way, part of the fun. And now people have become interested in us because we owe no money. They asked us how we did it. Well, we broke all the rules because we didn't know what the rules were. If we had known them, we never would have tried the things we did."

Now, along with *Fiberarts*, the Pulleyns publish *Yarn Market News*, have published an elaborate, illustrated coffee-table handicrafts book, organized national handicrafts conferences and, with a large Stockholm publishing firm that sought them out, they have developed a large-circulation magazine—called *Handmade*—on home crafts and restoration.

Harvey and Marcia Cinamon are midlife entrepreneurs—people who, in a sense, have taken even greater risks, quitting successful, secure careers after they were well along in years. "At the time we had five children, one recently merged household, alimony payments, two kids in college. We did it on our reputation and on credit. We didn't care if we didn't make as much money as we had been making as long as we could do things the way we thought they should be done." Today, they are partners in Cinamon Associates, a direct-mail operation in Boston, and are expanding into radio and television, as well as considering entering international marketing.

What does Marcia Cinamon believe are the characteristics successful entrepreneurs need? "Greed. Need. Desire. Probably half the deadly sins. I think most of all it's a person who can't leave something undone. I

remember I was sitting with someone, and there was a newspaper in the chair next to me with an undone crossword puzzle. I picked it up, and started doing the puzzle." Has doing the undone been worth it? "Yes. The reward . . . is that you know everything that happens," says Marcia Cinamon. "It is you who has your finger on the pulse of everything."

This desire for action and independence, for some degree of control of one's destiny, is echoed by Sydney Levine, owner of Shipping Intelligence in New York, a company that provides computerized control systems to the shipping industry for use in inventory and record keeping. He believes that to an important extent he makes his own economy. "When people ask me, 'Will the recession affect your business?' I answer, 'It depends on me. If I lose a client, well then I have a recession. If I get two new clients, it's a much different picture.'"

Self-reliance has its own burdens, however, Stanley Simon, who owns *Fitwell Stores* for Men in Minnesota, says, "When things take a bad turn, you don't have anyplace else to put the blame. . . ."

That small businesses are filling some pressing national needs as well as filling the needs of the people who run them seems evident.

According to a report by the Panel of Invention and Innovation to the Secretary of Commerce, more than half of the major technological advances of this century were developed by individual inventors and small businesses. Chester Carlson developed the first working model of what became the Xerox machine in a little lab over a bar. Texas instruments was a tiny company making equipment for finding oil until it paid Bell Labs \$25,000 for a license to make transistors. Individual investors and small companies have accounted for insulin, the vacuum tube, Kodachrome, power steering, the self-winding wristwatch, the helicopter, cellophane, ball-point pens, FM radio, shrink-proof knitted wear, the Polaroid camera and the zipper.

Meanwhile, however, some of our largest and most basic industries have been faltering. Chrysler, along with Lockheed, are only two in a series of organizations over the last dozen years that have been kept from bankruptcy by large sums of money in Government support and that indicates that a kind of arthritis is spreading through many of our largest companies. Companies such as Seatrail and Penn Central went bankrupt, but were helped out during reorganization by Federal assistance programs.

Of course, the Government does not bail out small businesses when the going gets rough. Productivity and self-reliance are essential requirements of small businesses, and hence they serve as an invaluable example to the nation. These qualities are really what makes small businesses such an integral part of what might be called "the economic system."

An economically healthy community—urban or rural—depends on the jobs as well as on the services provided by small businesses. In general, communities that are served by many small businesses, as against those essentially served by one or two large corporations, are more balanced and stable, enjoy greater civic participation, more retail facilities and home ownership, better housing, fewer slums, better health and sanitation standards, lower mortality rates, and more monetary support for education, recreation, and cultural and religious activities.

Berlin, N.H., for example, has had it with big business. "If you're going to employ

1,000," says Berlin's industrial development manager, Roland Sherman, "then don't come here. We don't want all our eggs in one basket."

Small business has not only proved itself to be the most significant employer of Americans and a stabilizing and enriching factor for the communities, but it is also vital to big business, a fact well recognized by the corporate giants. General Motors has 30,500 suppliers of whom a large majority are small enterprises with fewer than 500 employees. Small business is thus involved in a mutually dependent partnership with big business. In the 1950's, Charles E. Wilson, the late General Motors president, said that what was good for General Motors was good for the country. He should have added that what is good for small business is good for General Motors.

Given the crucial niche small business occupies in the economic system, one would think that more would have been done long ago to remove the forces that have made the national economic environment so hostile to it.

How to deal with the scarcity of funds for small-business ventures? The reduction in the maximum capital-gains tax rate from 28 percent to 20 percent contained in the Reagan Administration tax bill enacted by Congress may eventually prove to be an important measure of help in this, though it is still too soon to know for certain. Jack Albertine, president of the American Business Conference, sums it up this way: "Reduce the capital-gains tax and you will provide the incentive to put money into new ventures. If a person has a good idea, and there is a larger pool of equity capital [money available for investment in new enterprises], the money and the idea will come together. If investing in a new enterprise is not made more attractive by a tax incentive, however, the money will not be there and many good ideas will die on the vine."

And everyone benefits. Albertine notes that the last time the capital-gains tax was lowered, in 1978—from 49 percent to 28 percent—the Treasury Department estimated that by the end of 1979 it would have cost \$1.7 billion in revenue losses. In fact, it cost only \$100 million—and this year, preliminary figures indicate that the Government made money on the deduction.

One measure that would make more capital available is a tax credit for investment in a new small business: The credit would allow the investor to deduct 10 percent of the investment, or \$750, whichever is smaller.

Currently, small business enjoys far fewer tax benefits than big business. I.R.S. figures show that companies with more than \$1 billion in sales are claiming various tax credits equal to 61.1 percent of their tax liability, while comparatively small firms—those with \$1 million to \$5 million in sales—are claiming credits equal only to 6.5 percent. In addition to this, some rules for claiming deductions and credits are so complex that only large companies with vast accounting staffs can take complete advantage of them.

The Reagan tax bill failed to overcome many of the these inequities against the small-business entrepreneur. Payroll taxes, for example, are especially crippling. According to a survey by the National Federation of Independent Businesses, many small-business firms pay more in social security taxes than they do in corporate taxes.

This tax drain hurts not only small business but the nation. As the report of the 1980 White House Conference on Small

Business stated: "The more earnings that small companies can retain, the more they can expand, develop new products and services, and create new jobs."

Perhaps the biggest deficiency for small business has been, as Robert Dotchin, staff director of the Senate Small Business Committee phrases it, the lack of a "delivery system" of information for small businesses. Helpful information almost always exists if one knows where to find it. "But it is highly important," says Dotchin, that "people ask themselves the hard questions before they establish a business. All too often, people walk into the office of the Small Business Administration, blindly asking for assistance—when they are already going down for the third time." To avoid this, there must be active informational outreach programs, alerting new entrepreneurs to the difficulties they may face and advising them on how to combat them.

Furthermore, the small-business community needs more information about itself as a whole. As J. R. Kirkland, head of a Washington-based small-business policy research company puts it: "We need to provide the hard data and scientific underpinning that has so far been lacking in lobbying efforts on behalf of small business." Such data would be immensely helpful when demonstrating to Congress how injurious present economic policies have been.

One method of serving both the informational needs of individuals and the small-business community at large would be to establish a centralized facility or perhaps several regional facilities that provide a range of resources: outreach programs; curriculum development for business-schools desiring to teach classes on establishing a small enterprise; collection of economic data relating to small businesses and information on areas of opportunity in such fields as international trade, new energy sources and new technologies. Such facilities are now in planning and pilot stages, and this decade will see them become a major force for improving the success rate of small businesses.

The crippling effect that Government regulation has had on some small businesses must also be considered. To do so requires, first, an understanding that regulations designed for large corporations are often applied inflexibly to smaller enterprises as well. Here are a few of the absurdities that can result:

Robert Bentile runs a small surface-mining coal company in Ohio with 25 employees. He testified before a Washington Congressional hearing that "we have a total of 647 forms per year and a total of 63 different inspectors. When the weather broke a few weeks ago, we had more inspectors here than workers." There should be a way of protecting workers and consumers from the injustices of the past—but do we need 647 forms?

In the summer of 1978, state and local officials descended on Billy Halliwell, an enterprising 11-year-old from Roseland, N.J., who set up shop in his sister's red wagon dispensing coffee and doughnuts to sleepy motorists waiting in gas lines. Billy lacked a peddler's license, failed to collect state sales taxes and neglected to file a quarterly return with state authorities. Only after his father paid nearly \$1,000 in legal fees was the boy allowed to resume business—after surrendering 21 cents in tax payments.

Martha Hudson, a housewife from Appomattox, Va., started a business of providing transportation service in her area for sight-seeing trips and shopping expeditions, but

she encountered a regulatory deadend. "First," she says, "I found that my auto-insurance company would not insure a vehicle used for this purpose except through a plan that cost around \$2,000 a year. Next, I checked with the Department of Motor Vehicles and found that I would have to obtain a permit from the State Corporation Commission and the Interstate Commerce Commission."

"After checking with an attorney, I had to give up the idea completely. He informed me that Greyhound and Trailways bus services had a franchise to provide transportation, and would do everything possible to stop any individual from cutting in on their business. He also said it would cost me up to \$100,000 to get the permit from the state. Naturally, I did not have that kind of money."

And it appears that even recent attempts at controlling regulation have simply imposed an additional bureaucratic layer. The owner of a company that manufactures screws in Chicago explains: "The Government wants to have a continuing picture of the country's business scene, so it insists that its regulatory agencies develop what they call business and industry 'profiles.' Now that's a sound enough idea. Government ought to know how things are. But to get this profile, we receive forms from maybe a dozen different agencies, the Bureau of Labor Statistics, the Federal Trade Commission, the Census Bureau and so on. Some of these are 20 pages long. The trouble is they all ask the same questions."

There does, however, appear to be hope on the horizon. Congress enacted the Regulatory Flexibility Act last year requiring that each agency of the Federal Government prepare a report on the impact of proposed regulations on small business. It also requires that the agency consider "two-tiered" regulation if it appears that a particular act would place unfair strictures on smaller businesses in comparison with large corporations. Robert Dotchin of the Senate Small Business Committee appears optimistically ambivalent about what the effects of this new act will be: "It may not have enough teeth in it. But it does insure that an agency be more sensitive to the unique needs of small business, rather than having small business be just an afterthought in the regulatory process. We're keeping our fingers crossed."

Another encouraging sign is that President Reagan has taken partial cognizance of the problem. "Over regulation," he has told Congress, "causes small and independent business men and women, as well as large business, to defer or terminate plans for expansion and, since they're responsible for most of the jobs, those new jobs just aren't created." His point is correct and it may well be the first time in a long while that a President has put small business ahead of big business in a sentence.

Whether one talks about the problems of regulation, lack of capital or lack of information, one thing seems clear: small business has found its voice, and its voice is being heard.

From the small-business associations springing up at the grass-roots level across the United States to the major national groups now actively lobbying in Washington, it is apparent that the interests and concerns of millions of American entrepreneurs have begun to crystallize and find expression—much as did the concerns of environmentalists a decade ago. The Council of Smaller Enterprises, the Coalition of Small

and Independent Business Associations, the National Small Business Association, the Small Business Legislative Council, the National Association of Women Business Owners—such organizations are thriving and becoming increasingly effective in providing services and representing the concerns of their members to the Government and the public.

Government has begun to hear the small-business community, and to realize that helping this newly unified constituency is now a political imperative. As Gov. Richard D. Lamm of Colorado put it: "There is a tidal wave behind me. Its name is small business. And any politician who does not look over his shoulder at that wave will be a politician out of a job."

And I expect—or at least I hope—that big business, as well as politicians, will realize that in many ways their interests coincide with those of small companies. There are already some innovative programs that have been initiated by the private sector to help new entrepreneurs. Control Data Corporation has opened four Business and Technology Centers, in St. Paul, Minn.; Minneapolis; Charleston, S.C., and Toledo, Ohio. The centers provide office space and a wide array of services to young, growing companies. Rent-paying tenants make use of conference rooms, mail processing and legal consulting, as well as advice on inventory financing and tax consulting.

And the nice thing about all this is that the increasing power of small-business people is aided by the public's overwhelmingly favorable attitude toward them. I recall one survey which found that 68 percent of the public said that big business had too much power, but small business was at the top of the list of groups perceived as having too little. It ranked higher, in fact, than religious leaders and educators. I believe that the 1980's will see an even greater appreciation for the American entrepreneurial spirit and the contributions of those individuals who personify it.

Despite all that has been said, it should also be pointed out that small-business people do not want handouts. What they want is a fair opportunity. The free-enterprise system is supposed to allow winners to win and losers to lose. But they should not lose for the wrong reasons. An entrepreneur should have a reasonable chance to see whether his idea—for a product or a service—can fly. Because of what small business gives to this nation, it should be the business of Government, the private sector, labor, and an informed public to see that the coming years bring an increase in the success rate—rather than the failure rate—of new enterprises.

But no matter how much or how little assistance our small-business people are given, the entrepreneurial spirit will stay alive and keep kicking. For though it is true that the nation seems to face intractable economic difficulties, it is also true that there is, living in many Americans, a fiercely individualistic, bullheaded dreamer who, deep down, believes in a kind of magic. It is a magic of effort and ego and obsession that can make happen what other people consider impossible. George Bernard Shaw said: "The reasonable man adapts himself to the world, the unreasonable one persists in trying to adapt the world to himself. Therefore all progress depends on the reasonable man." Americans can be a mighty unreasonable people when they want to be. And if I am reading my tea leaves correctly, we're starting to become unreasonable again. ●

## UPDATE ON DRAIZE RESOLUTION—SENATE RESOLUTION 65

● Mr. DURENBERGER. Mr. President, 1 year ago I was joined by Senators DOLE, TSONGAS, PERCY, DECONCINI, and LEVIN in the introduction of Senate Resolution 65. As you might expect, a great deal has changed since that date. Senators WILLIAMS, RIEGLE, JEPSEN, ROTH, ABDNOR, MITCHELL, MOYNIHAN, D'AMATO, LEAHY, HEINZ, STAFFORD, KASTEN, FORD, LUGAR, and GORTON have joined the original sponsors of the resolution which places the Senate on record in calling for Federal action by the Federal Government to develop and validate an alternative nonanimal testing procedure to replace the Draize eye irritancy test.

There is some progress to report. Both the private sector and the regulatory agencies responsible for oversight of the Federal Hazardous Substances Act have made a concerted effort not only to reduce the number of animals subjected to the test, but also to fund alternatives to the Draize.

Among the more encouraging developments this past year, was the willingness of the regulated industries, after proper encouragement from interested and concerned private citizens and nonprofit groups, to contribute significant resources to the development of an alternative to the Draize. While I am sure that others will lend their support in the future, the following corporations and associations have made contributions to the cause:

Estee Lauder, \$250,000.

Avon, \$750,000.

Revlon, \$750,000.

Bristol-Meyers, \$400,000.

The Cosmetic Toiletory Fragrance Association, a \$1 million grant to John Hopkins University.

Max Factor.

Chanel.

Mary Kay Cosmetics.

I should also point out that the following letter from the Consumer Product Safety Commission to Mr. Henry Spira, founder and motivator of the Coalition to Stop Draize Rabbit Blinding Tests, is a welcome sign to those of us who were concerned over the regulatory agencies' apparent unwillingness to acknowledge the deficiencies of the test. While I am convinced that nothing short of total elimination of the test is necessary to halt the unnecessary pain albino rabbits are subjected to, I find the CPSC letter to be a step in the right direction.

In short, some encouraging first steps have been taken to halt the Draize test and replace it with more reliable, economical and humane alternatives. Unfortunately, the only thing that remains unchanged is the apparent unwillingness of Congress to go on record as being in favor of the Federal Government devoting additional research time and funds to develop an

alternative to the Draize. Senate Resolution 65 has no budgetary impact, is supported by industry and consumer interest groups alike, has no known opposition and is worthy of every Member's support. I strongly urge any Member of the Senate who is not a cosponsor of Senate Resolution 65 to join its cosponsors now.

Mr. President, I ask that the letter to Mr. Henry Spira from the Consumer Product Safety Commission be inserted into the RECORD.

The letter follows:

## U.S. CONSUMER PRODUCT SAFETY COMMISSION,

Washington, D.C., January 8, 1982.

Mr. HENRY SPIRA,  
Coalition To Stop Draize Rabbit Blinding Tests, New York, N.Y.

DEAR Mr. SPIRA: During a meeting on May 11, 1981, it was brought to the attention of CPSC staff that many companies are interpreting the test procedures at 16 CFR 1500.3(c)(4) and 1500.42 as requiring the exclusive use of the Draize test. The purpose of this letter is to clarify the requirements of 16 CFR 1500.3(c)(4) and 1500.42 and the Commission's position with respect to the use of the Draize test along with the suitability of equivalent alternative test data or information to support eye irritancy labeling under the Federal Hazardous Substances Act.

At present, there are several alternatives to actual biological testing that will establish whether a substance is an eye irritant. The Commission encourages manufacturers to consider and utilize such alternatives to biological testing as are appropriate.

One alternative to Draize testing is human experience with a hazardous substance. 16 CFR 1500.4(a) directs that reliable human experience with a substance should be taken into account in determining if that substance is in fact hazardous as defined in the FHSA. Even further, reliable human experience data will take precedence over any animal data reflecting differing results. The Commission staff encourages marketers of hazardous or potentially hazardous substances to solicit and to accumulate anecdotal human experience data as to whether their product is, for example, an eye irritant.

Previous test data as reported in scientific literature represents still another alternative to actual testing. There exist many literature sources of information on the biological responses (including eye irritancy) to many chemical mixtures. When a firm plans to begin packaging and marketing a product, we have in the past and will continue in the future to encourage it to search for information on previous tests which have been conducted on identical or very similar products. We feel it certainly is appropriate to rely on information of this type and forego any additional animal testing. For example, a firm planning to market a standard household bleach (approximately 5% calcium hypochlorite) should consult the wealth of literature showing this product to be an irritant to both eyes and skin. In such a case, there would be no need to conduct animal testing again to indicate the need for appropriate cautionary labeling of the product.

Finally, a manufacturer of products may choose to first test a substance for skin irritation, if possible. If the test shows the substance to be a skin irritant, a prudent manu-

facturer might also choose to presume the substance to be an eye irritant and label it accordingly.

In addition to encouraging industry to use the methods for determining eye irritant outlined above, the Commission also encourages the development of alternative methods of establishing whether or not a substance is an eye irritant. Indeed, once such a methodology is developed, the Commission staff would be amenable to recommending that the Commission take steps to adopt the alternative methodology as a replacement for the Draize test in determining when the FHSA labeling for eye irritancy is appropriate. Though at present we are not aware of a suitable alternative test procedure, we do know that industry has in the past and continues to actively seek alternative tests to the Draize test. I have requested our scientific staff to closely monitor this ongoing industry research. In the event that a reliable alternative test method for eye irritancy is developed, we will immediately take steps to replace the Draize test.

Sincerely,

CARLOS L. PEREZ,

Acting Associate Executive Director for Compliance and Administrative Litigation.●

## KATE SMITH

● Mr. SYMMS. Mr. President, recently I received a letter from Marj Findlay, a friend of mine in Cocolalla, Idaho, who wrote to remind me of the tremendous contribution that Kate Smith made to the war effort during World War II. Through those difficult years, Mrs. Findlay recalls, Kate Smith "helped to give our people purpose and a rededication to Americanism." The courage and unfailing support of the American people were essential to insure an Allied victory, and Kate Smith's appearances around the Nation were always a source of hope and encouragement for those Americans who listened to her song.

Mrs. Findlay notes that we have failed to honor Kate Smith in an appropriate manner for all of her efforts to unite the American people. I believe that this Congress should act to repay the debt that our Nation owes to Kate Smith, and in the near future I will suggest a suitable means to show the Nation's profound appreciation for all that she has done.

Mr. President, I ask that Mrs. Findlay's letter to the editor be printed in the RECORD following my remarks.

The letter follows:

COCOLALLA, IDAHO,  
December 10, 1981.

SPOKESMAN-REVIEW,  
Spokane, Wash.  
(Attention of editor).

DEAR SIR: December of 1941 was a dreadful time for the American people. Our beloved country, just a few years before had been through the great depression. Times were real tough but families were close knit. The major responsibility was on good old Dad's shoulders to bring home enough food to feed his brood and pay the rent as jobs were few and pay was low. Mom's full time job was to make a banquet out of dried

beans and little else, keeping the ragged hand-me-downs clean and mended and her families spirits and morals up. She wasn't worrying or wanting to be "liberated". She knew her duties and her responsibilities. Grandpa and Grandma were the live-ins at that time only no one ever dreamed of calling them that because they were considered the hierarchical part of the family. They were looked up to and consulted always because they were older and therefore wiser than their young counterparts.

The priorities of our American people in those years were God, family and country. They were very patriotic and happy, even though poor in material goods.

Then came the New Deal with its false philosophy. Leading people to believe that black was white and white was black. That you can take from the producers and give to the indigents or those that refuse to work. Yes, it was somewhat like the story of the Pied Piper of Hamelin.

While our nation was in this confused state of transition from freedom to collectivism under the "New Deal"—in December of 1941 Japan bombed Pearl Harbor.

Well—up from the ranks of our people at that time there arose a young woman who helped to give our people purpose and a rededication to Americanism. Her name was Kate Smith. She was called the "Songbird of the South" because of her beautiful voice and the wonderful patriotic songs that she sang. One of the songs she made famous was "God Bless America."

God Bless America, land that I love,  
Stand beside her—and guide her  
Through the night, with the light from  
above.

O'er the mountains, o'er the prairies,  
O'er the ocean white with foam—  
God bless America, my home sweet home—  
God bless America, my home sweet home.

Our beloved Kate Smith is now seriously ill in her home in North Carolina.

America today needs heroes. Kate Smith is a hero for what she has given America of herself.

We would like to see Miss Smith receive the Presidential Medal of Freedom from our President Ronald Reagan—and would like to request that you write our President and the Congressional delegation from Washington asking their help in accomplishing this.

Sincerely,

Mrs. FRANK (MARJ) FINDLAY.●

#### JOHN P. FOLEY—AN AMERICAN HERO

● Mr. EAST. Mr. President, I wish to take this opportunity to salute one of America's outstanding military heroes, Mr. John P. Foley of Durham, N.C.

During World War II, on September 19, 1944, Mr.—then Lieutenant—Foley was in command of a 110-man detachment of GI's who attacked and captured Devil's Hill in Beek, Holland. Lieutenant Foley and his men held Devil's Hill for 5 days against the German counterattack of superior forces, against the German demand that they surrender, and in the face of dwindling ammunition. Lieutenant Foley's heroism and leadership were recognized by the U.S. Army when he was awarded the Distinguished Service Cross for bravery—second only to the Congressional Medal of Honor in the

ranking of military decorations. Yet, more recently, another honor has been awarded to Mr. Foley. Because of the courage and tenacity of Lieutenant Foley and his soldiers, the townspeople of Beek were liberated from German military occupation and from Nazi tyranny. On September 27, 1981, the city of Beek recognized Mr. Foley's heroism by naming their town hall after him—long after many Americans had forgotten his sacrifices for them.

Mr. President, since coming to Washington last year, I have had the rare opportunity to witness human courage at its highest levels. I have had the honor of knowing Senator JEREMIAH DENTON, whose courage and patriotism are known to all. I have witnessed the courage of President Reagan as, bleeding from an assassin's wound, he made jokes to reporters and surgeons. In January, we were all moved by the heroism displayed by many persons during the disastrous airplane crash on the 14th Street Bridge. This month we have witnessed and have been inspired by the courage of General Dozier during and after his ordeal at the hands of terrorists.

Mr. President, I would like to place Mr. Foley in this noble company; to submit to you, to our colleagues, and to all Americans that the high and rare virtue of courage is not dead as long as we can be inspired by the deeds and accomplishments of Mr. Foley and the other gallant men whom I have mentioned; and I would like also to submit that as long as we can be so inspired, there is hope for America and for the cause of freedom against the remorseless tyranny against which Lieutenant Foley fought so valiantly and against which we are fighting even today.●

#### MEDICARE AND THE REAGAN BUDGET

● Mr. BAUCUS. Mr. President, once again the Reagan administration has shocked older Americans. Last year it was the President's proposed cuts in social security benefits, which Congress overruled. This year it is his proposed cuts in medicare.

When Congress created medicare in 1966, it made a commitment to America's elderly. Medicare would be a health insurance program for all Americans eligible for social security benefits, and today it covers virtually all those over 65 years old.

President Reagan wants to cut some \$3 billion from medicare's funds for the year beginning October 1, 1982, according to the budget he submitted to Congress February 8. The administration also plans to propose a new benefit program for 1984 that would severely affect older Americans. Here is an update on these proposals.

#### MEDICARE

Too often we forget that medicare is part of the social security system. Workers, now about 116 million or 90 percent of the work force, and employers contribute to social security in order to collect benefits when they retire. Their payroll taxes are allocated to three separate trust funds: Retirement, disability, and hospital insurance—medicare part A.

At age 65, medicare pays all hospital costs from the 2d to the 60th day after which recipients pay a percentage of these costs. Recipients also are eligible to purchase a low-cost supplementary medical insurance plan—medicare part B—to help them pay their other health costs.

#### REAGAN PLAN

The Reagan administration's proposed budget includes several very significant changes in medicare:

Cut by 2 percent the amount medicare reimburses hospitals;

Require employers to offer employees age 65 to 69 the same health insurance as younger employees, creating an incentive for employers to force retirement at age 65;

Delay for 1 month eligibility for benefits when a person reaches age 65;

Index the part B deductible—the amount paid by the medicare beneficiary—to the Consumer Price Index so that costs to the aged, who often live on fixed incomes, go up along with inflation;

Impose a 5-percent coinsurance cost to recipients of home health services; and,

Cut reimbursement payments to doctors for certain services.

These proposals would undermine the medicare program. They would shift health costs to the elderly, to people who purchase private insurance policies—medigap—and to private patients in hospitals.

The 2-percent reimbursement cut would penalize those hospitals—like Montana's—that can least afford it. The changes in physician reimbursements would discourage doctors from participating in medicare. Less than 50 percent of the Nation's physicians accept medicare under the current system.

In short, the real losers under the administration's plan are medicare recipients themselves. Older Americans will pay more for less care.

#### CATASTROPHIC

The administration also is proposing another change in medicare for 1984. This plan would substitute catastrophic insurance coverage for the medicare part A coverage now offered. Recipients would pay a percentage of their hospital stay, probably 10 percent or \$20 a day, up to \$2,500 after which the catastrophic coverage would cover expenses.

This proposal may look like better coverage for seniors, but do not be fooled. This is nothing more than a way for the Federal Government to shift more costs to seniors. The President has not given this plan his final OK. If you have strong views about this concept, you still have time to send them to the White House.

#### MEDICARE FRAUD

In recent years an alarming increase in fraud and waste in medicare has been shortchanging taxpayers. These losses are estimated at \$3 billion, a hefty part of the \$49 billion budget.

Recently the Senate Finance Committee, on which I serve, and the Senate Aging Committee held hearings to investigate these problems. We uncovered examples of doctors and hospitals billing medicare and medic-aid for services not performed, kick-backs, deliberate duplicate billing and false or misleading entries on cost reports. We also found numerous cases of unnecessary care being provided in unnecessarily costly surroundings.

Efforts to recover misspent funds are bogged down. The backlog of unresolved audits topped \$100 billion in 1981. These hearings were just a first step. I am continuing this investigation.

#### CONCLUSION

The Finance Committee must act on any proposals to change medicare benefits. As the ranking Democrat on the Health Subcommittee, I intend to play an active role in this work.

I oppose the budget cuts outlined above. Congress must not break the commitment we made to seniors when medicare was created. We should not be playing a shell game with medicare, pushing costs from the Federal Government to hospitals, doctors, insurance companies and, ultimately, the elderly. I am hopeful we will win this battle.●

#### U.S. TRADE POSTURE

● Mr. TOWER. Mr. President, on Monday of last week, U.S. Trade Representative William E. Brock delivered a major policy speech on U.S. trade posture before the European Management Forum in Davos, Switzerland. I commend Ambassador Brock for his adherence to the precepts of free and open trade while, at the same time, stressing the importance of equity in our trade relations with our world partners. As he points out, we are confronting a period where increased energy needs, high unemployment and inflation and payments imbalance have brought about a temptation for nations to adopt restrictive trade practices to protect domestic industries from import competition. It is imperative that we maintain our leadership role in the free global movement of goods, services, and capital; on the other hand, we cannot ignore the uni-

lateral changes being made by other nations that restrict access of U.S. products to their markets.

Most of our trade liberalization efforts in recent years have focused on the reduction of tariff barriers. Tariff levels have been reduced in a succession of multilateral trade negotiations (MTN) to the point where in most cases they are no longer as significant as a variety of nontariff measures. The Tokyo round of the MTN continues this trend of tariff reductions. As tariffs have eased, however, the development of sophisticated nontariff barriers created a greater impediment than tariffs to the export of U.S. goods and services and commodities. This is especially true, as discussed last Thursday in the Senate by my colleague from Texas, Senator BENTSEN, with regard to the current status of exports of U.S. agricultural products to Japan and to the European Community (EC).

It is anticipated that the MTN codes will significantly reduce the restrictive efforts of nontariff trade barriers. While we must continue to insist upon full implementation of the Tokyo round, efforts should also continue to expand the scope of the codes and to bring more countries within the MTN framework.

In addition, Mr. President, efforts must be continued to conclude agreements on new and more far-reaching codes to address additional areas of international trade. Service industry exports remain largely outside the scope of the codes, as do certain commodity groups, most notably textiles and many agricultural goods. Trade with the nonmarket economies has not been directly addressed in the MTN, leaving uncertain the status of commercial relations with a large bloc of potential trading partners. By devising better methods to include and involve less developed countries in the world trade system, we enable them to build a stronger house for themselves than can be fashioned through development assistance.

This expanded trading system should be designed to deal with new barriers as they arise, before they undermine past negotiating achievements. As Ambassador Brock stated:

We need a trading system that recognizes its task will never be completed, a system designed for the unending process of analyzing problems, and developing solutions, before they explode into crisis.

The effective enforcement of U.S. trading rights under this system will be a critical element in our trade strategy into the 21st century. How the United States responds to these adjustment pressures will have far-reaching consequences for the future dynamism and productivity of the U.S. economy. Our trade strategy must provide a coherent approach to adjustment, one that properly balances the

use of temporary safeguard measures with measures that facilitate adjustment.

In summary, Mr. President, if U.S. producers are to benefit from improvements in their competitiveness, they must not be denied promised access to foreign markets or be confronted by unfair trading practices of other governments. I applaud the efforts of this administration and Ambassador Brock in their commitment to a trading system that will work for all who hold fast to the goals of free trade.●

#### AMBASSADOR KIRKPATRICK ON GOLAN HEIGHTS SITUATION

● Mr. JACKSON. Mr. President, we are very proud of the professional performance of our Ambassador to the United Nations, Jeane J. Kirkpatrick. Her assignment is not an enviable one. She is working under extraordinarily difficult circumstances, and she is performing with great integrity, determination, and style.

I want particularly to call to the attention of my colleagues Ambassador Kirkpatrick's forthright and informative address in explanation of the U.S. vote on the recent bizarre U.N. resolution on the Golan Heights.

I asked that the text of the address be printed in the RECORD.

The text of the address follows:

STATEMENT BY AMBASSADOR JEANE J. KIRKPATRICK, UNITED STATES PERMANENT REPRESENTATIVE TO THE UNITED NATIONS, IN THE EMERGENCY SPECIAL SESSION OF THE GENERAL ASSEMBLY, IN EXPLANATION OF VOTE ON THE SITUATION IN THE GOLAN HEIGHTS, FEBRUARY 5, 1982.

Mr. President, the resolution before this emergency special session of the General Assembly is profoundly objectionable to the United States. We oppose it because it does not contribute to peace in the Middle East; it will make peace harder to achieve.

We oppose the end it seeks—which is revenge and retribution, not conciliation and compromise.

We oppose the means it recommends: which are unreasonably punitive and ill-suited to accomplishing any constructive purpose.

We oppose the use of the United Nations involved here because this body was and is meant to be devoted to building peace and security, and this resolution seeks neither. Instead, it uses this body as an instrument to deepen divisions and exacerbate conflicts.

We oppose this resolution because, like any other cynical use of power, it will leave this body weaker than it already is, less fit to achieve its noble purposes.

By damaging the prospects for peace, this resolution undermines the integrity—indeed, the very *raison d'être*—of the United Nations.

Last month in the Security Council the United States voted against a resolution on Israel's Golan Heights legislation because as we stated at the time, the resolution constituted "a perversion of the very purpose which the Security Council is called upon by Chapter VII of the United Nations Charter to perform." That purpose is to prevent "an aggravation of the situation." The reso-

lution before us today, like the previous resolution, does not prevent an aggravation of the situation: it is itself a source of aggravation. It is also procedurally flawed in that it seeks to assign to the General Assembly responsibilities that Chapter VII of the Charter properly and solely invests in the Security Council.

The United Nations has discussed the Golan Heights legislation now for nearly two months. As my delegation made clear at the outset, we opposed this legislation because it purported or appeared to alter unilaterally the international status of the Golan Heights. Therefore, on December 17th the United States joined other members of the Security Council in passing Resolution 497, thereby making clear our disapproval of the Israeli government's action in extending its civil law over the Golan Heights. We communicated the same message in our bilateral relations.

As we have stated often, the future of the Golan Heights, like that of all the occupied territories, can be resolved only through negotiations pursuant to Security Council Resolutions 242 and 338. Accordingly, we have called upon Israel to rescind its legislation and—most importantly—to reaffirm its commitment to a negotiated solution. In its letter of December 29th to the Secretary-General, Israel did, in fact, reaffirm its readiness to enter into unconditional negotiations with the Syrians over the international legal status of the Golan.

At that point, the only constructive role for the United Nations was to facilitate such negotiations, in accordance with Resolutions 242 and 338. But the resolution before the Security Council did not even mention these resolutions and, needless to say, the current draft resolution doesn't either.

Mr. President, we must go back to basics. Israel is accused of threatening peace. Yet peace is not the situation that prevailed between Israel and Syria before Israel's Golan Heights legislation was adopted. Security Council Resolution 338, which was the basis for the 1973 ceasefire, called upon the parties to "start immediately" to negotiate the implementation of Resolution 242 so that Israeli withdrawal could be effected in exchange for recognition of Israel's existence within "secure and recognized" borders. But no such negotiations took place.

There is no one in this chamber who does not know which party has refused to negotiate peace or even to accept Resolution 242. Yet the resolution before us today and the speeches we have heard take no account of this reality.

Mr. President, the United States greatly desires to have cordial, cooperative, good relations with all the states in the region. My country has devoted enormous effort, in this Administration and under previous Administrations, to finding a basis for peace and reconciliation. We also want very much a strong United Nations acting in fidelity to the principles of its Charter. For these very reasons we are appalled by this resolution which distorts reality, denies history and inflames passions.

The draft resolution before us calls the Israeli legislation an act of aggression. But no shots were fired, no soldiers were brought into place. And the future of the Golan Heights is no less negotiable than before.

It describes the Israeli legislation as an annexation. It is not. The United States has not recognized it as such. The Security Council in Resolution 497 did not recognize it as such. To now call it annexation only creates an artificial obstacle to negotiations.

This resolution call for comprehensive sanctions against Israel and for Israel's total isolation from the rest of the world. But can anyone truly believe that such proposals, advanced in a spirit of vindictiveness, will make a constructive contribution to peace?

Mr. President, the United States objects to this resolution because it makes the search for peace more difficult, and because it weakens this body. We also object to it for less disinterested reasons—we object to the barely veiled attack on the United States present here in the paragraph that "strongly deplores the negative vote by a permanent member \* \* \*"

The right to cast a veto is vested by the Charter in the five permanent members of the Security Council. The sole purpose of this provision is to permit one of the permanent members to block a proposed action of the Council if for any reason this action is deemed seriously flawed. The United States used the veto for the purpose for which it was intended—to block action which we deemed ill-conceived and imprudent and, moreover, one incompatible with the pursuit of international peace and security to which this body is dedicated. It is not at all appropriate that an action taken in conformity with the spirit and the letter of the Charter should be deplored.

Furthermore, as everyone present understands, this resolution raises basic questions which go to the heart of the relationship of a member state to the United Nations. This is a profoundly serious matter, filled with ominous portent. Questions of membership in this body and its associated agencies should not, indeed cannot be settled by majority passions. The United Nations or any similar organization can only exist if the principle of majority rule is balanced by respect for minority rights. This resolution strikes twice at the principle that minorities also have rights: first when it deplores our use of the veto, and second when it attempts to submit questions of membership to the General Assembly. Respect for the United Nations means respect for its Charter.

We hope that the authors and supporters of the resolution will think deeply about this aspect of their approach, for the health, even the survival of the United Nations depends on respect for both majority rule and minority rights. Nothing is more clear than this.

Mr. President, suppose this resolution passes, as regrettably I suppose it will, what will this exercise have achieved?

An Israeli withdrawal from the Golan? Of course not.

An embargo of economic, technological, military goods destined for Israel? Of course not.

A restoration of the occupied territories? Of course not.

A resolution of the problems of Palestinians? Of course not.

Peace in the Middle East? Of course not. Will it intimidate the United States, causing it to abandon its Middle East policy, its friendship with Israel, its search for peace in the region? Of course not.

What then, will this resolution accomplish?

What has already been achieved by these weeks of harsh, seemingly endless attacks on Israel, on the United States, on the spirit of reason, moderation, on peace itself? To raise the question is to answer it.

There is, in my country, a child's rhyme, sticks and stones may break our bones but words will never hurt us. The rhyme is profoundly mistaken. Words have consequences.

Words express the ideas, the values and the truths we live by. They are the principal means available for reason to explain purposes and dispel misunderstandings. The United Nations was conceived as a palace of reason, a place where reason would replace violence as the tool for settling disputes.

This miserable resolution before us today demonstrates the sad truth that any instrument can be made to serve purposes remote from its *raison d'être*: words can be used as weapons; ploughshares can be turned into swords, and the United Nations itself can be used to polarize nations, spread hostility, and exacerbate conflict.

The use made of the United Nations in this resolution and in the weeks preceding it is indeed worth "strongly deplored" and my government strongly deplores it.

Naturally we shall vote "no." ●

#### SMALL BUSINESS EXPORTS

● Mr. BOSCHWITZ. Mr. President, yesterday, I joined Mr. William H. Morris, Jr., Assistant Secretary for Trade Development for the Department of Commerce, in publicly presenting the International Trade Administration's new publication, "A Basic Guide to Exporting." This guide will be a very useful tool to help small businesses export their goods and services.

We are all aware of the great contribution small business makes in creating new jobs. In the past 10 years, nearly 20 percent of new jobs in the private sector has come from businesses with 20 or fewer employees. And, businesses with less than 100 employees have created 80 percent of the new jobs. In Minnesota, over 85 percent of the 6,000 manufacturers have less than 100 employees and have contributed to job creation.

Small businesses can create even more jobs by actively exporting their goods and services. Each \$1 billion in exports creates 24,000 U.S. jobs—almost 850,000 new jobs from 1977 to 1980. Businesses in my State of Minnesota have been very aggressive exporters—in 1980 Minnesota exported \$3.9 billion worth of manufactured goods, nearly twice as much as the \$2.3 billion in 1977. That \$3.9 billion in 1980 generated 13.1 percent of Minnesota's total employment. Even so, 80 percent of the goods and services exported by this country are currently exported by only 1 percent of the U.S. exporters. Furthermore, it is estimated that over 20,000 businesses have the ability to export but do not, for one reason or another. In Minnesota alone, there are 5,000 manufacturers that do not export, even though many could.

There may be a large number of reasons why individual firms do not export—differences in cultures, currencies, and languages, financing, inexperience and basic inertia.

As a businessman myself, I believe that exporting should not be viewed as a new market; rather, exporting is an extension of existing markets to a

greater number of customers. Exporting will have additional requirements for identifying markets and customers, documentation, shipping, and securing payment. But the basic business activity of selling goods and services is the same. What we need to do is develop an export mentality among public officials and small businesses alike.

The Export Guide presented today is an important first step in overcoming this inertia and thinking export. The guide is one of the best Government publications I have seen because it is written for businessmen. It not only describes export techniques, Government regulations and export programs, it tells how to contact the Government, foreign embassies and private organizations to obtain needed information. It gives small businesses access to Commerce Department information ranging from international economic indicators and demographic data to market share reports to contact lists for the Small Business Administration and Commerce Department district offices and State governments. In addition, the guide includes an export glossary and bibliography of export publications. It does not guarantee that all businesses will become exporters, but it does give potential exporters a good starting point. That alone is an important tool for small business. The guide can be obtained by contacting the nearest district office of the Department of Commerce. For Minnesota businesses, that is: Mr. Glenn Matson, director, 218 Federal Building, 110 South Fourth Street, Minneapolis, Minn. 55401; 612-725-2133.

For too long, small business has limited itself to the domestic economy—in some cases, a neighboring State is considered a foreign market. But it is becoming more and more apparent to businesses and public officials that we are dealing in a world economy. This Congress is more trade oriented than most have been in the past. Last year, the Senate passed the export trading companies bill, which I cosponsored, which will greatly help increase exports. I hope my colleagues in the House will also act quickly to pass this much needed legislation.

There is still much that can and should be done. Increased small business exports will create jobs at home and improve our balance of payments. Last Friday, the Vice President's Task Force on Regulations announced its intention to analyze regulations affecting small business exports. As chairman of the Senate Small Business Subcommittee on Export Promotion and Market Development, I shall be holding hearings on promoting small business exports and look forward to working with the task force and Secretary Morris to achieve this goal.●

#### SALUTE TO MRS. ALICE KING

● Mr. RIEGLE. Mr. President, I rise to salute Mrs. Alice King who is stepping down from her position as volunteer project director of Women in Community Service of Detroit. That organization, and the entire community will sorely miss her energy, enthusiasm, and heart.

Her dedication to the Job Corps girls has been tremendous, and she has given not only time, interest, and advice to these youngsters, but has even provided money from her own pocket to assure that her girls received adequate meals. Mrs. King, who is widowed and disabled, has not let anything disrupt or inhibit her work with the Job Corps girls.

Nor is this the only activity that she has devoted herself to, and her touch extended to a diverse range of organizations including: the Sacred Heart Senior Citizens Center, the Detroit Job Corps Center Advisory Council, the Detroit Institute of Art, the National Council of Negro and Jewish Women, and the Dexter Avenue Baptist Church.

Our community has been blessed with her devotion and unselfish character. Her unique brand of volunteer spirit is an asset to the city of Detroit, and serves as an inspiration to the entire Nation. It is with sadness that I see her leaving her present work, and ask that we all recognize and thank Mrs. King for all that she has given to make our community, and its children, rich in spirit and determination.●

#### LITHUANIAN INDEPENDENCE DAY

● Mr. SARBANES. Mr. President, February 16 marks the 64th anniversary of the founding of the Republic of Lithuania, which brought to the people of Lithuania the fundamental freedoms of speech, communication assembly, and religion. It is fitting that on this date we pay tribute to the principles of freedom and human dignity which this anniversary represents, and to the brave sons and daughters of Lithuania who continue today, at great personal cost, to uphold those principles in their native land.

February 16 also marks the establishment 731 years ago of the great and historic Kingdom of Lithuania. For more than seven centuries, the people of Lithuania have struggled to keep alive their priceless heritage of religion, language, and culture against aggression and repression—and against all odds, they have succeeded. From its creation in 1918 until its tragic destruction in 1940, the independent Republic of Lithuania was a beacon of freedom in a darkening world. Today, despite the brutal Soviet suppression of the Republic, the commitment of

the Lithuanian people to freedom survives.

In 1970 we saw dramatic proof of that commitment in the actions of Simas Kudirka, the heroic seaman who sought freedom when he jumped from his Soviet ship. In the shameful episode that followed, Kudirka was returned to Soviet authorities, tried, convicted, and sentenced to 10 years at hard labor in a Soviet prison camp. Even there he continued to speak out against the denial of basic human rights. His release in 1974, and his emigration with his family to the United States, was a triumph of the great principles which he so nobly espoused.

In Lithuania those principles are upheld by Viktoras Petkus and Vyautus Skuodis, members of the Lithuanian Helsinki Group, and Balys Bajasuskas, who was found guilty by Soviet justice of helping present and former political prisoners and their families, and by many, many others who have been sentenced to internal exile, prison camp, labor camp, or psychiatric institution for having the courage of their convictions. The commitment to basic human rights is fully shared by Lithuanian Americans in every part of our great Nation. They have rallied eloquently and forcefully against oppression in Lithuania while fully participating in and contributing to the freedoms of our own great Nation.

Lithuanians first came to America in significant numbers over 100 years ago to escape the oppression of the tsars. A generation later Lithuanians were already working as foundrymen in western Pennsylvania, weavers in New Jersey and New England, dockworkers in Cleveland and tailors in Baltimore. Today they live in communities across the land, prospering as doctors, lawyers, businessmen, teachers and scholars, scientists, artists, and technicians. Lithuanian Americans are justifiably proud of their tradition of self-help. Lithuanian charity and mutual aid organizations in the United States played an important role in alleviating the suffering of Lithuanians during the First World War and insuring the long-sought establishment of the Republic of Lithuania in 1918. There are more than 2,000 such organizations active today. Their pride in and respect for the heritage of Lithuania has enriched American society; social and cultural activities cruelly repressed in the homeland find vigorous expression in our communities.

Mr. President, in the face of great repression the people of Lithuania continue to hold fast to the principles of basic human rights. On February 16, as we commemorate the founding of the Republic of Lithuania in 1918, we pay tribute to them. Their courage has won the respect and admiration of all freedom-loving peoples.●

**THE COURAGE OF NATIONAL PARK SERVICE EMPLOYEES GENE WINDSOR AND DON USHER**

(By request of Mr. STEVENS the following statement was ordered to be printed in the RECORD:)

● Mrs. HAWKINS. Mr. President, today, I would like to commend the courage and skill of two special National Park Service employees, Don Usher and Gene Windsor. These are the two young men the Nation watched on television as they repeatedly risked their lives rescuing battered and shivering survivors of the January 13 airplane crash from the icy waters of the Potomac. One of these survivors was 23-year-old Kelly Duncan from Miami, Fla.

If these two men were standing before us today, they would probably say that they were just doing their job. Yet, it is impossible to say what level of risk people such as Windsor and Usher should subject themselves to in emergency situations by "just doing their job." To what degree such men should place their own lives in jeopardy is up to them alone, and they have to decide immediately. Gene Windsor and Don Usher did decide immediately and they chose to face considerable danger repeatedly. They demonstrated remarkable courage by doing so.

We must pray that we are spared new disasters in the future. However, if they do occur, let us also pray that men such as Don Usher and Gene Windsor are there again to help.●

**AUTOMOBILE EMISSIONS STANDARDS**

● Mr. RIEGLE. Mr. President, the Clean Air Act has served as a vital piece of legislation since its enactment in 1970. I have been a strong supporter of many of the basic provisions of this legislation and I believe most Americans support the efforts of the Congress to protect the environment for our future generations.

The Clean Air Act was amended in 1977 and is once again up for reauthorization in the Congress. I support reauthorization of the act. In extending the act, however, it is up to the Congress to reexamine certain standards to determine if those standards are still necessary or should be modified. It has been my belief that certain standards associated with automotive emissions could be waived or stretched beyond the present implementation dates because we may very likely achieve the goal of a cleaner atmosphere with or without the addition of costly new fuel emissions systems to automobiles.

On October 5, 1981, Walter C. Barber, Director of the Office of Air Quality Planning and Standards of the U.S. Environmental Protection Agency

sent a letter to my distinguished colleague, Hon. HENRY A. WAXMAN of the House of Representatives. I ask that the letter be printed in the RECORD.

The letter follows:

U.S. ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF AIR QUALITY PLANNING AND STANDARDS, Research Triangle Park, N.C., October 5, 1981.

Hon. HENRY A. WAXMAN, Chairman, Subcommittee on Health and the Environment, Committee on Energy and Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During the recent hearing on proposed changes to the emission standards for automobiles, you asked what impact relaxing the nitrogen oxide (NO<sub>x</sub>) emission standards from 1.0 to 2.0 gpm for automobiles might have on the acid deposition problem. As you may recall, I indicated that I believe there would be little or no impact from the increase in question. The purpose of this letter is to follow up on that statement and clarify the basis for my opinion. My comments were made in the context of the mobile source discussions and were not intended to reach questions related to the significance of stationary sources of NO<sub>x</sub>.

There are several reasons to believe that the impact on acid rain of increased emission associated with the proposed adjustment would probably be small. These reasons include:

(1) the difference in total NO<sub>x</sub> emissions between the two standards will be a small portion of the total atmospheric loading of precursor emissions to acid deposition in the future years;

(2) on an equivalent mass basis, NO<sub>x</sub> emission have the potential to cause about one-half the acid deposition as do sulfur oxide emissions;

(3) NO<sub>x</sub> emissions from automobiles are emitted over broad geographical areas and at essentially ground level, thus reducing the potential for long-range transport; and

(4) there is evidence that the interaction between plants and nitrates deposited on the soil may reduce the role of such nitrates in acidifying soils and aquatic systems.

Listed below are the estimated emissions of NO<sub>x</sub> and SO<sub>2</sub> for 1979 along with projected levels of these emissions for the year 1995. For NO<sub>x</sub>, separate projections are given for a 1.0 and a 2.0 gram/mile emission standard for automobiles.

*Estimated emissions for 1979*

(In millions of metric tons)

Nitrogen Oxides:	
Passenger cars.....	4
Trucks and other mobile sources .....	6
Stationary.....	13
Total.....	23
Sulfur oxides:	
All sources .....	25

*Projected emissions for 1995*

(In millions of metric tons)

Case No. 1—2 gram/mile standard:	
Nitrogen oxides:	
Passenger cars.....	3
Trucks and other mobile sources.....	6
Stationary.....	22
Total.....	31

*Projected emissions for 1995—Continued*

(In millions of metric tons)

Sulfur oxides:	
All sources.....	26
Case No. 2—1 gram/mile standard:	
Nitrogen oxides:	
Passenger cars.....	2
Trucks and other mobile sources.....	6
Stationary.....	22
Total.....	30

It can be seen that in 1979 automobiles (passenger cars) accounted for about 15 percent of the total NO<sub>x</sub> emissions and about 7 percent of the total atmospheric loading of nitrogen and sulfur oxides (NO<sub>x</sub>+SO<sub>2</sub>). However, atmospheric emissions of SO<sub>2</sub> tend to form sulfuric acid (H<sub>2</sub>SO<sub>4</sub>) which contains 2 hydrogen atoms, while NO<sub>x</sub> emissions tend to form nitric acid (HNO<sub>3</sub>) which contains one hydrogen atom. Thus, SO<sub>2</sub> emitted into the air has the potential to cause about twice the amount of hydrogen ion deposition as an equal mass of NO<sub>x</sub> emissions. The deposition process, of course, is not quite that simple, but given that all other things were equal, then in 1979 NO<sub>x</sub> emissions from automobiles could have accounted for a maximum of about 5 percent of the total acid deposition; i.e., percent of contribution is equal to NO<sub>x</sub> cars, divided by 2SO<sub>2</sub>, plus NO<sub>x</sub> total, times 100.

Referring to the projections above, it can be seen that in 1995 the difference in total NO<sub>x</sub> emissions between 1.0 and 2.0 gram/mile standard is projected to be less than 1,000,000 metric tons. Using the above calculation procedure, this difference is projected to represent only about 1 percent of the total precursor emissions.

The potential impact of increased emissions between the two standards is probably even smaller than 1 percent, for several reasons. Automobiles emit NO<sub>x</sub> near ground level, and over large geographic areas. Thus, these emissions are less prone to be transported over great distances than are emissions from very tall stacks.

Further, nitrates in the atmosphere seem to pose less of a threat to aquatic and terrestrial system than do sulfates in the atmosphere. As I indicated in the hearing, scientific opinion both inside and outside the Agency on the relative significance of NO<sub>x</sub> emissions for acid rain has been shifting over the past several years. For example, until recently, it was generally believed that nitrate deposition played a more significant role in the acidification of lakes and other aquatic systems. However, as recently reported by the National Research Council, some scientists now believe that the impact of nitrate deposition on the acidification of aquatic systems may be less than previously thought. An explanation for this is that plants will absorb nitrates deposited on the soil and in the process give off an OH ion. The OH ions will combine with hydrogen ions and reduce the soil acidity. Thus, the leaching of metals and other acid materials from soils into stream, rivers, and lakes may not be as strongly influenced by the deposition of nitrates as was previously thought to be the case.

The above reasons suggest that relaxing the NO<sub>x</sub> emission standard for automobiles to 2.0 gram/mile will not contribute signifi-

cantly to acid deposition. This appears to be particularly true in the eastern part of the country where sulfur oxides play a dominant role in acid deposition. Nitrates are believed to contribute relatively more to the acid deposition problem in the western states than in the east. Although still small, the impact of the proposed relaxation may be somewhat higher in the western states except California where a more stringent NO<sub>x</sub> standard is in effect.

I trust the above information will be of use to you. If I can be of further service, please contact me.

Sincerely,

WALTER C. BARBER,  
Director, Office of Air Quality  
Planning and Standards.●

**ADJOURNMENT UNTIL MONDAY,  
FEBRUARY 22, 1982**

Mr. STEVENS. Mr. President, if there is no further business to come before the Senate, I move that the Senate adjourn until 12 noon, Monday, February 22, in accordance with House Concurrent Resolution 268, as amended.

The motion was agreed to; and at 4:03 p.m., the Senate adjourned until Monday, February 22, 1982, at 12 noon.

**NOMINATIONS**

Executive nominations received by the Senate, February 11, 1982:

**THE JUDICIARY**

Harold M. Fong, of Hawaii, to be U.S. district judge for the district of Hawaii, vice Walter Meheula Heen.

**DEPARTMENT OF JUSTICE**

William L. Lutz, of New Mexico, to be U.S. attorney for the district of New Mexico for the term of 4 years vice Rufus E. Thompson, resigned.

David D. Queen, of Maryland, to be U.S. attorney for the middle district of Pennsylvania for the term of 4 years vice Carlon M. O'Malley, Jr.

**U.S. ARMS CONTROL AND DISARMAMENT  
AGENCY**

Robert Thaddeus Grey, Jr., of Virginia, to be Deputy Director of the U.S. Arms Control and Disarmament Agency, vice Surgeon M. Keeny, Jr., resigned.

**SECURITIES INVESTOR PROTECTION  
CORPORATION**

James W. Fuller, of California, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 1983, vice Michael A. Taylor, resigned.

**U.S. INTERNATIONAL TRADE COMMISSION**

Veronica A. Haggart, of Virginia, to be a Member of the U.S. International Trade Commission for the remainder of the term expiring June 16, 1984, vice Catherine May Bedell.

**CONFIRMATION**

Executive nomination confirmed by the Senate February 11, 1982:

**IN THE 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 subsection (a) of section 601, in grade as follows:

*To be lieutenant general*

Maj. Gen. Walter F. Ulmer, Jr., xxx-xx-x...  
xxx-x... U.S. Army.