SENATE—*Wednesday, February 24, 1982*

(Legislative day of Monday, February 22, 1982)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable WILLIAM S. COHEN, a Senator from the State of Maine.

PRAYER

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

Let us pray.

Blessed be the name of the Lord from this time forth and even for evermore! From the rising of the sun to its setting the name of the Lord is to be praised! The Lord is high above all nations, and his glory above the heavens.—Psalm 113: 2-4.

We worship Thee O Lord, not because Thou dost need our worship but because we need to worship. We enrich our humanity when we praise and adore Thee, we diminish our humanity when we fail to worship Thee. Blessed be the name of the Lord.

Let Thy blessing rest upon all who labor here, not that we may exploit Thy blessings on ourselves, but that what is done here, what is decided here will be a blessing to those who are served by the Senate.

Be with those who are in need: the ill, the discouraged, the frustrated, the lonely, the tempted, those without hope, those financially burdened, those alienated from friends or loved ones. In grace, touch their lives with healing and peace. Let Thy will be done in the Senate, in all the offices and homes represented here. We pray in the name of Him who is the Great Physician, the Wonderful Counselor, the Prince of Peace. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. THURMOND).

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., February 24, 1982.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable WILLIAM S. COHEN, a Senator from the State of Maine, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

Mr. COHEN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, 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 ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

STRONG SUPPORT FOR THE PRESIDENT

Mr. STEVENS. Mr. President, this is the third day of our proceedings, following the period of the recess honoring the birthdays of President Washington and President Lincoln.

Many of us took the opportunity to return to our homes to meet with our friends, community leaders, State leaders, and constituents. I took the occasion to return to my State of Alaska and also to visit the States of Wyoming, California, and Arizona.

I wish to report to the Senate and confess to my colleagues that never in my life have I encountered such strong support for a President. The people with whom I talked, almost unanimously, believe that the President deserves support in his program and that we should assist him by sticking by our guns and his as we try to turn our economy around.

People literally stopped me on the streets and in airports, people I had never met before in my life, to urge me to support the President and to give his program a chance to work. I previously planned to follow that course, and I can assure the Senate I now am certain that I am going to follow that course.

We are going through a difficult transition. Our economy has the potential to be healthy and vibrant which, of course, will insure the maintenance of a healthy nation.

The effort to revitalize our economy is really an effort to restore our Nation to the greatness it deserves. There is going to be a rough road ahead. There are going to be some tough decisions. But I believe we should stick to our guns.

We have set a program in place. It ought to be given time to succeed. I hope that the Senate will listen to those people throughout the country who support this program for economic recovery.

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

THE DEATH OF ROBERT LOWE KUNZIG

Mr. STEVENS. Mr. President, it is with sadness that I learned of the premature death of Robert Lowe Kunzig. Bob Kunzig was a personal friend and a dedicated public servant.

His career in Government was illustrious and marked with distinction. I had the privilege of knowing him not only when he served as the administrative assistant to our former minority leader, Senator Hugh Scott, but also when he was administrator of the General Services Administration.

Bob Kunzig earned his law degree from the University of Pennsylvania and following his education, he served in the European theatre with the U.S. Army during World War II. After the war, he served on the prosecution staff at the Nuremberg war crimes trials.

Bob's distinguished career in Government continued after a 4-year stint in private practice in Philadelphia. From 1953 to 1955 he was counsel to the House Un-American Activities Committee. From there he accepted the position of Executive Director of the Civil Aeronautics Board in 1955. Then in 1958 President Eisenhower appointed him to the U.S. Foreign Claims Settlement Commission.

In 1961 he returned to private business only to return to Government as the administrative assistant to Senator Hugh Scott of Pennsylvania. Bob Kunzig made a great contribution during his 4-year tenure on Capitol Hill.

In 1969, President Nixon appointed Bob Kunzig as the Administrator of the General Services Administration. I was impressed with his leadership at GSA. He was warm and approachable, yet he was efficient and effective. I admired and respected him and I valued his friendship.

His success at GSA led to his appointment as an associate judge on the U.S. Court of Claims in 1972. It was at this position where Judge Kunzig remained until his recent death.

Judge Kunzig will be remembered by all. His example is one by which we all may learn.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the Democratic leader is recognized.

SENATE RESOLUTION 322—RELATING TO POSSIBLE ACTIONS TAKEN TO EXPEL ISRAEL FROM THE GENERAL ASSEMBLY OF THE UNITED NATIONS

(Submitted by Mr. ROBERT C. BYRD, for himself and Mr. MOYNIHAN.)

ISRAEL AND THE UNITED NATIONS

Mr. ROBERT C. BYRD. Mr. President, earlier this month the United Nations condemned Israel for taking steps to annex the Golan Heights. Some 86 nations voted in favor of this resolution which also called upon all nations of the world to isolate totally a friend and ally of the United States.

Many observers of the United Nations scene interpret this action as laying the basis for suspending Israel from participation in the 37th General Assembly when it convenes this fall. In fact, there are reports that Syria is actively pursuing this course of action.

Mr. President, not only would such an action be illegal under the United Nations Charter, it also would represent the height of hypocrisy. That is why I am gong to offer a sense-of-the-Senate resolution today on behalf of myself and my distinguished colleague from New York, Mr. MOYNIHAN.

The resolution is simple. If the General Assembly votes to suspend, expel, or deny Israel its credentials, then the U.S. Government is urged to do two things: First, we should withhold our own participation in the General Assembly; and second, we should withhold our assessed contributions to the United Nations until the Assembly overturns this illegal action.

If the United Nations majority was to take steps to deny Israel's participation in the 37th General Assembly, such an action would be a clear violation of the U.N. Charter. The legality issue was addressed in a report prepared by the Congressional Research Service of the Library of Congress in response to a request from the Senate Committee on Foreign Relations. Issued on September 30, 1980, the Congressional Research Service study analyzed the legal aspects of credentials challenges in the United Nations General Assembly.

According to the study, during the 25th U.N. General Assembly, the United Nations Legal Counsel defined the credentials of a representative to an international organization "as the document attesting that the person or persons named are entitled to represent their State at the seat of or at meetings of the Organization."

As such, the Legal Counsel stated that only two basic types of questions can be raised regarding the legitimacy of a country's delegation to the Assembly. These involve:

First, a technical question as to whether a delegation has received and presented proper credentials from its government indicating it is an authorized representative of that government, or;

Second, a broader question of which governmental delegation properly represents a country.

When the issue of South Africa's credentials was raised during the 25th General Assembly in 1970, the U.N. Legal Counsel was requested to render an opinion to the Assembly President.

According to the Congressional Research Service study, the U.N. Legal Counsel reported to the Assembly President.

A statement on the scope of "credentials" issues in Rule 27 of the Assembly Rules of Procedure:

After exploring the general practice relative to the treatment of credentials for the General Assembly, the Legal Counsel offered the following opinion:

6. Should the General Assembly, where there is no question of rival claimants, reject credentials statisfying the requirements of Rule 27 for the purpose of excluding a Member State from participation in its meetings, this would have the effect of suspending a Member State from the exercise of rights and privileges of membership in a manner not foreseen by the Charter. Article 5 of the Charter lays down the following requirement for the suspension of a Member State from the rights and privileges of membership:

(A) Preventive or enforcement action has been taken by the Security Council against the Member State concerned;

(B) The Security Council has to recommend to the General Assembly that the Member State concerned be suspended from the exercise of the rights and privileges of membership;

(C) The General Assembly has to act affirmatively on the foregoing recommendation by a two-thirds vote, in accordance with Article 18, paragraph 2, of the Charter, which lists "suspension of the rights and privileges of membership" as an "important question."

The participation in meetings of the General Assembly is quite clearly one of the important rights and privileges of membership. Suspension of this right through the rejection of credentials would not satisfy the foregoing requirements and would therefore be contrary to the Charter.

Thus, it is clear that a General Assembly action which would suspend, expel or deny Israel's credentials would be an illegal action. For the General Assembly to take such an action, there would first have to be a recommendation by the Security Council under article 5 of the charter.

I find it rather ironic that countries such as Syria and other Moslem countries would feel compelled to take such action against Israel. After all, a puppet government has been installed in Afghanistan. That government was installed by force by an outside power, an act considered to be in violation of article 2, paragraph 4 of the U.N. Charter. Yet, there has not been any worldwide movement to challenge the credentials of the Soviet-imposed Afghan Government. And Soviet troops continue their slaughter of the Afghan people, the vast majority of whom are Moslem. Apparently, some Moslem nations do not share concern for their Moslem brothers in Afghanistan.

Yet, I am unaware of any nonalined nation requesting the Security Council to take sanctions action against the Soviets.

In addition, the armies of Vietnam continue to occupy Kampuchea. Yet, where is the worldwide movement to suspend Vietnam from participation in the General Assembly?

Finally, what of the Soviet-inspired military crackdown in Poland. What has the United Nations done to assist the vast majority of the people of Poland?

These examples only place into clear focus the sheer hypocrisy of actions against Israel in the United Nations. Israel is a democratic nation whose leaders are elected by the citizens of that country. The Government of Israel was not installed as the puppet of an outside power. In fact, modern-day Israel was created by the United Nations.

As to the action of the Knesset which extended Israeli law to encompass the occupied Golan Heights, I, for one, agreed with that action. It is Syria's own fault. The Golan Heights are strategically important to the security of Israel. Syria has done everything possible to undermine the Camp David agreement and the peace process. And in the face of increasing belligerency on the part of the Syrians, it was only natural that Israel would take steps necessary to enhance her own national security.

In conclusion, I think it is important for the Senate to go on record in opposition to any action which would deny Israel's participation in the United Nations. And I think it is important that a signal be sent to the nations of the world, that the United States will not stand idly by if Israel is suspended or expelled from the General Assembly.

Therefore, I offer, and hope for early action on, this resolution as an unmistakable signal of what the United States would do if the U.N. General Assembly undertakes an illegal action of this nature.

Mr. President, I am proud to say again that Mr. MOYNIHAN, a very able individual in the context of the United Nations actions, experience, and understanding of the charter, is a cosponsor of the resolution.

I ask unanimous consent that the resolution be printed in the RECORD and appropriately referred.

The ACTING PRESIDENT pro tempore. The resolution will be received and appropriately referred.

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

S. RES. 322

Whereas, the United Nations was founded on the principle of universality; and

Whereas, the Charter further stipulates that U.N. members may be suspended by the General Assembly only "upon the recommendation of the Security Council"; and

Whereas, a move by the General Assembly that would deny Israel its credentials in the Assembly would be a direct violation of these provisions of the Charter: Now, therefore, be it

Resolved, that it is the sense of the Senate that if such provisions of the Charter are violated by the expulsion, suspension or denial of the credentials of Israel in the General Assembly, the United States will:

1. Withhold its participation from the General Assembly; and

2. Withhold its assessed contributions to the United Nations until the Assembly majority overturns this illegal action.

(Later the following occurred:)

Mr. MOYNIHAN. Mr. President, I understand the distinguished minority leader has reserved time for me. May I inquire how much?

The ACTING PRESIDENT pro tempore. There are 6 minutes remaining.

Mr. MOYNIHAN. I thank the Chair. I particularly thank the minority leader for allowing me to join with him in this resolution, which will be watched with the very greatest attention in the capitals of the world.

Mr. ROBERT C. BYRD. Mr. President, I am privileged to have the cosponsorship of the Senator from New York (Mr. MOYNIHAN).

Mr. MOYNIHAN. Mr. President, the object of this resolution is elemental. It states the intention of the Senate that, if the General Assembly of the United Nations proceeds with what probably are now the intentions of the majority there and expels the State of Israel, the United States will suspend further participation in the General Assembly and will withhold its assessed contribution to the U.N. until the Assembly majority overturns this illegal action.

I make two points: First, Mr. President, we are not proposing that the United States should withdraw from the United Nations. Nothing will get us to withdraw from the United Nations and the Security Council and the rights which that gives to the United States and the protection it gives to the friends of the United States as a consequence of our membership. But we do not have to pay for the outrages of the General Assembly. The resolution adopted on the 5th of February by the General Assembly declares in paragraph 11, that Israel's record and actions confirm that it is not a peace-loving member. Article IV of the Charter of the United Nations states that membership in the U.N. is open to all peace-loving states. It is precisely this language, in the February 5 resolution, which is designed to lay the groundwork for Israel's expulsion from the General Assembly. That is why the United States must make clear its position on this matter. Our enemies have already begun their work; we must begin ours.

Mr. President, allow me to make a comment about the very notion that the General Assembly might move to expel Israel on grounds that it is not a peace-loving state. This is doubly an absurdity. First, it is not the Assembly which may alone expel members. The Security Council must first vote such a resolution.

Second, there is the State of Israel itself which is manifestly a peace-loving state. Four times in its existence, three times as a state, it has been invaded by its neighbors. It has never invaded them. Some 15 nations in the world remain openly at war with it, including its closest neighbors, Jordan, and Syria. Israel is a country that has wanted no more than to live in its own allotted space in harmony with its neighbors. Yet it has all around it nations declaring that it has no right to existence.

Mr. President, this is the nation declared not to be peace-loving. This is the Orwellian language of the General Assembly of the United Nations. And make no mistake about this; the language is directed to all the democracies of the world, not just this one. Israel has become a metaphor for democracy in the United Nations and, typically, in this resolution not only is Israel condemned, but the United States is condemned as well.

This campaign against Israel has been going on since the 1967 war, directed by the Soviets as methodically as if a training manual were involved. It has now, in February of 1982, progressed to this point where the preliminary steps have been taken to expel the nation.

In this, Mr. President, we should recognize not only how small our majority is but how quickly it is diminishing.

In 1975, I was Permanent Representative of the United States at the United Nations when the first major step in the General Assembly in this campaign was introduced. It was, of course, the infamous Resolution 3379 equating Zionism with racism. On a motion by the Government of Belgium to adjourn immediately before consideration of the Zionism-racism resolution, we lost 67 to 55. We had 55 votes with us then. This time, 2 weeks ago, we had 21 votes with us, 86 against. Not a single African state, not a single Latin American state. Only the democracies were with us in the defense of Israel.

Mr. President, they must understand that this kind of altogether outrageous distortion of fact does not go unnoticed in this Chamber; that the minority leader will stand up and say, "If the U.N. progresses to its obvious purpose, which is Israel's expulsion, that is the end of American contributions; that is the end of $80,000 tax-free salaries paid in gold francs with full retirement, with villas and lunches and dinners and all the associated accouterments that can be provided you as long as you are in good order with the director of personnel—who, invariably, will turn out to be a KGB colonel."

Mr. President, we have had enough of that and members of the United Nations should consider themselves on notice, if they value their institution, because it obviously holds little esteem in this body.

I once again express appreciation to the distinguished minority leader, who has shown his leadership now as in all matters. I hope that will not go unnoticed in the capitals of this world, that when ROBERT C. BYRD speaks to matters in this Chamber, it listens.

Mr. ROBERT C. BYRD. Mr. President, I thank the Senator. I hope the Foreign Relations Committee will act on this resolution and report it favorably and promptly. Following that, I hope to call up the resolution at an appropriate time on the appropriate vehicle and get a vote on it.

Mr. MOYNIHAN. Mr. President, the distinguished Senator from Louisiana (Mr. JOHNSTON) would like to be a cosponsor. I know Senator Byrd and I are honored to have him.

Mr. ROBERT C. BYRD. Indeed.

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

(Conclusion of proceedings that occurred later.)

ORDER OF PROCEDURE

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

The ACTING PRESIDENT pro tempore. The Senator has 2½ minutes remaining.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may reserve that time for Mr. MOYNIHAN.

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

Mr. ROBERT C. BYRD. Mr. President, may I ask the distinguished majority leader if he has any time remaining that he would yield?

Mr. BAKER. Mr. President, I have no need for my time this morning. I understand the distinguished Senator from New York is on his way to the floor. In the event he or some other Senator on that side requires it, I yield the remainder of my time to the control of the minority leader.

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

ask unanimous consent that that time may likewise be reserved for Mr. MOYNIHAN.

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

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

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

The bill clerk proceeded to call the roll.

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

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

Mr. BAKER. Mr. President, will the minority leader permit me to recapture 2 minutes of my time?

Mr. ROBERT C. BYRD. Mr. President, I yield back 2 minutes.

SENATE SCHEDULE DURING CONSIDERATION OF RESOLUTION RELATING TO SENATOR WILLIAMS

Mr. BAKER. Mr. President, it might be well to announce once more the schedule for next week in respect to the resolution of the Ethics Committee concerning Senator HARRISON WILLIAMS of New Jersey.

I have previously announced and previously notified Members on this side, and conferred with the distinguished minority leader, that we will begin that debate on March 3. It is the intention of the leadership to ask the Senate to convene on that day at 10:30 a.m. and to proceed to the consideration of that resolution at 12:30 p.m., which will permit committees to meet for the first 2 hours, as they are entitled to under the rules of the Senate.

I will object to any request for committees to meet after that time.

While the Appropriations Committee and the Ethics Committee are excepted from the 2-hour rule, I have written the chairman of each committee urgently requesting that they not avail themselves of the privilege of meeting beyond the first 2 hours of the session while the Williams resolution is the subject of debate in the Senate.

March 3 is on Wednesday. I would expect the day to run until the normal hour, perhaps 6 o'clock. On Thursday, March 4, we would begin at 10:30, with the Williams debate to begin at approximately 12:30 after a live quorum, and to extend until 6 o'clock. It is not my intention to ask the Senate to proceed with the deliberations of the Williams resolution on Friday.

There are a number of reasons for that, Mr. President, not the least of which is that this is a terribly important matter not only to Senator WILLIAMS but also to the Senate as a whole and I wish to never create the impression that this is being done under forced draft or in a hurried way.

Then on the following Monday, which would be the 8th of March, the Senate will convene once more at 10:30 in the morning. It would be the hope that the Senate would proceed to the consideration of the Williams resolution, after a live quorum, at approximately 12:30.

ORDER TO CONVENE AT 10:30 A.M. ON MARCH 3, 4, AND 8, 1982

Mr. BAKER. Mr. President, at this time, I ask unanimous consent that when the Senate convenes on March 3, it do so at 10:30 a.m.; that on Thursday, March 4, it convene at 10:30 a.m.; and that on Monday, March 8, it convene at 10:30 a.m.

Mr. JOHNSTON. Reserving the right to object, Mr. President, is this subject to finishing the Department of Justice authorizations bill?

Mr. BAKER. Mr. President, there is a unanimous-consent order, if I am not mistaken, that provides that the Department of Justice authorizations bill will be displaced by the Williams matter. I simply urge that we finish the Department of Justice authorizations bill before that time. There was announcement of the Williams matter on March 3. I think it is essential that we go forward with it at that time. It is certainly not my intention to interrupt the progress on this measure. I hope we finish it. Indeed, we shall go late tonight—perhaps very, very late tonight—and we shall be on it tomorrow, if necessary. I think we can finish before March 3.

So, while what the Senator suggests is a possibility, I do not think it is a likelihood and I prefer to address that question at a future time.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

Mr. BAKER. Mr. President, I thank the minority leader for letting me make that announcement. I shall send out a written codification of these statements later today so the Members will understand that we shall once again proceed with the Williams case on Wednesday, the 3rd; we shall continue with it on Thursday, the 4th. We shall not be involved with it on Friday, the 5th. We will resume consideration, if necessary, on Monday the 8th.

Mr. ROBERT C. BYRD. Mr. President, I thank the majority leader. I wonder if he, in accordance with his usual practice, will supply me with a memorandum, which I in turn shall disseminate among my colleagues.

Mr. BAKER. I thank the minority leader and I most assuredly shall do that.

DEPARTMENT OF JUSTICE AUTHORIZATIONS, 1982

The ACTING PRESIDENT pro tempore. Under the previous order, the clerk will state the unfinished business.

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.

QUORUM CALL

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

The ACTING PRESIDENT pro tempore. 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.

Mr. WEICKER. I object.

The ACTING PRESIDENT pro tempore. Objection is heard. The clerk will resume the call of the roll.

The bill clerk resumed the call of the roll.

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

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. WEICKER. I object.

The ACTING PRESIDENT pro tempore. Objection is heard. The clerk will resume the call of the roll.

The bill clerk resumed the call of the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 7 Leg.]

Baker	Cranston	Leahy
Byrd, Robert C.	Gorton	Moynihan
Cohen	Johnston	Weicker

The ACTING PRESIDENT pro tempore. A quorum is not present.

Mr. BAKER. Mr. President, I move that the Sergeant at Arms be instructed to invite the attendance of absent Senators.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Tennessee.

Mr. BAKER. And I ask for the yeas and nays on the motion.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Tennessee to instruct the Sergeant at Arms to invite the attendance of absent Senators. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Florida (Mrs. HAWKINS), the Senator from Maryland (Mr. MATHIAS), the Senator from Oregon (Mr. PACKWOOD), the Senator from Illinois (Mr. PERCY), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Connecticut (Mr. DODD), the Senator from Hawaii (Mr. INOUYE), the Senator from Hawaii (Mr. MATSUNAGA), and the Senator from Massachusetts (Mr. TSONGAS) are necessarily absent.

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

The PRESIDING OFFICER (Mr. MATTINGLY). Are there any other Senators wishing to vote?

The result was announced—yeas 79, nays 8, as follows:

[Rollcall Vote No. 16 Leg.]

YEAS—79

Abdnor	Ford	Melcher
Andrews	Garn	Metzenbaum
Armstrong	Glenn	Mitchell
Baker	Gorton	Moynihan
Baucus	Grassley	Murkowski
Bentsen	Hart	Nickles
Biden	Hatch	Nunn
Boren	Hatfield	Pell
Bradley	Hayakawa	Pressler
Bumpers	Heflin	Pryor
Burdick	Heinz	Randolph
Byrd, Harry F., Jr.	Hollings	Riegle
Byrd, Robert C.	Huddleston	Roth
Cannon	Humphrey	Rudman
Chiles	Jackson	Sarbanes
Cohen	Jepsen	Sasser
Cranston	Johnston	Schmitt
D'Amato	Kassebaum	Simpson
Danforth	Kasten	Specter
DeConcini	Kennedy	Stafford
Denton	Laxalt	Stennis
Dixon	Leahy	Stevens
Dole	Levin	Symms
Domenici	Long	Tower
Eagleton	Lugar	Wallop
Exon	Mattingly	Zorinsky
	McClure	

NAYS—8

Boschwitz	Helms	Warner
East	Proxmire	Weicker
Goldwater	Quayle	

NOT VOTING—13

Chafee	Inouye	Thurmond
Cochran	Mathias	Tsongas
Dodd	Matsunaga	Williams
Durenberger	Packwood	
Hawkins	Percy	

So the motion was agreed to.

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

Mr. BAKER. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The pending question before the Senate is amendment No. 1258 to amendment No. 1252 to the bill S. 951.

Mr. BAKER. Mr. President, I think Members should be aware that we will be in session for a long day, perhaps a very, very late evening. I would not be at all surprised to see the Senate be asked to remain in session past midnight.

We have to finish this bill. Senators are on notice that we will proceed diligently to that end. I hope debate on the pending question and other amendments can proceed as promptly as possible. I hope that it will not be necessary to have repeated quorum calls. In the event it is, I will ask Members to remain on the floor after they answer their names to a rollcall or a quorum call in order to facilitate the transaction of business.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON ENERGY REGULATION AND THE SUBCOMMITTEE ON WATER AND POWER

Mr. BAKER. Mr. President, I ask unanimous consent that the Subcommittees on Energy Regulation and Water and Power of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, February 24, at 2 p.m. to hold a joint oversight hearing to discuss hydroelectric development and licensing procures, provided that the conference report on S. 1503 is not being debated on the floor of the Senate.

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

DEPARTMENT OF JUSTICE AUTHORIZATIONS, 1982

The Senate resumed consideration of the bill (S. 951).

QUORUM CALL

Mr. WEICKER addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

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

Mr. JOHNSTON. Mr. President, I object that this is dilatory. A quorum has just been established with no intervening business.

Mr. WEICKER. Mr. President, there has been intervening business. I refer to that raised by the distinguished majority leader. I suggest the absence of a quorum.

The PRESIDING OFFICER. The point of order is well taken. The clerk will call the roll.

Mr. JOHNSTON. Mr. President, I make the point of order that the request is dilatory.

Mr. WEICKER. I suggest that is not in order since a quorum call has been requested.

The PRESIDING OFFICER. The quorum call has been ordered. The point of order of the Senator from Louisiana is overruled.

Mr. BAKER. Mr. President, I might say before the quorum call begins that this will be a live quorum.

QUORUM CALL

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 8 Leg.]

Baker	Helms	Melcher
Ford	Huddleston	Symms
Goldwater	Jackson	Weicker
Gorton	Johnston	
Heinz	Mattingly	

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of absent Senators.

The legislative clerk resumed the call of the roll.

Mr. JOHNSTON. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators, 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 of the Senator from Louisiana. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Florida (Mrs. HAWKINS), the Senator from Maryland (Mr. MATHIAS), the Senator from Oregon (Mr. PACKWOOD), the Senator from Illinois (Mr. PERCY), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Connecticut (Mr. DODD), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. LONG), and the Senator from Hawaii (Mr. MATSUNAGA) are necessarily absent.

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

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 78, nays 10, as follows:

[Rollcall Vote No. 17 Leg.]

YEAS—78

Abdnor	Byrd, Harry F., Jr.	Dixon
Andrews	Byrd, Robert C.	Dole
Armstrong	Cannon	Domenici
Baker	Chiles	Durenberger
Baucus	Cohen	Eagleton
Bentsen	Cranston	Exon
Biden	D'Amato	Ford
Boren	Danforth	Glenn
Bradley	DeConcini	Gorton
Bumpers	Denton	Grassley
Burdick		Hart

Hatch	Lugar	Rudman
Hatfield	Mattingly	Sarbanes
Heflin	McClure	Sasser
Heinz	Melcher	Schmitt
Hollings	Metzenbaum	Simpson
Huddleston	Mitchell	Specter
Humphrey	Moynihan	Stafford
Jackson	Murkowski	Stennis
Jepsen	Nickles	Stevens
Johnston	Nunn	Symms
Kassebaum	Pell	Tower
Kasten	Pressler	Tsongas
Kennedy	Pryor	Wallop
Laxalt	Randolph	Zorinsky
Leahy	Riegle	
Levin	Roth	

NAYS—10

Boschwitz	Hayakawa	Warner
East	Helms	Weicker
Garn	Proxmire	
Goldwater	Quayle	

NOT VOTING—12

Chafee	Inouye	Packwood
Cochran	Long	Percy
Dodd	Mathias	Thurmond
Hawkins	Matsunaga	Williams

So the motion was agreed to.

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

Mr. BAKER. Mr. President, the amendment by the distinguished Senator from Washington (Mr. GORTON), in my view, is an appropriate and important supplement to the Johnston amendment on mandatory busing, an amendment which I supported. I have long believed that the mandatory assignment of school students by race when designed to cure a condition of segregation in which those children played no part to be both ineffective and wrong.

The amendment of the Senator from Washington (Mr. GORTON) deals with this view directly and effectively. His amendment recognizes what I have always considered to be the command of the Constitution; that every student has a right to a racially neutral school assignment.

Senator GORTON's amendment does not attempt to deprive the courts of their jurisdiction to try cases involving asserted deprivations of constitutional rights. It does, however, direct the courts to consider both the constitutional right to be free from purposeful segregation in school assignments and the right to a racially neutral school assignment. I consider those rights to be consistent and important. I, therefore, support the amendment, now pending, offered by the distinguished Senator from Washington.

JUDICIAL INDEPENDENCE

● Mr. GOLDWATER. Mr. President, 2 weeks ago I expressed my concern about proposals that would interfere with Federal court independence. These measures would put limits on judicial consideration of social issues, particularly busing, abortion, and prayer.

Now, I happen to believe the Federal courts have wrongly decided these subjects. I am strongly opposed to the breakup of neighborhood schools. I think the unborn baby is entitled to some legal protection. And I believe schoolchildren should be allowed a few moments of voluntary prayer.

In my view, the Supreme Court has erred. But we should not meet judicial excesses with legislative excesses.

As vacancies occur, we can confirm Federal judges who believe in judicial restraint. We can amend the Constitution. We can use the power of the purse to deny Federal moneys for activities we disapprove, such as abortions. But to make a frontal assault on the independence of the courts is a dangerous blow to the foundations of a free society.

It is contrary to the will of the framers. It is destructive of the Federal system. And it will result in the reverse outcome of what the Court's critics wish.

INTENT OF FRAMERS

Mr. President, I will examine the intent of the framers first, starting with four significant developments that occurred at the Constitutional Convention on August 27, 1787.

First, a motion was withdrawn that would have placed most original court jurisdiction in the States and allowed State legislatures to restrict Federal appellate review.

Second, an amendment was defeated that would have vested in Congress discretion to determine whether or not Federal jurisdiction should be original or appellate in cases where the United States is a party. The vote was five States against and three States for the proposal.

Third, an amendment to permit Congress to direct the manner in which the Federal judicial power may be exercised was defeated by a vote of six States against and two States for.

Fourth, the Convention dropped a plan to vest discretion in Congress to "assign any part" of judicial jurisdiction to lower Federal courts "in the manner and under the limitations it shall think proper." This clause had been reported by the Committee of Detail on August 6 and was stricken in the full Convention by the unanimous vote of eight States.

Before completing its work in September of 1787, the Convention made a last-minute change further reducing legislative power relative to the courts. The Convention adopted a proposal by the Committee of Style to eliminate language in the judicial article that would have provided for only those lower courts "as shall, when necessary . . . be constituted by the legislature." By dropping the express power of Congress to decide when it is "necessary" to constitute courts, the final version of article III gives Congress less discretion than the earlier draft.

It is true that the second clause of section 2, article III, gives the Supreme Court appellate jurisdiction "with such exceptions, and under such regulations as the Congress shall make." Many historians believe, however, that in 18th century practice the terms "regulations" and "exceptions" were used for housekeeping purposes, such as providing that suits must be filed within a reasonable time period.

Whatever its original meaning, the "exceptions and regulations" clause must be read in the light of subsequent additions to the Constitution, particularly the first 10 and the 13th, 14th, and 15th amendments. These additions to the original Charter strengthen the purposes of the framers and point to the Federal judiciary as the intended arbiter of the Constitution.

FEDERALISM

To these considerations, I would add the significance of the rejection by the framers of proposals to forever use the State courts as the sole inferior courts for most causes. By repulsing these attempts, the framers clearly linked the Federal judicial power to their plan of national union.

We must remember that instead of forming a loose connection of 13 different "countries," the framers deliberately turned to a Federal structure with a stronger continental government than had existed under the Articles of Confederation.

Current efforts to limit Federal court independence repudiate federalism by reverting to State supremacy over matters of basic constitutional doctrine. The antifederalists lost this argument two centuries ago.

The interesting thing is that the State courts will have no part of this backward looking scheme. The supremacy clause of the Constitution, article VI, clause 2, provides that "the judges in every State shall be bound" by the Constitution and laws of the United States.

State judges are not blind to their obligations. In fact, the Conference of Chief Justices for State Courts unanimously adopted a resolution on January 30 of this year, at its general business meeting in Williamsburg, Va., expressing its serious concern about bills to restrict the jurisdiction of Federal courts.

Let us look at the reasons given by the State chief justices. First, the justices point out that they have taken an oath to obey the U.S. Constitution. Any idea that they will deliberately thwart the rulings of the Supreme Court and put their personal views ahead of the dictates of the Constitution is an exercise in futility.

Moreover, removing jurisdiction from Federal courts means there will be no opportunity for the Supreme Court to alter or distinguish its earlier decisions. The likely outcome of restricting Federal court authority is to seal in permanent stone the very holdings court opponents condemn.

Once new cases arise that require new answers, the absence of Federal court jurisdiction could mean different rulings in each of the 50 States.

To this astute analysis of the State chief justices, I would add a point drawn from the early experience of the Republic. Patrick Henry once sponsored a law to disqualify the courts of Virginia from having jurisdiction of cases arising under the laws of the Union. If we should leave the State courts with the sole jurisdiction of certain Federal subjects, one or more States may follow this example by passing a law which bars access to the courts of those States over identical matters. This would leave no tribunal with jurisdiction over basic constitutional issues and totally defeat the exercise of the judicial powers of the United States.

REVERSE OUTCOME

To sum up my conclusions, I recognize that Congress has been granted some powers over the judiciary, but believe these powers are bound by all the other principles and provisions of the Constitution, including the separation of powers, the design of forming "a more perfect union" and the guarantees of basic individual rights.

What the court limitations boil down to is a radical proposition—a claim of unchecked power to do under the exceptions clause what is forbidden elsewhere in the Constitution. But the Supreme Court held in U.S. against Klein that Congress cannot restrict appellate jurisdiction "as a means to an end."

What particularly troubles me about trying to override constitutional decisions of the Supreme Court by a simple bill is that I see no limit to the practice. There is no clear and coherent standard to define why we shall control the court in one area but not another. The only criteria seems to be that whenever a momentary majority can be brought together in disagreement with a judicial action, it is fitting to control the Federal courts.

Now it is busing and abortion and prayer. But what will it be next? Will a majority lay hold of Congress who puts all actions of the Internal Revenue Service beyond judicial scrutiny? Might opponents of private schools muster sufficient support to deny a challenge in Federal court to confiscatory taxes which may be levied on church schools?

Under the theory put forward by advocates of court controls, Congress may deny judicial review of any such statute.

Mr. President, I see no safe boundaries on use of the power claimed for Congress. The same club wielded by social issue groups today can be swung against them in the future.

Whether or not Congress possesses the power of curbing judicial authority, we should not invoke it. As sure as the Sun will rise over the Arizona desert, the precedent will return to oppress those who would weaken the courts. If there is no independent tribunal to check legislative or executive action, all the written guarantees of rights in the world would amount to nothing.●

Mr. RANDOLPH. Mr. President, what is the pending business? Does it give opportunity for comment by the Senator from West Virginia?

The PRESIDING OFFICER. The pending question is the amendment offered by the Senator from Washington to the amendment offered by the Senator from Louisiana.

Mr. RANDOLPH. Mr. President, I will, of course, as other Senators, vote in approval or disapproval of the Gorton amendment when a rollcall is requested.

I use this opportunity to again express for the RECORD what I believe to be an absurdity of the system under which we operate the Senate and the committee structure of this body.

Today in the Committee on Environment and Public Works we were considering the budget for the highway program of this Nation in fiscal 1983. We had present the knowledgeable Secretary of Transportation, Drew Lewis; and the Administrator of the Federal Highway Administration, Ray Barnhart. These gentlemen have responsibility of working to keep and to develop a strong network of highways necessary to be rebuilt from time to time in our country.

I do not want in any wise to speak in disparagement of the pending amendment. But, I do say that during that hearing, which was an important hearing, the members had to come back and forth to the Chamber to vote on at least two occasions.

The hearing was a very important one. There were questions that members of the Subcommittee on Transportation and the parent committee wished to have discussed in some detail. Members wished to be present, very frankly, to hear what our witnesses had to say and to, perhaps, develop colloquy with them when matters that we felt were important should be discussed.

However, we have not had that opportunity this morning. I presume that across the board in the Senate committee structure today we have seen that which I have described in our committee repeated in other committees.

I repeat that I am in no wise critical of the amendment or any amendment which is offered. I only say that it is an abusurd practice of the Senate of the United States to continue in the face of what is such an evident fact that on and on we go with the sort of operation in this Chamber which should have been abolished long ago.

In the early seventies this body created the Hughes Commission. It was chaired by the former Senator from Iowa, Harold Hughes. The commission was created to discuss operating procedure problems of the Senate and to make recommendations for improvements in the efficiency of the Senate. That study brought out what I am indicating here today, and yet another book was printed and forgotten on the shelf.

The Senate has taken little action in this or any other matter that concerns the actual operating efficiency of this body. Nothing is done.

I realize we are experiencing the elements of a filibuster. I understand, the lengthy debate. But what we see constantly taking place, Congress after Congress, is the loss of a precious hour or two in the consideration of subject matter within a committee or a subcommittee.

Why we cannot have legislative days and committee days separate one from the other still evades me. There is, I think, no practical reason why that could not take place.

There are perhaps many Members of the Senate who believe that this could be done. Certainly there is no valid reason why the committee structure could not move forward from, let us say, 8 a.m. in the morning, or probably perhaps 9 a.m. But if committees were able to function and testimony was allowed to be given on the budgets as are now being considered on this Hill, how much better it would be to have uninterrupted a subcommittee or a committee hearing. The witnesses who come from the Cabinet of the President of the United States, all nominees who have been approved in this body deserve our active attention.

Some will say it is impossible to structure the days in the manner I suggest. But certainly there is absolutely no valid reason, as I see it, why the morning, I say to the earnest Senator from Connecticut, Mr. WEICKER, I see no reason why at least the morning period, could not be given over to the committee hearing. This time could be reserved for witnesses who are being heard, and to discussions very important to the States represented by the Senators. That morning period could be given over with the jurisidiction of committees meeting, and functioning. Then at the period of 1 o'clock or whatever the hour that we know that the committees are not meeting, we would have the obligation to be in the Senate. That, of course, is a matter of decision by the Members. That procedure would allow us to use the beeper in our office, where we are trying to carry forward the work with our constituents, and even in a sense to meet people who are with us in the office and still keep apprised of what takes place here in the Chamber.

I am using this time to say that it seems to me somewhat ironic that we are going to consider the televising of the Senate, while we will still not address and solve the basic problems of the operations of the Senate operations from the standpoint of the work within the committees and, of course, the important work here in the Senate with decisions to be made upon amendments or on measures for final passage.

I hope that possibly there may be some who will read in the RECORD what I have said today. I would like correspondence from them. I would like disagreement, if they feel it is necessary, with the feeling that I have expressed. I solicit your comments and suggestions.

I do not express it in any anger. And I do not direct my comments at the present leadership of the Senate. These problems continue from one Congress to another. I express it, as I do so very often as I express the failure of Senators to vote from their desks that are assigned to us instead of milling about in the well of the Chamber. Or when the Senators come out for a moment from the Cloak Rooms and answer "yes" or "no."

I think that there is not so much the dignity of the Senate involved but the efficiency of the Senate commensurate with that which we have set for ourselves, and that is hopefully an orderly operation of the Senate itself.

I thank the majority leader for his indulgence.

Mr. WEICKER. Mr. President, will my distinguished colleague from West Virginia yield for a question?

Mr. RANDOLPH. Yes, I do.

Mr. WEICKER. First, let me say this: Since I first came to this body and to the moment that I speak now, there is no honor I have felt more keenly than that of serving with the distinguished Senator from West Virginia, whom I had read about and heard about as a matter of part of American history, being here since the days of Franklin Roosevelt. So I want to, first, prior to my question, just state to him that whenever he speaks on any subject, his words are to be heeded and, believe me, when I say that more wisdom has come forth from him, whether in his capacity as chairman of the committee or ranking member, his comments on the floor as they relate to Senate procedure here, I just want you to know, Senator RANDOLPH, that I think the world of you, and truly—never mind all the flowery language we use between us—truly for the rest of my days you have been a great part of the experience in my having served with you.

First of all, the Senator from West Virginia does understand I did not set the time of the convening of the U.S. Senate this morning.

Indeed that could have been done by the majority leader at noon or 1 o'clock or whatever, and then the committees could have met as the committees should meet.

I would hope my colleague would understand that I am being forced to abide by an early starting time, and now being told that we will go until midnight tonight. So the choice was not mine. Indeed I have made it clear to several colleagues on my side of this issue who have asked whether I should object to the convening of committees, and I said no, I want the business of the Senate to go forward both here and in committee, and I have not objected to that.

As to the starting time, I hope the record will be made clear, and that is the question I pose to my distinguished colleague, that was not my choosing, and I apologize for any inconvenience caused to any Senator or those witnesses he was trying to give attention to.

Mr. RANDOLPH. Mr. President, I am grateful for the generous comments of my colleague. And I am not being overly generous but I am being very factual when I say that his chairmanship of the Subcommittee on the Handicapped is something that—I necessarily do not use the word "admire," but I know the effort in which the Senator is placing his commitment to do for the handicapped, the severely disabled, the blind, the deaf and others that move in our society. These people should never be in hidden recesses but, insofar as the mainstream would allow them, to be the entrepreneurs even in the marketplace and in professions.

I commend the Senator. There is nothing in what I have said. Certainly there was no intention in what I was saying to direct it at the Senator from Connecticut in reference to the remarks that I have made.

It only gave me the opportunity to say what I say perhaps too often, and that is that the Senate is not operating in an efficient manner. I feel that those who have responsibilities of leadership might feel that I am critical of them. I am critical of the Senate as a body in failing to come to grips, as it were, and decide that which is practical and reasonable and will reflect credit, not so much one Member to another but to the electorate of the United States. Wherever they may be in one State or another and even those who visit in the galleries from one time or another.

I would only ask again, and hopefully the Members and their staffs will give attention to what I have said. Not because it comes from me, but only to look again, as it were, of the continuing inability of the Senate of the United States to function efficiently as a body. We weaken the ability of the membership in our obligation to the Republic through the States we represent. I thank the Chair and I appreciate the comments of my friend 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. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection?

Mr. WEICKER. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. JOHNSTON. Mr. President, I make a point of order that a quorum call is dilatory.

The PRESIDING OFFICER. A quorum call is in progress. There is no point of order at this time. The clerk will resume the call of the roll.

The bill clerk resumed the call of the roll.

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

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

(Mr. GORTON and Mr. JACKSON addressed the Senate in connection with the introduction of legislation. Their remarks are printed later in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

Mr. JACKSON. Mr. President, I ask unanimous consent that the time just consumed by Senator GORTON and me in connection with the introduction of the Mount St. Helens measure be charged to my time under the cloture motion and not be charged against Senator GORTON's time.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER (Mrs. KASSEBAUM). The majority leader.

Mr. BAKER. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BAKER. Now, Madam President, what is the question before the Senate?

AMENDMENT NO. 1258

The PRESIDING OFFICER. The question before the Senate is amendment 1258. The question is on agreeing to the amendment.

Mr. WEICKER. Madam President, I was only trying to exhibit some degree

of courtesy to the majority leader by not interrupting his statement here. I thought some momentous pronouncement was about to be made by the Senator.

Mr. BAKER. Madam President, if the Senator will yield, it was my hope that the momentous announcement would be made by the Senate in disposing of this amendment at this time.

Mr. WEICKER. I wish to say to my distinguished friends from Tennessee and Louisiana that I would have hoped this would never have been on the Senate floor in the first instance, but it is.

If I had to characterize the amendment, first, the amendment of the Senator from North Carolina, which started all of this, and then the amendment of the Senator from Louisiana, and the amendment of the Senator from Washington, I could do it very briefly: gross, grosser, grossest.

I hope the Senate will reject the amendment of the distinguished Senator from Washington. Any comments of unconstitutionality that attach to the amendments of the Senator from Louisiana and the Senator from North Carolina certainly apply to this amendment. This is not a numbers game, it is not a question of how many minutes or how many miles. That is not why I am up on my feet and have been up on my feet for months now. It is not a matter of whether we are talking about schoolchildren, whether we are talking about discrimination in the schools. What is the slick term here used by my colleague from Washington? "Racially neutral."

This is not the issue. It is not how many minutes, not how many miles. The great issue before this body does not even have to do with the matter of discrimination and busing or pupil assignment. It has to do with the Constitution of the United States. Tomorrow maybe the unpopular segment of our society might be Senators. They might be more unpopular, and they might be the target of the legislative branch trying to tell the courts which rights of Senators can be protected and which rights cannot.

Maybe next year it will be the elderly; maybe after that the retarded; maybe businessmen. How about presidents of oil companies? That is the issue.

So really the Senator from Washington, with all due respect, adds nothing to this argument except perhaps to fog it up a little bit more in the sense of what is at issue here on the floor of the Senate. For that reason I oppose his amendment.

Now, Madam President, I raise the point of order that the Gorton amendment is nongermane.

The PRESIDING OFFICER. The amendment of the Senator from Washington deals with the same subject matter as amendment No. 96 which is now part of the bill, and, therefore, would be germane.

Mr. WEICKER. I appeal the ruling of the Chair and I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Shall the decision 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 bill clerk called the roll.

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Maryland (Mr. MATHIAS), the Senator from Wyoming (Mr. SIMPSON), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I further announce that, if present and voting, the Senator from South Carolina (Mr. THURMOND) would vote "yea."

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE) is necessarily absent.

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

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

The result was announced—yeas 63, nays 30, as follows:

[Rollcall Vote No. 18 Leg.]

YEAS—63

Abdnor	Gorton	Nunn
Andrews	Grassley	Packwood
Armstrong	Hatch	Pressler
Baker	Hawkins	Proxmire
Bentsen	Hayakawa	Pryor
Biden	Heinz	Quayle
Byrd, Harry F., Jr.	Helms	Randolph
	Hollings	Roth
Byrd, Robert C.	Huddleston	Rudman
Cannon	Humphrey	Sasser
Chiles	Jackson	Schmitt
D'Amato	Jepsen	Specter
Danforth	Johnston	Stennis
DeConcini	Kassebaum	Stevens
Denton	Kasten	Symms
Dixon	Laxalt	Tower
Dole	Long	Wallop
Domenici	Lugar	Warner
East	Mattingly	Weicker
Ford	McClure	Zorinsky
Garn	Murkowski	
Goldwater	Nickles	

NAYS—30

Baucus	Eagleton	Melcher
Boren	Exon	Metzenbaum
Boschwitz	Glenn	Mitchell
Bradley	Hart	Moynihan
Bumpers	Hatfield	Pell
Burdick	Heflin	Percy
Cohen	Kennedy	Riegle
Cranston	Leahy	Sarbanes
Dodd	Levin	Stafford
Durenberger	Matsunaga	Tsongas

NOT VOTING—7

Chafee	Mathias	Williams
Cochran	Simpson	
Inouye	Thurmond	

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

Mr. WEICKER, Mr. BAKER, and Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. I thank the Chair.

Mr. President, may I inquire if the yeas and nays have been ordered on the Gorton amendment?

The PRESIDING OFFICER. They have not.

Mr. BAKER. I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. WEICKER addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. Mr. President, I move to reconsider the vote on the germaneness question that has just taken place.

Mr. JOHNSTON. I make the point of order, Mr. President, that there has been intervening business and also that the motion to reconsider is dilatory under page 240 of the Senate Proceedings.

The PRESIDING OFFICER. Intervening business will not preclude a motion to reconsider. However, the Chair is required to take the initiative, under rule XXII, to rule out of order all dilatory motions pursuant to a precedent of 1977 in which, on a vote of 80 yeas to 31 nays, a motion to reconsider was held dilatory. The Chair sustains the point of order.

QUORUM CALL

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

Mr. JOHNSTON. Mr. President, I make the point of order that the call for the quorum is dilatory.

The PRESIDING OFFICER. On what basis?

The only way in which the Chair can hold a quorum call dilatory is if there is obviously a quorum present. There is not obviously a quorum present. The clerk will call the roll.

The bill clerk proceeded to call the roll, and the following Senators answered to their names:

[Quorum No. 9 Leg.]

Present—29

Andrews	Garn	Melcher
Baker	Gorton	Pressler
Baucus	Hayakawa	Pryor
Bentsen	Helms	Roth
Boschwitz	Johnston	Schmitt
Chiles	Kasten	Tower
Cranston	Kennedy	Wallop
D'Amato	Levin	Warner
Denton	Mattingly	Weicker
Dixon	McClure	

The PRESIDING OFFICER (Mr. WALLOP). A quorum is not present. The clerk will call the names of the absent Senators.

The assistant legislative clerk proceeded to call the roll of the absent Senators.

Mr. BAKER. Mr. President, I move that the Sergeant at Arms be instructed to compel the attendance of absent Senators, 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 of the Senator from Tennessee. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Maryland (Mr. MATHIAS), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE) is necessarily absent.

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

The PRESIDING OFFICER. Mr. WARNER). Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 87, nays 7, as follows:

[Rollcall Vote No. 19 Leg.]

YEAS—87

Abdnor	Garn	Metzenbaum
Andrews	Glenn	Mitchell
Armstrong	Gorton	Moynihan
Baker	Grassley	Murkowski
Baucus	Hart	Nickles
Bentsen	Hatch	Nunn
Biden	Hatfield	Packwood
Boren	Hawkins	Pell
Bradley	Hayakawa	Percy
Bumpers	Heflin	Pressler
Burdick	Heinz	Pryor
Byrd, Harry F., Jr.	Helms	Randolph
	Hollings	Riegle
Byrd, Robert C.	Huddleston	Roth
Cannon	Humphrey	Rudman
Chiles	Jackson	Sarbanes
Cohen	Jepsen	Sasser
Cranston	Johnston	Schmitt
D'Amato	Kassebaum	Simpson
Danforth	Kasten	Specter
DeConcini	Kennedy	Stafford
Denton	Laxalt	Stennis
Dixon	Leahy	Stevens
Dodd	Levin	Symms
Dole	Long	Tower
Domenici	Lugar	Tsongas
Durenberger	Matsunaga	Wallop
Eagleton	Mattingly	Zorinsky
Exon	McClure	
Ford	Melcher	

NAYS—7

Boschwitz	Proxmire	Weicker
East	Quayle	
Goldwater	Warner	

NOT VOTING—6

Chafee	Inouye	Thurmond
Cochran	Mathias	Williams

So the motion was agreed to.

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

(At this point, Senator JACKSON addressed the Senate regarding "The Oil Glut Miage." By unanimous consent, his remarks appear elsewhere in today's RECORD.)

Mr. JOHNSTON. Mr. President, reserving the right to object, am I correct that putting into the RECORD by unanimous consent such material as that which Senator JACKSON just placed into the RECORD does not constitute the transaction of intervening business?

The PRESIDING OFFICER. The Senator is correct.

The Senator from Montana.

CONGRESS AND THE COURTS

Mr. BAUCUS. Mr. President, most of the Nation's attention these days is on the economy, and rightfully so. But an equally significant issue is simmering on the congressional back burner threatening to boil over any time.

The New Right came to Congress last year determined to reverse Federal policy, as set forth in several recent Federal district and Supreme Court decisions, on the so-called "social issues": abortion, school prayer, and school busing.

Mr. JOHNSTON. Mr. President, will the Senator yield for a question?

Mr. BAUCUS. I am sorry; I cannot yield.

Their strategy, to strip the Federal courts of jurisdiction over these issues, poses the most serious threat to judicial independence since President Franklin Roosevelt tried to pack the Supreme Court in 1937.

Some 30 court jurisdiction bills have been introduced. Several of them are being actively considered by the Senate Judiciary Committee, on which I serve.

THE DEBATE

The debate stems from several Supreme Court decisions: Roe against Wade (1973), which prevented States from outlawing abortion; Engele against Vitale (1962), which prevented States from requiring prayer at the beginning of each schoolday; and Swann against Charlotte-Mecklenburg (1972), which permitted lower Federal courts to issue mandatory busing orders to remedy constitutional violations in school desegregation cases.

Opponents of these decisions view them as proof that an imperial judiciary is overstepping its authority and usurping functions that should be performed by Congress.

Furthermore, they argue that two sections of the Constitution give Congress authority to withdraw certain areas from the jurisdiction of the Supreme Court and lower Federal courts:

Article III, section 2, gives the Supreme Court appellate jurisdiction "with such exceptions and under such regulations as the Congress shall make." They argue that this exceptions clause gives Congress power to withdraw specific categories of cases from the Court's review.

Article III, section 1, gives Congress power to create lower Federal courts, and thus, they argue, Congress also has the power to abolish courts. And if Congress can do this, clearly it can withdraw areas of jurisdiction.

Mr. President, the court-stripping bills supposedly are designed to end abuses by the judiciary. But whether the bills are constitutional or whether they would accomplish their objective is questionable.

When trying to assess the constitutionality of the exceptions clause, it is important to understand the basic objectives of the Constitution's authors. It is clear that they wanted to establish a judicial branch capable of protecting the Constitution and individual liberties.

Those who favor these court-stripping bills have given the exceptions clause a meaning the Founding Fathers could not have intended. If Congress has the right to remove any constitutional right from the Court's jurisdiction, then, in effect, Federal courts could only protect those rights that a majority in Congress thought worthy of protection. The Bill of Rights would become a political football.

The critical question is not whether a particular Supreme Court decision is constitutional. The real issue is, who is to decide that question? Since 1803, when the Supreme Court ruled in Marbury against Madison, the Court has fulfilled that function. If the authors of these bills before us have their way, however, Congress would assume that authority.

In the final analysis, these bills attempt to use a technical device to overturn Supreme Court decisions. They seek to end-run the constitutional amendment process provided in article V of the Constitution.

These bills not only are unconstitutional; they do not accomplish their objectives. Withdrawing abortion, school prayer, or busing from the jurisdiction of the Supreme Court and lower Federal courts does not overturn a court decision. Those decisions would still be in effect. These bills simply leave the issue open to 51 separate interpretations—the 50 State courts and the District of Columbia court. This will destroy the Constitution's ability to serve as a meaningful national document and undo the common bond that now insures the same protections for Montanans, for New Yorkers, and for Texans.

Once Congress takes the first step toward limiting court jurisdiction, Mr. President, who knows where it will stop? A pro-gun-control Congress could preclude the Supreme Court from interpreting the meaning of that

section of the Constitution that includes "the right to bear arms." Congress also could prevent Supreme Court consideration of congressional ceilings on Montana's coal severance tax or the severance taxes of other States. Or, Congress could prohibit Supreme Court review of discriminatory business and property taxes.

RECENT ACTIONS

Several court jurisdiction bills already have been considered. Last July, the Judiciary Subcommittee on the Separation of Powers voted to eliminate lower Federal court jurisdiction in certain abortion cases. I was one of two members of the subcommittee who opposed this bill, which now is pending before the Judiciary Committee and is also on the Senate calendar.

On November 17, the subcommittee voted to report a bill that removes lower Federal court jurisdiction to issue busing orders. I also opposed that legislation, which currently is pending before the full Judiciary Committee. In February, the Senate passed a similar provision to limit busing.

The Senate soon is expected to consider several additional bills proposing limits on the Court's jurisdiction, including a bill to strip the Supreme Court and lower Federal courts of jurisdiction over the issue of school prayer. I voted against a similar measure in 1979.

CONCLUSION

Mr. President, Montana Senator Burton K. Wheeler was one of the leaders in the fight to defeat Roosevelt's court-packing plan. At that time, he said:

Of course, Mr. President, there have been abuses in the court. I have been one who has disagreed with them, and I expect to disagree with them again, but I am unwilling on the basis of some specious argument or of some subterfuge that defies the spirit of the Constitution to participate in setting one of the most dangerous precedents that has ever been conceived by this Congress or any other.

Those words are as true today as they were 45 years ago. There is a way to reverse troubling Supreme Court decisions—the constitutional amendment process that has worked effectively for 200 years. Let us not undermine our system of government by taking constitutional shortcuts.

Mr. President, those of us in the Senate strongly opposed to those bills that strip the courts of jurisdiction over controversial social issues are not limited to one side of the aisle or one end of the political spectrum. In fact, some of the country's leading conservative constitutional scholars have publicly declared that they believe that these proposals are both unconstitutional and unwise.

One such distinguished scholar is Prof. Robert Bork of Yale Law School. Mr. Bork is a former Solicitor General of the United States and has been nominated by President Reagan and confirmed by the Senate to serve as a judge on the District of Columbia Circuit Court of Appeals, the second highest court in the land.

I had an opportunity to discuss these issues on the record with Mr. Bork when he appeared before the Senate Judiciary Committee for his confirmation hearing earlier this year, on January 27. I think it would be illuminating for my colleagues in the Senate to hear the exchange between Mr. Bork and myself that took place at that time. The conversation went as follows:

Senator BAUCUS. Mr. Bork, there are two areas, though, I would like to very briefly inquire about. The first is your view with regard to efforts on the part of the Congress to remove Supreme Court jurisdiction from certain Federal issues, from constitutional issues. As I recall, when you appeared before this committee in hearings on S. 158, you stated that in your view, efforts in that bill to remove this lower court Federal jurisdiction, and maybe in some other bills and in some other cases Supreme Court jurisdiction, more certainly was an unconstitutional effort, not permitted by the Constitution.

Even though you personally may agree with the underlying thrust in trying to overturn what, in your view, are incorrect Supreme Court decisions, you felt it was improper and, more importantly, unconstitutional for the Congress to attempt to remove Supreme Court jurisdiction from constitutional issues. Is that a fairly accurate statement of your view?

Mr. BORK. I think that is entirely an accurate statement of my view, Senator Baucus.

Senator BAUCUS. Do you still hold to that view? Is that still your personal view?

Mr. BORK. Yes, it is.

Senator BAUCUS. Could you also indicate to this committee why, in your view, it would be unconstitutional for Congress to pass a statute that would limit Supreme Court jurisdiction, say, in a Federal constitutional question?

Mr. BORK. Well, the attempt to eliminate Supreme Court jurisdiction as opposed to lower court jurisdiction would have to rest upon the exceptions clause of article 3 of the Constitution, which allows Congress to make such exceptions and regulations of the Supreme Court's appellate jurisdiction as it desires. Literally, that language would seem to allow this result.

I think it does not allow this result because it was not intended as a means of blocking a Supreme Court that had, in Congress' view, done things it should not. The reason I think it was not intended is that clearly in the most serious kinds of cases, where the Supreme Court might do something that the Congress regarded as quite improper, the exceptions clause would provide no remedy.

For example, if the Supreme Court should undertake to rule upon the constitutionality or the unconstitutionality of a war, and the Congress was quite upset, thinking that is not the Supreme Court's business as indeed I agree it is not, to use the exceptions clause to remove Supreme Court jurisdiction would have the result not of returning power to the Congress but of turning the question over to each of the State court systems. We could not tolerate a situation in which 50 States were deciding through their own judges the constitutionality of a war.

Senator BAUCUS. Well, as I hear you, I hear you address the question more on a policy ground. Apart from the policy ground——

Mr. BORK. No, I do not think that is a policy ground, Senator. I think that a constitutional argument. One of the ways of construing the Constitution, as Chief Justice Marshall showed us so well in *McCulloch* v. *Maryland*, is to argue from its structure: What is the necessity of Government? Would the framers have done something that led to results like this?

I think the answer is that the framers would not have devised a check upon the judiciary which does not return power to the Congress but returns power to the State judiciary systems, from which it probably cannot be removed. When one perceives that that is the result, then I think one has to say the framers did not intend this as that kind of a check upon the Court. I do not know any way to apply the Constitution that I regard as legitimate other than in terms of the intent of the framers, as best as that can be determined.

Senator BAUCUS. This is not a hearing on the proper actions that Congress should or should not take to try to overturn Supreme Court decisions but could you tell me your view of whether the amendment process is sufficient or whether the present constitutional provisions are sufficient to enable the country and the Congress to overturn what it regards as improper Supreme Court decisions?

Mr. BORK. I think there is a real dilemma, Senator. I think in a variety of areas the Court over a period of years has reached results that were not intended by the framers of the Constitution or by the framers of the various amendments. I think to that degree the Court has stepped into areas that do not belong to it. It is that form of judicial activism or judicial imperialism that the chairman asked me about.

I do not think there is an adequate way of checking the Court provided in the Constitution, and I think the reason for that is that the framers never anticipated judicial review could become the enormous power that it has become. There was no court at the time that had any power resembling that.

The only cure for a Court which oversteps its bounds that I know of is the appointment power, and in addition to that the power of debate, political rebuke, and hopefully one day a better understanding by the profession and by the judges of what the limits of judicial power are.

Senator BAUCUS. What about the amendment process?

Mr. BORK. The amendment process is certianly useful but it is very hard to use. It is very hard to get the Constitution amended, and if you have a Court which frequently oversteps the bounds you cannot keep amending the Constitution every time that happens. We would be in a constant state of turmoil.

Senator BAUCUS. Well, do you recommend that some other device be formulated, enacted, other than what we presently have under our present Constitution?

Mr. BORK. Senator, I do not recommend that. I would like to think about that long and hard. I think it is a very grave matter to start changing the Constitution and shifting balances of power. I do not reject it out of hand, either. I do not mean to say that. I simply have not thought that through, and I would like to think long and hard before I came down one way or the other.

Senator BAUCUS. Let me read from your statement when you testified on S. 158. It is very brief, just three sentences:

"The question to be answered"—this is you speaking—"in assessing S. 158 is whether it is proper to adopt unconstitutional countermeasures to redress unconstitutional actions by the Court. I think it is not proper. The deformation of the Constitution is not properly cured by further deformation."

I frankly find that a very cogent and very articulate statement. Do you still hold to that statement today?

Mr. BORK. I do, Senator.

In addition to Professor Bork, the American Bar Association, the American College of Trial Lawyers, the Association of Chief Justices of the 50 State courts and retired Supreme Justice Potter Stewart have all spoken out in opposition to these proposals.

Let me state that again:

In addition to Professor Bork, the American Bar Association, the American College of Trial Lawyers, the Association of Chief Justices of the 50 State courts and retired Supreme Justice Potter Stewart have all spoken out in opposition to these proposals.

In addition, newspaper editorials have appeared all over the country in opposition to these bills. For the benefit of my colleagues, I ask unanimous consent to have printed in the RECORD an editorial from the Missoulian a paper in my home State, which appeared in that paper earlier this month.

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

CONGRESS WOULD USURP FEDERAL COURT POWERS

President Reagan has been catching hob recently from conservatives who accuse him of neglecting what they call "social" issues.

The issues are abortion, school busing and prayer in school.

These are bedrock issues to bedrock conservatives. Congress and the administration, engrossed with economic matters during Reagan's first year, are expected to address those issues this spring and summer.

Legislation has been introduced on all of them. For what it's worth, Congress should not alter the Supreme Court's abortion ruling, it should not tinker with court insistence upon integration of schools, it should not permit prayer in public schools.

But the vital issue is not those controversial topics, important though they are. The vital issue lies with court review.

According to Jay Hedlund, a lobbyist for Common Cause in Washington, about 30 bills are pending in Congress to overturn Supreme Court decisions or to ban court review of legislation. Hedlund, during a recent visit to Missoula, said Common Cause—a citizens' lobby—takes no position for or against any of the specific social issues in question. But it stands firmly against efforts to emasculate court review of acts of Congress.

Hedlund said the supporters of the various bills reason that, since Congress establishes the lower courts, it can tell those courts what to do. Many conservatives and liberals, he said, doubt that is the case or ever should be the case.

The chief danger of the bills is that they would take "judicial independence and make it subject to the political winds of the day," Hedlund said.

In all three instances, the conservatives want Congress to pass legislation that would prohibit court review. The legislation would allow neither the Supreme Court nor lower federal courts to be able to judge the constitutionality of laws on abortion, busing or school prayer.

That proposal to freeze out court review has alarmed many. Most recently, lawyers at the American Bar Association meeting in Chicago expressed opposition.

Said David R. Brink, ABA president, "These proposals challenge our Constitution, our separation of powers, our system of American government and our identity as one nation.

"They threaten the elimination of the third branch of federal government, the judicial," he said, warning that, if passed, the court freeze-out could cause a "terrible confrontation" between Congress and the Supreme Court, especially if the court found any of the legislation passed concerning the social issues to be unconstitutional.

That's the crux of the issue. The answer should be a resounding "NO!"

Important to Montanans are the attitudes of its two senators, Max Baucus and John Melcher. Baucus, a lawyer, has been very leery of proposals to freeze out court review. He is expected to oppose any law that would do so.

Melcher, a veterinarian, has not addressed that matter of principle. Instead, he has centered his attention on the issues themselves. For example, he is a co-sponsor of the bill to allow prayer in public schools, and to ban court review of that bill it it should become law.

Montanans should let Baucus and Melcher know how they feel. If Montanans are wise, they will support separation of powers and a status quo that permits the federal courts to review the constitutionality of all laws passed by Congress.

Mr. BAUCUS. Mr. President, I should like to comment briefly on the Department of Justice authorization bill and the Johnston-Helms amendment which was added to it by a vote of the Senate.

At the outset, let me state that I am personally opposed to busing unless necessary to protect a person's constitutional rights. I do not like forced busing, and I do not think that the American people like it.

Furthermore, I firmly believe that Congress has a very real and important role to play in fashioning judicial remedies. Those of us who have genuine concerns about the remedy of busing, have the obligation to try and do something about it.

However, we also have an obligation to legislate within the constraints placed on us by the Constitution. The Johnston-Helms amendment exceeds those limits. We cannot and we must not have a congressional field day limiting the juridiction of our Federal courts.

I have repeatedly stated that I do not favor busing as a remedy in school desegregation cases. However, I believe that we in Congress must be constrained in how we translate our personal feelings into responsible legislation.

Senator JOHNSTON and I share a common general perspective on the need to restrict busing. Put the Johnston-Helms amendment, in my view, steps over the line and represents the legislative usurpation of the judicial function. It could conceivably lead to American citizens being unable to vindicate their constitutional rights.

I believe that Congress has the right and the duty to issue a clear congressional directive that busing shall only be used as a last resort after all other alternatives have failed. Furthermore, Congress has the right to demand that the remedy will only be used in those cases where the court has made very specific findings in a number of substantive areas, including the health, safety and educational impact on students. Such a provision, in my view, would force the courts to limit their use of the remedy, but recognizes that Congress cannot constitutionally prohibit the remedy in those limited cases where it is the only way that constitutional rights can be vindicated.

This limitation on Congress power was described by Prof. Burt Neuborne, professor of law at the New York University Law School, when he testified before the Separation of Powers Subcommittee on October 1, 1981. At that time, Professor Neuborne stated:

What Congress may not do is purport to give an Article III judge power to resolve a constitutional case or controversy by vesting him with subject matter jurisdiction while simultaneously removing the power to grant remedies needed to enforce his decree. It is, to say the least, hypocritical to invite minority plaintiffs to use a judicial forum which lacks power to vindicate their rights. . . . Unfortunately, Congress' reaction to the remedial problem in school desegregation cases has tended to be negative. However, if Congress genuinely wishes to end busing, it may not do so by simply seeking to outlaw it. Rather, it must explore the existence of alternatives which will provide minority children with their full constitutional rights. . . . Unless Congress is prepared, however, to explore innovative alternatives to busing, it may not pursue a negative course which seeks to strip federal judges of the only remedial device which can vindicate the constitutional rights of plaintiffs who have properly envoked the subject matter jurisdiction of an Article 3 court.

Finally, Mr. President, I am troubled by the Johnston-Helms amendment because I believe it will do great societal harm in reopening current pending court orders involving desegregation. I am not the only one who has this concern. It is shared by the Reagan administration.

When Assistant Attorney General for the Civil Rights Division, Brad Reynolds, testified before the Separation of Powers Subcommittee, he presented the administration's view on this subject:

Let me add that our present thinking is to give this approach perspective application only. We, thus, do not contemplate routinely reopening decrees that have proved effective in practice. The law generally recognizes a special interest in the finality of judgments, and that interest is particularly strong in the area of school desegregation. Nothing we have learned in the ten years since Swann leads to the conclusion that the public would be well served by reopening wounds that have long since healed.

In summary, Mr. President, I believe that the Johnston-Helms amendment is an attempt to effectively overrule Swann against Board of Education and other related decisions of the Supreme Court of the United States which give the Federal court the remedial power to vindicate constitutional rights.

Before we take such action here, we should be reminded of President Abraham Lincoln's wise response to the Supreme Court after it handed down the Dred Scott decision:

We think its decisions on constitutional questions, when fully settled, should control, not only the particular cases decided, but the general policy of the country, subject to be disturbed only by amendments of the Constitution as provided in that instrument itself. More than this would be revolution.

The Senate ought to keep Lincoln's wise words in mind as it votes on S. 951, the Department of Justice authorization bill.

I oppose the Johnston-Helms amendment because I believe it is unconstitutional. I favor congressional action to limit the remedy of busing—but, I can only support those legislative efforts to restrict the remedy that I believe are proper within the constraints placed on us by the Constitution. I urge my colleagues to consider those constraints when they vote on the Department of Justice authorization bill.

Mr. President, I would like to continue to address what I see as a profound assault on the independence of one of the three branches of our Federal Government—the Federal judiciary. Recent developments have convinced me that the judicial branch is facing an attack of major proportions.

On its surface, this attack is a challenge to the outcome of recent controversial court decisions. But, more profoundly, the assault threatens to undermine the central role the courts have traditionally played in American government.

I began my public service in Congress at a time when another branch of government—the Presidency—was embroiled in serious crisis. As a member of the so-called Watergate Class of 1974, I am proud to have participated in fashioning the sweeping post-Watergate reforms that included the Ethics in Government Act and the campaign finance laws.

But the real legacy of Watergate is that it demonstrated to all of us the wisdom of the framers of our Constitution. We saw the strength of a system of checks and balances that provided for a Presidential impeachment hearing in the House of Representatives.

We witnessed the need for the total independence of the Federal judiciary that enabled it to reach its landmark decision in United States against Nixon. In sum, we saw that our Government could respond to a crisis of major proportion within the framework provided by the Constitution.

TODAY'S CRISIS

Today, people are no longer as concerned by the threat of an "imperial Presidency." Rather, many Americans are concerned by the threat of an "imperial judiciary." The courts are seen as exceeding their constitutional authority in numerous instances:

Courts have imposed mandatory busing orders on school systems. That is one area.

Second, courts have stepped in to prevent States from requiring school prayer or from prohibiting abortions.

Third, courts have taken over the administration of State prisons and mental institutions.

I do not wish to argue about whether this picture of the judiciary is an accurate one. I am personally troubled by those judicial decisions that do not carefully and narrowly construe legislative intent. I am equally troubled by those decisions that impose solutions that look more like statutes than case law.

But, I am here today because I believe there is a growing movement in this country to address judicial abuses in a manner that is profoundly more damaging than the abuses themselves. The "New Right" and the "Moral Majority" are proposing solutions that present a far greater threat to our system of government than any threat we may face from the courts themselves.

During The Watergate period, Congress and the courts were very careful to proceed within their constitutionally prescribed roles. Today, those in Congress attacking the "Imperial Judiciary" are paying little attention to the letter or spirit of the Constitution. They are asking this nation to embrace solutions that undermine the essential function of the courts.

THE TRADITIONAL ROLE OF THE COURTS

The framers of the Constitution designed a judical branch which could protect the integrity of the Constitution. They also designed the judiciary to assure that individual liberties would not be abridged. Alexander Hamilton stated in Federalist Paper 78 that it is the duty of the courts "to declare all acts contrary to the manifest tenor of the Constitution void. Without this," he observed, "all reservations of particular rights or privileges would amount to nothing."

This concept of the judical branch was reaffirmed and expanded in Marbury against Madison. The "decision declared the basic principle that the Federal judiciary is supreme in the exposition of the law of the Constitution." 150 years later, in Cooper against Aaron, the court observed that the principle of Marbury "has even since been respected by this court and the country as a permanent and indispensable feature of our constitutional system."

Until recently, the role of the Supreme Court as the final arbiter over the terms of the Constitution has not been seriously challenged. Throughout our Nation's history it has been recognized that an interpretation of the Constitution by the Supreme Court could only be altered by the Court itself or by constitutional amendment.

During the past 200 years on four different occasions, our Nation has responded to controversial Supreme Court decisions by the constitutional amendment process. Even in the wake of the infamous Dred Scott decision, which held that black Americans were not citizens, it was recognized that the proper way to alter that decision was by constitutional amendment.

But today, several single-issue constituencies have failed to mobilize sufficient support to pass constitutional amendments to overturn constitutional decisions with which they disagree. Instead, they have begun to advocate legislative measures which effectively end-run the requirements of a constitutional amendment. It is these constitutional shortcuts that threaten to undermine the constitutional role of the judicial branch.

REMOVAL OF COURT JURISDICTION

The new right has been advocating two different approaches that would permit Congress to overturn Supreme Court decisions by simple statute. The first approach would have Congress respond to a court decision it disagreed with, by stripping the courts of the power to hear or order specific remedies in that category of cases. The second approach would have Congress upend constitutional decisions of the Supreme Court by using the congressional power to enforce the 14th amendment.

The first approach has become quite popular. There are currently over 20 bills pending in Congress that would strip the courts of jurisdiction or remedial powers in areas involving controversial social issues. One bill would eliminate Supreme Court jurisdiction over school prayer. Others would eliminate lower Federal court jurisdiction over busing and abortion.

Thus far the debate has focused on whether these bills are constitutional. I wish to focus on what these bills would really accomplish.

Withdrawing the Supreme Court's jurisdiction over school prayer does not return prayer to the schools. Withdrawing court jurisdiction over abortion does not outlaw abortion.

The congressional sponsors of these bills know they cannot directly reverse Supreme Court decisions.

Instead, they want to tie the hands of the Supreme Court. This will leave State court judges free to rule on the Constitution as they please. These bills are an open invitation to State courts to overrule the decisions of the Supreme Court. This means that we could have 50 different interpretations of the basic terms of the Constitution.

The principle of uniformity of constitutional interpretation would be thrown out the window. The ability of the Constitution to serve as a meaningful national document would be destroyed.

We are one Nation. The first amendment in Montana should offer the same protection as the first amendment in North Carolina. These protections are what bind us as people. These court jurisdiction proposals permit Congress to undo that common bond by simple statute.

If Congress can determine which rights and privileges can no longer be reviewed or enforced, Congress, in effect, has the power to decide which rights and privileges exist.

The end result is that constitutional protections become illusory.

The protections of the Constitution will only be what 51 percent of the House and 51 percent of the Senate say they are. This is not what was intended by the framers of our Constitution.

The framers created a judicial branch that could protect constitutional guarantees.

In 1789, the Supreme Court was able to handle this role. Today it cannot do it alone.

Its caseload has increased dramatically. Today in 1982, access to the lower Federal courts is essential. While we consider the essential role of the Supreme Court, we must not ignore the role of the lower Federal courts in modern times.

Finally, we should consider the impact of these bills on the Congress itself. If Congress decides to endorse this approach, the pressure to respond to a wider range of constitutional issues will grow. Every constituency that feels victimized by an adverse consititutional ruling will come running to Congress for a jurisdiction withdrawal bill.

Furthermore, the proponents of these measures ought to contemplate future Congresses, who may have significantly different views on substantive issues, playing the jurisdictional withdrawal game as well. They should consider carefully whether we would like a progun control Congress to preclude the Supreme Court from interpreting the meaning of the right to bear arms. They should consider whether we would want a proconsumer Congress to be able to prevent the Supreme Court from reviewing the constitutionality of discriminatory business and property taxes.

USING THE 14TH AMENDMENT TO REDEFINE THE CONSTITUTION

The second approach the new right has advocated would permit Congress to redefine the basic terms of the Constitution.

The Constitution clearly gives Congress power to enforce the 14th amendment. It so states, until recently, Congress has utilized this power to enhance constitutional protections.

Today, however, the right wing is trying to use this power to actually remove 14th amendment protections that have been recognized by the Supreme Court.

One set of proposals would attempt to enforce the 14th amendment rights of white students. These bills would effectively overturn those Supreme Court cases that specifically give black children constitutional remedies in school desegregation cases.

The other recent attempt to utilize section 5 of the 14th amendment is the human life statute. The proposal attempts to give the fetus the due process protections of the 14th amendment.

The Supreme Court has already stated in Roe against Wade that a fetus is not a person under the 14th amendment. The human life statute attempts to directly overturn that decision.

If Congress can alter the Court's ruling of a constitutional term as basic as the interpretation of "person" under the 14th amendment, then there is virtually no constitutional protection that Congress could not dilute or eliminate by simple majority vote.

Additionally, if Congress can find today by statute that life begins at conception, then a future Congress can decide life begins at some other point. Instead of having a constitution whose terms have some permanence, we would have a constitution whose meaning would be altered and realtered by succeeding Congresses. The basic terms of the Constitution would be left to the whims of the shifting majorities in Congress.

It is for these basic reasons that most of the country's leading scholars and those who have served the Nation as the highest ranking legal officers have publicly announced their view that the human life statute is unconstitutional. It is highly unusual to find agreement among six former Attorneys General, three former Solicitors General, and the Nation's most distinguished constitutional scholars on such a controversial issue.

In my view, the consensus among them provides significant evidence that the question of its constitutionality is not a "close call." Rather, the theory behind the legislation runs counter to principles of judicial independence and the separation of powers that are central to our constitutional system.

As former U.S. Solicitor General and former Yale law professor, Robert Bork told the Senate Separation of Powers Subcommittee:

> The question to be answered in assessing S. 158 is whether it is proper to adopt unconstitutional counter-measures to redress unconstitutional action by the Court. I think it is not proper. The deformation of the Constitution is not properly cured by further deformation. Only if we are prepared to say that the Court has become intolerable in a fundamentally Democratic society and that there is no prospect whatever for getting it to behave properly, should we adopt a principle which contains within it the seeds of the destruction of the Court's entire constitutional role. I do not think we are at that stage.

CONCLUSION

While specific issues we deal with may change and should change, the process by which we consider them should not. Our respect and adherence to the Constitution and the procedures it establishes should not diminish. I fear that if we abandon those principles, we as a country slide down a slippery slope that leads us toward anarchy.

The question presented by the court-stripping proposals is simply this: Should we adopt measures that violate the spirit of the Constitution in order to address the issues of today?

That was the same question that faced the Congress in 1937. President Roosevelt proposed to increase the size of the Supreme Court.

He was deeply troubled by a series of Supreme Court decisions that threatened the success of his national recovery program. He hoped to alter the composition of the Court so that the Court would uphold the constitutionality of his economic plan.

The people and the Congress rose up and resoundingly defeated that plan. The American public and a majority of its representatives saw the court-packing plan for what it was—a significant threat to the independence of the judicial branch.

As we consider the court-stripping bills before us today, we should keep in mind the wise words of those who successfully defended the Supreme Court in 1937.

One of my predecessors in the Senate from Montana, Burton K. Wheeler, played an active role in fighting the proposal put forward by the President of his own party. Here are the words of Burton K. Wheeler as they were uttered on the floor of the Senate 45 years ago:

So I say it is morally wrong to do by indirection what cannot be done by direction. It is morally wrong to change the Constitution by coercive interpretation. . . . Of course, Mr. President, there have been abuses in the court. I have been one who has disagreed with them, and I expect to disagree with them again, but I am unwilling on the basis of some specious argument or of some subterfuge that defies the spirit of the Constitution to participate in setting one of the most dangerous precedents that has ever been conceived by this Congress or any other. . . .

And, finally, Mr. President, I hope the Senate will heed the words of the committee report of the then-Democratically controlled Senate Judiciary Committee when they rejected the President's court-packing proposal. I close with these ringing words:

Shall we now, after 150 years of loyalty to the constitutional ideal of an untrammeled judiciary . . . create the vicious precedent which must necessarily undermine our system? . . . Let us now set a salutory precedent that will never be violated. Let us, of the 75th Congress, in words that will never be disregarded by any succeeding Congress, declare that we would rather have an independent court, a fearless court, a court that will dare to announce its honest opinions in what it believes to be the defense of liberties of the people, than a court that, out of fear or sense of obligation to the appointing power or factional passion, approves any measure we may enact. . . . Exhibiting this restraint, thus demonstrating our faith in the American system, we shall set an example that will protect the independent American judiciary from attack as long as this government stands.

Mr. President, I feel strongly about these bills. It is not often that I spend as much time as I have on a single subject. But I firmly believe that we should exercise some restraint. We should not take the easy way out.

Mr. President, I know the Senator from Connecticut has very ably taken the lead in bringing these issues up for full debate. I hope others join him, because I think it is crucial that those who have looked into this question and realize its implications speak out at length on them.

The Senator from Connecticut, as well as others, have exposed some of the abuses and some of the problems that are associated with these bills. I strongly call on other Senators to pay heed to the call of the Senator from Connecticut to come and voice their concerns, as well, because I think this is an extremely dangerous precedent that we are embarking on today.

Mr. President, I move to table the amendment of the Senator from Washington (No. 1258), 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.

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

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

The bill clerk proceeded to call the roll.

Mr. HELMS. 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.

The question is on the motion——

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that I may withdraw my motion to table the amendment.

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

Mr. HELMS. Mr. President, I wonder if my good friend from Washington would yield so that I may ask him a question.

Mr. GORTON. I yield.

Mr. HELMS. I thank my friend.

Let me state a hypothetical case. Let us suppose that a school district in the Senator's State or in my State were to encounter a situation wherein and whereby a high school with 1,000 capacity had 2,000 students who were black. Would the school board be prohibited from busing those who were involved in that? How would the school board handle that situation?

Mr. GORTON. The amendment which I have proposed, I will say to the distinguished Senator from North Carolina, would not impact in any way on the judgment to be utilized by the school board in managing this particular type of school in choosing students who would be permitted to go to that school.

If I understand the hypothetical correctly, we have a school with a capacity of 1,000 students and we also have a situation in which the school is so attractive and the rules of the school board are such that 2,000 students have applied to go to the school so not all of them can be admitted.

The school board would have the authority to grant preference if it wished to those who lived closest to the school. It would not be required, under my amendment, to make that choice. It might very well simply decide, if we could take the additional hypothetical that half of these applicants were black and half were white, that it would simply allow people to go to that school on the basis of chance simply, quite literally, by drawing straws.

It could also state that the method by which you were picked for that school were the grades that you had. It might state that the reason for which you apply to that school would be the particular courses of instruction which you propose to follow.

In other words, Mr. President, there would be no limitation on the authority of the school district to accept applications to that school even if those applications were accepted on a voluntary basis on the basis of race. The school might very well say, "We want 500 blacks and 500 whites and we shall make choices on that basis." Because there would be no mandatory assignment involved in that method of choice, it would not fall under any of the proscriptions of the amendment which is before the Senate at this time.

Mr. HELMS. Mr. President, the Senator is a distinguished lawyer. Would he care to speculate about lawsuits that might evolve from the 1,000 who were not selected?

Mr. GORTON. I could not speculate, Mr. President, on that proposition, except to say that whatever lawsuits might evolve from any of those unsuccessful 1,000 students could not successfully be based on any right granted by the amendment which is before the Senate right now. It could be some other local cause of action which they could have, which I cannot imagine, but they could not base the cause of action on the amendment.

Mr. HELMS. Mr. President, I thank the Senator.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, am I correct in assuming that amendment No. 1258, offered by the Senator from Washington, is the matter before the Senate?

The PRESIDING OFFICER. It is the pending question.

Mr. EXON. Mr. President, I am about to move to table the amendment offered by my friend and colleague from Washington. Before I make the official motion to table, I should like, for the record, to explain how I view this.

I first say, Mr. President, that I am a cosponsor of the amendment that has been offered by the Senator from Louisiana and the Senator from North Carolina. I happen to feel that, while there are a great many wrongs and rights and gray areas in between, the matter of forced busing of students has been the basis of a costly disaster that has done little for overall integration, the purpose for which it was originally intended.

I have listened to much of the debate over the last several months by my friend from Connecticut and I cannot tell him, though I hope he knows, how sincerely I appreciate a man who has the guts and determination that this man has, to stand on the floor on numerous occasions to speak out for something that he very strongly believes in. I do not happen to agree with him.

I also had a chance to listen a few moments ago to the very moving arguments that were made by my colleague

from Montana (Mr. BAUCUS). I thought it was very well said.

I must confess, Mr. President, that, of course, I am concerned when I feel that one of the three and supposedly equal branches of Government intends to intrude upon the prerogatives of another. But I do not know how else we are going to come to grips with this matter of forced school busing that, from my interpretation, has not worked out, has been a disaster, and, furthermore, is generally not supported by the people of the United States, regardless of their race, creed, or color. I certainly do not take issue with the supposed intent of the amendment offered by the Senator from Washington. I was particularly struck by the purpose that is printed on his amendment:

To secure the right of students entitled to equal protection of the laws to be free from purposeful discrimination and segregation and to be treated in a racially neutral manner with regard to their assignment to public schools providing free public education, and for other purposes.

I suspect I generally agree with the overall thrust, possibly, of the amendment offered by my friend from Washington but we have something more at stake here. We have at stake, No. 1, an amendment that has been offered jointly by the Senator from Louisiana and the Senator from North Carolina that I think potentially has overwhelming support by my colleagues in the Senate, since it does not go as far in telling the courts what they should do—if that is a legitimate argument, and it might be—as the amendment offered by the Senator from Washington, at least in the opinion of this nonlawyer.

I should like, though, to ask my friend from Washington with regard to the technicalities about this type of scenario for clarification of the record, whether or not my tabling motion that I shall make in a few moments comes to pass.

I ask the Senator from Washington to respond, if he will, to this question: Assuming that there were a community somewhere in the United States that wanted to continue forced busing—or busing, as the case might be.

I shall first say that in the amendment we have been discussing here, offered by the Senator from Louisiana and the Senator from North Carolina, they would not be able to continue that busing if the round trip were more than one-half hour. I recognize that. But let us assume that this Main City, U.S.A., that I am talking about wanted indeed to continue busing under the scenario that I just outlined, within half an hour's distance from their residence. As I read the amendment offered by the Senator from Washington, I suspect that that might be precluded. Am I right or wrong, in the opinion of the author of this amendment?

Mr. GORTON. Mr. President, I say to my good friend from Nebraska that he has certainly reached one of the central points, if not the central point, in both the proposal which is before the Senate now and, for that matter, that of the Senator from North Carolina and the Senator from Louisiana.

I do not believe, if I may make this as a preliminary to my answer, that the amendment of the Senator from Louisiana would preclude what the Senator from Michigan (Mr. LEVIN) yesterday referred to as voluntary busing; that is to say, busing which was not imposed by a court order but which was imposed by the free choice of a local, individual school board. So, in that sense, if we are talking about a voluntary system in that regard, even the 5-mile and 15-minute limitations in the Johnston amendment would have no impact at all.

In the case of my amendment, the Senator from Nebraska may be no lawyer, but he certainly accurately reads the amendment which is the product of the proposal of the Senator from Louisiana, which is broader. It is broader than the proposal of the Senator from Louisiana. The thrust of the proposal which I have laid before this body is that it is inappropriate for a school board as well as for a court or for any other person exercising the force or the authority of government to classify by race students who have played no role in creating any unconstitutional discrimination or segregation whatsoever. That is not an authority which I think appropriate to delegate to the servants of the government, wherever they may be. To the extent that they are dealing with individual students, they must deal in a colorblind fashion.

It is certainly possible to conceive of such a classification which met with such popularity in the community to which it applied that there would be no objection to it, that no parent or student would raise an objection. To the extent that the system was voluntary, in that sense, of course, it could be continued under the proposal which I offer. But I do not at least regard as voluntary a system imposed by a school board over the objections of parents and students as being any more voluntary than I do one imposed by a court.

I say to my good friend, who has expressed an attitude on busing as a concept which is identical to my own—I could have made the first part of his speech myself—that I think it totally appropriate for this Congress to follow what I consider to be the strictures of the original Brown litigation, which ended a system which for 100 years allowed and encouraged school districts and school boards to classify students by reason of race, and to move to a system in which school boards do not have that authority.

Before I complete my remarks, I do want to say what the limitations in my proposal are as well. They certainly do not prevent—as a matter of fact, they will encourage—school boards which are concerned about segregation, whether it is de facto or de jure, from closing a school which is, say, filled completely with members of one race because of residential patterns, from creating cluster schools, from changing the grade structures in schools which may traditionally have been grades one through six, but in order to produce a system in which there is more integration—three-grade schools or two-grade schools or the like—from creating magnet schools, and a whole host of other techniques which are racially conscious, in the sense that their goal is to see to it that there is greater integration than might otherwise be the case in a school district, so long as they do not involve saying to a specific student, John Jones, or to his parents, "You must go to thus and such a school, which is at a great distance from your home, by reason of your race, rather than because we have created a school system in which that school is the closest school which offers your grade or your type of instruction."

However, the answer to the question which the Senator propounded is the answer he expected. This does deny to the school district authorities the right to classify students by race.

Mr. EXON. I thank my friend from Washington.

Mr. President, because I think we must move ahead with the business of the United States Senate; because I think that it would be better for the Senate to move ahead as quickly as it can under the rules, while recognizing the rights of each individual Member of this body, and because I am a cosponsor of the measure before us, which is sponsored by the Senator from North Carolina and the Senator from Louisiana, I now move to table the amendment offered by the Senator from Washington, 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.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of the absent Senators.

The legislative clerk called the roll, and the following Senators entered

the Chamber and answered to their names:

[Quorum No. 10 Leg.]

Byrd. Harry F., Jr.	Gorton	Stennis
Exon	Helms	Weicker
	Quayle	

Mr. BAKER. Mr. President, I move that the Sergeant at Arms be instructed to compel the attendance of absent Senators, 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 of the Senator from Tennessee. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Maryland (Mr. MATHIAS), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE) and the Senator from Michigan (Mr. RIEGLE) are necessarily absent.

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

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 82, nays 11, as follows:

[Rollcall Vote No. 20 Leg.]

YEAS—82

Abdnor	Glenn	Metzenbaum
Andrews	Gorton	Mitchell
Armstrong	Grassley	Moynihan
Baker	Hart	Murkowski
Baucus	Hatch	Nickles
Bentsen	Hatfield	Nunn
Boren	Hawkins	Packwood
Bradley	Hayakawa	Pell
Bumpers	Heflin	Percy
Burdick	Heinz	Pressler
Byrd, Harry F., Jr.	Helms	Pryor
	Hollings	Randolph
Byrd, Robert C.	Huddleston	Roth
Cannon	Humphrey	Rudman
Chiles	Jackson	Sarbanes
Cohen	Jepsen	Sasser
Cranston	Johnston	Schmitt
D'Amato	Kassebaum	Simpson
Danforth	Kasten	Specter
DeConcini	Kennedy	Stafford
Denton	Laxalt	Stennis
Dixon	Leahy	Stevens
Dodd	Levin	Symms
Dole	Long	Tower
Durenberger	Lugar	Tsongas
Eagleton	Mattingly	Wallop
Exon	McClure	Zorinsky
Ford	Melcher	

NAYS—11

Biden	Garn	Quayle
Boschwitz	Goldwater	Warner
Domenici	Matsunaga	Weicker
East	Proxmire	

NOT VOTING—7

Chafee	Mathias	Williams
Cochran	Riegle	
Inouye	Thurmond	

So the motion was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the motion by the Senator from Nebraska (Mr. EXON) to table the amendment numbered 1258. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Oregon (Mr. HATFIELD), the Senator from Maryland (Mr. MATHIAS), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Connecticut (Mr. RIEGLE), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

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

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

The result was announced—yeas 40, nays 51, as follows:

[Rollcall Vote No. 21 Leg.]

YEAS—40

Baucus	Eagleton	Metzenbaum
Bentsen	Exon	Mitchell
Boren	Ford	Moynihan
Boschwitz	Glenn	Nunn
Bradley	Hart	Packwood
Bumpers	Heflin	Pell
Burdick	Hollings	Percy
Cannon	Huddleston	Pryor
Chiles	Kennedy	Randolph
Cohen	Leahy	Sarbanes
Cranston	Levin	Specter
Dixon	Long	Tsongas
Dodd	Matsunaga	
Durenberger	Melcher	

NAYS—51

Abdnor	Grassley	Pressler
Andrews	Hatch	Proxmire
Armstrong	Hawkins	Quayle
Baker	Hayakawa	Roth
Biden	Heinz	Rudman
Byrd, Harry F., Jr.	Helms	Sasser
	Humphrey	Schmitt
Byrd, Robert C.	Jackson	Simpson
D'Amato	Jepsen	Stafford
Danforth	Johnston	Stevens
DeConcini	Kassebaum	Symms
Denton	Kasten	Tower
Dole	Laxalt	Wallop
Domenici	Lugar	Warner
East	Mattingly	Weicker
Garn	McClure	Zorinsky
Goldwater	Murkowski	
Gorton	Nickles	

NOT VOTING—9

Chafee	Inouye	Stennis
Cochran	Mathias	Thurmond
Hatfield	Riegle	Williams

So the motion to lay on the table amendment No. 1258 was rejected.

Mr. WEICKER. Mr. President, I move to reconsider the vote by which the motion to lay on the table was rejected.

Mr. BAKER. I move to lay on the table the motion to reconsider.

Mr. WEICKER. I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Oregon (Mr. HATFIELD), the Senator from Maryland (Mr. MATHIAS), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE) and the Senator from Connecticut (Mr. RIEGLE) are necessarily absent.

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

The result was announced—yeas 49, nays 43—as follows:

[Rollcall Vote No. 22 Leg.]

YEAS—49

Abdnor	Gorton	Murkowski
Andrews	Grassley	Nickles
Armstrong	Hatch	Pressler
Baker	Hawkins	Proxmire
Biden	Hayakawa	Quayle
Byrd, Harry F., Jr.	Heinz	Roth
	Helms	Rudman
Byrd, Robert C.	Humphrey	Sasser
D'Amato	Jackson	Schmitt
Danforth	Jepsen	Simpson
DeConcini	Johnston	Stevens
Denton	Kassebaum	Symms
Dole	Kasten	Tower
Domenici	Laxalt	Wallop
East	Lugar	Warner
Garn	Mattingly	Zorinsky
Goldwater	McClure	

NAYS—43

Baucus	Exon	Moynihan
Bentsen	Ford	Nunn
Boren	Glenn	Packwood
Boschwitz	Hart	Pell
Bradley	Heflin	Percy
Bumpers	Hollings	Pryor
Burdick	Huddleston	Randolph
Cannon	Kennedy	Sarbanes
Chiles	Leahy	Specter
Cohen	Levin	Stafford
Cranston	Long	Stennis
Dixon	Matsunaga	Tsongas
Dodd	Melcher	Weicker
Durenberger	Metzenbaum	
Eagleton	Mitchell	

NOT VOTING—8

Chafee	Inouye	Thurmond
Cochran	Mathias	Williams
Hatfield	Riegle	

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

Mr. GOLDWATER. Mr. President, I wish to be recorded as having yielded my 1 hour, to which I am entitled, to the majority leader, Mr. BAKER.

The PRESIDING OFFICER. The Senator has 59 minutes and they are yielded to the Senator from Tennessee.

Mr. GOLDWATER. Fifty-nine. No wonder that clock is all wrong.

The PRESIDING OFFICER. May it be shown the Senator from Arizona has already spoken for 1 minute.

Mr. GOLDWATER. I am sorry.

Mr. LEVIN and Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. I recognize the Senator from Michigan.

Mr. LEVIN. Mr. President, the issue in the amendment is not busing, mandatory or otherwise. Transportation is not even mentioned in this amendment. The issue is not even whether a school board should give any consideration to race in drawing boundaries when a board acting on its own wants to eliminate purposeful or so-called de jure segregation or discrimination.

The issue is whether the Federal Government is going to dictate the answer to that last question for 15,000 local school boards and 50 State boards of education.

The issue is whether we intervene in local education administration and tell local school boards and State boards of education how they cannot draw school boundaries and assign pupils.

This is a mischievous precedent of Federal intrusion in local school administration. It is an unprecedented intrusion in local school administration which most of us will some day scramble to disavow.

For now, I make the plea for the record, a record which will soon be a cold record. I hope that courts will scratch a little beneath the findings we will soon be voting on to see if they meet any tests of substantiality.

If the courts will, they will find that the hallowed repository of freedom known as the 14th amendment is being invoked here based on so-called findings of fact although, as Senator GORTON indicated last night, the testimony before the Judiciary Committee has not yet been printed and is therefore not readily available to Members. It is being invoked here although no committee report is before us setting forth the backup material for these findings of fact based on evidence. The hallowed 14th amendment is being invoked here although the committee has not, as Senator GORTON has candidly indicated, even completed its work.

The 14th amendment is being invoked to intrude in local administration for the first time in history that this Congress has done it in this way, although the committee did not even focus on many of the issues raised in this amendment. The 14th amendment is being invoked here, although the issue is voluntary assignment of students or consideration of race in drawing boundries. The thrust of this amendment was not the focus of the hearings, that theoretically constitute the evidence before us upon which we base our support for these findings of fact.

Despite all of those inadequacies, despite that almost total absence of bases to make these findings, we are being asked to vote on these findings now and the 14th amendment, section 5, is being relied upon as a basis for our doing so.

Mr. President, if that minimal judicial scrutiny is given, I do not fear the outcome of this vote, whichever way it comes out. The 14th amendment will then and only then be the weapon of freedom it was intended to be instead of a mechanism to meddle in the local administration of schools.

This amendment seeks to repeal the Supreme Court decision in the Swann case. That decision said that to forbid at this stage all assignments made on the basis of race will "deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate existing dual school systems," *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43 (1971).

We cannot repeal the Swann decision by statute and, even if this amendment is adopted, I do not believe that it will succeed.

Finally, one word for my friend from Washington, Senator GORTON, who I see on the floor. Again I thank him for the patience that he displayed last night and the perserverance that he displayed last night in a long colloquy with this Senator, and I am grateful for the patience that he so displayed.

I thank the Chair.

Mr. WEICKER addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. Mr. President, I make the point of order that the Johnston amendment is not germane.

The PRESIDING OFFICER. Will the Senator from Connecticut direct my attention to which Johnston amendment he is referring?

Mr. WEICKER. I make the point of order that the Johnston amendment No. 1252 is nongermane, and I suggest the absence of a quorum.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Chair has not ruled on the point of order.

The amendment by the Senator from Louisiana numbered 1250 simply restates——

Mr. WEICKER. Amendment No. 1252.

The PRESIDING OFFICER. Amendment No. 1252 simply restates the bill plus the germane committee amendments and, therefore, that amendment is germane.

Mr. WEICKER. Mr. President, I appeal the ruling of the Chair and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. JOHNSTON. Mr. President, I make the point of order that the appeal from the ruling of the Chair is dilatory.

The PRESIDING OFFICER. The Chair must first establish whether or not there is a sufficient second in the call for the yeas and nays. Is there a sufficient second? There is not a sufficient second.

Mr. WEICKER. 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. JOHNSTON. Mr. President, I make the point of order that the call for the quorum is dilatory.

The PRESIDING OFFICER. The quorum call has already begun and, therefore——

Mr. JOHNSTON. The first Senator has not answered the rollcall.

The PRESIDING OFFICER. A Senator does not have to answer the rollcall once the quorum has been called.

The bill clerk resumed the call of the roll.

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

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. BAKER. Mr. President, what is the pending question before the Senate?

The PRESIDING OFFICER. The question is the appeal from the ruling of the Chair that amendment No. 1252 is germane. The question is, Shall the decision of the Chair be the judgment of the Senate?

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.

Mr. WEICKER. Mr. President, I ask unanimous consent that the vote on the appeal from the ruling of the Chair be set aside until disposition of the Gorton amendment.

The PRESIDING OFFICER. Is there objection?

Mr. JOHNSTON. Mr. President, does that reserve the right to raise a point of order that the matter is dilatory?

The PRESIDING OFFICER. What matter is dilatory?

Mr. JOHNSTON. That the appeal from the ruling of the Chair is dilatory.

The PRESIDING OFFICER. The Senator may raise that if he wishes.

Mr. JOHNSTON. It is not waived?

The PRESIDING OFFICER. That is correct.

Mr. BAKER. Now, Mr. President, it is my hope that in the time remaining between now and 7 p.m. debate on the Gorton amendment can be concluded and that a rollcall vote can occur beginning at 7 p.m. on the Gorton amendment up or down.

The PRESIDING OFFICER. Is there objection to the request?

Mr. BAKER. Mr. President, I am not making a request. I must say to the Chair I did not make the request that occur because I have not notified the minority leader. It is my hope that that will occur and I hope the debate will proceed at this time in order to facilitate that.

The PRESIDING OFFICER. The Senator made a request to set aside the appeal. Is there objection? Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, the pending amendment is the Gorton amendment. The Gorton amendment in many respects achieves the same goals that the Johnston-Helms amendment achieves in that it prohibits busing which as the debate has indicated and as I think the record indicates has been a positive evil as far as education is concerned without at the same time achieving the purpose for which the busing is done, that is to say integration.

The question now though is whether to attach the Gorton amendment to this legislation. It is a close and difficult question. As far as I personally am concerned, I have done a great deal of soul searching about the question. Mr. President, I will vote no on the Gorton amendment.

The reasons are principally practical, practical in the sense that, first of all, I think it puts baggage on the question of constitutionality, which may frankly weigh too great the side of the scale on the side of constitutionality in that it would prohibit a school board, a State court, or anyone indeed from ordering any busing whatsoever, not even busing within the 5-mile or 15-minute limit.

It seems to me that, therefore, what I regard as a reasonable limit has a better chance of passing muster with the court. It also seems that if a duly elected school board representing the people wishes to draw its school districts in a certain way that that is democracy in action as opposed to tyranny and the Johnston-Helms amendment does not propose to prohibit that.

The second practical consideration is the passage of this matter in the Senate. On the motion to table, there was a rather close vote here in the Senate. Many of those who voted with us before against the Gorton amendment voted to table the Gorton amendment, and the expression was that it goes too far.

Mr. President, when so many of my colleagues for whom I have great respect and who share a concern with forced busing feel that the matter goes too far then I believe it means that many of those in the House would feel the same way.

So for principally practical reasons I will vote against the Gorton amendment recognizing that the Gorton amendment has a great deal to be said for it both from a logical and a legal standpoint. I think from a practical standpoint it is the better part of judgment to vote no on the Gorton amendment.

Mr. HELMS. Mr. President, I pay my respects to the distinguished Senator from Washington. As he knows not only did I agree to vote against tabling his amendment, I worked this floor during the vote and I am certainly aware of the thought, work, and concentration that he has given his amendment.

I am inclined to agree with the observation of the distinguished Senator from Louisiana.

I have got to say, Mr. President, that the Senator from North Carolina is no oracle from Mount Sinai. I do not know who is right about this. But I think we ought to move along.

I do wish to pay my respects to the distinguished Senator from Washington, and I thank him for his cooperation and for the diligent efforts on his behalf.

The PRESIDING OFFICER (Mr. MURKOWSKI). The Senator from Washington.

Mr. GORTON. Mr. President, I do not have the ability to express my disappointment in the position taken by my good friend and colleague, the Senator from Louisiana, and the agreement expressed with that proposition by the Senator from North Carolina.

In spite of the position which they have expressed, I must ask the Members of this body to vote in favor of the amendment which is before them now in any event. I do that because, having observed all of the debates, at least the result of all the debates, which have taken place in the Congress of the United States on the subject of mandatory assignments to public schools on the basis of race I observe that this is the first vote on that proposition as a principle of law and of social policy in this body.

In the past, including the votes on both the Helms amendment and the Johnston amendment in this Congress, the Members of this body have not been willing to follow the logic of their convictions to its appropriate end, that end being that race should not be considered by public authorities in assignments to public schools.

We have had proposals considered and passed in this body which limit the right of the Department of Justice to enter into school desegregation litigation. We have had proposals pass the Congress of the United States which restrict the authority of the Department of Health, Education, and Welfare, and one of its successors, the Department of Education, to deal with public policy in this area.

We have recently passed a Johnston amendment which prohibits the use of a mandatory assignment remedy on the part of the courts when it would result in a busing remedy which would extend for more than 5 miles or for more than 15 minutes.

Ironically, however, that very solution is inconsistent with the findings on which it is based. The findings which this body has already adopted in passing the Johnston amendment are essentially identical to those in the amendment which is before us at the present time. They have to do with the inefficacy of mandatory busing as an educational remedy, they have to do with its destruction of the concept of the public school system, with its acceptance by the general public, and with its deprivation of the normal and historic rights of the citizens of the United States to choose the school assignments of their children by the place in which they choose to live.

Yet faced with the proposition that the Congress of the United States should follow its undoubted right to set social policy in this area, they essentially blink and say that busing may be appropriate under some circumstances or when it does not involve a great distance of travel or when a court may disagree with the findings of fact which are made by this Congress itself.

Never before this vote have the Members of this body had the opportunity to vote directly on whether or not they consider mandatory school assignments, that is to say mandatory busing based on race, to be a valid or an appropriate social policy in the United States. Not one Member, with the possible exception of the Senator from Connecticut, not all of whose remarks I have heard on this, has stood up in this body to justify that social policy. In fact, every speech we have heard has deprecated that policy but has been followed all too frequently by the statement that even though that policy is to be deprecated, even though it is ineffective, even though it is inappropriate, even though it has tended to undermine public acceptance of public schools, we nevertheless should not accept our willingness or follow our own consciences in voting something which will limit or correct it.

Curiously enough, I have heard at least some debate on the floor of this body asserting that this reverses a policy of Brown against Board of Education. I wish to take this opportunity to read a portion of one paragraph

from the case which is colloquially known as Brown II, that is to say the portion of the second Brown against Board of Education case which dealt with remedies, and I am reading from volume 349 of the United States Reports beginning on page 300:

> The courts (the Supreme Court of the United States said) may consider problems related to administration arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas and to compact units to achieve a system of determining admission to the public schools on a non-racial basis.

It is precisely that policy to which this amendment ask the courts of the United States to return based on the wisdom and the actual experience of school districts of the United States during the decade of the 1970's and the 2 years which have passed during the course of the 1980's.

This amendment does not in any respect restrict the rights of courts or of popularly elected school districts to cluster schools, to close individual schools because they tend to destroy racial balance, to set grade levels in a different fashion than they have in the past or to engage in any other activity not only to end de jure segregation but to create a greater degree of racial balance in public schools even where there is no de jure segregation to the extent that that is regarded as socially desirable other than to deprive a student——

The PRESIDING OFFICER. The 1 hour of the Senator from Washington has expired.

Mr. GORTON. I understand the majority leader yielded to me the hour of the Senator from Arizona.

Mr. BAKER. Mr. President, before I yield my time, I repeat my wish that we might get to a vote on this amendment in the next few minutes. I yield 10 minutes to the Senator from Washington.

Mr. GORTON. I am very close to finishing.

The only restriction contained in this amendment is the restriction against classifying by race the schoolchildren of the United States who, by definition, are guilty of no action of racial segregation whatsoever.

It is precisely the promise of Brown against Board of Education which this amendment is designed to implement. It is precisely the high ground in this debate which it is the design of this amendment to take by recognizing in every schoolchild in the United States the right to a racially neutral school assignment.

I must say very bluntly that I found it very difficult, extremely difficult, to vote for the Johnston-Helms amendment because it did not deal with this as a matter of principle. I did so only because it provided the vehicle to discuss this amendment which, for the first time, does deal with the matter as a question of principle.

I feel quite firmly, and I state this due to my own experience before becoming a Member of the Senate, that the chances that this approach will be validated by the Supreme Court, because it is consistent with the congressional findings included in the amendment and because it does recognize a right to have racially neutral treatment of individual school students, are greater than the chances that the Johnston-Helms amendment will be validated by the Court.

I believe we are being led down a blind alley which is likely to meet a rebuff on the part of the courts of the United States, and unlikely to solve the very problem against which it is directed even if it is validated. I believe that sooner or later this body and the Congress are going to have to make that fundamental value determination as to whether or not they think that schoolchildren can appropriately be assigned to public schools simply on the basis of their race; that they can be treated as the pawns of a sociological experiment rather than have the Congress of the United States vindicate their rights to the equal protection of the laws.

As I said, I am disappointed, although I understand the tactical reasons for the change of view on the part of my two distinguished colleagues from Louisiana and North Carolina. I, nevertheless, ask each of those persons who has ever made a speech stating that schoolchildren should be treated without regard to race in their school assignments to consider very carefully their vote on the first single instance in which they have been able to vote on that principle, clean and unlimited by attacks of jurisdiction of the courts of the United States or the Department of Justice.

Mr. WEICKER addressed the Chair.

The PRESIDING OFFICER (Mr. ANDREWS). The Senator from Connecticut.

Mr. WEICKER. Mr. President, I urge defeat of the Gorton amendment. I do so for the same reason I urge defeat of the Helms amendment and I urge defeat of the Johnston amendment.

The fact is that the Senate, in any of these amendments, is not creating a solution to the problem of discrimination and segregation. It is merely preventing that arm of the Government, which has the independence and the courage, to state the solution of what it can or cannot do.

I will vote on this floor for any proposition put forth by any Senator that constructively addresses itself to the problem of discrimination and segregation in our school systems. But any amendment and any proposition that either says no or modifies that which the judicial branch of Government has conceived in the vacuum that we have created will have my opposition.

I urge defeat of the Gorton amendment for those reasons.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Washington (Mr. GORTON). The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Oregon (Mr. HATFIELD), and the Senator from South Carolina (Mr. THURMOND), are necessarily absent.

I further announce that, if present and voting, the Senator from South Carolina (Mr. THURMOND), would vote "yea."

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Michigan (Mr. RIEGLE), and the Senator from Maryland (Mr. SARBANES), are necessarily absent.

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

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

The result as announced—yeas 42, nays 49, as follows:

[Roll Call Vote No. 23 Leg.]

YEAS—42

Abdnor	Hatch	Pressler
Andrews	Hawkins	Proxmire
Armstrong	Hayakawa	Quayle
Baker	Heinz	Roth
Byrd, Harry F., Jr.	Humphrey	Rudman
Byrd, Robert C.	Jackson	Sasser
D'Amato	Jepsen	Schmitt
Danforth	Kassebaum	Simpson
DeConcini	Kasten	Stevens
Dole	Laxalt	Symms
Domenici	Lugar	Wallop
Goldwater	Mattingly	Warner
Gorton	McClure	Zorinsky
Grassley	Murkowski	
	Nickles	

NAYS—49

Baucus	East	Metzenbaum
Bentsen	Exon	Mitchell
Biden	Ford	Moynihan
Boren	Garn	Nunn
Boschwitz	Glenn	Packwood
Bradley	Hart	Pell
Bumpers	Heflin	Percy
Burdick	Helms	Pryor
Cannon	Hollings	Randolph
Chiles	Huddleston	Specter
Cohen	Johnston	Stafford
Cranston	Kennedy	Stennis
Denton	Leahy	Tower
Dixon	Levin	Tsongas
Dodd	Long	Weicker
Durenberger	Mathias	
Eagleton	Melcher	

NOT VOTING—9

Chafee	Inouye	Sarbanes
Cochran	Matsunaga	Thurmond
Hatfield	Riegle	Williams

So Mr. GORTON's amendment (No. 1258) was rejected.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I have already cleared this request with the minority leader. I ask unanimous consent that, if a vote is ordered on the motion to table, it occur following the vote previously ordered on the appeal from the ruling of the Chair, not before 9 o'clock.

The PRESIDING OFFICER. Is there objection? The Chair hears none. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, no vote has been ordered.

The PRESIDING OFFICER. There will be no votes between 7 and 9 o'clock.

Mr. BAKER. Mr. President, debate on this bill will continue between now and 9 o'clock, but the vote on the appeal from the ruling of the Chair will not occur before 9 o'clock.

It is not the intention of the leadership to ask for any vote between now and 9 p.m.

Mr. JOHNSTON. Mr. President, that does not include a vote as to which the yeas and nays have not been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered on the motion to table.

Mr. BAKER. Mr. President, if the Senator will yield to me, if his inquiry was as to whether matters could be disposed of by voice vote, of course. I was referring to rollcall votes.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the motion to reconsider.

The motion to 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 bill clerk proceeded to call the roll.

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

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

ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, there has not been a period for transaction of routine morning business during this calender day. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. Mr. President, I believe it would be appropriate to provide for that at this time.

I ask unanimous consent that there be a brief period for the transaction of routine morning business, to extend not more than 5 minutes, during which Senators may speak for not more than 1 minute each.

I ask unanimous consent that at the conclusion of that time or at the expiration of the time for the transaction of routine morning business, the Senate resume consideration of the pending business and the pending question.

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

THE OIL GLUT MIRAGE

Mr. JACKSON. Mr. President, today's Wall Street Journal carries an alarming article about developments in the Middle East. The article details recent escalation of the border war between Iran and Iraq, and highlights the involvement of outside forces, particularly the Soviet Union.

I have commented on this situation numerous times, including a statement I made on this floor just before the recess on Thursday, February 11. At that time, I observed that few would dispute that the Middle East is still a cauldron of instability. Today's article confirms that statement.

Mr. President, all of America's eyes were riveted on the Middle East, particularly Iran, while the hostages were still being held captive. Since that time, the crisis atmosphere has abated and many Americans have been lulled to sleep. We seem to be letting down our guard, principally due to a temporary surplus in oil production.

I have said repeatedly that even though our own dependence on Persian Gulf oil is declining—due to conservation and the recession—our dependence will continue for the foreseeable future. Our allies are in even worse shape, particularly those who do not have domestic energy production. The fate of the Western economic system, and the stability of our political systems, are inextricably tied to the Middle East.

We cannot afford to ignore these events. They will eventually have very serious repercussions. The oil glut is a mirage, as is the temporary respite from conflict in the Middle East.

Unfortunately the administration appears to believe in mirages. They are cutting back on the budget for the strategic petroleum reserve at a time when they should be increasing it.

As I have said before, I applauded the 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. But the budget before the Congress right now falls short of what is needed.

Congress has set a target for the SPR fill rate of 300,000 barrels per day. The law requires the President to "seek to fill" the strategic petroleum reserve at that rate. It would certainly be possible to purchase oil at that rate given the current world oil market conditions. In fact, now is the perfect time to accelerate purchases.

Instead, the fiscal year 1983 budget proposal will set the SPR program back an entire year. It calls for completion of the program in 1990, rather than 1989 as was planned. The President's budget proposes to defer 28 percent of fiscal year 1982 facilities construction funding. OMB cut the DOE request for facilities construction funds by more than half. The oil procurement funding request represents a cut of 44 percent from last year.

Oil prices are declining. Oil is available. Yet they are cutting back on what is unquestionably a national security program.

Yesterday, the Secretary of Energy attempted to appease the members of the Energy Committee by telling us that the fill rate for fiscal year 1983 will be higher than that for fiscal year 1982. What he neglected to point out is that all but 20,000 barrels per day of the oil to fill the SPR in fiscal year 1983 will be purchased under long-term contracts with fiscal year 1982 funds. As a result, the administration's course of action will lead to a precipitous drop in the fill rate by 1985. The projected fill rate for fiscal year 1985 will plummet to 107,000 barrels per day. I simply cannot support that policy.

I hope that the article will be of interest to my colleagues. I ask unanimous consent that it be reprinted at this point in the RECORD.

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

[From the Wall Street Journal, Feb. 24, 1982]

ASCENDANCY OF IRAN IN CONFLICT WITH IRAQ IMPERILS MIDEAST OIL

(By Youssef M. Ibrahim and Karen Elliott House)

A steady escalation of the border war between Iraq and Iran is reviving fears among neighbors and in the West that the 17-month-old conflict may spread—an eventuality that could disrupt oil supplies from the Persian Gulf and bring a swift end to the current world oil glut.

The fears are based largely on two developments, the first being that Iran began in September to gain the upper hand. The second is that the Soviet Union is taking advantage of Iran's near bankruptcy. The Russians have dramatically expanded their presence in Iran and recently signed a cultural-exchange agreement with the Islamic revolutionary regime of Ayatollah Ruhollah Khomeini. Trade between the Soviets and the Iranians is growing.

"The Soviet pause for appraisal of this adminstration is over, and we're now going to be tested," says Eugene Rostow, director of the U.S. Arms Control and Disarmament Agency. "I believe Iran is the place we're going to be tested."

Until recently, Western nations have paid little attention to the Iraq-Iran war. Oil has been plentiful, and the U.S. has little influence with Iraq and none with Iran. Moreover, pivotal oil producers in the region, such as Saudi Arabia, Kuwait and the United Arab Emitrates, have been content to see the two biggest powers in the Persian Gulf preoccupied with what appeared to be an endless war of attrition.

Today, however, the situation in the Persian Gulf is "markedly different," says Adeed Dawisha, a Mideast expert with the Royal Institute of International Affairs in London. He explains: "Iran hasn't only survived, the war, but it is emerging stronger. Secondly, they are actively trying to export the revolution in many concrete ways to their Arab neighbors. This is pushing the Arab oil producers to actively support Iraq."

COUP ATTEMPT

Iran's attempts to export its revolution date from the early days of the Ayatollah's regime but were dropped for a long period because of preoccupation with internal affairs. Such activity was resumed late last year. In October, for example, Saudi Arabia expelled dozens of Iranian pilgrims from Mecca after the Iranians staged political demonstrations aimed at arousing other Moslem worshipers. Then, in mid-December, a band of Iranian-trained revolutionaries attempted a coup in the tiny, conservative Arab sheikdom of Bahrain, a stone's throw from Saudi Arabia. Although both Iranian actions were failures, the conservative Arab regimes of the Middle East began to adopt tactics to curb Iran.

In Jordan, King Hussein is rounding up volunteers to fight alongside Iraq. Egypt is sending military supplies to Iraq and hinting that Egyptian soldiers would join the fight against Iran if the latter's troops set foot on Iraqi soil. Kuwait is offering logistical help, and the United Arab Emirates and Jordan continue to make their ports available to landlocked Iraq.

Since the war began in September 1980, a huge campaign of grants and loans has channeled an estimated $20 billion to Iraq from Saudi Arabia, Kuwait and the UAE. Several more billions are expected this year. Such outlays are described by Arab officials as an unprecedented drain on the region's oil revenues.

Still, Iraq appears in real danger of suffering further military humiliation at the hands of Iran, which is sending waves of new, young recruits to the front in record numbers. "They have Islam in their eyes and a rifle in their hands," says a U.S. official speaking of the zealous Revolutionary Guards, who make up the bulk of Iran's assault troops.

TEHERAN'S DETERMINATION

Iran's goal goes beyond taking back the sliver of land that Iraqi troops have occupied in the Iranian oil province of Khuzinstan. Teheran is determined to topple Iraq's president, Saddam Hussein, and replace his secular Arab socialist government with an Islamic Shia regime similar to that of Iran. Since last September, Iranian troops have taken back land occupied by Iraq near the large city of Abadan. More importantly, the Iranians are coming closer to the Iraqi borders at several points, forcing Baghdad to commit more men to battle and to abandon its policy of avoiding too many casualties for fear of a serious backlash among the Iraqi populaton.

All this comes at a time when Egypt's new government is struggling to root out Islamic fundamentalists and when Syria's president, Hafiz al-Assad, is fighting a tough battle with the fundamentalists in that nation. An Iranian victory could give fundamentalist movements throughout the Middle East new impetus to take on established governments. Such conflicts and the resulting instability would be certain to disrupt the region's vital oil supplies.

Meanwhile, Iran is becoming more dependent on Soviet-bloc aid. Iran has been unable to sell much of its dwindling oil production because of the world-wide oversupply and because of the war risks that keep many buyers away from its Persian Gulf loading stations. The Iranians are therefore resorting to bartering almost half their crude exports—a meager 500,000 barrels a day—for essential goods and services from the Soviet Union and other Communist countries, including Romania, East Germany and Yugoslavia.

Soviet arms continue to flow to Iran under agreements originally concluded with the late shah's regime. Soviet experts are flocking back in growing numbers to work on Iranian industrial projects interrupted in the three years of the revolution, and many new commercial contracts have been signed with Soviet-bloc nations in the past few weeks. Significantly, the Iranian regime seems to have abandoned its public posture of neutrality with the Soviets. Iran's press widely reported a series of recent meetings held by the Russian ambassador to Iran with the Iranian foreign minister, prime minister and deputy foreign ministers; the Iranian officials reported details of the meetings to the Ayatollah Khomeini, but the subject matter wasn't made public.

Most worrisome to officials in Washington are Soviet military activities around Iran. For the past two years, U.S. officials assert, Moscow has been beefing up its troops along Iran's borders—a buildup that appears so alarming to Washington that an administration official recently described it as "the most menacing development in the Near East."

Furthermore, intelligence sources in Washington and London agree that the Iranian Tudeh Communist Party is spreading its wings. Tudeh is a longtime ally of the Soviet Union that has aligned itself with the Ayatollah's revolution from the start of the Islamic upheaval in 1978. Tudeh members are said to have infiltrated the Iranian bureaucracy, occupying positions of power in the security services and within the ruling Islamic Republican Party.

There is also evidence that the Tudeh Party has infiltrated opposition groups such as the leftist (but non-Communist) Mujahedeen Khalq. According to U.S. officials, safe houses of the Mujahedeens and other anti-government groups have been disclosed to the ruling regime by Tudeh Party members.

The Russian involvement enhances the possibility of a long war—a possibility that many observers believe is rapidly becoming a probability. "There is little political incentive for a settlement on either side, and there is no serious mediation effort under way," says William B. Quandt, program director for energy and national security at the Brookings Institution. He adds: "For the next year or two, the prospect is that the war will continue."

Certainly, it doesn't appear that the two countries are being deterred by the war's enormous costs. By the warring powers' own accounts, the dead exceed 15,000 in Iraq, a nation of 14 million, and well over twice that in Iran, whose population is 40 million. The wounded run into several tens of thousands on both sides, and each country holds some 10,000 prisoners of war.

According to Arab bankers in London, Paris and Washington, Iran and Iraq have each incurred losses of $40 billion in damaged facilities alone. Iran's foreign-currency reserves, which totaled $12 billion in 1979, are down to less than $600 million; Iraq, which began the war with $35 billion in reserves, is estimated to be down to $16 billion. (That latter figure, however, doesn't include last year's $20 billion in aid from Arab countries.)

As recently as last month, when the latest of a half-dozen mediation attempts collapsed, both Teheran and Baghdad vowed to continue fighting until the opponent of each is vanquished completely. On Jan. 16, Iran's prime minister, Mir-Hossein Mousavi, warned: "Those states which provide support for Iraq will face disastrous consequences."

The Arabs know the Iranian threats aren't empty. Since the war began, Iran had sent its warplanes into Kuwait three times. (The last assault, in October, set an oil-gathering station ablaze.) But the Arabs are more concerned about the Iranian-inspired disturbances among their own citizens, particularly the Shiite Moslems who abound throughout the Gulf region. The Shiites, who rule in Iran, are a majority in Bahrain and constitute substantial minorities in Kuwait, the UAE, Qatar and the vital eastern province of Saudi Arabia that contains most of Saudi oil reserves.

"An Iranian victory would bolster Islamic revolutionary zeal throughout the region by making it appear that God is with Khomeini," a U.S. official says.

In the past few weeks, almost all observers agree, Iran has mounted a successful counteroffensive that has pushed Iraqi troops out of several areas inside Iran and that has brought Iranian troops closer to Iraq's own borders. A new Iranian offensive is expected next month.

"I believe the war is entering a very crucial stage in which oil facilities throughout the region may become seriously endangered," says James Akins, former U.S. ambassador to Saudi Arabia and a frequent traveler to Iraq and the Persian Gulf's Arab countries.

Whatever does happen, the U.S., to its consternation, will be a bystander—while the Soviets continue to expand their influence in the area. These days, the pervasive concern in Washington isn't that the Russians have signed up Iran as a satellite, but that the U.S. and other Western countries can't compete because they are absent from the scene.

"The Soviets have assets we don't have," explains a Reagan administration official. "They have an open border, a devoted party inside Iran and natives who share the culture and language of ethnic groups in Iran—and we aren't even in the ball game."

SOLE SOURCE AQUIFER PROTECTION ACT

Mr. BAUCUS. Mr. President, I am pleased to cosponsor the introduction of the Sole Source Aquifer Protection Act. This measure signifies an important effort to encourage planning and management to protect one of the Nation's most valuable resources—our ground water supply.

We are still learning about the complexities of ground water movement through aquifers. For too long we believed that nature alone could provide the cleansing and purifying mechanisms to assure ground water purity. We have come to learn that in fact ground water may move through an aquifer at the rate of only a few feet per year. Therefore, when contamination incidences occur, they may be impossible to control and can cause irreversible damage to the quality of the ground water.

Because the size and hydrological characteristics of aquifers vary from area to area, ground water protection has been perceived to be primarily a State and local concern. However, only a limited number of States have initiated programs of their own. The Sole Source Aquifer Protection Act addresses this matter by providing a system of Federal support for programs designed and implemented at the State and local level.

Many States and localities stand to benefit from the provisions of this bill. Currently, 17 States have petitions pending, or already have designated sole source aquifers under the Safe Drinking Water Act. Once this designation has been made, municipalities may seek to protect particularly sensitive recharge zones within the aquifer through the process set forth in this measure.

We know from experience that the containment and removal of pollutants in ground water is difficult and costly. This measure offers a procedure of planning and management that should help to prevent the occurrence of contamination in the most ecologically sensitive areas of the aquifers that we depend on for drinking water.

AH, WILDERNESS

Mr. SYMMS, Mr. President, William Tucker is not the first writer to discern a connection between the drive for wilderness designation on the public lands and class distinctions. In the current issue of Harper's, Mr. Tucker does provide some interesting insights into the class and social implications of preservationism.

The drive for wilderness is extremely important in a State such as mine, Mr. President. The declaration of wilderness as immediate implications for jobs and lifestyle for the people who live in Idaho year around, as opposed to those who visit for only a few days in the year. Mr. Tucker understands these impacts, and explains them clearly.

I think that some of my colleagues can profit from Mr. Tucker's comments, and so ask unanimous consent that his article be printed at this point in the RECORD.

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

IS NATURE TOO GOOD FOR US?

(By Willliam Tucker)

Probably nothing has been more central to the environmental movement than the concept of wilderness. "In wildness is the preservation of the world," wrote Thoreau, and environmental writers and speakers have intoned his message repeatedly. Wilderness, in the environmental pantheon, represents a particular kind of sanctuary in which all true values—that is, all nonhuman values—are reposited. Wildernesses are often described as "temples," "churches," and "sacred ground"—refuges for the proposed "new religion" based on environmental consciousness. Carrying the religious metaphor to the extreme, one of the most famous essays of the environmental era holds the Judeo-Christian religion responsible for "ecological crisis."

The wilderness issue also has a political edge. Since 1964, long-standing preservation groups like the Wilderness Society and the Sierra Club have been pressuring conservation agencies like the National Forest Service and the Bureau of Land Management to put large tracts of their holdings into permanent "wilderness designations," countering the "multiple use" concept that was one of the cornerstones of the Conservation Era of the early 1900s.

Preservation and conservation groups have been at odds since the end of the last century, and the rift between them has been a major controversy of environmentalism. The leaders of the Conservation Movement—most notably Theodore Roosevelt, Gifford Pinchot, and John Wesley Powell—called for rational, efficient development of land and other natural resources: multiple use, or reconciling competing uses of land, and also "highest use," or forfeiting more immediate profits from land development for more lasting gains. Preservationists, on the other hand, the followers of California woodsman John Muir, have advocated protecting land in its natural state, setting aside tracts and keeping them inviolate.

"Wilderness area" battles have become one of the hottest political issues of the day, especially in western states—the current "Sagebrush Revolt" comes to mind—where large quantities of potentially commercially usable land are at stake.

The term "wilderness" generally connotes mountains, trees, clear streams, rushing waterfalls, grasslands, or parched deserts, but the concept has been institutionalized and has a careful legal definition as well. The one given by the 1964 Wilderness Act, and that most environmentalists favor, is that wilderness is an area "where man is a visitor but does not remain." People do not "leave footprints there," wilderness exponents often say. Wildernesses are most importantly, areas in which evidence of human activity is excluded; they need not have any particular scenic, aesthetic, or recreational value. The values, as environmentalists usually say, are "ecological"—which means, roughly translated, that natural systems are allowed to operate as free from human interference as possible.

The concept of excluding human activity is not to be taken lightly. One of the major issues in wilderness areas has been whether or not federal agencies should fight forest fires. The general decision has been that they should not, except in cases where other lands are threatened. The federal agencies also do not fight the fires with motorized vehicles, which are prohibited in wilderness areas except in extreme emergencies. Thus in recent years both the National Forest Service and the National Park Service have taken to letting forest fires burn unchecked, to the frequent alarm of tourists. The defense is that many forests require periodic leveling by fire in order to make room for new growth. There are some pine trees, for instance, whose cones will break open and scatter their seeds only when burned. This theoretical justification has won some converts, but very few in the timber companies, which bridle at watching millions of board-feet go up in smoke when their own "harvesting" of mature forests has the same effect in clearing the way for new growth and does less damage to forest soils.

The effort to set aside permanent wilderness areas on federal lands began with the National Forest Service in the 1920s. The first permanent reservation was in the Gila National Forest in New Mexico. It was set aside by a young Forest Service officer named Aldo Leopold, who was later to write A Sand County Almanac, which has become one of the bibles of the wilderness movement. Robert Marshall, another Forest Service officer, continued the program, and by the 1950s nearly 14 million of the National Forest System's 186 million acres had been administratively designated wilderness preserves.

Leopold and Marshall had been disillusioned by one of the first great efforts at "game management" under the National Forest Service, carried out in the Kaibab Plateau, just north of the Grand Canyon. As early as 1906 federal officials began a program of "predator control" to increase the deer population in the area. Mountain lions, wolves, coyotes, and bobcats were systematically hunted and trapped by game officials. By 1920, the program appeared to be spectacularly successful. The deer population, formerly numbering 4,000, had grown to almost 100,000. But it was realized too late that it was the range's limited food resources that would threaten the deer's existence. During two severe winters, in 1924-26, 60 percent of the herd died, and by 1939 the population had shrunk to only 10,000. Deer populations (unlike human populations) were found to have no way of putting limits on their own reproduction. The case is still cited as the classic example of the "boom and bust" disequilibrium that comes from thoughtless intervention in an ecologicial system.

The idea of setting aside as wilderness areas larger and larger segments of federally controlled lands began to gain more support from the old preservation groups. In part, this came from preservationists' growing realization, during the 1950s, that they had not won the battle during the Conservation Era, and that the national forests were not parks that would be protected forever from commercial activity.

Pinchot's plan for practicing "conservation" in the western forests was to encourage a partnership between the government and large industry. In order to discourage overcutting and destructive competition, he formulated a plan that would promote conservation activities among the larger timber companies while placing large segments of the western forests under federal control. It was a classic case of "market restriction," carried out by the joint efforts of larger businesses and government. Only the larger companies, Pinchot reasoned, could gener-

ate the profits that would allow them to cut their forest holdings slowly so that the trees would have time to grow back. In order to ensure these profit margins, the National Forest Service would hold most of its timber lands out of the market for some time. This would hold up the price of timber and prevent a rampage through the forests by smaller companies trying to beat small profit margins by cutting everything in sight. Then, in later years, the federal lands would gradually be worked into the "sustained yield" cycles, and timber rights put up for sale. It was when the national forests finally came up for cutting in the 1950s that the old preservation groups began to react.

The battle was fought in Congress. The 1960 Multiple Use and Sustained Yield Act tried to reaffirm the principles of the Conservation Movement. But the wilderness groups had their day in 1964 with the passing of the Wilderness Act. The law required all the federal land-management agencies—the National Forest Service, the National Park Service, and the Fish and Wildlife Service—to review all their holdings, keeping in mind that "wilderness" now constituted a valid alternative in the "multiple use" concept—even though the concept of wilderness is essentially a rejection of the idea of multiple use. The Forest Service, with 190 million acres, and the Park Service and Fish and Wildlife Service, each with about 35 million acres, were all given twenty years to start designating wilderness areas. At the time, only 14.5 million acres of National Forest System land were in wilderness designations.

The results have been mixed. The wilderness concept appears valid if it is recognized for what it is—an attempt to create what are essentially "ecological museums" in scenic and biologically significant areas of these lands. But "wilderness," in the hands of environmentalists, has become an all-purpose tool for stopping economic activity as well. This is particularly crucial now because of the many mineral and energy resources available on western lands that environmentalists are trying to push through as wilderness designations. The original legislation specified that lands were to be surveyed for valuable mineral resources before they were put into wilderness preservation. Yet with so much land being reviewed at once, these inventories have been sketchy at best. And once land is locked up as wilderness, it becomes illegal even to explore it for mineral or energy resources.

Thus the situation in western states—where the federal government still owns 68 percent of the land, counting Alaska—has in recent years become a race between mining companies trying to prospect under severely restricted conditions, and environmental groups trying to lock the doors to resource development for good. This kind of permanent preservation—the antithesis of conservation—will probably have enormous effects on our future international trade in energy and mineral resources.

At stake in both the national forests and the Bureau of Land Management holdings are what are called the "roadless areas." Environmentalists call these lands "de facto wilderness," and say that because they have not yet been explored or developed for resources they should not be explored and developed in the future. The Forest Service began its Roadless Area Resources Evaluation (RARE) in 1972, while the Bureau of Land Management began four years later in 1976, after Congress brought its 174 million acres under jurisdiction of the 1964 act. The Forest Service is studying 62 million roadless acres, while the BLM is reviewing 24 million.

In 1974 the Forest Service recommended that 15 million of the 50 million acres then under study be designated as permanent wilderness. Environmental groups, which wanted much more set aside, immediately challenged the decision in court. Naturally, they had no trouble finding flaws in a study intended to cover such a huge amount of land, and in 1977 the Carter administration decided to start over with a "RARE II" study, completed in 1979. This has also been challenged by a consortium of environmental groups that include the Sierra Club, the Wilderness Society, the National Wildlife Federation, and the Natural Resources Defense Council. The RARE II report also recommended putting about 15 million acres in permanent wilderness, with 36 million released for development and 11 million held for further study. The Bureau of Land Management is not scheduled to complete the study of its 24 million acres until 1991.

The effects of this campaign against resource development have been powerful. From 1972 to 1980, the price of a Douglas fir in Oregon increased 500 percent, largely due to the delays in timber sales from the national forests because of the battles over wilderness areas. Over the decade, timber production from the national forests declined slightly, putting far more pressure on the timber industry's own lands. The nation now has become an importer of logs, despire the vast resources on federal lands. In 1979, environmentalists succeeded in pressuring Congress into setting aside 750,000 acres in Idaho as the Sawtooth Wilderness and National Recreational Area. A resource survey, which was not completed until after the congressional action, showed that the area contained an estimated billion dollars' worth of molybdenum, zinc, silver, and gold. The same tract also contained a potential source of cobalt, an important mineral for which we are now dependent on foreign sources for 97 percent of what we use.

Perhaps most fiercely contested are the energy supplies believed to be lying under the geological strata running through Colorado, Wyoming, and Montana just east of the Rockies, called the Overthrust Belt. Much of this land is still administered by the Bureau of Land Management for multiple usage. But with the prospect of energy development, environmental groups have been rushing to try to have these high-plains areas designated as wilderness areas as well (cattle grazing is still allowed in wilderness tracts). On those lands permanently withdrawn from commercial use, mineral exploration will be allowed to continue until 1983. Any mines begun by then can continue on a very restricted basis. But the exploration in "roadless areas" is severely limited, in that in most cases there can be no roads constructed (and no use of off-roads vehicles) while exploration is going on. Environmentalists have argued that wells can still be drilled and test mines explored using helicopters. But any such expoloration is likely to be extraordinarily expensive and ineffective. Wilderness restrictions are now being drawn so tightly that people on the site are not allowed to leave their excrement in the area.

IMPOSSIBLE PARADISES

What is the purpose of all this? The standard environmental argument is that we have to "preserve these last few wild places before they all disappear." Yet it is obvious that something more is at stake. What is being purveyed is a view of the world in which human activity is defined as "bad" and natural conditions are defined as "good." What is being preserved is evidently much more than "ecosystems." What is being preserved is an image of wilderness as a semisacred place beyond humanity's intrusion.

It is instructive to consider how environmentalists themselves define the wilderness. David Brower, former director of the Sierra Club, wrote in his introduction to Paul Ehrlich's "The Population Bomb" (1968):

"Whatever resources the wilderness still held would not sustain [man] in his old habits of growing and reaching without limits. Wilderness could, however, provide answers for questions he had not yet learned how to ask. He could predict that the day of creation was not over, that there would be wiser men, and they would thank him for leaving the source of those answers. Wilderness would remain part of his geography of hope, as Wallace Stegner put it, and could, merely because wilderness endured on the planet, prevent man's world from becoming a cage."

The wilderness, he suggested, is a source of peace and freedom. Yet setting wilderness aside for the purposes of solitude doesn't always work very well. Environmentalists have discovered this over and over again, much to their chagrin. Every time a new "untouched paradise" is discovered, the first thing everyone wants to do is visit it. By their united enthusiasm to find these "sanctuaries," people bring the "cage" of society with them. Very quickly it becomes necessary to erect bars to keep people out—which is exactly what most of the "wilderness" legislation has been all about.

In 1964, for example, the Sierra Club published a book on the relatively "undiscovered" paradise of Kauai, the second most westerly island in the Hawaiian chain. It wasn't long before the island had been overrun with tourists. When Time magazine ran a feature on Kauai in 1979, one unhappy island resident wrote in to convey this telling sentiment: "We're hoping the shortages of jet fuel will stay around and keep people away from here." The age of environmentalism has also been marked by the near overrunning of popular national parks like Yosemite (which now has a full-time jail), intense pressure on woodland recreational areas, full bookings two and three years in advance for raft trips through the Grand Canyon, and dozens of other spectacles of people crowding into isolated areas to get away from it all. Environmentalists are often critical of these inundations, but they must recognize that they have at least contributed to them.

I am not arguing against wild things, scenic beauty, pristine landscapes, and scenic preservation. What I am questioning is the argument that wilderness is a value against which every other human activity must be judged, and that human beings are somehow unworthy of the landscape. The wilderness has been equated with freedom, but there are many different ideas about what constitutes freedom. In the Middle Ages, the saying was that "city air makes a man free," meaning that the harsh social burdens of medieval feudalism vanished once a person escaped into the heady anonymity of a metropolitan community. When city planner Jane Jacobs, author of "The Death and Life of Great American Cities," was asked by an interviewer if "overpopulation" and "crowding into large cities" weren't making social prisoners of us all,

her simple reply was: "Have you ever lived in a small town?"

It may seem unfair to itemize the personal idiosyncrasies of people who feel comfortable only in wilderness, but it must be remembered that the environmental movement has been shaped by many people who literally spent years of their lives living in isolation. John Muir, the founder of the National Parks movement and the Sierra Club, spent almost ten years living alone in the Sierra Mountains while learning to be a trail guide. David Brower, who headed the Sierra Club for over a decade and later broke with it to found the Friends of the Earth, also spent years as a mountaineer. Gary Snyder, the poet laureate of the environmental movement, has lived much of his life in wilderness isolation and has also spent several years in a Zen monastery. All these people far outdid Thoreau in their desire to get a little perspective on the world. There is nothing reprehensible in this, and the literature and philosophy that emerge from such experiences are often admirable. But it seems questionable to me that the ethic that comes out of this wilderness isolation—and the sense of ownership of natural landscapes that inevitably follows—can serve as the basis for a useful national philosophy.

THAT FRONTIER SPIRIT

The American frontier is generally agreed to have closed down physically in 1890, the year the last Indian Territory of Oklahoma was opened for settlement. After that, the Conservation Movement arose quickly to protect the remaining resources and wilderness from heedless stripping and development. Along with this came a significant psychological change in the national character, as the "frontier spirit" diminished and social issues attracted greater attention. The Progressive Movement, the Social Gospel among religious groups, Populism, and Conservation all arose in quick succession immediately after the "closing of the frontier." It seems fair to say that it was only after the frontier had been settled and the sense of endless possibilities that came with open spaces had been constricted in the national consciousness that the country started "growing up."

Does this mean the new environmental consciousness has arisen because we are once again "running out of space"? I doubt it. Anyone taking an airplane across almost any part of the country is inevitably struck by how much greenery and open territory remain, and how little room our towns and cities really occupy. The amount of standing forest in the country, for example, has not diminished appreciably over the last fifty years, and is 75 percent of what it was in 1620. In addition, as environmentalists constantly remind us, trees are "renewable resources." If they continue to be handled intelligently, the forests will always grow back. As farming has moved out of the Great Plains of the Middle West, many eastern areas that were once farmed have reverted back to trees. Though mining operations can permanently scar hillsides and plains, they are usually very limited in scope (and as often as not, it is the roads leading to these mines that environmentalists find most objectionable).

It seems to me that the wilderness ethic has actually represented an attempt psychologically to reopen the American frontier. We have been desperate to maintain belief in unlimited, uncharted vistas within our borders, a preoccupation that has eclipsed the permanent shrinking of the rest of the world outside. Why else would it be so necessary to preserve such huge tracts of "roadless territory" simply bacause they are now roadless, regardless of their scenic, recreational, or aesthetic values? The environmental movement, among other things, has been a rather backward-looking effort to recapture America's lost innocence.

The central figure in this effort has been the backpacker. The backpacker is a young, unprepossessing person (inevitably white and upper middle class) who journeys into the wilderness as a passive observer. He or she brings his or her own food, treads softly, leaves no litter, and has no need to make use of any of the resources at hand. Backpackers bring all the necessary accouterments of civilization with them. All their needs have been met by the society from which they seek temporary release. The backpacker is freed from the need to support himself in order to enjoy the aesthetic and spiritual values that are made available by this temporary removal from the demands of nature. Many dangers—raging rivers or precipitous cliffs, for instance—become sought-out adventures.

Yet once the backpacker runs out of supplies and starts using resources around him—cutting trees for firewood, putting up a shelter against the rain—he is violating some aspect of the federal Wilderness Act. For example, one of the issues fought in the national forests revolves around tying one's horse to a tree. Purists claim the practice should be forbidden, since it may leave a trodden ring around the tree. They say horses should be hobbled and allowed to graze instead. In recent years, the National Forest Service has come under pressure from environmental groups to enforce this restriction.

Wildernesses, then, are essentially parks for the upper middle class. They are vacation reserves for people who want to rough it—with the assurance that few other people will have the time, energy, or means to follow them into the solitude. This is dramatically highlighted in one Sierra Club book that shows a picture of a professorial sort of individual backpacking off into the woods. The ironic caption is a quote from Julius Viancour, an official of the Western Council of Lumber and Sawmill Workers: "The inaccessible wilderness and primitive areas are off limits to most laboring people. We must have access. . . ." The implication for Sierra Club readers is: "What do these beer-drinking, gun-toting, working people want to do in our woods?"

The class-oriented vision of wilderness as an upper-middle-class preserve is further illustrated by the fact that most of the opposition to wilderness designations comes not from industry but from owners of off-road vehicles. In most northern rural areas, snowmobiles are now regarded as the greatest invention since the automobile, and people are ready to fight rather than stay cooped up all winter in their houses. It seems ludicrous to them that snowmobiles (which can't be said even to endanger the ground) should be restricted from vast tracts of land so that the occasional city visitor can have solitude while hiking past on snowshoes.

The recent Boundary Waters Canoe Area controversy in northern Minnesota is an excellent example of the conflict. When the tract was first designated as wilderness in 1964, Congress included a special provision that allowed motorboats into the entire area. By the mid-1970s, outboards and inboards were roaming all over the wilderness, and environmental groups began asking that certain portions of the million-acre preserve be set aside exclusively for canoes. Local residents protested vigorously, arguing that fishing expeditions, via motorboats, contributed to their own recreation. Nevertheless, Congress eventually excluded motorboats from 670,000 acres to the north.

A more even split would seem fairer. It should certainly be possible to accommodate both forms of recreation in the area, and there is as much to be said for canoeing in solitude as there is for making rapid expeditions by powerboat. The natural landscape is not likely to suffer very much from either form of recreation. It is not absolute "ecological" values that are really at stake, but simply different tastes in recreation.

NOT ENTIRELY NATURE

At bottom, then, the mystique of the wilderness has been little more than a revival of Rousseau's Romanticism about the "state of nature." The notion that "only in wilderness are human beings truly free," a credo of environmentalists, is merely a variation on Rousseau's dictum that "man is born free, and everywhere he is in chains." According to Rousseau, only society could enslave people, and only in the "state of nature" was the "noble savage"—the preoccupation of so many early explorers—a fulfilled human being.

The "noble savage" and other indigenous peoples, however, have been carefully excised from the environmentalists' vision. Where envirommental efforts have encountered primitive peoples, these indigenous residents have often proved one of the biggest problems. One of the most bitter issues in Alaska is the efforts by environmental groups to restrict Indians in their hunting practices.

At the same time, few modern wilderness enthusiasts could imagine, for example, the experience of the nineteenth-century artist J. Ross Browne, who wrote in Harper's New Monthly Magazine after visting the Arizona territories in 1864:

"Sketching in Arizona is . . . rather a ticklish pursuit . . . I never before traveled through a country in which I was compelled to pursue the fine arts with a revolver strapped around my body, a double-barreled shot-gun lying across my knees, and half a dozen soldiers armed with Sharpe's carbines keeping guard in the distance. Even with all the safeguards . . . I am free to admit that on occasions of this kind I frequently looked behind to see how the country appeared in its rear aspect. An artist with an arrow in his back may be a very picturesque object . . . but I would rather draw him on paper than sit for the portrait myself."

Wilderness today means the land after the Indians have been cleared away but before the settlers have arrived. It represents an attempt to hold that particular moment forever frozen in time, that moment when the visionary American settler looked out on the land and imagined it as an empty paradise, waiting to be molded to our vision.

In the absence of the noble savage, the environmentalist substitutes himself. The wilderness, while free of human dangers, becomes a kind of basic-training ground for upper-middle-class values. Hence the rise of "survival" groups, where college kids are taken out into the woods for a week or two and let loose to prove their survival instincts. No risks are spared on these expeditions. Several people have died on them, and a string of lawsuits has already been launched by parents and survivors who

didn't realize how seriously these survival courses were being taken.

The ultimate aim of these efforts is to test upper-middle-class values against the natural environment. "Survival" candidates cannot hunt, kill, or use much of the natural resources available. The true test is whether their zero-degree sleeping bags and dried-food kits prove equal to the hazards of the tasks. What happens is not necessarily related to nature. One could as easily test survival skills by turning a person loose without money or means in New York City for three days.

I do not mean to imply that these efforts do not require enormous amounts of courage and daring—"survival skills" I am only suggesting that what the backpacker or survival hiker encounters is not entirely "nature," and that the effort to go "back to nature" is one that is carefully circumscribed by the most intensely civilized artifacts. Irving Babbit, the early twentieth-century critic of Rousseau's Romanticism, is particularly vigorous in his dissent from the idea of civilized people going "back to nature." This type, he says, is actually "the least primitive of all beings":

"We have seen that the special form of unreality encouraged by the aesthetic romanticism of Rousseau is the dream of the simple life, the return to a nature that never existed, and that this dream made its special appeal to an age that was suffering from an excess of artificiality and conventionalism."

Babbitt notes shrewdly that our concept of the "state of nature" is actually one of the most sophisticated productions of civilization. Most primitive peoples, who live much closer to the soil than we do, are repelled by wilderness. The American colonists, when they first encountered the unspoiled landscape, saw nothing but a horrible desert, filled with savages.

What we really encounter when we talk about "wilderness," then, is one of the highest products of civilization. It is a reserve set up to keep people out, rather than a "state of nature" in which the inhabitants are "truly free." The only thing that makes people "free" in such a reservation is that they can leave so much behind when they enter. Those who try to stay too long find out how spurious this "freedom" is. After spending a year in a cabin in the north Canadian woods, Elizabeth Arthur wrote in "Island Sojourn": "I never felt so completely tied to objects, resources, and the tools to shape them with."

What we are witnessing in the environmental movement's obsession with purified wilderness is what has often been called the "pastoral impulse." The image of nature as unspoiled, unspotted wilderness where we can go to learn the lessons of ecology is both a product of a complex, technological society and an escape from it. It is this undeniable paradox that forms the real problem of setting up "wildernesses." Only when we have created a society that gives us the leisure to appreciate it can we go out and experience what we imagine to be untrammeled nature. Yet if we lock up too much of our land in these reserves, we are cutting into our resources and endangering the very leisure that allows us to enjoy nature.

The answer is, of course, that we cannot simply let nature "take over" and assume that because we have kept roads and people out of huge tracts of land, then we have absolved ourselves of a national guilt. The concept of stewardship means taking responsibility, not simply letting nature take its course. Where tracts can be set aside from commercialism at no great cost, they should be. Where primitive hiking and recreation areas are appealing, they should be maintained. But if we think we are somehow appeasing the gods by not developing resources where they exist, then we are being very shortsighted. Conservation, not preservation, is once again the best guiding principle.

The cult of wilderness leads inevitably in the direction of religion. Once again, Irving Babbitt anticipated this fully: "When pushed to a certain point the nature cult always tends toward sham spirituality. . . . Those to whom I may seem to be treating the nature cult with undue severity should remember that I am treating it only in its pseudo-religious aspect. . . . My quarrel is only with the aesthete who assumes an apocalyptic pose and gives forth as a profound philosophy what is at best only a holiday or weekend view of existence. . . ."

It is often said that environmentalism could or should serve as the basis of a new religious consciousness, or a religious "reawakening." This religious trend is usually given an Oriental aura. E. F. Schumacher has a chapter on Buddhist economics in his classic "Small Is Beautiful." Primitive animisms are also frequently cited as attitudes toward nature that are more "environmentally sound." One book on the environment states baldly that "the American Indian lived in almost perfect harmony with nature." Anthropologist Marvin Harris has even put forth the novel view that primitive man is an environmentalist, and that many cultural habits are unconcious efforts to reduce population and conserve the environment. He says that the Hindu prohibition against eating cows and the Jewish tradition of not eating pork were both efforts to avoid the ecological destruction that would come with raising these grazing animals intensively. The implication in these arguments is usually that science and modern technology have somehow dulled our instinctive "environmental" impulses, and that Western "nonspiritual" technocracy puts us out of harmony with the "balance of nature."

Perhaps the most daring challenge to the environmental soundness of current religious tradition came early in the environmental movement, in a much quoted paper by Lynn White, professor of the history of science at UCLA. Writing in Science magazine in 1967, White traced "the historical roots of our ecologic crisis" directly to the Western Judeo-Christian tradition in which "man and nature are two things, and man is master." "By destroying pagan animism," he wrote, "Christianity made it possible to exploit nature in a mood of indifference to the feelings of natural objects." He continued:

"Especially in its Western form, Christianity is the most anthropocentric religion the world has seen. . . . Christianity, in absolute contrast to ancient paganism and Asia's religions (except, perhaps Zoroastrianism), not only established a dualism of man and nature but also insisted that it is God's will that man exploit nature for his proper ends. . . . In antiquity every tree, every spring, every stream, every hill had its own genius loci, its guardian spirit. . . . Before one cut a tree, mined a mountain, or dammed a brook, it was important to placate the spirit in charge of that particular situation, and keep it placated."

But the question here is not whether the Judeo-Christian tradition is worth saving in and of itself. It would be more than disappointing if we canceled the accomplishments of Judeo-Christian thought only to find that our treatment of nature had not changed a bit.

There can be no question that White is onto a favorite environmental theme here. What he calls the "Judeo-Christian tradition" is what other writers often term "Western civilization." It is easy to go through environmental books and find long outbursts about the evils that "civilization and progress" have brought us. The long list of Western achievements and advances, the scientific men of genius, are brought to task for creating our "environmental crisis." Sometimes the condemnation is of our brains, pure and simple. Here, for example, is the opening statement from a book about pesticides, written by the late Robert van den Bosch, an outstanding environmental advocate:

"Our problem is that we are too smart for our own good, and for that matter, the good of the biosphere. The basic problem is that our brain enables us to evaluate, plan, and execute. Thus, while all other creatures are programmed by nature and subject to her whims, we have our own gray computer to motivate, for good or evil, our chemical engine. . . . Among living species, we are the only one possessed of arrogance, deliberate stupidity, greed, hate, jealousy, treachery, and the impulse to revenge, all of which may erupt spontaneously or be turned on at will."

At this rate, it can be seen that we don't even need religion to lead us astray. We are doomed from the start because we are not creatures of instinct, programmed from the start "by nature."

This type of primitivism has been a very strong, stable undercurrent in the environmental movement. It runs from the kind of fatalistic gibberish quoted above to the Romanticism that names primitive tribes "instinctive environmentalists," from the pessimistic predictions that human beings cannot learn to control their own numbers to the notion that only by remaining innocent children of nature, untouched by progress, can the rural populations of the world hope to feed themselves. At bottom, as many commentators have pointed out, environmentalism is reminiscent of the German Romanticism of the nineteenth century, which sought to shed Christian (and Roman) traditions and revive the Teutonic gods because they were "more in touch with nature."

But are progress, reason, Western civilization, science, and the cerebral cortex really at the root of the "environmental crisis?" Perhaps the best answer comes from an environmentalist himself, Dr. René Dubos, a world-renowned microbiologist, author of several prize-winning books on conservation and a founding member of the Natural Resources Defense Council. Dr. Dubos takes exception to the notion that Western Christianity has produced a uniquely exploitative attitude toward nature:

"Erosion of the land, destruction of animal and plant species, excessive exploitation of natural resources, and ecological disasters are not peculiar to the Judeo-Christian tradition and to scientific technology. At all times, and all over the world, man's thoughtless interventions into nature have had a variety of disastrous consequences or at least have changed profoundly the complexity of nature."

Dr. Dubos has catalogued the non-Western or non-Christian cultures that have

done environmental damage. Plato observed, for instance, that the hills in Greece had been heedlessly stripped of wood, and erosion had been the result; the ancient Egyptians and Assyrians exterminated large numbers of wild animal species; Indian hunters presumably caused the extinction of many large paleolithic species in North America; Buddhist monks building temples in Asia contributed largely to deforestation. Dubos notes:

"All over the globe and at all times . . . men have pillaged nature and disturbed the ecological equilibrium . . . nor did they have a real choice of alternatives. If men are more destructive now . . . it is because they have at their command more powerful means of destruction, not because they have been influenced by the Bible. In fact, the Judeo-Christian peoples were probably the first to develop on a large scale a pervasive concern for land management and an ethic of nature."

The concern that Dr. Dubos cites is the same one we have rescued out of the perception of environmentalism as a movement based on aristocratic conservatism. That is the legitimate doctrine of stewardship of the land. In order to take this responsibility, however, we must recognize the part we play in nature—that "the land is ours." It will not do simply to worship nature, to create a cult of wilderness in which humanity is an eternal intruder and where human activity can only destroy.

"True conservation," writes Dubos, "means not only protecting nature against human misbehavior but also developing human activities which favor a creative, harmonious relationship between man and nature." This is a legitimate goal for the environmental movement.

THE CHALLENGE OF SOVIET DISINFORMATION

Mr. SYMMS. Mr. President, a massive Soviet effort is challenging one of the free world's greatest strengths, a free press. Since the late 1950's, the Soviet Union has intensified its propaganda and organized extensively to turn this strength against the free world and utilize its free press to sell Soviet policies and undermine those of the West and the Third World. In the Third World it is utilized to incite revolutions and poison the image of democracies, particularly the image of the United States. In Europe the Soviets have used the media to build sentiment against U.S.-NATO defense capability.

Wars are fought and won with words and ideas as much as with missiles, planes, tanks, and ships. Between 1977 and 1980, the Soviets spent about $100 million on propaganda to defeat U.S. deployment of the neutron bomb in Europe, according to CIA estimates. This was more than $30 million each year. If the Soviets spent over $30 million per year or over $100 million total just to defeat the neutron bomb, how much might they be spending to block modernization of the U.S. strategic nuclear deterrent?

A new book, "Target America, the Influence of Communist Propaganda on U.S. Media," (Regnery Gateway, Chicago, 1981) by James L. Tyson, has answered this question. According to Tyson's detailed analysis, there are more than 4,000 full-time paid Soviet propaganda agents inside the United States, spending more than $250 million a year on anti-United States propaganda inside America. Accuracy In Media President Reed Irvine states in the book's preface:

As we embark—and rightly so—on an expensive effort to reconstitute our military might, we must recognize that the best weapons systems in the world will do us little good if we continue to disregard our vulnerability on the battlefield of words.

Tyson himself estimates that the total magnitude of the Soviet foreign influence operation is estimated to exceed $3 billion per year. Tyson adds that the Soviet propaganda and disinformation program is "an effort most Americans do not realize even exists."

It is time we begin to understand what the Soviets are doing, and when we are being influenced by their efforts. As an introduction to the problem we face, I would like to place in the RECORD a landmark article, "Soviet Disinformation." This article was written by Dr. Joseph D. Douglass, Jr., one of this country's leading authorities on Soviet military strategy. He is the author, among other works, of "Soviet Military Strategy in Europe" (Pergamon Press), "The Soviet Theater Nuclear Offensive," which was published by our own Government Printing Office and has sold over 15,000 copies, and coauthor of "Soviet Strategy for Nuclear War" (Hoover Institution Press). This latter book is another seminal work that should be "must" reading for those concerned about the problem of Soviet manipulation of the threat of global nuclear war.

Dr. Douglass' article entitled "Soviet Disinformation" appeared in Strategic Review in the winter 1981 issue. It is an excellent, trail-blazing effort to shed some new light on a very difficult problem—recognizing and understanding Soviet disinformation.

I ask unanimous consent that the article written by Dr. Douglass be printed in the RECORD.

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

SOVIET DISINFORMATION

(By Joseph D. Douglass, Jr.)

After more than three decades of accumulated experience, the study of Soviet plans, strategy and, simply stated, Soviet intentions remains one of the more difficult, controversial and frustrating realms of strategic analysis in the United States. It is difficult and controversial because of the nature and credibility of the intelligence sources on which such analysis must be based—defectors, in-place agents and Soviet writings, from the unclassified to the most highly classified—and the susceptibility of this intelligence data to manipulation by the opponent. It is frustrating not only because Soviet intentions behind the haze of Soviet secrecy are inherently a slippery phenomenon, but also because of a seemingly chronic propensity in the West to downgrade, in effect, the real importance of the study of intentions. A former Director of Central Intelligence put it as follows:

"The adversary's intention is not necessarily the key to determining his future action. His intention can change, his intention may not yet be formed, his intention may be rather a hope than a commitment to action."

Another former Director, who served subsequently as Secretary of Defense, went so far as to question the relevance of intentions to actual behavior:

"Doctrines control the minds of men only in periods of nonemergency. They do not necessarily control the minds of men during periods of emergency. In the moment of truth, when the possibility of major devastation occurs, one is likely to discover sudden changes in doctrine." [1]

Such attitudes at the top strata of government hardly have been encouraging to analytical efforts at lower levels.

Yet, this kind of disparagement of the study of enemy intentions flies in the face of history. Over two thousand years ago Sun Tzu averred: "What is of supreme importance in war is to attack the enemy's strategy." [2] More recently, the Soviet military academician, General Major M. D. Ionov, quoted another classic thinker, Machiavelli: "Nothing makes a general greater than discovery of the enemy's plans." [3]

SURPRISE AND DISINFORMATION

This view is consistent with the Soviets' time-hallowed emphasis on the principle of surprise and the associated tactics of secrecy and deception. Surprise, the Soviets believe, is a pivotal element in the nuclear age. It is achieved, as is stated in the new "Soviet Military Encyclopedia," "by leading the enemy into error concerning one's own intentions; by keeping secret the concept of the battle and by concealment of the preparation for actions." Strategic surprise, the encyclopedia explains, can be accomplished at the start of war "by using the unpreparedness of the enemy for war, by forestalling him in the beginning of active military operations," as well as during the conduct of war "by the unexpected use of new means of armed combat which have a strategic effect, of new methods of strategic actions, by a skillful choice of the direction of the main attack, by disinformation, and by other means." [4]

According to the Soviets, war rages today—a class war that will not end until capitalism has been destroyed. And, in this war disinformation becomes a significant weapon. This is a subject that is dealt with prominently in a study by the Central Intelligence Agency, "Soviet Covert Action and Propaganda," that was released in February 1980 by the House Permanent Select Committee on Intelligence. [5] The study purports that the practice of disinformation has become more pronounced as tensions between East and West have "relaxed"—that is, during detente. More specifically, two benchmarks are offered: one in mid-1959, when the KGB Department of Disinformation was established, and the second in the early 1970s, when the department was upgraded to a "service" status, an indication of its ascent in importance. The 1959 date is interesting because it connotes a Soviet embrace of the disinformation weapon as an integral part of Khrushchev's strategy of peaceful coexistence. Similarly, the appar-

ent elevation of the weapon in the early 1970s may bar a correlation with the blossoming of the strategic arms limitation negotiations during that period.

In addition to run-of-the-mill propaganda, the CIA study explains, the Soviets mount a variety of activities that are called "active measures," which are targeted, in accordance with the issues and events of the day, against the "glavnyy protivinik," or main enemy, the United States. Active measures include "a range of practices such as written and oral 'disinformation' (forgeries, false rumors), 'gray' and 'black' propaganda, manipulation or control of foreign media assets, political action and 'agent of influence' operations, clandestine radio stations, semi-clandestine use of foreign communist parties and international front and special action organizations, staged or manipulated demonstrations and even in the past, blackmail and kidnapping." [6]

The study cites a KGB training manual to describe strategic disinformation as follows:

"Strategic disinformation is directed at misleading the enemy concerning the basic questions of the State policy, the military-economic status, and the scientific-technical achievement of the Soviet Union; the policy of certain imperialist states with respect to each other and to other countries; and the specific counterintelligence tasks of the organs of State Security." [7]

Disinformation involves not simply false information. It also includes incomplete and misleading information "that is passed, fed or confirmed to a targeted individual, group or country," according to an earlier Congressional release prepared by the CIA in 1965. Propaganda, as the term is commonly understood in the West, is used in support of disinformation, but it "lacks the precision and bite of disinformation." [8]

The CIA study cites as one indicator of the rising importance of the disinformation weapon the increased trafficking by the Soviets in forged official documents. The numerous examples that are listed amply verify the Soviet practice, but they do not trace the real dimensions of the problem that confronts Western analysts—the "wilderness of mirrors" vividly described by James Angleton, former Director of Counterintelligence within the operations directorate of the CIA. For one thing, the examples invoked offer fairly clear-cut cases of Soviet deception, in which the brief for disinformation can be convincingly made. But since disinformation functions in the shadowy world of perceptions—and since successful deception, by definition, is not found out—how can one fully come to grips with the problem? How can the analyst who "smells a rat" convince his colleagues?

The vast majority of cases of disinformation entail not outright falsification or contrivance—e.g., on the order of the famous "Potemkin Village"—but rather subtle shadings to shape a certain image. Indeed, the most effective disinformation usually contains some kernels of truth, especially those that tend merely to reinforce certain perceptions or "desired" conclusions. After all, the key to successful deception, Dzerzhinskey was counseled by Lenin, is to "Tell them what they want to believe."

For example, a number of basic themes about Soviet behavior have gained currency among Western analysts. There may be some substance to these themes; on the other hand, they could well be the composite product of a deliberate and persistent Soviet disinformation campaign waged over the past decades with the objectives of establishing credibility (that is, providing the proper setting) for other disinformation of, more generally, psychologically "disarming" the West by communicating a message that causes the receiver to discount the Soviet threat. Among the more prominent of these themes are the following:

The Soviet Union will change. The problem with the Soviet Union is the top leadership, which no longer has the respect of the bureaucrats. The thousands of middle-level workers only function as best as they can within a system which they see as inefficient and debilitating. The coming leadership must respond to the economic and social chaos that the old leadership has caused before the whole system blows up.

There is a split in the Soviet leadership, and the West must cast its policies so as to strengthen the hand of the more moderate elements.

U.S.-Soviet Union "convergence" is possible and is, in fact, in progress. Signs of pluralism within the Soviet Union are already evident.

One should pay no attention to the official communist ideology of the Soviet Union. Few people in the Soviet Union still pay heed to ideological rituals.

The Soviet Union is defense-oriented. Its leaders lack self-confidence. They are not a threat to anyone and only want peace. The use of force in Afghanistan, Czechoslovakia, Hungary and East Germany was only to quell uprisings and ensure stability of Soviet borders. The Soviet arms build-up is a natural defensive reaction to the arms race initiated by the United States.

There is an obvious relevance of these themes, which have been propagated or encouraged by the Soviets in one fashion or another, to the following general objectives of Soviet disinformation that were indentified in the 1980 CIA study:

To confuse world public opinion regarding the aggressive nature of certain Soviet policies.

To create a favorable environment for the execution of Soviet foreign policy.

To influence both world and American public opinion against U.S. military and political policies and programs which are perceived as threatening by the Soviet Union.[9]

The fact of this relevance does not establish, of course, the fact of disinformation. Yet, it denotes the broad parameters of uncertainty within which the serious student of Soviet affairs must operate. It also helps explain the often deep splits that pervade Western intelligence agencies in their interpretation of even the most basic Soviet data.

To better appreciate the nature of the problem, two examples of possible Soviet disinformation are reviewed below. One represents a theme: the alleged mid-1970s shift in Soviet military doctrine. The other is a more specific case: the London Times interview with the recent KGB defector, Ilya Dzhirkvelov. Neither example involves provable exercises in Soviet disinformation: in fact, as will be shown, the issue is very much in doubt. The examples have been selected precisely in order to illustrate the fog of uncertainty that, despite the great technological advances in intelligence-gathering, continues to bedevil Western observers of the Soviet Union.

THE ALLEGED MID-1970'S SHIFT IN SOVIET MILITARY DOCTRINE

On January 18, 1977, on the eve of President Carter's inauguration, the General Secretary of the Central Committee of the CPSU, L. I. Brezhnev, branded as "absurd and totally unfounded" the allegation that the Soviet Union "strives for superiority in armaments with the aim of delivering a 'first strike.' . . ." He asserted that "the Soviet Union has always been and remains a convinced opponent of such concepts." [10]

This general proposition was repeated in an article written for the American quarterly, Orbis, by Henry Trofimenko, a specialist on U.S. foreign policy and a member of the Academy of Sciences of the USSR.[11] The Trofimenko article was a carefully structured attack against those Western defense strategists who were evincing concern over the growth of Soviet military power and a looming shift in the strategic nuclear balance in favor of the USSR. The article explained that the Soviet military programs which worried such Western alarmists were only those required to attain parity with the United States. The so-called throw-weight gap, the disparity between the United States and the USSR in military appropriations, the one-sided Soviet capabilities in civil defense, etc., were all dismissed as "myths fostered by the Pentagon" to justify and accelerate its own arms program.

This theme—that the Soviets are not interested in strategic superiority or a first-strike strategy—has been conspicuous in Soviet writings and articles ever since 1974. The basic elements of the "new Soviet doctrine" are:

The Soviet Union does not seek strategic superiority.

The Soviet Union does not have, or aspire to, a first-strike strategy.

The Soviet Union threatens no one; its interests are merely defensive.

The Soviet Union's strategic programs are only in response to U.S. weapons programs.

In a February 1979 article in Fortune, two of Trofimenko's colleagues in the Institute for the USA and Canada, Radomir Bogdanov and Lev Semeiko, whose prior affiliations include the Soviet intelligence and military establishments respectively, continued this theme in what was offered as a rejoinder to an earlier article in Fortune by Fred Charles Iklé, "What It Means to Be Number Two." [12] After discussing purported U.S. overestimates of the "Soviet military threat" (always in quotation marks)—as well as the need to avoid becoming trapped in statistics and an endless numbers game—they declared that:

"The Soviet Union is opposed to any idea of its own strategic superiority. This very notion is now meaningless, considering the vast scale of the stockpiled nuclear weapons. Besides, it is realized in the Soviet Union that any attempt to acquire such superiority will be retaliated against, which would mean an endless arms race. The "action-counteraction" principle has much too often proved its viability throughout the entire postwar period, as, indeed, it has through history. The only reasonable option in the nuclear age is, first, to keep the present strategic parity, and second, to progressively reduce the stockpile of weapons so as to guarantee the security of the parties involved." [13]

Perhaps the most authoritative statement along these lines came in the section on "Military Strategy" written by the Chief of the General Staff, Marshal N. V. Ogarkov, in Volume VII (1979) of the "Soviet Military Encyclopedia":

". . . The U.S. and the other NATO countries initiated an unprecedented arms race . . . going far beyond the limits required for defense . . . the Soviet Union . . . was forced to strengthen its own defensive capability.

"Soviet military strategy, as well as Soviet military doctrine as a whole, have an especially defensive tendency; they do not provide for any preemptive strike or premeditated attacks.

"Soviet military strategy . . . does not have as its own objective the attainment of military-technical superiority over other countries."

It is conceivable that the above quotations do reflect current Soviet thinking—the recognition of significant limits to military power and a belief in the benefits associated with a stable military "balance." But some central questions emerge: Do the Soviets mean what they say? Is what they say merely propaganda? Indeed, are the statements part of a carefully orchestrated effort purposely to mislead the West? The answers are obviously crucial because they bear not only on U.S. strategic arms programs, but also on the viability—and therefore the desirability—of strategic arms control as embodied in the SALT process. Clearly, the success of this process hinges on the willingness of both sides to forgo the thrust toward strategic superiority and the capabilities of the devastating first strike.

There is thus another explanation for the changes in Soviet declaratory policy that have asserted themselves since the mid-1970s: namely, that they have spearheaded a tactical shift designed to mislead the West about Soviet strategic intentions and, in so doing, restrain the West from new strategic nuclear weapons programs, that the Soviet drive toward strategic superiority and the achievement of a disarming first-strike capability is unstinted, and that success in this drive is possible only through Western acquiescence. The latter, in turn, calls for a Western perception that the Soviets share a basic conviction, prevalent in the West, about the irrationality of nuclear war and the inutility of nuclear power.

The evidence in support of this explanation cannot be conclusive. Yet, the evidence seems ample in terms of the consistency of the themes expressed in the Soviet literature, both military and Party, that has been addressed to internal audiences in the Soviet Union for at least two decades. The themes can be found in various textbooks such as the widely referenced "Military Strategy" and "Marxism-Leninism on War" and Army. For example, the former states:

"The nuclear weapon is already the basis of the combat might of all services of the armed forces. Creating the advantage over the enemy in this weapon and methods of its use is the most important task in the building up of the armed forces in peacetime as well as during the course of a war."[14]

And, the latter, which represents the Communist Party's guidance to the military, avers:

"As in the past, the character and the outcome of the future war will be determined by the general relation of forces. In case of a nuclear war, decisive importance will be acquired by the relation of nuclear forces and means, as well as by the individual elements of the nuclear power of the sides, that is, the nuclear stockpiles, the quality and quantity of the means for their delivery to target, the efficiency and accuracy of the hit. Thus, the struggle for military-technical supremacy has now become decisive."[15]

Furthermore:

"Massed nuclear missile strikes at the armed forces of the opponent and at his key economic and political objectives can determine the victory of one side and the defeat of the other at the very beginning of the war. Therefore, a correct estimate of the elements of the supremacy over the opponent, and the ability to use them before the opponent does, are the key to victory in such a war."[16]

The notions of superiority, of the need to strike first in the event of war, and of the importance of surprise were clearly and logically elucidated in the Soviet literature of the 1960s and 1970s.[17] Those notions also seem validated by the course of Soviet force development and weapon systems acquisition that has been in train since before the Cuban missile crisis.

But, there is no denying the definite shift in tone in the Soviet literature in 1974-1975. Again, one can adduce several tactical motives for this shift through a simple process of correlations. The immediate target of the Soviet shift could have been the "peace dividend" in military expenditures that the United States would derive from disengagement from the war in Southeast Asia and was expected to apply toward the strengthening of a variety of strategic programs—the B-1 bomber, the MX and Trident missiles and the strategic cruise missile—as was heralded by the FY 1975 (March 4, 1974) Defense Posture Statement. More broadly, the change may have been intended to counter the "reactionary" pro-defense advocates in the United States who in the mid-1970s began to sound more shrilly their warnings about the growing Soviet threat, the shift in the strategic balance, the vulnerabilities the West would face in the 1980s and, therefore, the urgent need for the United States to fund new strategic programs.

This hypothesis regarding Soviet motives gains strength in light of intelligence passed by the British to the United States about high-level Soviet bloc meetings in the Spring of 1973, when the Soviet leaders, Brezhnev in particular, emphasized to their East European counterparts that detente was "a tactical policy change to permit the Soviet bloc to establish its superiority in the next 12 to 15 years."[18] A press report at the time vividly illuminated the problems of intelligence perception that have been described earlier:

"Some high-ranking military officials regard the intelligence reports as confirmation of their suspicions that the Russians are intent upon using accommodations as a way of disarming the West and establishing a military superiority that will permit a more aggressive Soviet foreign policy.

"Most civilian analysts of the Soviet Union place less ominous interpretations on the intelligence reports. They tend to consider the reported Brezhnev statements an internal tactic designed to mollify the hard line opposition within the communist camp as the Soviet leader pursues a policy of detente with the West."[19]

The simple characterization of this split as one between military intelligence specialists (presumed hard-liners) and their civilian counterparts (presumed soft-liners) rings like a reporter's exaggeration, given the diversity of attitudes on both these sides of the U.S. intelligence community. What is valid, however, is that different people can and will reach very different conclusions based on the same information. In any event, according to a later follow-up by Boston Globe reporter William Beecher, the intelligence report was suppressed and did not affect U.S. national intelligence estimates until 1976, and then only as a result of a group of outside specialists known as Team B. One of Beecher's references to the report is particularly relevant: "He [Brezhnev] noted that while negotiations proceeded on SALT and on Mutual Balanced Force Reductions, the United States was unlikely to build up militarily in reaction to the Soviet build-up."[20]

Additionally interesting in retrospect is the timing of the reported communist leaders' discussion—i.e., 1973, the year preceding the aforementioned shift in Soviet doctrinal statements, and just after the disinformation department of the KGB had been upgraded in importance. It is also worth noting that the themes newly stressed by the Soviets in the strategic-nuclear arena have been paralleled with increased vigor in the European context in recent years. Thus, a meeting of the Political Consultative Committee of Warsaw Pact Treaty member-countries in May 1980 issued the following statement:

"...The Warsaw Treaty member-countries declare once again that they have never striven and will not strive for military superiority; they are invariably coming out for safeguarding the military balance in even lower levels, for reduction and elimination of the military confrontation in Europe. They have not, have never had and will not have any other strategic doctrine except a defensive one. They have not, have never had and will not have the intentions to build up the potential for the first nuclear strike. By the very nature of their social order, they cannot and will not strive for setting up "spheres of influence," for the establishment of military or political control over any regions or international transport communications."[21]

A third and related explanation of the apparent shifts in Soviet strategic doctrine in the mid-1970s is that they were intended to "explain" and cushion the impact of the continued growth in Soviet strategic arsenals. The new Soviet themes appeared on the eve of the surfacing of major new Soviet ICBM capabilities: the SS-16, -17, -18 and -19 missiles. This objective ties in very nicely with the final dimension of the new theme: namely, the warning that any effort on the part of the West to regain superiority would merely trigger a new round in the arms race.

THE INTERVIEW WITH ILYA DZHIRKVELOV

In May 1980, the London Times published a three-part interview with Ilya Dzhirkvelov, a former KGB officer and TASS correspondent, who had defected to Great Britain the previous month (presumably April).[22] In examining the interview and the message it communicates, one must, in all prudence, bear in mind the KGB tradition of using defectors, emigrés and other apparent malcontents as "double agents" or purveyors of disinformation. An immediate question is raised by the identification of Dzhirkvelov as a "former" KGB officer—one who was "a full-time KGB officer until 1956." According to Peter Deriabin, a KGB officer who defected in 1954 and subsequently described his education and experience as an officer of state security in his book, "The Secret World," members of the KGB do not simply "leave the service."

The more interesting aspects of the interview, in any event, are Dzhirkvelov's comments about Afghanistan, Western responses, Soviet moves in Africa and the current leadership in the Kremlin. As regards Afghanistan, Dzhirkvelov deemed the Soviet invasion ill-considered. For many years a Soviet intelligence expert in Iran

and Turkey, he could see no strategic or economic justification for the invasion, which "surprised and dismayed many middle-ranking Soviet officials." The implication is not only that the action in Afghanistan is unpopular within the Soviet establishment, but that there is a substantial base of middle-level officials who disagree with current leadership policies.

Another interesting aspect of Dzhirkvelov's discussion of Afghanistan is its portrayal as a potential Vietnam for the Soviet Union:

The Russians, according to Mr. Dzhirkvelov, are not equipped or prepared for mountain warfare. He believes the Soviet Government's action is all the more inexplicable in view of previous Soviet experience of long and bloody fighting against anti-Soviet nationalist rebels [basmatchi] in Central Asia during the early years of Soviet rule.

The basmatchi, he argues, were as wild and as poorly armed as the Mujhidan (combatants in a holy war) of Afghanistan, yet it took the entire might of the Red Army, fighting on its own ground, to crush them in a protracted struggle.

The Soviet troops now in Afghanistan, he maintains, are in a worse position, and are likely to become permanently bogged down in a war they may never win on foreign soil.

A third point of interest is Dzhirkvelov's applause for President Carter's boycott of the Olympics in Moscow—which was clearly a nonviolent, nonintrusive and, some would argue, ineffective action. The only other avenues of Western response to Afghanistan mentioned in the interview seem to be the BBC and Voice of America. As explained by Dzhirkvelov, there has been an "immense growth" in the influence of these Western transmitters: "Ninety-nine per cent of those Russians interested in politics listen to the BBC or Voice of America, as indeed do the Soviet leaders themselves." Other defectors and emigrés, however, have sharply questioned the effectiveness of Western broadcasts into the Soviet Union—witness the following passage from Aleksandr Solzhenitsyn's recent article in Foreign Affairs:

"It is clear that the directors of the Voice of America are constantly trying not to arouse the anger of the Soviet leadership. In their zeal to serve detente, they remove everything from their programs which might irritate the communists in power. There are plenty of examples of such political kowtowing to the Central Committee of the CPSU. . . ."[23]

Solzhenitsyn added that "at times the Voice of America dances to the tune called by the communist regime or indeed becomes indistinguishable from a Moscow radio station."[24]

According to the London Times article, Dzhirkvelov spent many years in Africa—as a correspondent in Zanzibar in the mid-1960s and in the Sudan in the early 1970s. His message on Africa is clear: "Soviet strategy in Africa has failed, largely due to Moscow's inability to comprehend African conditions and the African cast of mind." The information that "correspondents" send to Moscow is often tailored "to suit the Kremlin's view of the world." The Russians "have very little understanding of African agrarian and tribal societies." They often back "the wrong horse in African politics." In summation: "Looking at Africa as a whole, Mr. Dzhirkvelov sees a catalogue of setbacks for the Soviet Union, in contrast to the high hopes of the 1960s."

This may indeed be the case. On the other hand, could the depiction not be a deliberate effort to lull the Western nations—particularly the European nations, with their heavy dependence on African resources—concerning the real implications of the accelerating and expanding Soviet-Cuban-East German offensive in Africa? Could it not play to a point of view that has been prominent in some influential Western circles: "Let the Soviets stumble into their inevitable pitfalls in Africa, as have the Western nations before them"?

The alleged Soviet failures in Africa seem to be one of two major themes in the interview article. The other concerns the Soviet leaders, who are portrayed as misinformed, told what they want to hear and subject to a distorted view of the world. They are corrupt, "an isolated, self-perpetuating, 'aristobureaucracy'," and "unprincipled careerists." The Kremlin is "isolated from its own people," and "nepotism is rife." Under Brezhnev this condition has reached "epidemic proportions." "Corruption at the top in Russia today surpasses anything known in tsarist times. 'Nicholas II was a poor man compared to Mr. Brezhnev'."

The leadership allegedly is "unaware of the catastrophe facing the Soviet economy." The ruling elite is kept in power by the Army and the KGB, and "anything could happen 'if they were to falter' for a single day." Whoever succeeds Brezhnev will have to restore credibility to the highest offices. He will have to halt the "economic and moral decay," including the chronic shortages of food and housing and the spread of alcoholism. However, radical changes may not be appropriate: "If the Kremlin tightens up still further, . . . something could well crack; but if it allows liberalization, that too would lead to an 'unpredictable explosion'." The current, aging leadership will in time be replaced by more enlightened bureaucrats who have a more realistic view of the Soviet system and its problems:

Whereas in the past, says Mr. Dzhirkvelov, ordinary Russians complained privately about economic decay and political repression, nowadays more and more members of the ruling elite itself are voicing their concern. These, he says, include officers of both the Army and the KGB, "which after all are composed of people, many of whom understand what is going on only too well." Only the pinnacle of power is totally isolated from reality.

But this transition to a new and more enlightened leadership will require time and Western patience. By implication, there might even be an incentive for the West to provide economic aid in order to assist the new leaders when they take control. Certainly there must be recognition of the dangers if change in the Soviet Union is pushed too rapidly.

Is this wise advice? Is it dezinformatisiya? Or, for that matter, could it simply represent an effort by a defector to ingratiate himself with his new hosts by telling them what (he feels) they want to hear?

Whatever may be the answer in this specific case, it should be pointed out that the theme, "the Soviet system is in dire difficulty," is one of the oldest documented staples of Soviet disinformation strategies. The theme was used by Moscow in the interwar years, with telling effect, to mislead Western intelligence services, to discourage new attempts at military intervention in the Soviet Union (on the assumption that time would solve the Bolshevik problem) and to attract Western economic assistance (on the assumption that such aid and the "levers" it provided to the West would accelerate desired change in the Soviet system).

This theme of Soviet disinformation had obvious advantages at a time when the communist revolutionaries were trying to consolidate their hold on Russian society and to buy time for building defenses against the expected foreign invasions. Today, when the Soviet Union is a superpower on the global ascendancy, the stratagem still serves both an old utility—e.g., as far as needed Western technology transfers to the Soviet Union are concerned—as well as a new purpose in a new setting: namely, to distract Western perceptions of rising Soviet military power. But after more than sixty years of the theme's propagation, are we still to take it seriously?

NEEDED: A CONCERTED ATTACK ON THE DISINFORMATION PROBLEM

The examples above have been presented to illustrate the "prism distortions" that confront the Western analyst in both his broad assessments of Soviet strategic intentions and his specific interpretations of intelligence data. Analyses that do not inquire critically into the origins and nature of the source material run the high risk of stumbling into carefully laid disinformation traps.

The Soviet Union is well aware of the importance of shaping the opponent's perceptions as an integral part of the intelligence battle and the strategic competition. For example, in an effort to seek a sharper understanding of how surprise is best achieved at the start of a war, the Soviets conducted a detailed study of all wars over the past hundred years, concluding that "surprise in unleashing wars was usually achieved as a result of poor knowledge of the attacking side, subjective mistakes in evaluating the intentions and plans of the aggressor, and superficial analysis of the measures directed toward surprise."[25] This, quite simply, explains why disinformation is focused upon in the new "Soviet Military Encyclopedia" as a key element in achieving surprise.

According to the CIA's report on "Soviet Covert Action and Propaganda," several major Soviet institutions are involved in formulating and disseminating disinformation. Of special importance in this respect may be the research institutes of the Academy of Sciences of the USSR, such as the Institute of the USA and Canada, whose members appear to play the dual role of analyzing Western institutions and interest groups and of shaping Western opinion through both written and oral propaganda and disinformation. It is virtually predictable that Yuri Arbatov and his minions will deploy to the United States for conferences and meetings whenever a major U.S.-Soviet issue is at stake.

Soviet disinformation efforts are, of course, keenly sensitive to Western monitoring efforts. The new Sovied strategic "line" in the mid-1970s described earlier not only was attuned to Sovied objectives in SALT and the impending Soviet strategic build-up, but it was probably responsive as well to more intensive analytical efforts that began to be directed in the United States toward the Soviet strategic literature in the early 1970s—as evidenced by monographs by the University of Miami Center for Advanced International Studies on "The Role of Nuclear Forces in Current Soviet Strategy,"[26] and "Convergence of Communism and Capitalism: The Soviet View,"[27] as well as the U.S. Air Force's "Soviet Military Thought" series that began with "The Offensive"[28] and "Scientific-Technical Progress and the Revolution in Military Affairs."[29] Within

two years of the publication of these efforts, a filtering process became conspicuous in Soviet strategic writings, stressing the "defensive" and "parity" aspirations while shading the traditional Soviet line of thought concerning the importance of superior military strength and the indispensability of a war-winning posture.

As has been suggested, these themes have already taken their toll on Western perceptions, including those in the professional intelligence communities. If the past is any guide, however, Western analysts will have to brace themselves for an outpouring of Soviet disinformation efforts during the leadership transition following Brezhnev's death. In such times, disinformation serves not only the defensive role of screening any power struggle in the Kremlin from the outside world, but also the opportunistic mission of misleading external target audiences about the nature of "changes" implicit in the new leadership. No doubt, there will be "changes" after Brezhnev, as there have always been in past successions, but just as likely they will be changes in style and tactics, not in basic Soviet strategy or national goals. One can infer from the previous examples some possible stage-setting for precisely such a new disinformation effort.

This leads to a question that is crucial to a well-founded assessment of the broader context within which Soviet military programs and policies—and the veracity of Soviet statements concerning them—can be adjudged. Are Soviet military programs and policies essentially pragmatic—or even reactive to Western programs, as Soviet spokesmen like to aver and many Western analysts like to believe? Or are they part of a larger design and planning process, in which the military, political and economic strands are integrally interwoven into a "grand strategy"?

There seems to be a congenital skepticism in the West about the existence of such a Soviet grand strategy—a skepticism that perhaps leans not so much upon an intimate knowledge of the Soviet system as it does upon the better knowledge of the difficulties of coordinating national strategies within the Western democracies. Consider, for example, Henry A. Kissinger's recent categorical statement: "Nothing could be more mistaken than to fall in with the myth of an inexorable Soviet advance carefully orchestrated by some superplanners."[30] Yet, whether or not the Soviet advance is "inexorable," certainly there is evidence to the effect that Soviet planners do think in terms of integrated strategy—the Soviet concept of a "correlation of forces" is just that—and that they approach their planning task within long-range dimensions. We have, for example, the testimony of a prominent Warsaw Pact defector about a Soviet "Long Range Strategic Plan for the Next 10-15 Years and the Years After,"[31] which squares very nicely with Marshal Sokolovskiy's own description of Soviet long-range planning during the 1960s.[32]

Whether such long-range planning is on the mark and effective is another question. Clearly, however, the belief in the existence or nonexistence of a Soviet grand strategy bears sharply on the discernment of what is fact and what is disinformation in intelligence about the Soviet Union. Professor Richard Pipes, for one, contends that disbelief in a broader Soviet strategic design is at the root of many mistakes committed in U.S. intelligence estimates of the Soviet intentions. "My feeling is that, apart from whatever institutional problems there may be, the fundamental problem is that the people drafting these estimates do not believe that there is such a thing as a Russian or Soviet grand strategy. . . ."[33]

In the final analysis, however, the solution to the rising problem of Soviet disinformation at a critical juncture of the global competition lies in a more rigorous, comprehensive and skeptical assessment of all dimensions of the data base in which intelligence estimates—and the policies they influence—are steeped. This includes prominently the effort, in cases where differing conclusions are presented on the basis of the same data, to look critically at the underlying analyses—their assumptions and logical progressions—with an eye toward significant distinctions or points-of-departure, and to set about to resolve or reconcile the differences.

An even more obvious need is to study more intensively the "anatomy" of Soviet disinformation—its purveyors, tactics, themes and objectives—and to integrate the findings into the intelligence process. There is an enormous volume of largely untapped data that can be harnessed to this task. It would be in the U.S. Government's enlightened self-interest to permit broader access to this data as part of a concerted attack on the disinformation problem. Until we make greater headway in stripping away the layers of secrecy and deception from Soviet military programs, and intentions, we will continue to grope uncertainly and hazardously in the strategic arena.

FOOTNOTES

[1] U.S. Congress, *U.S. Nuclear Weapons in Europe and U.S.-USSR Strategic Doctrine and Policies*, Senate Hearings, 1974, p. 160.

[2] Sun Tzu, *The Art of War*, Griffith translations (London: Oxford University Press, 1963), p. 77.

[3] Major General M. D. Ionov, "On the Methods of Influencing an Opponent's Decision," *Voyennaya mysl'* (Military Thought), No. 12, 1971, trans. in Foreign Press Digest, No. 0003, January 17, 1974.

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HANDGUN CONTROL

Mr. SYMMS. Mr. President, FBI crime reports state that a violent crime occurs in our Nation every 24 seconds. I understand and feel the frustration which results from the violence that occurs in our cities and towns. I can understand why this frustration causes many who are seeking an end to this violence to strike out at what they view as its cause. It is somehow reassuring to feel that if we as a society can only control this something that causes violence, the problem will be solved.

Unfortunately, because all too often the real cause of a problem is difficult to understand or correct or both, many will point to a symptom of the problem, declare it the culprit, and attack it feverishly. Regardless of whether the attack succeeds or fails, the real problem, which was ignored, remains. In this approach nothing is gained and much is lost.

Mr. President, this is exactly what is involved in the issue of handgun control. Individuals, justly concerned about the crime and violence which has seemingly become part of our national life, have incorrectly focused on the handgun as its cause.

We do not have a gun problem in the United States, we have a criminal problem. The belief that a restriction or prohibition on the ownership and possession of handguns will result in less crime is not founded on facts, logic, or the reality of the nature of crime.

Of all the gun laws ever enacted, with each promised by its proponents to reduce crime, not one city, not one State has experienced a reduction in crime rates, nor even a reduced rate of crime growth in comparison to neighboring jurisdictions without such laws. FBI figures show that since the District of Columbia instituted strict handgun laws its murder rate has increased 17 percent. Compare this to neighboring Virginia where there are few restrictive gun laws and where the homicide rate actually decreased 9 percent in 1980 from 1979.

New York, with its restrictive gun laws, has been dubbed the robbery capital of our country. Miami, with laws requiring police permits to buy handguns, handgun proficiency testing, waiting periods, and bans on the sale of so-called Saturday Night Specials, is one of the most crime-ridden cities in our Nation. Yet, nearby Jacksonville, with none of the restrictive gun laws of Miami, has only one-fifth of the murder rate.

To blame the occurrence or increase of crime on an inanimate object betrays an intellectual shallowness. To state, for instance, that violent crime in New York City is caused by handguns, is like stating that graffiti in New York City is caused by cans of spray paint.

Reason and commonsense dictate that handguns, like cans of spray paint or any other object ever created by man, are not evil in and of themselves, but that they can be used for the wrong purposes. Though used in crimes, handguns do not perpetrate and carry out these crimes. The function of deciding upon and commiting an unlawful act is done by a person and only a person, not guns, not cans of spray paint, not anything else, only a person. It is only when the expression of human decision and agency apply themselves to inanimate objects that any action or result occurs.

Neither can it be said that the number of handguns in private hands is a factor in the amount of crime occurring in our country. There are approximately 60 million handguns in the United States today. Less than 0.004 of these 60 million handguns will be used in the commission of crime. In other words, over 99.6 percent of all handguns in the possession of private Americans are not used in the commission of any crime. Having these facts, it cannot reasonably be concluded that private ownership of handguns in the United States is a significant cause of crime. It is further a fact that half of all criminal homicides in the United States are committed with other means than handguns. This indicates that despite the fairly ready availability of handguns, there are other major factors in murder that would cause it to happen even if there were no handguns at all.

In a study funded by the U.S. Department of Justice and called, "Weapons and Violent Crime," Prof. James Wright and Peter Rossi of the University of Massachusetts concluded that:

> There is little evidence to show that gun ownership among the population as a whole is, per se, an important cause of criminal violence.

Further, Professors Wright and Rossi found that laws restricting handgun ownership or possession neither curb crime or limit the access of criminals to firearms. Their previously mentioned study supports the findings of Douglas Murry of the University of Wisconsin who, in doing a study for the Wisconsin State Council on Criminal Justice, found that:

> The severity of handgun control laws has no significant effect on the violent crime rates of the fifty states, thus far the relationship between gun laws and crime is nonexistent.

In checking the results of the Wisconsin study Matthew De Zee of Florida State University agreed:

> The results indicate that not a single gun control law, and not all the gun control laws added together, had a significant impact. Gun laws do not appear to affect gun crimes.

Commonsense would dictate that criminals are criminals exactly because they break laws. An individual who has little concern for laws against assault, robbery, rape, drug trafficking, or murder, is going to have little concern for laws restricting or prohibiting his possession of handguns. The Omnibus Crime and the Gun Control Acts of 1968 were major Federal efforts to regulate firearms use. Note the 1968 U.S. Supreme Court decision which ruled that criminals do not have to register firearms if to do so would violate self-incrimination provisions of the fifth amendment. Both these, as well as thousands of local and State statutes which call for background checks, waiting periods, registration, and licensing of handguns, are notable only in their failure to have an effect on the criminal use of firearms.

Such facts should surprise no one. Criminals, if they choose to obtain weapons, merely deal on the street with other criminals. Such dealing is identical in nature to that done in drugs and stolen property and is done as a matter of course circumventing any gun control laws.

Gun control advocates, in an attempt to bolster their argument for handgun control, often compare the level of crime in the United States with that of other countries which have strict gun laws. Such selective comparisons are superficial at best and ignore significant cultural differences. For instance, England, a country with strict laws concerning the private ownership of firearms and a lower crime rate than the United States, is used as an example of crime control through gun control. Yet gun control advocates avoid mention of Switzerland and Israel where virtually every household is armed and where murder rates are comparable to those in England with its strict laws.

Another country which is often pointed to as an example of crime control as a result of gun control is Japan. However, Prof. Hideichiro Nakano, a Japanese sociologist, states that such a comparison between our two countries is improper. He feels that violence in America is not caused by the presence of guns but is a disease which has become indigenous to American society. He points out that:

> American society differs from Japanese society in a number of ways. The feeling of common community is much weaker among Americans. There have been more serious social cleavages according to region, class, ethnic affiliation, or generation partly because the United States has undergone rapid growth while absorbing waves of immigrants from every corner of the globe. Furthermore, if, as I have suggested, the source of violence lies at the very heart of American values, a reduction in violence will not result from limiting access to the means of violence alone.

The FBI's uniform crime reports reported 13 million serious crimes taking place in the United States last year. This is a level 55 percent higher than a decade before. The impact of these grim statistics is all the greater when it is pointed out that 46 percent of violent crime is not reported to any police or governmental authority.

What has taken place in our society to bring about this problem of crime and violence? Certainly, we can point to problems in our criminal justice system. Crime figures show that as little as 3 percent of crime in the United States will result in apprehension, conviction, and punishment. The cause of such a situation can be traced to any number of factors within and without the criminal system itself. But, here again the criminal justice system is a system that reacts to criminal conduct that is taking place. We have not addressed the core problem of why crime occurs. Mark W. Cannon, Administrative Assistant to the Chief Justice of the United States, in "Crime and the Decline of Values" gave a penetrating view of the cause of crime:

> Numerous theories attempting to explain the causes of crime and delinquent behavior have been advanced. Some assert that antisocial behavior is often "neurological" or "psychological," and hence uncontrollable. Others maintain that sociological and cultural factors, including poverty and class-

based frustrations, contribute heavily to crime. Crime is even viewed by some to be a "rational response" to the inequities of our capitalistic economic system. Though alcoholism, poverty, and perceived social injustice all contribute to crime, there is a deeper force that is causing a breakdown of our society. These merely tip the raft of social order, while a deep current is moving the entire raft at a startling speed. That deep current is our failure to transmit positive values, norms, and attachments from one generation to another.

Mr. Cannon then cites Justice Powell who felt that our society was experiencing a major decline of morals:

> We are being cut adrift from the type of humanizing authority which in the past shaped the character of our people. He was not referring to governmental authority, but to the more personal forms we have known in the home, church, school and community which once gave direction to our lives.

Throughout history, families, churches, and schools perpetuated the norms and values of a society. The deterioration of these institutions has left a void that is manifesting itself in today's level of crime. Crime does not have its roots in the availability of handguns, its roots lie in values, personal conduct, morality, and social philosophy.

There is no pleasure in the realization that the cause of much of the crime and violence we experience in the United States is a result of those in our society that have consciously adopted the philosophy that their part in life is to rob, plunder, and murder others.

Mr. President, more and more people are realizing that crime is a result of some in society viewing others as prey. Chip Elliott expressed his feelings in a recent article in Esquire and appropriately titled "Letter From an Angry Reader":

> So there you are: a nation of pirates. As long as we live in a society in which a large constituency thinks it can do whatever it damn pleases—no sense of morality asked for or required—then those of us who have the middle-class work ethic, those of us who believe the Freudian epithets of work and love, will be seen as potential victims by the flocks of hustlers and lurkers who are out there. It is sometimes tough to get a job. It is also, right now, easier to rob people than it is to work for money. Its easier because it can be gotten away with. These people believe no one will stop them. They're right. No one will. Not the police, not the courts, not the penal system. No one but the growing number of us who have decided we will not be victimized again, ever.

Mr. President, an evergrowing number are concluding, reluctantly, that they must be able to provide for their own self-defense.

Pope John Paul II recently highlighted the fact that the right of self-defense is a universal and elementary right of man:

> In the name of an elementary requirement of justice, peoples have a right even a duty to protect their existence and freedom by proportionate means against an unjust aggressor.

Whether an unjust aggressor be a foreign nation, a government, or a criminal, peoples and individuals have a right to protect themselves, their family, and their property. Such a need of self-defense cannot be dismissed or taken lightly. In their study Professors Wright and Rossi found that about half of all households in the United States keep firearms. In these over 37 million gun owning households, some 15 percent or over 5,550,000 had a member of the household actually use the gun in self-defense at some time.

Those who seek gun control make vague references to the days of the wild west and would have us rely solely on law enforcement agencies for our protection. This approach is not realistic. It is little comfort for an unarmed citizen to have to rely on a police force whose resources have long been dangerously stretched thin and whose response time is often measured not in minutes but in hours. Indeed, the courts have long recognized the sheer impossibility of providing police protection to individual citizens. A recent D.C. appellate court opinion reaffirmed a well established and uniformally accepted rule that:

> A government and its agents are under no general duty to provide public services, such as police protection, to any particular individual citizen.

The court held that the police have a duty only to the public at large and not to individual members of the community.

I am surprised that a municipality could so totally ignore the legitimate need and right of its own residents for protection of self and property that it would make it illegal to even have a handgun in the home.

Law abiding residents of Morton Grove, Ill., now find themselves either breaking a law which carries a 6-month jail term and a $500 fine or find they are unable to protect themselves, their families, and their property from criminals who arm themselves at will from other criminal sources and who have little fear of being arrested, tried, and punished for their criminal acts. The city of Morton Grove undoubtedly feels it is acting in a very humanitarian manner under its police powers in protecting residents from themselves. However, a local or State government that shows such an absolute misunderstanding of individual rights and liberties, the proper function of governments, and the tyranny of crime, is one which misunderstands its overall role in the protection of its citizens. Such misunderstanding cannot be tolerated or condoned.

A far better approach, Mr. President, than the myth of crime control through gun control is to foster the responsible ownership of weapons. This is being done on a small scale at local levels nationwide. We don't have to give everyone a .38 Special. We do have to recognize that the wrong people already have them. We must, as President Reagan pointed out, encourage those who desire to have firearms to learn how to use them properly and safely.

Again, Mr. President, we do not have a gun problem in our Nation; we have a criminal problem. I am convinced that the American people will weather this storm. But, its answer does not lie in gun control which even to be effective would require conversion of our society to an outright police state. I think the fallacy of gun control is summed up very well by the widow of John Lennon, Yoko Ono, when she stated in an interview with Rolling Stone:

> Eventually, I would like to think that the world will be so peaceful we won't need to carry guns. But of course guns are not the only weapons. Control the guns, and somebody will think of another method. It's not the weapon that creates murder—it's the mind. It might just be like Prohibitions * * *. It may sound like a good idea, but the reality is not the same * * *.

INTERNATIONAL SOLIDARITY NECESSARY ON GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, in this week's Newsweek there is an article entitled "Holocaust Unsweetened" in which Harry F. Waters reviews the CBS television movie "The Wall," which will be presented on February 16. The literary source for the movie is a classic: John Hersey's 1950 novel about the Warsaw ghetto uprising.

Mr. Waters major praise for the adaptation is its realistic portrayal of Jewish victims, not as all-noble, but as individuals with normal human frailties. This is the power of the presentation in which the unimaginable is made believable.

The last paragraph of the article reads:

> For once on TV, the final product was worth the compromises built into its construction. This movie bursts with relevance. The Polish extras in the crowd scenes, their somber faces adorned with Lech Walesa-style mustaches, look like outtakes from last night's newscast. Perhaps as it's being shown, residents of a real Warsaw tenement will be locked in agonized debate over the choice between capitulation and defiance. CBS's "The Wall" cuts to the marrow of that dilemma while refusing to supply an easy solution. One lesson emerges: the first step is solidarity.

Mr. Waters urges the first step of solidarity, as necessary now as it was when the Nazis were attempting to splinter and destroy Polish underground movements. He points to the present-day relevance of the lessons tragically learned from the Holocaust;

a crucial one being the dangers of division.

We in this body have to deal with this problem of division on a pressing and important topic: the Genocide Convention. I am not talking about division of the American people, because since President Truman first submitted the treaty to the Senate for ratification it has had the broad support of Americans across the country as well as their leaders. Is there deep and fundamental division on this issue in the American public? No; there is not.

What we must realize is that by refusing to ratify this much-needed treaty, and by being the only major nation not lending our voice to the cause, we are creating division in the international demand for outlawing the perverse crime of genocide. It is a pity and a shame that the United States, a leader in initiating and implementing international agreements, should thwart efforts at global cooperation on the Genocide Convention.

I agree with Mr. Waters that the first step is solidarity; international solidarity on the Genocide Convention. I urge my colleagues to immediately ratify the Genocide Convention.

Mr. President, 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:

[From Newsweek, Feb. 15, 1982]

HOLOCAUST UNSWEETENED

As grist for the made-for-TV movie mill, the Nazi Holocaust ranks right up there with real-life struggles against terminal illness. It is hardly difficult to figure out why. Like the trauma of cancer, Hitler's hideous "final solution" offers guaranteed ingredients for emotional impact: terror, rage, heroism and grisly death, all packaged under the emblem of historical authenticity. But for all the network's admirable intentions, their dramatizations of Jewish genocide in World War II too often exude a disquieting whiff of exploitation. In their obsession with ratings, video moviemakers tend to sweeten the unpalatable with simplistically pat characterizations that transform tragedy into easy melodrama.

CBS's "The Wall," which will be presented over three hours of Feb. 16, makes its own compromises with factual unpleasantries—yet it manages to rise above TV's Holocaust genre with unforgettable force. That achievement can be partly attributed to the movie's literary source and topical locale. Drawn from John Hersey's classic 1950 novel about the Warsaw ghetto uprising, "The Wall" was filmed on the same polish earth that now shudders beneath another set of tank treads. Best of all, the adaptation shuns the all-noble stereotypes that viewers have been conditioned to expect in such sagas. These Jewish martyrs display enough human frailties to make their valor all the more moving—and the unimaginable terribly believable.

HONOR

"The Wall" traces the psychic journey of a most improbable hero. Dolek Berson, played by Britain's Tom Conti, is a coolly dispassionate Jewish drifter who steadfastly suppresses his outrage until the Warsaw inferno all but engulfs him. Selfishness and self-delusion also afflict Berson's neighbors. As the Nazis tighten their noose, a prominent jeweler, Eli Wallach, abandons his family and buys his way to freedom. "I didn't ask to be a Jew, it was wished on me," he tells his children before fleeing with Aryan credentials. Other Jewish elders retreat behind their faith in divine wisdom. "I believe in God even when he's silent," explains one rabbi with a shrug. Ultimately, the best of the beleaguered—led by reluctant hero Berson—opt for honor over silent doom in the death camps. The film builds to a crescendo of carnage as 650 Jewish men, women and children make an apocalyptic stand against 3,000 heavily armed Germans. This rebellion's denouement is every bit as harrowing as the mass suicide in last year's "Masada." But while that ABC mini-series lapsed into preachy overkill, the CBS movie allows its documentary-style camera work to convey a horror beyond the reach of words.

"The Wall" is not without its structural defects. CBS, while originally intended to run the film in four hours over two nights, seems to have done its editing with an ax. Characters arrive on screen in what appear to be major roles, then abruptly vanish like wraiths in a fog. And lovers of Hersey's novel will be disappointed to discover that the book's most memorable figure—a compassionately nosy Jewish diarist who chronicles the ghetto's annihilation—has been dropped from the adaptation. As recompense for that, however, the film's cast serves Hersey's story almost as well as its cameras. Lisa Eichhorn brings just the right mixture of bravado and trepidation to her portrayal of the resistance fighters' Joan of Arc. As Berson, Conti projects a natural feel for his character's moral ambiguity.

CONFISCATED

The production of "The Wall" may have been the most difficult in television history. During the five years between purchase of TV rights to the book and final editing, the project survived several executive turnovers at CBS and the ouster of Polish Communist Party leader Edward Gierek, who had granted permission to shoot in Poland. As labor strikes spread throughout the country and the new government grew suspicious of the West, cast and crew raced to finish before they were booted out. Fearful that the film would be confiscated, the production manager began hiding each day's footage under his bed.

One obstacle that couldn't be overcome was the government's insistence that the production play down Poland's own role in the Holocaust. During World War II pervasive anti-Semitism prompted many Poles not only to avert their eyes from the Nazi persecution of the Jews but also, in many instances, to assist and exploit it. Even some members of the Polish underground devoted almost as much time to hunting down Jews as to battling the Germans. Confronted with the Communist regime's determination to erase any such depictions from the script, producers of "The Wall" agreed to give the government censors "consultation" privileges.

That concession did not result in an entirely revisionistic film treatment. In one scene, a Polish partisan leader is shown refusing to supply guns to the Jewish insurgents. Nevertheless, the movie's makers concede that they were unable to convey the degree of Polish anti-Semitism recorded by historians and fictionalized by Hersey. "If we were going to have 100 percent accuracy," says director Robert Markowitz, "the film would never have been made."

For once on TV, the final product was worth the compromises built into its construction. This movie bursts with relevance. The Polish extras in the crowd scenes, their somber faces adorned with Lech Walesa-style mustaches, look like outtakes from last night's newscast. Perhaps as it's being shown, residents of a real Warsaw tenement will be locked in agonized debate over the choice between capitulation and defiance. CBS's "The Wall" cuts to the marrow of that dilemma while refusing to supply an easy solution. One lesson emerges: the first step is solidarity.

PRESIDENT REAGAN'S ADDRESS TO OAS

Mr. DENTON. Mr. President, the policy declarations made by President Reagan in his speech today to the Organization of American States represent an historic commitment and contribution to the future security and prosperity of Central America. The Caribbean Basin Initiative lays a sound foundation for a comprehensive program based on a true partnership of the nations of the American.

I have just returned from a trip to Panama, where I was brought up to date by senior officers of the U.S. Unified Command having responsibility for that Latin American area. Diplomats from a number of American nations, including the United States, briefed me on the political, economic, military, and psychological facts in the Caribbean Basin. Based on those facts, I applaud the President's speech, particularly the emphasis contained in the following quotation: "In the face of outside threats, security for the countries of the Caribbean and Central America area is not an end in itself, but a means to an end." That security is the key to permitting progress in the political, economic, and social well-being of the peoples of our hemisphere.

I can confirm that the President's speech was eagerly awaited by the leaders of the democratic forces in Central America. I believe his proposals are responsive to the critical needs and long-held aspirations of our American neighbors. Together and resolute, we can insure the survival of liberty, the enhancement of economic prosperity, and the growth of the democratic principles that bind our peoples. Divided and irresolute, we face the prospect of the loss of liberty, the deepening of economic deprivation, and the growth of a malignant order that threatens the demise of our collective security and what the President called our "common destiny."

Security is the essential means to preserve the institutions required for the nurturing of basic human rights. Among those who are the preservation of democratic institutions in El Salvador, the coming free elections that will

establish a national assembly, providing the framework for a duly elected and responsive Presidency in that country, and the work of the Central American Democratic Community formed in January by Costa Rica, Honduras, and El Salvador.

The President's program merits our support. We must join with him to do, as he said, "Whatever is prudent and necessary to insure the peace and security of the Caribbean area." I hope and expect that my colleagues on both sides of the aisle will carefully examine his words and assist in taking the steps to insure their implementation.

Mr. President, I ask unanimous consent that the full text of President Reagan's speech to the Organization of American States be printed in the RECORD immediately following my remarks.

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

TEXT OF REMARKS BY THE PRESIDENT TO THE ORGANIZATION OF AMERICAN STATES

The principles which the Organization of American States embodies—democracy, self-determination, economic development and collective security—are at the heart of U.S. foreign policy.

The United States of America is a proud member of this Organization. What happens anywhere in the Americas affects us in this country. In that very real sense, we share a common destiny.

We, the peoples of the Americas, have much more in common than geographical proximity. For over 400 years our peoples have shared the dangers and dreams of building a new world. From colonialism to nationhood our common quest has been for freedom.

Most of our forebears came to this hemisphere seeking a better life for themselves. They came in search of opportunity and, yes, in search of God. Virtually all—descendants of the land and immigrants alike—have had to fight for independence. Having gained it, they had to fight to retain it. There were times when we even fought each other.

Gradually, however, the nations of this hemisphere developed a set of common principles and institutions that provided the basis for mutual protection. Some 20 years ago, John F. Kennedy caught the essence of our unique mission when he said it was up to the New World, "to demonstrate that man's unsatisfied aspiration for economic progress and social justice can best be achieved by free men working within a framework of democratic institutions."

In the commitment to freedom and independence, the peoples of this hemisphere are one. In this profound sense, we are all Americans. Our principles are rooted in self-government and non-intervention. We believe in the rule of law. We know that a nation cannot be liberated by depriving its people of liberty. We know that a state cannot be free when its independence is subordinated to a foreign power. And we know that a government cannot be democratic if it refuses to submit to the test of a free election.

We have not always lived up to these ideals. All of us at one time or another in our history have been politically weak, economically backward, socially unjust or unable to solve our problems through peaceful means. My own country, too, has suffered internal strife including a tragic civil war. We have known economic misery, and once tolerated racial and social injustice. And, yes, at time we have behaved arrogantly and impatiently toward our neighbors. These experiences have left their scars but they also help us today to identify with the struggle for political and economic development in the other countries of this hemisphere.

Out of the crucible of our common past, the Americas have emerged as more equal and more understanding partners. Our hemisphere has an unlimited potential for economic development and human fulfillment. We have a combined population of more than 600 million people; our continents and our islands boast vast reservoirs of food and raw materials; and the markets of the Americas have already produced the highest standard of living among the advanced as well as the developing countries of the world. The example we could offer to the world would not only discourage foes; it would project like a beacon of hope to all of the oppressed and impoverished nations of the world. We are the New World, a world of sovereign and independent states that today stand shoulder to shoulder with a common respect for one another and a greater tolerance of one another's shortcomings.

Some 2 years ago when I announced as a candidate for the Presidency, I spoke of an ambition I had to bring about an accord with our two neighbors here on the North American continent.

I was not suggesting a common market or any kind of formal arrangement. "Accord" was the only word that seemed to fit what I had in mind. I was aware that the U.S. has long enjoyed friendly relations with Mexico and Canada, that our borders have no fortifications. Yet it seemed to me there was the potential for a closer relationship than had yet been achieved. Three great nations share the North American continent with all its human and natural resources. Have we done all we can to create a relationship in which each country can realize its potential to the fullest?

I know in the past the United States has proposed policies we declared would be mutually beneficial not only for North America but also for the nations of the Caribbean and Central and South America. But there was often a problem. No matter how good our intentions were, our very size may have made it seem that we were exercising a kind of paternalism.

At the time I suggested a new North American accord, I said I wanted to approach our neighbors not as someone with yet another plan, but as a friend seeking their ideas, their suggestions as to how we could become better neighbors.

I met with President Lopez Portillo in Mexico before my inauguration and with Prime Minister Trudeau in Canada shortly after I had taken office. We have all met several times since, in the U.S., Mexico, and Canada. I believe we have established a relationship better than any our three countries have ever known before.

Today, I would like to talk about our other neighbors—neighbors by the sea—some two dozen countries of the Caribbean and Central America. These countries are not unfamiliar names from some isolated corner of the world, far from home. They are very close to home. The country of El Salvador, for example, is nearer to Texas than Texas is to Massachusetts. The Caribbean region is a vital strategic and commercial artery for the United States. Nearly half of U.S. trade, two-thirds of our imported oil, and over half of our imported strategic minerals pass through the Panama Canal or the Gulf of Mexico. Make no mistake: The well-being and security of our neighbors in this region are in our own vital interest.

Economic health is one of the keys to a secure future for our Caribbean Basin neighbors. I am happy to say that Mexico, Canada and Venezuela have joined us in the search for ways to help these countries realize their economic potential.

Each of our four nations has its own unique position and approach. Mexico and Venezuela are helping to offset energy costs to Caribbean Basin countries by means of an oil facility that is already in operation. Canada is doubling its already significant economic assistance. We all seek to ensure that the peoples of this area have the right to preserve their own national identities; to improve their economic lot and to develop their political institutions to suit their own unique social and historical needs. The Central American and Caribbean countries differ widely in culture, personality and needs. Like America itself, the Caribbean Basin is an extraordinary mosaic of Hispanics, Africans, Asians, and Europeans, as well as native Americans.

At the moment, however, these countries are under economic siege. In 1977, one barrel of oil was worth 5 pounds of coffee or 155 pounds of sugar. To buy that same barrel of oil today, these small countries must provide five times as much coffee (nearly 26 pounds) or almost twice as much sugar (283 pounds). This economic disaster is consuming our neighbors' money reserves and credit, forcing thousands of people to leave for the United States, often illegally, and shaking even the most established democracies. And economic disaster has provided a fresh opening to the enemies of freedom, national independence and peaceful development.

We have taken the time to consult closely with other governments in the region, both sponsors and beneficiaries, to ask them what they need and what they think will work. And we have labored long to develop an economic program that integrates trade, aid and investment—a program that represents a long-term commitment to the countries of the Caribbean and Central America to make use of the magic of the market of the Americas to earn their own way toward self-sustaining growth.

At the Cancun Summit last October, I presented a fresh view of development which stressed more than aid and government intervention. As I pointed out then, nearly all of the countries that have succeeded in their development over the past 30 years have done so on the strength of market-oriented policies and vigorous participation in the international economy. Aid must be complemented by trade and investment.

The program I am proposing today puts these principles into practice. It is an integrated program that helps our neighbors help themselves, a program that will create conditions under which creativity, private entrepreneurship and self-help can flourish. Aid is an important part of this program because many of our neighbors need it to put themselves in a starting position from which they can begin to earn their own way.

But this aid will encourage private sector activities, not displace them.

The centerpiece of the program I am sending to the Congress is free trade for Caribbean Basin products exported to the United States. Currently, some 87 percent of Caribbean exports already enter U.S. markets duty free under the Generalized System of Preferences. These exports, however, cover only the limited range of existing products—not the wide variety of potential products these talented and industrious peoples are capable of producing. Under the free trade arrangement I am proposing, exports from the area will receive duty free treatment for 12 years. Thus new investors will be able to enter the market knowing that their products will receive duty free treatment for at least the pay-off lifetime of their investments. Before granting duty-free treatment, we will discuss with each country its own self-help measures.

The only exception to the free trade concept will be textile and apparel products because these products are governed by other international agreements. However, we will make sure that our immediate neighbors have liberal quota arrangements.

This economic proposal is as unprecedented as today's crisis in the Caribbean. Never before has the United States offered a preferential trading arrangement to any region. This commitment makes unmistakably clear our determination to help our neighbors grow strong.

The impact of this free trade approach will develop slowly. The economies we seek to help are small. Even as they grow, all the protections now available to U.S. industry, agriculture and labor against disruptive imports will remain. And growth in the Caribbean will benefit everyone, with American exports finding new markets.

Secondly, to further attract investment, I will ask the Congress to provide significant tax incentives for investment in the Caribbean Basin. We also stand ready to negotiate bilateral investment treaties with interested Basin countries.

Third, I am asking for a supplemental Fiscal Year 1982 appropriation of $350 million to assist those countries which are particularly hard hit economically. Much of this aid will be concentrated on the private sector. These steps will help foster the spirit of enterprise necessary to take advantage of the trade and investment portions of the program.

Fourth, we will offer technical assistance and training to assist the private sector in the Basin countries to benefit from the opportunities of this program. This will include investment promotion, export marketing and technology transfer efforts, as well as programs to facilitate adjustments to greater competition and production in agriculture and industry. I intend to seek the active participation of the business community in this joint undertaking. The Peace Corps already has 861 volunteers in Caribbean Basin countries, and will give special emphasis to recruiting volunteers with skills in developing local enterprise.

Fifth, we will work closely with Mexico, Canada, and Venezuela—all of whom have already begun substantial and innovative programs of their own—to encourage stronger international efforts to coordinate our own development measures with their vital contributions and with those of other potential donors like Colombia. We will also encourage our European, Japanese, and other Asian allies, as well as multilateral development institutions, to increase their assistance in the region.

Sixth, given our special, valued, relationship with Puerto Rico and the U.S. Virgin Islands, we will propose special measures to ensure that they also will benefit and prosper from this program. With their strong traditions of democracy and free enterprise, they can play leading roles in the development of the area.

This program has been carefully prepared. It represents a farsighted act by our own people at a time of considerable economic difficulty at home. I would not propose it if I were not convinced that it is vital to the security interests of this Nation and this hemisphere. The energy, the time, and the treasure we dedicate to assisting the development of our neighbors now can help to prevent the much larger expenditures of treasure, as well as human lives, which would flow from their collapse.

One early sign is positive. After a decade of falling income and exceptionally high unemployment, Jamaica's new leadership is reducing bureaucracy, dismantling unworkable controls, and attracting new investment. Continued outside assistance will be needed to tide Jamaica over until market forces generate large increases in output and employment—but Jamaica is making freedom work.

I have spoken up to now mainly of the economic and social challenges to development. But there are also other dangers. A new kind of colonialism stalks the world today and threatens our independence. It is brutal and totalitarian. It is not of our hemisphere but it threatens our hemisphere and has established footholds on American soil for the expansion of its colonialist ambitions.

The events of the last several years dramatize two different futures which are possible for the Caribbean area: Either the establishment or restoration of moderate, constitutional governments with economic growth and improved living standards; or, further expansion of political violence from the extreme left and the extreme right resulting in the imposition of dictatorships and—inevitably—more economic decline and human suffering.

The positive opportunity is illustrated by the two-thirds of the nations in the area which have democratic governments. The dark future is foreshadowed by the poverty and repression of Castro's Cuba, the tightening grip of the totalitarian left in Grenada and Nicaragua, and the expansion of Soviet-backed, Cuban-managed support for violent revolution in Central America.

The record is clear. Nowhere in its whole sordid history have the promises of Communism been redeemed. Everywhere it has exploited and aggravated temporary economic suffering to seize power and then to institutionalize economic deprivation and suppress human rights. Right now, 6 million people worldwide are refugees from Communist systems. Already, more than a million Cubans alone have fled communist tyranny.

Our economic and social program cannot work if our neighbors cannot pursue their own economic and political future in peace but must divert their resources, instead, to fight imported terrorism and armed attack.

Economic progress cannot be made while guerrillas systematically burn, bomb and destroy bridges, farms and power and transportation systems—all with the deliberate intention of worsening economic and social problems, in hopes of radicalizing already suffering people.

Our Caribbean neighbors' peaceful attempts to develop are feared by the foes of freedom because their success will make the radical message a hollow one. Cuba and its Soviet backers know this. Since 1978, Havana has trained, armed and directed extremists in guerrilla warfare and economic sabotage as part of a campaign to exploit troubles in Central America and the Caribbean. Their goal is to establish Cuban-style Marxist-Leninist dictatorships. Last year, Cuba received 66,000 tons of war supplies from the Soviet Union—more than in any year since the 1962 missile crisis. Last month, the arrival of additional high performance MiG-23 Floggers gave Cuba an arsenal of more than 200 Soviet war planes—far more than the military aircraft inventories of all other Caribbean Basin countries combined. For almost 2 years, Nicaragua has served as a platform for covert military action. Through Nicaragua, arms are being smuggled to guerrillas in El Salvador and Guatemala.

The Nicaraguan government even admits the forced relocation of about 8,500 Miskito Indians, and we have clear evidence that since late 1981 many Indian communities have been burned to the ground and men, women, and children killed.

The Nicaraguan Junta cabled written assurances to the OAS in 1979 that it intended to respect human rights and hold free elections. Two years later, these commitments can be measured—by the postponement of elections until 1985, by repression against free trade unions and parties, against the media and minorities, and—in defiance of all international civility—by the continued export of arms and subversion to neighboring countries.

Two years ago, in contrast, the government of El Salvador began an unprecedented land reform. It has repeatedly urged the guerrillas to renounce violence and to join in the democratic process—an election in which the people of El Salvador could determine the government they prefer. Our own country and other American nations through the OAS have urged such a course. The guerrillas have refused. More than that, they threaten violence and death to those who participate in such an election.

Can anything make more clear the nature of those who pretend to be supporters of so-called wars of liberation?

A determined propaganda campaign has sought to mislead many in Europe and certainly many in the U.S. as to the true nature of the conflict in El Salvador. Very simply, guerrillas armed and supported by and through Cuba are attempting to impose a Marxist-Leninist dictatorship on the people of El Salvador as part of a larger imperialistic plan.

If we do not act promptly and decisively in defense of freedom, new Cubas will arise from the ruins of today's conflicts. We will face more totalitarian regimes, more regimes tied militarily to the Soviet Union, more regimes exporting subversion, more regimes so incompetent yet so totalitarian that their citizens' only hope becomes that of one day migrating to other American nations as in recent years they have come to the U.S.

I believe free and peaceful development of our hemisphere requires us to help governments confronted with aggression from outside their borders to defend themselves. For this reason I will ask the Congress to provide increased security assistance to help friendly countries hold off those who would destroy their chances for economic and social progress and political democracy. Since 1947, the Rio Treaty has established

reciprocal defense responsibilities linked to our common democratic ideals. Meeting these responsibilities is all the more important when an outside power supports terrorism and insurgency to destroy any possibility of freedom and democracy. Let our friends and our adversaries understand that we will do whatever is prudent and necessary to ensure the peace and security of the Caribbean area.

In the face of outside threats, security for the countries of the Caribbean and Central American areas is not an end in itself, but a means to an end. It is a means toward building representative and responsive institutions, toward strenghtening pluralism and free private institutions—churches, free trade unions, and an independent press. It is a means to nurturing the basic human rights freedom's foes would stamp out. In the Caribbean we above all seek to protect those values and principles that shape the proud heritage of this hemisphere. I have already expressed our support for the coming election in El Salvador. We also strongly support the Central American Democratic Community formed this January by Costa Rica, Honduras and El Salvador. The U.S. will work closely with other concerned democracies inside and outside the area to preserve and enhance our common democratic values.

We will not, however, follow Cuba's lead in attempting to resolve human problems by brute force. Our economic assistance, including the additions that are part of the program I have just outlined, is more than 5 times the amount of our security assistance. The thrust of our aid is to help our neighbors realize freedom, justice, and economic progress.

We seek to exclude no one. Some, however, have turned from their American neighbors and their heritage. Let them return to the traditions and common values of this hemisphere and we all will welcome them. The choice is theirs.

As I have talked these problems over with friends and fellow citizens here in the U.S., I am often asked "why bother?" Why should the problems of Central America or the Caribbean concern us? Why should we try to help? I tell them we must help because the people of the Caribbean and Central America are in a fundamental sense fellow Americans. Freedom is our common destiny. And freedom cannot survive if our neighbors live in misery and oppression. In short, we must do it because we are doing it for each other.

Our neighbors' call for help is addressed to us all: here in this country to the Administration, to the Congress, and to millions of Americans from Miami to Chicago, from New York to Los Angeles. This is not Washington's problem; it is the problem of all the people of this great land and of all the other Americas—the great and sovereign republics of North America, the Caribbean Basin, and South America.

The Western Hemisphere does not belong to any one of us—we belong to the Western Hemisphere. We are brothers historically as well as geographically.

I am aware that the United States has pursued Good Neighbor Policies in the past. These policies did some good. But they are inadequate for today. I believe that my country is now ready to go beyond being a good neighbor to being a true friend and brother in a community that belongs as much to others as to us. That, not guns, is the ultimate key to peace and security for us all.

We have to ask ourselves why has it taken so long for us to realize the God-given opportunity that is ours? These two great land masses are rich in virtually everything we need. Together, our more than 600 million people can develop what is undeveloped, can eliminate want and poverty, can show the world that our many nations can live in peace, each with its own customs, language and culture, but sharing a love for freedom and a determination to resist outside ideologies that would take us back to colonialism.

We return to a common vision. Nearly a century ago, a great citizen of the Caribbean and the Americas, José Martí, warned that "Mankind is composed of two sorts of men—those who love and create, and those who hate and destroy."

Today, more than ever, the compassionate, creative peoples of the Americas have an opportunity to stand together—to overcome injustice, hatred and oppression and build a better life for all the Americas.

I have always believed that this hemisphere was a special place with a special destiny. I believe we are destined to be the beacon of hope for all mankind.

With God's help we can make it so; we can create a peaceful, free and prospering hemisphere based on our shared ideals and reaching from pole to pole of what we proudly call the New World.

AID CUTBACKS COULD COLLAPSE STUDENT LOAN PROGRAM

Mr. SASSER. Mr. President, there is increasing debate today over the impact of the administration's proposed changes in student assistance programs. These changes not only register a lack of Federal financial assistance but also a change in philosophy—a lack of Federal commitment to an educated populace.

Certainly we all believe that Federal financial aid should be based on a student's relative need. However, I must say that I part with the administration over their decision to put an end to an almost 20-year investment in America's future.

Through the combined contributions of family support, individual labor, charitable gifts, and Federal financial support, millions of our citizens have had an opportunity for a higher education.

Now, however, with tuition costs increasing at double-digit rates across the country, the administration is proposing that we turn our backs on the educational needs of our country. The impact of these actions would not only be to deny thousands of students the chance for higher learning but could also lead to the premature demise of some of our country's oldest learning institutions. And I submit that the long-term impact will be an erosion of our national security—a less educated citizenship and a loss of adequate research technology.

I was recently contacted by Kenneth Barber, the executive director of the Tennessee Student Assistance Corp., regarding the impact these proposals could have in Tennessee. I will ask that at the end of my remarks his comments be inserted in the RECORD. However, to briefly summarize his comments, should the proposed administration changes go into effect Tennessee students would lose almost half of the currently available student aid from Federal sources. That means a total loss of more than $38.5 million from the 1981–82 school year. Changes in the guaranteed student loan program would cost 5,000 graduate and professional students over $20 million in financial aid. And because Tennessee has not yet put in place the parent and auxiliary loan programs, these students will have no substitute source for loan assistance.

And perhaps the most ominous of all, Mr. Barber predicts that administrative changes in the loan program will cause lenders to refuse to participate causing the collapse of the entire program.

I encourage my colleagues to compare similar analyses in their own States, and reject these ill-conceived proposals.

I ask unanimous consent that Mr. Barber's letter be inserted in the RECORD.

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

TENNESSEE STUDENT ASSISTANCE CORP.,
Nashville, Tenn., February 12, 1982.

Hon. JAMES R. SASSER,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR SASSER: I wish to share an assessment of the impact which 1983 federal budget proposals will have on student assistance programs.

Most student aid funds are allocated through six programs authorized in the Higher Education Act of 1965, as amended. Attached are summaries which illustrate funding levels proposed for five of the programs both at the national level (Attachment 1) and at the state level (Attachment 2). The 1983 budget also contains a series of proposed changes to the Guaranteed Student Loan Program. These proposed changes and my assessment of their impact are summarized on Attachment 3.

In summary, the 1982–83 proposed rescissions will reduce Title IV outlays in Tennessee by about 9 or 10 percent from 1981–82 levels. The 1983–84 recommendations are more pronounced. If the recommendations are implemented, Title IV outlays in 1983–84 would decline by about 50 percent from 1981–82 levels. The changes proposed for Guaranteed Student Loans are even more severe. In my opinion, if all five of the changes are adopted and implemented by Congress on the recommended date of April 1, 1982, the entire program will collapse. Banks and other participating lenders will simply refuse to lend under those conditions.

Please call me if you have questions.

Sincerely,

KENNETH BARBER,
Executive Director.

Enclosures.

[Attachment 1]

TITLE IV STUDENT AID PROGRAMS—FUNDING SUMMARY

	1981–82 appropriations	1982–83		1983–84 budget request
		December 10 continuing resolution	After possible rescissions	
Basic educational opportunity grants (Pell grants) (billions)	$2.346	$2.279	$2.187	$1.440
Supplemental educational opportunity grants (millions)	370	278	278	0
National direct student loans (millions)	200	193	198	0
College work study (millions)	550	528	484	400
State student incentive grant (millions)	77	74	78	0
Total (billions)	3.543	3.352	3.215	1.840

Note.—The guaranteed student loan program is also authorized by title IV of the Higher Education Act of 1965, as amended. Federal law appropriates "such sums as are necessary" for guaranteed student loans. The 1983 budget proposals contain 5 recommendations for change to GSL. These changes are summarized on attachment 3.

This funding summary was compiled by staff of the Tennessee Student Assistance Corp., from information furnished by the National Association of Student Financial Aid Administrators and Congressional Office staff.

[Attachment 2]

PROJECTIONS OF TITLE IV FUNDING FOR STUDENTS ENROLLED IN TENNESSEE EDUCATIONAL INSTITUTIONS

	1981–82	1982–83		1983–84 budget request
		December 10 continuing resolution	After possible rescissions	
Basic educational opportunity grants (Pell grant)	$60,000,000	$56,316,000	$54,043,000	$35,568,000
Supplemental Educational Opportunity Grants	6,640,000	4,976,000	4,976,000	0
National Direct Student Loans	3,258,000	3,132,000	3,213,000	0
College Work Study	10,726,000	10,296,000	9,438,000	7,800,000
State Student Incentive Grants	1,265,000	1,216,000	1,109,000	0
Total	81,889,000	75,936,000	72,779,000	43,368,000

Note.—These projections were prepared by staff of the Tennessee Student Assistance Corp. using historical percentages received under each program. Because of this methodology, the projections should be considered only rough approximations.

[Attachment 3]

PROPOSED CHANGES TO THE GUARANTEED STUDENT LOAN PROGRAM WITH PROBABLE IMPACTS

A. Proposal: Increase the loan origination fee to 10 percent. (It is currently 5 percent.)

Impact: (1) Administratively feasible by April 1 proposed implementation date.

(2) Will cost individual students as much as $125 each. For the fiscal year ended September 30, 1981 this provision had it been in place, would have cost Tennessee GSL borrowers $2,924,000.

(3) No adverse impact on lender willingness to participate in GSL is expected.

B. Proposal: Require demonstration of financial need by all GSL borrowers, not just those whose families have an adjusted income above $30,000.

Impact: (1) Administratively feasible by April 1 proposed implementation date; however, would create additional workload on college financial aid offices and thus contribute to bottlenecks in paperwork flow.

(2) Will significantly reduce the number of eligible students.

(3) Could expect some decline in lender participation because of reduction in average loan size. Guaranteed Student Loans are already at a competitive disadvantage because of their relatively small amounts.

C. Proposal: Eliminate graduate and professional students from GSL. Increase loan limits under PLUS Program from $3,000 to $8,000 per year, and from $15,000 to $40,000 cumulative.

Impact: (1) Administratively possible to eliminate graduate and professional students from GSL by proposed April 1 implementation date. It is impossible to serve these students under the PLUS Program by that time.

(2) Short-run impact would be to eliminate over $20,000,000 in financial aid to over 5,000 students. (See attached chart.) Long-run impact could be two-fold. Lenders may be unwilling to lend because of the necessity to collect interest from in-school students. Collecting interest raises their administrative costs and makes student loans an unattractive investment. If so, short-term becomes long-term. If lenders do choose to lend, the costs of borrowing increase dramatically for graduate and professional students. There is a strong possibility that many students will be unable to pay the interest while attempting to meet other college costs, thus increasing defaults. It should be noted that in those states where PLUS is already operative, lenders have chosen not to lend.

(3) This change also will have an impact on lender willingness to participate in GSL. Elimination of graduate and professional students, whose average loan size is approximately double that of undergraduates, will mean that overall loan averages per borrower will decline, thus raising administrative costs and making it more difficult to meet par purchase requirements for sales to the Student Loan Marketing Association.

D. Proposal: Limit special allowance payments to the in-school period plus a two-year period following graduation or withdrawal from school and allow lenders to set new borrower interest rates, after the two-year period.

Impact: (1) Cannot possibly be implemented by April 1, 1982. This change will require a new note form and new truth-in-lending disclosure procedures. Neither lawyers nor the Federal Reserve, which will be required to approve any new note form, can act that quickly. There may be other problems of a techncial nature.

(2) This change will raise the cost of borrowing for students who can still find lenders willing to lend. How much the cost would depend on interest rates.

(3) A change of this nature could easily lead to a general collapse in lender willingness to participate in the GSLP. Currently lenders have in a GSL an investment vehicle which provides a variable yield but without the necessity to constantly adjust rates. To achieve the same yield would require adjustment of the interest rate (in the lender's accounting system) every quarter. Some large lenders, Union Planters for example, are developing computer software to handle variable rate loans. That isn't the norm for most lending institutions, however. Even if it was, the cost of administration tends to increase under variable rate accounting. Greater costs equals less profit equals fewer lenders.

E. Proposal: Require payment of a guarantee agency reinsurance premium equal to half the agency's yearly income from insurance premiums.

Impact: (1) Administratively feasible by April 1, 1982.

(2) No impact on students.

(3) No impact on lenders.

(4) TSAC is required by state law to maintain a ten percent insurance reserve. Under a contract with the U.S. Department of Education, TSAC is reinsured at a base rate of eighty percent. The effect of state law, then, is to require that TSAC raise funds to insure ten percent of the unreinsured twenty percent or two percent. Thus, for every loan insured or guaranteed by TSAC, two percent of the amount of the loan must be available in cash or other liquid assets to underwrite that loan. TSAC raises the necessary reserve funds by assessment of an insurance premium (guaranty fee), which provides an average of 1.75 percent of each loan, and by investment earnings received on funds already in the fund.

If the proposal to pay half the insurance premium income to the federal government is adopted, this would require either:

(a) An increased insurance premium assessment;

(b) A state appropriation equal to one-half of premiums collected; and

(c) A change in state law which would delete the ten percent requirement. Item (a) is impractical without investing in a more sophisticated loan accounting system. TSAC

is limited by federal law from assessing more than one percent on the unpaid principal balance. Refunds are payable if the assessment reaches into the repayment years of the loan. TSAC is currently charging approximately one percent during the in-school period. To make an assessment and account for refunds during the repayment period requires a record of paid down loan balances, a feature the TSAC loan accounting system does not now possess.

Item (b) would have to amount to about $657,000 in fiscal year 1981-82 were the payback feature in effect this year.

Item (c) would raise the question, and a valid one, among Tennessee's GSL lenders of whether they are really one hundred percent insured on their student loans. Current law provides that the state is not liable on TSAC obligations and the Tennessee Constitution, in fact, prohibits the lending of the credit of the state on behalf of any individual.

In summary, proposal E strikes at the ability of TSAC to serve as a guarantor of student loans.

GUARANTEED STUDENT LOAN PROGRAM LOANS TO GRADUATE AND PROFESSIONAL STUDENTS—OCTOBER 1, 1980, TO SEPTEMBER 30, 1981

	Students	Amount
Austin Peay State	48	$133,121
East Tennessee State [1]	218	770,750
Memphis State	460	2,015,257
Middle Tennessee State	344	961,809
Tennessee State	92	225,759
Tennessee Tech	89	238,941
Subtotal	1,251	4,345,637
UT Chattanooga	62	148,725
UT Knoxville [2]	1,004	4,062,315
UT Martin	78	178,515
UT Center for Health Sciences	1,091	4,781,339
Subtotal	2,235	9,170,894
Total public	3,486	13,516,531
Fisk University	1	1,000
Meharry Medical College	99	439,870
Scarritt College	4	9,533
Tennessee Temple	0	0
University of the South	3	15,000
Vanderbilt University	450	1,783,117
Total private	557	2,248,520
Total—Tennessee institutions	4,043	15,765,051
Students attending out-of-State institutions	1,165	4,690,834
Grand total	5,208	20,455,885

[1] Includes medical school.
[2] Includes veterinary medicine.

ANNIVERSARY OF THE FIRST UNITED STATES EARTH ORBITAL FLIGHT

Mr. DENTON. Mr. President, February 20 was the 20th anniversary of a truly historic event, an event in which a distinguished Member of this Chamber played the central role. On that day in 1962, Col. JOHN GLENN became the first American to pilot a spacecraft in orbit of the Earth.

Because the later developments in space were so spectacular, we too easily forget the thrill of JOHN GLENN's first venture into the void. His was a giant step that later made a small step possible, and that now sees us bringing into operation a regular and reusable space shuttle. Space no longer seems unknown and formidable; it is, rather, now our back yard.

This was certainly not so in 1962. JOHN GLENN and his six colleagues, our first astronauts, were more than pioneers. They were venturers into danger, they willingly went in harm's way. Not only did they have exceptional minds, advanced qualifications, and superb physical condition, they also had the willingness, even the desire, to risk everything above and beyond the call of duty.

There is a difference between those who choose the dangerous and difficult course and those who are but the victims of circumstance. We have recently observed the anniversary of another day, 9 years ago, when hundreds of Americans returned home from cruel captivity. They did not consider themselves as heroes, but only as loyal Americans, members of our Nation's military services, doing their simple duty to God, country, and their fellow citizens.

They did not volunteer for the experience. They had no physical or mental or educational qualifications that were exceptional or that distinguished them from millions of other American fighting men. Like those others, most of them did their duty well.

JOHN GLENN was different. He willingly made the effort to develop his physical, mental, and educational abilities to a high pitch, to devote himself single-mindedly to a course of self-sacrifice and dedication.

Mr. President, I am truly and deeply honored to have him in the Senate of the United States as a colleague and as a friend.

ENROLLED JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, February 24, 1982, he had presented to the President of the United States, the following enrolled joint resolutions:

S.J. Res. 122, Joint resolution to authorize and request the President to designate the week of February 28, 1982, through March 6, 1982, as "National Construction Industry Week"; and

S.J. Res. 134. Joint resolution to designate 1982 as the "National Year of Disabled Persons."

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-684. A concurrent resolution adopted by the Legislature of the State of South Carolina to the Committee on Agriculture, Nutrition, and Forestry.

"CONCURRENT RESOLUTION

"Whereas, President Reagan since he took office has worked to reduce inflation, worked to expand foreign trade, and worked to assist America's farmers, including the providing of funds for agricultural research; and

"Whereas, the economy of the United States is strengthened by our cost efficient farmers whose export markets contribute to this country's research; and

"Whereas, the efficiency of these farms and farmers depends on the rapid application of new technology from agricultural research, the funds for which are being reduced by inflation; and

"Whereas, American farmers have forgone acreage allotments on most crops on the assurance that export markets would be allowed to expand without undue government restrictions; and

"Whereas, Secretary of State Alexander Haig and the officials of the State Department in administering foreign policy have many times used "food as a weapon", and this has the effect of destroying our farm export markets, undermining America's farm economy, postponing investments in efficient production methods and agricultural research, and fueling inflation by increasing the cost of purchasing food; and

"Whereas, such disruption of American farm export markets is not in the interest of our nation. Now, therefore,

"Be it resolved by the Senate, the House of Representatives concurring:

"That the members of the General Assembly hereby express their appreciation to President Reagan for his support of America's farmers.

"Be it further resolved that the members of the General Assembly hereby memorialize President Reagan to allow the United States Department of Agriculture in conjunction with private enterprise to manage the foreign sales of agricultural products during the absence of a pressing national or international emergency.

"Be it further resolved that the members of the General Assembly also memorialize President Reagan to restrain Secretary of State Alexander Haig and the officials of the State Department from using "food as a weapon" in administering foreign policy, in agricultural foreign trade negotiations, and in the food for peace program.

"Be it further resolved that should it become necessary to impose food or other agricultural product embargoes for the national defense or security, the members of the General Assembly hereby request President Reagan to make such decisions himself and not to delegate the authority to make such decisions to any Cabinet level officer or to the department or staff of a Cabinet level officer.

"Be it further resolved that a copy of this resolution be forwarded to President Reagan, to each United States Senator from South Carolina, each member of the House of Representatives of Congress from South Carolina, the Senate of the United States and the House of Representatives of the United States."

POM-685. A concurrent resolution adopted by the Legislature of the State of South Dakota; to the Committee on Agriculture, Nutrition, and Forestry:

"HOUSE CONCURRENT RESOLUTION No. 1006

"Whereas, the state of South Dakota is concerned with the management of noxious weeds on private, state and federal lands; and

"Whereas, undesirable plant species, including noxious plants, on lands administered by federal agencies have been and con-

tinue to be a major problem in South Dakota and other western states because they reduce forage needed for livestock production and wildlife and interfere with the forest product industries; and

"Whereas, a major problem for agriculture and livestock producers is the continuing and, in some cases, increasing infestations of noxious weeds on their lands; and

"Whereas, certain federal agencies managing public lands have failed to initiate, implement and fund viable management programs for the prevention, control and containment of these undesirable plant species; and

"Whereas, two federal laws of beneficial intent address noxious weed management, Public Law 90-583, the Carlson-Foley Act of 1968, which calls for the destruction of noxious weeds, and Public Law 93-629, the Federal Noxious Weed Act of 1974, which regulates the movement of noxious weeds; and

"Whereas, neither federal law requires the federal agencies administering public land to manage for the prevention, control and containment of undesirable plant species; and

"Whereas, the management practices of the federal agencies administering these lands are inconsistent with the management practices for undesirable plant species on the existing state, county and private levels; and

"Whereas, section 3 of Public Law 90-583, the Carlson-Foley Act of 1968, reads: "There are hereby authorized to be appropriated to departments or agencies of the Federal Government such sums as the Congress may determine to be necessary to carry out the purposes of this Act." However, no appropriations have yet been authorized under this section; and

"Whereas, county and state agencies and universities are responsibly increasing their weed management efforts in areas of research, education, coordination and integrated control; and

"Whereas, certain federal laws, regulations and policies impede the establishment of cooperative seed management programs between federal land management agencies and state agencies, counties and private landowners.

"Now, therefore, be it resolved, by the House of Representatives of the Fifty-seventh Legislature of the state of South Dakota, the Senate concurring therein, that section 3 of the Carlson-Foley Act of 1968 be replaced with a new section that would read as follows: "The departments or agencies of the Federal Government shall implement and pursue an effective management program for the prevention, control and containment of noxious plants on lands under their control or jurisdiction."; and

"Be It Further Resolved, that such management program be in accordance with state and federal weed laws; and

"Be It Further Resolved, that such management program be implemented in cooperation with the state Department of Agriculture or with a state-designated weed control organization; and

"Be It Further Resolved, that the Congress of the United States is requested to amend section 5 of Public Law 95-313, the Cooperative Forestry Assistance Act of 1978, which pertains to insect and disease control on nonfederal forest lands, to include noxious weed control and management through cooperative efforts on federal, state and private lands; and

"Be It Further Resolved, that the Congress is requested to allow federal land management agencies to enter into cooperative weed surveillance and control agreements with state and local weed management agencies for providing services and funds; and

Be It Further Resolved, that the Congress is requested to increase the funding of weed management programs conducted by federal land management agencies on federal lands; and

"Be It Further Resolved, that the Chief Clerk of the House of Representatives of the state of South Dakota send copies of this concurrent resolution to the South Dakota congressional delegation, the President of the United States Senate, the Speaker of the United States House of Representatives and the chairmen of the United States Senate and House of Representatives Agricultural Committees."

POM-686. A resolution adopted by the New Haven, Conn., Board of Aldermen, urging Congress to fund the Franklin Delano Roosevelt Memorial; to the Committee on Appropriations.

POM-687. A resolution adopted by the Arkansas Legislation Council, urging the restoration of public employment services to a reasonable funding level; to the Committee on Appropriations.

POM-688. A resolution adopted by the board of supervisors of the County of Sacramento, Calif., favoring legislation relative to military retirement; to the Committee on Armed Services.

POM-689. A resolution adopted by the board of directors of the Alameda County, Calif., Developmental Disabilities Planning and Advisory Council, relative to nuclear arms buildup; to the Committee on Armed Services.

POM-690. A resolution adopted by the House of Representatives of the State of Illinois; to the Committee on Armed Services.

"HOUSE RESOLUTION No. 615

"Whereas, The Soviet Union has exploited United States peace initiatives to build up its strategic and conventional warfare capabilities; and

"Whereas, This has given the Soviet Union the means to support increasingly bolder world-wide agression; and

"Whereas, There is basis for concern that the Soviets may next use these forces in Poland, Pakistan, Iran and Yugoslavia; and

"Whereas, The Soviet Union, has demonstrated an unwillingness to live by international law; and

"Whereas, The United States is the one world power that can effectively oppose the Soviet expansionism; therefore, be it

"Resolved, by the House of Representatives of the Eighty-Second General Assembly of the State of Illinois, (a) That we urge the Congress of the United States to adopt a National Strategy of Peace Through Strength, the general principles of which would be:

"(1) to inspire, focus and unite the national will and determination to achieve this goal of peace through strength;

"(2) to achieve overall military and technological superiority over the Soviet Union;

"(3) to create a strategic defense and civil defense which would protect United States citizens against nuclear war at least as well as the Soviets defend their citizens;

"(4) to accept no arms control agreement which in any way jeopardizes the security of the United States or its allies, or locks the United States into a position of military inferiority;

"(5) to reestablish effective security and intelligence capabilities;

"(6) to pursue positive non-military means to roll back the growth of communism;

"(7) to help our allies and other non-communist countries defend themselves against communist aggression; and

"(8) to maintain a strong economy and protect our overseas sources of energy and other vital raw materials.

"(b) That this body recognizes that it will take the combined efforts of hundreds of organizations to achieve the adoption of a National Strategy of Peace Through Strength.

"(c) That this body will join the Coalition for Peace Through Strength to work with other organizations and entities for the adoption of a National Strategy of Peace Through Strength, except that this legislative body reserves to itself the right to make its own decisions as to how the principles shall be applied on individual issues; and, be it further

"Resolved, That a suitable copy of this Preamble and Resolution be sent to the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Congressional Delegation from the State of Illinois."

POM-691. A resolution adopted by the Lexington Fayette Urban County Government, relative to the Federal Government's community development block grant program and the urban development action grant program; to the Committee on Banking, Housing, and Urban Affairs.

POM-692. A resolution adopted by the Baptist Hospital Speech and Hearing Clinic, Pensacola, Fla., relative to access to public telephones for the hearing impaired; to the Committee on Commerce, Science, and Transportation.

POM-693. A resolution adopted by the International Flying Farmers, relative to various aviation and agriculture issues; to the Committee on Commerce, Science, and Transportation.

POM-694. A concurrent resolution adopted by the Legislature of the State of Pennsylvania; to the Committee on Energy and Natural Resources.

"RESOLUTION

"Whereas, Public Law 95-87, section 402 (a) of the Federal Surface Mine Control and Reclamation Act of 1977, authorized reclamation fees to be collected for the Abandoned Mine Reclamation Fund; and

"Whereas, Funds are appropriated by the Congress of the United States from the Abandoned Mine Reclamation Funds; and

"Whereas, Section 401 of Public Law 95-87 authorized the United States Secretary of the Interior to transfer up to 20% of the money deposited in the Abandoned Mine Reclamation Fund to the Secretary of Agriculture for carrying out the Rural Abandoned Mine Program (RAMP); and

"Whereas, The amounts of fees generated in the Abandoned Mine Funds were in 1978—$105,000,000; 1979—$184,000,000; 1980—$191,000,000; 1981—estimated $200,000,000 and 1982—estimated $220,000,000; and

"Whereas, Only $10,000,000 were transferred to the Secretary of Agriculture for fiscal year 1979 and fiscal year 1980; therefore be it

"Resolved, (the House of Representatives concurring), That the General Assembly memorializes the Congress of the United States to appropriate $30,000,000 to Soil

Conservation Service from Abandoned Mine Reclamation Funds; and be it further

"*Resolved*, That the General Assembly petitions the United States Secretary of Agriculture to request the United States Secretary of the Interior to transfer $30,000,000, to the United States Department of Agriculture to implement the Rural Abandoned Mine Program; and be it further

"*Resolved*, That copies of this resolution be sent to the presiding officers of the House of Representatives and Senate of the Congress of the United States and to each Senator and Congressman from Pennsylvania and the United States Secretary of Agriculture."

POM-695. A resolution adopted by the City Council of Youngstown, Ohio, opposing legislation allowing oil companies to bill consumers for the cost of the Alaska natural gas pipeline; to the Committee on Energy and Natural Resources.

POM-696. A petition from a citizen of Lawrence, Kans., relative to fission power reactors; to the Committee on Energy and Natural Resources.

POM-697. A concurrent resolution adopted by the Legislature of the State of Mississippi; to the Committee on Environment and Public Works.

"HOUSE CONCURRENT RESOLUTION No. 54

"Whereas, the Legislature of the State of Mississippi has listened carefully to all the evidence presented in every conceivable forum since the 1960's by both proponents and opponents of the Tennessee-Tombigbee Waterway project, and has concluded that evidence is clear that the project is being designed and constructed under strict environmental regulations; and

"Whereas, the Corps of Engineers has gone to great lengths to avoid and minimize environmental damage and, to ensure this, the Corps of Engineers has made changes in the project design in response to suggestions made by environmental groups who are plaintiffs in the present lawsuit against the Tennessee-Tombigbee Waterway project; and

"Whereas, we feel that the aforementioned plaintiffs have used every means at their disposal to halt the waterway project, and that their claim that the environmental statement and supplemental statements are inadequate and totally unfounded; and

"Whereas, since the people of this state have shouldered their responsibility and have expended large sums of money to do their part in constructing the project, we feel that stopping the waterway project now would cause irreparable harm to them; and

"Whereas, We feel that opponents of the waterway want to eliminate vital market competition which is so important to our state's economy; and

"Whereas, delays in completion of the waterway project result in lost benefits to our state and failure to go ahead with the waterway project would mean a total loss of the money already invested in the waterway project and, accordingly, it would be a sham and a travesty to allow the plaintiffs to prevail on such a crucial issue at such a crucial time; and

"Whereas, we feel that the waterway has withstood every conceivable test by every group; and

"Whereas, since 70% of the navigation portion of the waterway project has been completed, and since Congress has appropriated about 1.5 billion dollars to its construction, and since the waterway will be fully opened to navigation in about five years, it would be irresponsible to further delay or halt the waterway project: Now, therefore, be it

"*Resolved by the House of Representatives of the State of Mississippi, the Senate Concurring therein*, That we do hereby memorialize the Congress of the United States of America to continue to fully fund the Tennessee-Tombigbee Waterway and urge scheduled completion of such waterway which is, and has been since its inception, a worthwhile project for the public benefit. Be it further

"*Resolved*, That copies of this Resolution be forwarded to the President of the United States, the Vice President of the United States, the Speaker of the United States House of Representatives, and to the members of Mississippi's Congressional Delegation."

POM-698. A petition from a citizen of Palm Springs, Fla., relative to tax legislation affecting members of Congress; to the Committee on Finance.

POM-699. A resolution adopted by the 16th Guam Legislature; to the Committee on Finance.

"RESOLUTION No. 192

"Be it resolved by the Legislature of the Territory of Guam:

"Whereas, the 1981 Packwood-Moynihan Tuition Tax Credit Bill would establish a federal tax credit for tuition paid by parents who send their children to a non-government school; and

"Whereas, an additional feature of the 1981 Packwood-Moynihan Tuition Tax Credit Bill is a refund provision for those parents who do not earn a taxable income but do pay tuition for their children to attend a non-government school; and

"Whereas, the 1981 Packwood-Moynihan Tuition Tax Credit Bill would apply to college, vocational, secondary and elementary tuition; and

"Whereas, under present law, parents who exercise their basic right to send their children to a non-government school are being doubly taxed and are not afforded relief as proposed by the 1981 Packwood-Moynihan Tuition Tax Credit Bill; and

"Whereas, November 1981 has been declared "National Tuition Tax Credit Month" to draw attention to the proposal that tuition tax credit legislation is urgently needed to remove the unfair burden of double taxation placed upon parents who exercise their basic right to educate their own children according to their own moral, religious and cultural values; now, therefore, be it

"*Resolved*, That the Sixteenth Guam Legislature of the territory of Guam does support passage of federal tuition tax credit legislation with refund provisions as proposed in the 1981 Packwood-Moynihan Tuition Tax Credit Bill and urges the Congress and the President to accept this legislation that would eliminate tax penalties which now exist for those parents who pay tuition to send their children to non-discriminating, non-government schools whose curriculum corresponds with religious, moral and cultural values embraced by the families; and be it further

"*Resolved*, That the Speaker certify to and the Legislative Secretary attest the adoption hereof and that copies of the same be thereafter transmitted to the President of the United States of America, the Honorable Ronald Reagan; to the U.S. Secretary of Education; to the Speaker of the United States House of Representatives; to the President of the U.S. Senate; to all members of the U.S. Congress; to the Honorable Antonio B. Won Pat; to His Excellency Bishop Felixberto C. Flores; to the Administrators of each nongovernment school within the territory; and to the Governor of Guam."

POM-700. A resolution adopted by the Senate of the State of Michigan; to the Committee on Finance:

SENATE RESOLUTION No. 349

"Whereas, Recent federal budget cuts are having devastating effects on the services offered to Michigan's many unemployed individuals, including the closing of various Michigan Employment Security Commission offices throughout the state and a substantial reduction in the Work Incentive Program (WIN). They are also resulting in the immediate layoff of more than 750 Michigan Employment Security Commission employees, over and above the 1,000 employees which the Michigan Employment Security Commission laid off in September of 1981; and

"Whereas, While these cuts will undoubtedly affect millions of unemployed individuals throughout our nation, they will be especially devastating to the State of Michigan, which is reeling under the country's highest unemployment rate. It will also hinder unemployed individuals in locating available jobs for which they are eligible. Last year, 19,335 WIN participants found gainful employment, saving at least $6.5 million in welfare benefits and contributing immeasurably to the quality of their lives; and

"Whereas, The State of Michigan has been on a determined course over the years to keep its economy on an even keel and to reduce Michigan's staggering unemployment rate. These federal budget cuts constitute a major setback to this effort and are not good public policy; now, therefore, be it

"*Resolved by the Senate*, That the members of this legislative body memoralize the President and the Congress of the United States to reconsider the recent budget cuts which are so particularly devastating to unemployed individuals; and be it further

"*Resolved*, That copies of this resolution be transmitted to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and to the members of the Michigan Congressional Delegation."

POM-701. Joint resolution adopted by the Legislature of the State of California; to the Committee on Foreign Relations:

"ASSEMBLY JOINT RESOLUTION No. 52

"Whereas, There have been numerous confirmed reports of Americans still being held hostage by Communist forces as a result of the Korean and Southeast Asian conflicts; and

"Whereas, More than 2,800 American troops are still unaccounted for from the Korean and Southeast Asian conflicts; and

"Whereas, Since 1973, there have been more than 4,000 individual sighting reports made with respect to Americans still being held prisoner in Southeast Asia; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of California, jointly*, That the Legislature of the State of California respectfully memorializes the President and Congress of the United States to take every step necessary to secure the return of all

Americans still held as prisoners of war in Southeast Asia; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives and to each Senator and Representative from California in the Congress of the United States."

POM-702. A concurrent resolution adopted by the Legislature of the State of Minnesota; to the Committee on Foreign Relations:

"RESOLUTION

"Whereas, almost nine years have elapsed since the Paris agreement that was to have ended American involvement in the war in Southeast Asia; and,

"Whereas, one of the conditions of that agreement was provision for a return or accounting for prisoners of war and persons missing in action; and,

"Whereas, the government of Vietnam has only provided information on 79 of the missing and this only through the pressure of determined families and dedicated congressmen; and,

"Whereas, 2,490 Americans, including 45 Minnesotans, remain unaccounted for with investigation of their status arrested by failure of the Socialist Republic of Vietnam and its allied governments to cooperate and assist; and,

"Whereas, there have been repeated verified sighting reports that some of the missing men are still alive in Southeast Asia; and,

"Whereas, the sorrow, anxiety, and frustration of the families of these men cannot be dispelled by delay or neglect; and,

"Whereas, it is America's duty to ensure, through an authentic, comprehensive investigation, the return of Americans still in Southeast Asia and to account for Americans who have perished there; and,

"Whereas, Congress has established a Task Force on American Prisoners and Missing in Southeast Asia that has held hearings on the evidence relating to the status of the missing in Southeast Asia; and

"Whereas, another hearing of the Task Force will be held on January 27, 1982, the ninth anniversary of the Paris accords, at which Secretary of State Alexandar Haig and Secretary of Defense Casper Weinberger have been invited to testify on present initiatives to achieve more success on learning the status of the missing men; and,

"Whereas, it is absolutely essential that the governments of the United States and the Socialist Republic of Vietnam act now to account for the missing; now, therefore,

"Be it resolved by the Legislature of the State of Minnesota that the government of the United States should do all it can to answer the questions surrounding the status of the missing men, to secure the return of any living prisoners or missing persons, and to secure the return of the remains of the dead.

"Be it further resolved that the Socialist Republic of Vietnam should immediately yield all information it has on the status of the missing especially since there is no reason for them to refuse to give this information other than a calculated effort to protract the agony of the families of the missing.

"Be it further resolved that the Secretary of State of Minnesota is directed to send certified copies of this resolution to the President of the United States, the Speaker and Chief Clerk of the United States House of Representatives, the President and Secretary of the United States Senate, the chairman of the Committee on Foreign Affairs of the United States House of Representatives, the chairman of the Committee on Foreign Relations of the United States Senate, to the Minnesota Representatives and Senators in Congress and to the Permanent Representatives of the Socialist Republic of Vietnam to the United Nations."

POM-703. A resolution adopted by the House of Delegates of the American Bar Association, relative to amending the Freedom of Information Act; to the Committee on the Judiciary.

POM-704. A resolution adopted by the Florida Cabinet, relative to the "Missing Childrens Act"; to the Committee on the Judiciary.

POM-705. A resolution adopted by the Senate of the State of Michigan; to the Committee on the Judiciary.

"RESOLUTION

"Resolved by the Senate (the House of Representatives concurring), That there be created a special committee to consist of three members of the Senate and three members of the House of Representatives, to be appointed in the same manner as standing committees of the Senate and House are appointed; to function during the 1982 Regular Session of the Legislature, and until December 31, 1982, to study the drug abuse problem. The special committee shall report on its progress in writing by June 30 and December 31 of 1982 and shall report its findings and recommendations in writing to the Legislature by December 31, 1982; and be it further

"Resolved, That the committee may call upon the Legislative Service Bureau, subject to approval of the Legislative Council, for such services and assistance as it deems necessary; and be it further

"Resolved, That the members of the committee shall serve without compensation, but shall be entitled to actual and necessary travel and other expenses incurred in the performance of official duties, the expenses of the members of the Senate to be paid, subject to the approval procedures of the Senate, from the appropriations to the Senate and the expenses of the members of the House to be paid, subject to the approval procedures of the House, from the appropriations to the House of Representatives."

POM-706. Joint resolution adopted by the Legislature of the State of Alaska; to the Committee on the Judiciary:

"RESOLUTION

"Whereas annually the United States moves more deeply into debt as its expenditures exceed its available revenues and the public debt now exceeds hundreds of billions of dollars; and

"Whereas annually the federal budget demonstrates the unwillingness or inability of the federal government to spend in conformity with available revenues; and

"Whereas proper planning, fiscal prudence, and plain good sense require that the federal budget be in balance absent national emergency; and

"Whereas a continuously unbalanced federal budget except in a national emergency causes continuous and damaging inflation and consequently a severe threat to the political and economic stability of the United States; and

"Whereas, under Article V of the Constitution of the United States, amendments to the Constitution may be proposed by Congress or, on the application of the legislatures of two-thirds of the states, Congress shall call a constitutional convention for the purpose of proposing amendments;

"Be it resolved by the Alaska State Legislature that the Congress of the United States is requested to propose and submit to the states an amendment to the Constitution of the United States which would require that within four years after its ratification by the various states, in the absence of a national emergency, the total of all appropriations made by Congress for a fiscal year shall not exceed the total of all estimated federal revenues for that fiscal year; and be it

"Further resolved that, alternatively, this body makes application and requests that the Congress of the United States call a convention for the sole and exclusive purpose of proposing an amendment to the Constitution of the United States which would require that, in the absence of a national emergency, the total of all appropriations made by Congress for a fiscal year shall not exceed the total of all estimated federal revenues for that fiscal year; and be it

"Further resolved that if Congress proposes such an amendment to the Constitution this application shall no longer be of any force or effect; and be it

"Further resolved that this application and request shall no longer be of any force or effect if the convention is not limited to the exclusive purpose specified by this resolution."

POM-707. A resolution adopted by the Legislature of the State of Nebraska; to the Committee on Labor and Human Resources:

"RESOLUTION 207

"Whereas, the federal government historically has recognized and accepted its responsibility for providing public educational opportunities for dependents of personnel in its uniformed services and for those American Indians residing on Indian reservations; and

"Whereas, for more than one hundred years, this responsibility was met through various funding acts such as the Lanham Act for the military and the Bureau of Indian Affairs for Indians and since 1950 under P.L. 874, otherwise known as impact aid; and

"Whereas, the State of Nebraska has entered into agreements with the federal government which have substantially limited the availability of revenue resources at the local level in school districts which are severely impacted by federal activity; and

"Whereas, appropriations for impact aid for fiscal year 1982 have already been reduced by almost fifty per cent below fiscal year 1981 levels based on a continuing resolution which expires in March 1982, and this has led to uncertainties in planning for the current year's operation due to a possible cut back of up to six million dollars; and

"Whereas, highly impacted districts cannot possibly be expected, nor is it fiscally possible in such districts, to replace the lost funds through increases in local property taxes since the tax dollars needed could exceed the actual valuation of the taxable property; and

"Whereas, the State of Nebraska collects sales and income taxes to support public elementary and secondary education through the foundation and equalization program under which the impacted school districts

currently receive the highest aid per pupil in the state; and

"Whereas, further reductions have been proposed for impact aid in the current year and for fiscal year 1983. Now, therefore, be it

Resolved, by the Members of the Eighty-Seventh Legislature of Nebraska, Second Session:

"1. That the Legislature opposes cuts in impact aid which cannot be replaced by local property taxes.

"2. That the Legislature opposes shifting a recognized federal responsibility to state and local government.

"3. That the Legislature request the federal government, through its executive and legislative branches, to reaffirm through adequate budget recommendations and appropriations its obligation for the education of those students in public school districts which are highly impacted by its actions.

"4. That the Clerk of the Legislature send copies of this resolution to the President, the Office of Management and Budget, and the Department of Education, for their consideration, and copies to Nebraska's Congressional delegation, and appropriate committees of the Congress for their information."

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. GARN, from the Committee on Banking, Housing, and Urban Affairs:

James Jay Jackson, of Texas, to be a Member of the Federal Home Loan Bank Board for the remainder of the term expiring June 30, 1982.

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. HEINZ:

S. 2132. A bill to designate certain public lands in the Allegheny National Forest in the State of Pennsylvania as wilderness, to designate certain other lands in that national forest as a national recreation area, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. GORTON (for himself and Mr. JACKSON):

S. 2133. A bill to designate certain lands in the State of Washington as a national volcanic area, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. STAFFORD:

S. 2134. A bill authorizing appropriations to the Secretary of the Interior for services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts, and other purposes; to the Committee on Environment and Public Works.

By Mr. LAXALT:

S. 2135. A bill to amend the Administrative Conference Act, by authorizing appropriations therefor; to the Committee on the Judiciary.

By Mr. DECONCINI (for himself and Mr. THURMOND):

S. 2136. A bill to amend the Communications Act of 1934; to the Committee on the Judiciary.

By Mr. MATHIAS:

S. 2137. A bill to amend the Policemen and Firemen's Retirement and Disability Act and other relevant provisions of law to correct an inequity created by the merit pay system; to the Committee on Governmental Affairs.

By Mr. HELMS (for himself, Mr. HUDDLESTON, Mr. ABDNOR, Mr. ANDREWS, Mr. BAUCUS, Mr. BENTSEN, Mr. BOREN, Mr. BOSCHWITZ, Mr. CHILES, Mr. COCHRAN, Mr. DIXON, Mr. DOLE, Mr. DOMENICI, Mr. EAST, Mr. EXON, Mr. FORD, Mr. GORTON, Mrs. HAWKINS, Mr. HAYAKAWA, Mr. HEFLIN, Mr. HOLLINGS, Mr. INOUYE, Mr. JEPSEN, Mr. KASTEN, Mr. LEAHY, Mr. LONG, Mr. LUGAR, Mr. MCCLURE, Mr. MELCHER, Mr. NUNN, Mr. PERCY, Mr. PRYOR, Mr. QUAYLE, Mr. RANDOLPH, Mr. SARBANES, Mr. SASSER, Mr. TOWER, and Mr. ZORINSKY):

S.J. Res. 148. A joint resolution to proclaim March 18, 1982, as "National Agriculture Day"; to the Committee on the Judiciary.

By Mr. METZENBAUM (for himself, Mr. DECONCINI, Mr. MATHIAS, Mr. PRYOR, Mr. BUMPERS, Mr. EAGLETON, Mr. BURDICK, Mr. PELL, Mr. WEICKER, Mr. SASSER, Mr. ARMSTRONG, Mr. HEINZ, Mr. STENNIS, Mr. CRANSTON, Mr. RANDOLPH, Mr. GOLDWATER, Mr. MATSUNAGA, Mr. TOWER, Mr. CHAFEE, Mr. HUDDLESTON, Mr. DURENBERGER, Mr. DENTON, Mr. FORD, Mr. BAUCUS, Mr. PROXMIRE, and Mr. PACKWOOD):

S.J. Res. 149. A joint resolution to designate the week of June 6, 1982, through June 12, 1982, as "National Child Abuse Prevention Week"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. ROBERT C. BYRD (for himself, Mr. MOYNIHAN, and Mr. JOHNSTON):

S. Res. 322. A resolution expressing the sense of the Senate with respect to possible actions taken to expel Israel from the General Assembly of the United Nations; to the Committee on Foreign Relations.

By Mr. HART:

S. Res. 323. A resolution concerning STOP talks; to the Committee on Foreign Relations.

By Mrs. HAWKINS:

S. Res. 324. A resolution relative to production and importation of narcotics.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HEINZ:

S. 2132. A bill to designate certain public lands in the Allegheny National Forest in the State of Pennsylvania as wilderness, to designate certain other lands in that national forest as a national recreation area, and for other purposes; to the Committee on Energy and Natural Resources.

PENNSYLVANIA WILDERNESS ACT OF 1982

● Mr. HEINZ. Mr. President, I am proud to be introducing today the Pennsylvania Wilderness Act, a House companion to which is being introduced simultaneously by Representative WILLIAM F. CLINGER, JR. This legislation would end years of controversy surrounding management of the Allegheny National Forest (ANF) in northwest Pennsylvania by striking a responsible balance among the competing demands placed upon this picturesque area. In fact, the legislation represents a carefully crafted compromise addressing the interests of such diverse parties as environmental and conservation groups; timber companies; owners of subsurface oil, gas, and mineral rights within the ANF; local merchants; sportsmen; and recreational enthusiasts.

For the benefit of my distinguished colleagues and the residents of Pennsylvania and surrounding States who are within easy driving distance of this picturesque area, let me briefly explain the provisions of the Pennsylvania Wilderness Act and its impact on land management within the ANF.

This legislation would create within the ANF two wilderness areas and a national recreation area, preserving the unique attributes of these areas while also insuring that the private property rights of owners of subsurface oil, gas, and mineral rights are adequately protected. Holders of these subsurface rights would be allowed to exercise them even within the designated wilderness areas but would be directed to take economically feasible steps to minimize the conflict between resource development and protection of wilderness values. Although the legislation contains no condemnation authority and does not contemplate acquisition of these subsurface rights by the Federal Government—which now owns 2 percent of such rights within the forest boundaries—it does direct the Secretary of Agriculture in cooperation with the Secretary of the Interior to seek voluntary exchanges with subsurface right holders for comparable rights in nonwilderness areas. Besides explicitly protecting subsurface right holders, the legislation further promotes orderly and balanced development of the vast resources of the ANF by permanently releasing from potential wilderness designation roughly 98 percent of the land area of the national forest. Multiple-use management of these nonwilderness areas would thus not be impaired by the potential for future wilderness designations. The only potential wilderness additions within the current boundaries of the national forest are Allegheny River islands not designated as wilderness by the Pennsylvania Wilderness Act.

Designated as wilderness by the legislation would be two areas, the Allegheny River Island (totaling roughly 370 acres) and Hickory Creek (about

9,400 acres). Recommended for wilderness as a result of the Roadless Area Review and Evaluation (RARE) II process, the seven islands comprising the Allegheny River Islands Wilderness Area are all alluvial in origin and characterized by river-bottom forest. All ages and sizes of trees grow here, including virgin stands with specimens over 4 feet in diameter. Also present is extremely dense, herbaceous undergrowth with ferns reaching 6 to 7 feet in height. The islands are often used for camping by canoeists and fishermen. Specifically designated as wilderness by this legislation would be the following islands:

Crulls Island: 96.2 acres with a unique old growth of virgin river bottom forest stands. About one-third of the island is an old field community. The Forest Service owns fifteen-sixteenth of the subsurface rights underlying the island.

Thompsons Island: 66.9 acres, the site of the only Revolutionary War battle in northwest Pennsylvania, and covered with exceptionally fine riverine forest. All subsurface rights are reserved by third parties.

R. Thompsons Island: 30 acres, has been acquired along with all subsurface rights from the Western Pennsylvania Conservancy.

Courson Island: 61.5 acres, including two fields—now overgrown—and a small section of telephone right-of-way. It is a conspicuous feature from the popular Tidioute Overlook and has some old growth forest.

King Island: 35.7 acres, has good riverine forest with many trees 35 to 50 inches in diameter. The Forest Service owns all subsurface rights.

Baker Island: 66.9 acres, has an old field and an excellent old growth forest with very large specimens. Subsurface rights are outstanding in third parties.

No Name Island: 9.9 acres, is equally divided between river bottom trees and dense undergrowth. All subsurface rights are outstanding in third parties.

The second wilderness proposal is Hickory Creek, 9,427 acres, one of the largest, relatively undisturbed areas in the Allegheny National Forest. Noted for its northern hardwoods, Hickory Creek was the most highly rated tract for inclusion in the National Wilderness System by wilderness advocacy groups—and it is not hard to understand why. The predominant topography consists of gentle, rolling hills. The major stream, Middle Hickory Creek, flows through meadows studded with bogs and beaver ponds. This is a major wildlife area with 15 acres of maintained food plots and many natural, scenic openings. In 1974, severe windstorms damaged one 850-acre area. All the subsurface rights are privately owned.

Besides the two wilderness designation, the legislation would also establish a 9,200-acre Kinzua National Recreation Area. Essentially the area studied under RARE II as "Tracy Ridge," the Kinzua NRA would be managed so as to maximize the recreational opportunities available to visitors, including boating, camping, hiking, and swimming. Located on the east bank of the Allegheny Reservoir at Kinzua Dam, the Kinzua NRA is a relatively undisturbed area of the forest and is heavily forested in second-growth timber. Among the attractions of the area are outcroppings of rock, large boulders, steep topography, and the Allegheny Reservoir, which surrounds the area on three sides. Several hiking trails cross the area, including the renowned North Country Trail. Two "boat-to" campgrounds within the proposed NRA can also be reached by trail. Of the subsurface rights underlying the Kinzua NRA, 94 percent are either reserved or outstanding in third parties.

From the foregoing description of the provisions of the Pennsylvania Wilderness Act, I am sure my distinguished colleagues will agree that it represents a responsible balance among many competing interests and priorities. Equally important is the fact that its passage will erase the uncertainty that has hindered efforts at long-range land use planning and management within the national forest.

In closing, Mr. President, I hope that action on this measure can be expedited within the Senate Committee on Energy and Natural Resources on which I serve and that we shall soon see its favorable consideration by the full Senate.

I ask that the explanation entitled "Questions and Answers About the Pennsylvania Wilderness Act," together with the bill, be printed in the RECORD.

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

S. 2132

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 "Pennsylvania Wilderness Act of 1988".

SEC. 2. (a) In furtherance of the purposes of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131-1136), the following lands in the Allegheny National Forest as generally depicted on a map entitled "Allegheny National Forest—Rare II Inventories Roadless and Undeveloped Areas (9/29/77)" are hereby designated as wilderness and therefore as components of the National Wilderness Preservation System:

(1) the Allegheny Islands Wilderness comprising approximately three hundred and sixty-eight acres and composed of Crulls Island, Thompson Island, R. Thompsons Island, Courson Island, King Island, Baker Island, and No Name Island; and

(2) the Hickory Creek Wilderness comprising approximately nine thousand and four hundred acres.

(b)(1) Subject to valid existing rights, the wilderness areas designated under subsection (a) shall be administered by the Secretary of Agriculture (hereinafter in this Act referred to as the "Secretary") in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

(2) It is the intent of Congress that—

(A) the designation of lands as wilderness under subsection (a) shall not be construed to—

(i) impose any legal impediment not otherwise provided by law on the exercise of valid outstanding or reserved oil, gas, or mineral rights, or

(ii) modify Federal or State laws otherwise applicable to the validity or utilization of such rights; and

(B) oil, gas, and mineral rights holders cooperate to the fullest economical extent feasible in protecting wilderness values while exercising their oil, gas, and mineral rights.

(c) As soon as practicable after enactment of this Act, the Secretary shall file a map and a legal description of the wilderness areas designated under subsection (a) with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Such map and description shall have the same force and effect as if included in this Act. Correction of clerical and typographical errors in such legal description and map may be made.

(d)(1) To achieve the purposes of this section by reducing or eliminating potential conflicts between the management of the federally owned surface estate herein designated as wilderness and the exercise and utilization of valid private outstanding or reserved oil, gas, and mineral rights, the Secretary of Agriculture, in cooperation with the Secretary of the Interior, is authorized to initiate negotiations to acquire, by exchange, such private rights and private oil, gas, and mineral rights in the Allegheny National Forest which are adjacent to the boundaries of such wilderness areas.

(2) To carry out any such negotiated exchange agreement, the Secretary of the Interior is authorized to convey federally owned oil, gas, and mineral interests or rights in the contiguous forty-eight States in exchange for private oil, gas, and mineral rights within, and adjacent to, the wilderness areas designated under subsection (a). Federally owned mineral interests or rights which may be conveyed include bidding rights that may be exercised in competitive coal lease modifications, or both, under sections 2 and 3 of the Mineral Leasing Act of 1920 (30 U.S.C. 201(a), 203).

(3) The fair market values of any interests exchanged under this section shall be approximately equal, or if not equal, the values shall be equalized by the payment of money as the circumstances require, except that the payment required for equalization shall not exceed 25 per centum of the total value of the interests to be conveyed.

(4) The fair market value of any interest exchanged under this section shall be determined on the basis of a real property appraisal methodology agreed upon by the Secretary, the Secretary of the Interior, and the person with whom such interest is exchanged.

(5) There is hereby authorized to be appropriated such sums as may be necessary to establish the value of the nonfederally

owned oil, gas, or other mineral rights lying within the wilderness areas designated under this section and to establish the value of federally owned oil, gas, or other interests or rights to be exchanged under the authority contained in this subsection. Effective October 1, 1982, there are hereby authorized to be appropriated such sums as are necessary to carry out the other provisions of this section.

(6) Exploration activities, including core drilling and use of mechanized ground equipment, shall be allowed in the wilderness designated by this section, to determine the value of the nonfederally owned oil, gas, and other mineral resources therein, under such reasonable stipulations and conditions as may be imposed by the Secretary to prevent harm to the wilderness values.

(7) In determining the value of Federal oil, gas, and mineral interests to be exchanged, the Secretary of the Interior shall conduct evaluations on no more than four sites mutually identified by the Secretary and private owners for possible exchange. The Secretary shall provide the owner with all data resulting from such evaluations if the private owner of such rights makes available to the Secretary all information of such owner pertaining to the validity and extent of such private oil, gas, and mineral interests.

(e)(1) For the protection of Federal property rights, the owners of all valid reserved or outstanding oil, gas, and mineral rights not exchanged or otherwise conveyed out of the wilderness areas designated under this section, shall be required to prepare and submit to the Secretary a plan detailing the utilization of the surface during any activities related to exploration, development, or extraction of oil, gas, or other minerals.

(2) The plan shall establish compliance with all Federal, State, and local permit and other requirements including, but not limited to, requirements pertaining to prevention of air and water pollution, and use and restoration of the surface after termination of the activities.

(3) The plan shall address options for extraction of the oil, gas, or minerals resources by locating drill sites and other entries, along with support facilities, outside the wilderness area. The Secretary shall facilitate such siting, on adjacent nonwilderness National Forest lands through his regulation of the occupancy and use of such lands.

(4) Notwithstanding the Wilderness Act but consistent with all other Federal, State, and local laws and regulations, the Secretary may condition his approval of the plan with reasonable requirements for the location within the wilderness area of drilling and mining sites, access roads and utilities, cutting and disposal of timber, and other requirements deemed necessary for the protection of the National Forest resources.

SEC. 3. (a) Except for the islands in the Allegheny River between Kinzua Dam and the Township of Tionesta, all lands within the present proclamation boundary of the Allegheny National Forest which have not been designated as wilderness on or before such date shall be deemed, for purposes of all present and future land management plans and associated environmental statements, required for such lands by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, to have been given adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System, and shall hereafter be managed for uses other than wilderness.

(2) Unless expressly authorized and directed by Congress, the Secretary shall not conduct any further roadless area review and evaluation of lands within the Allegheny National Forest or any other review of such lands for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System unless expressly authorized by Act of Congress adopted after the effective date of this Act.

(3) The designation of a wilderness area under this Act shall not lead to the creation of protective perimeters or buffer zones around such wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness shall not preclude such activities or uses up to the boundary of the wilderness area.

(b) Congress intends that the Secretary manage the following lands within the Allegheny National Forest identified for further planning for uses other than wilderness and in accordance with subsection (a) of this section:

Area code	Area name	Net acreage
09031	Cornplanter	3,012
09019	Allegheny Front	7,424
09022	Clarion River	3,440

SEC. 4. (a) To assure that the scenic, historical, archeological, and wildlife resources of the Kinzua area in the Allegheny National Forest in Pennsylvania are protected and preserved for this and future generations, and that the recreational and ecologic values and public enjoyment of the area are thereby enhanced, there is hereby established the Kinzua National Recreation Area (hereinafter in this Act referred to as the "Recreation Area").

(b) The Recreation Area shall comprise an area of approximately 9,500 acres as generally depicted on a map entitled "Kinzua National Recreation Area Proposed (2/24/82)". The Secretary shall, within eighteen months after the date of enactment of this Act, file a map and legal description of the Recreation Area with the Committee on Energy and Natural Resources, the United States Senate, and the Committee on Interior and Insular Affairs of the House of Representatives. The map and legal description shall be on file and available for public inspection in the Office of the Chief of the Forest Service.

(c) The Secretary shall administer the Recreation Area in accordance with this Act and the laws, rules, and regulations applicable to the national forests and in a manner which will minimize to the extent practicable the environmental impact of energy exploration, development, and transportation.

(d) The Secretary shall prepare and publish, and may from time to time amend, a management plan for the Recreation Area to carry out the purposes of this section. The plan may be prepared in conjunction with, or incorporated with, ongoing planning for the Allegheny National Forest in accordance with the National Forest Management Act of 1976. Such plan shall include, but not be limited to—

(1) standards and guidelines for protection and preservation of the historic, archeological, and paleontological resources in the Recreation Area for the public benefit and knowledge;

(2) provisions for the control of the use of motorized and mechanical equipment which will assure the use and protection of the Recreation Area in accordance with the purposes of this section;

(3) provisions for energy exploration, development, and related transportation within the Recreation Area including provisions permitting reasonable access by road and the necessary clearance of sites, consistent with the purposes of this Act, which insure that (A) exploration, development, and transportation of oil and gas resources is economically feasible, (B) disturbances to the environment are minimized, (C) revegetation of access roads and related sites is undertaken when oil and gas is no longer produced within areas concerned; and

(4) management, utilization, and disposal of renewable natural resources and the continuation of such existing uses and developments as will promote or are compatible with, or do not significantly impair, public recreation and conservation of the scenic, scientific, historic, or other values contributing to public enjoyment.

(e) The Secretary shall permit hunting and fishing within the boundaries of the Recreation Area in accordance with applicable laws of the United States and the States wherein the lands and waters are located except that the Secretary may designate zones where, and establish periods when, no hunting or fishing shall be permitted for reasons for public safety, administration, or public use and enjoyment. Except in emergencies, any regulations of the Secretary pursuant to this paragraph shall be put into effect only after consultation with the appropriate State fish and game department.

QUESTIONS AND ANSWERS ABOUT THE PENNSYLVANIA WILDERNESS ACT

WHAT WOULD THE PENNSYLVANIA WILDERNESS ACT DO?

The bill would:

(1) Create 2 wilderness areas within the Allegheny National Forest: (a) the Allegheny Islands Wilderness, and (b) the Hickory Creek Wilderness.

(2) Create a national recreation area within the Allegheny National Forest: the Kinzua National Recreation Area.

(3) Provide for permanent release of all other land in the Allegheny National Forest from future wilderness consideration, except for the remaining islands on the Allegheny River. The remaining Allegheny River Island may be considered for future wilderness designation.

(4) Provide for an innovative procedure whereby the Secretary of the Interior, and the Secretary of Agriculture may arrange for voluntary exchanges of subsurface rights in the designated Wilderness Areas for subsurface rights under other Federal lands.

WHAT IS INCLUDED IN THE ALLEGHENY ISLANDS WILDERNESS AREA?

The Allegheny Islands Wilderness consists of 7 islands on the Allegheny River. All are alluvial in origin, and characterized by river bottom forest.

All ages and sizes of trees grow here, including virgin stands with specimens over 4 feet in diameter. Extremely dense, herbacious undergrowth is prevalent, with some ferns reaching 6 or 7 feet in height.

The islands are often used by canoeists and fishermen for camping sites.

The following islands are included:

(1) Crulls Island: 96.2 acres, it has unique old growth or virgin bottom, forest stands. About one-third of the island is an old field community. The Forest Service owns 15/16ths of all subsurface rights.

(2) Thompsons Island: 66.9 acres, it is the site of the only Revolutionary War battle in Northwest Pennsylvania. It has exceptionally fine riverine forest. All subsurface rights are reserved by third parties.

(3) R. Thompsons Island: 30 acres, it has been acquired with all subsurface rights from the Western Pennsylvania Conservancy.

(4) Courson Island: 61.5 acres, it includes two old fields now overgrown, and a small section of telephone right of way. The island is a charming part of the vista from the well used Tidioute Overlook, and has some old growth forest.

(5) King Island: 35.7 acres, it has good riverine forest with many trees 35 to 50 inches in diameter. The Forest Service owns all subsurface rights.

(6) Baker Island: 66.9 acres, it has excellent old growth forest with very tall specimens. Subsurface rights are outstanding in third parties.

(7) No Name Island: 9.9 acres, it is equally divided between river bottom trees and dense undergrowth. All subsurface rights are outstanding in third parties.

WHAT IS INCLUDED IN THE HICKORY CREEK WILDERNESS?

Hickory Creek was the most highly rated tract in the Allegheny National Forest for inclusion in the National Wilderness System by Wilderness advocacy groups.

Totaling 9,427 acres, Hickory Creek is one of the largest relatively undisturbed areas in the Allegheny National Forest. The predominant topography consists of gentle, rolling hills. The major stream, Middle Hickory creek, flows through meadows studded with bogs and beaver ponds.

This is a major wildlife area with 15 acres of maintained food plots and many natural, scenic openings in its tree growth, especially notable northern hardwoods. All subsurface rights are reserved in third parties.

WHAT IS INCLUDED IN THE KINZUA NATIONAL RECREATION AREA?

Essentially the area studied under the Roadless Area Review and Evaluation (RARE II) process as "Tracy Ridge," the Kinzua National Recreation Area will total 9,200 acres. The Kinzua NRA will be managed so as to maximize the recreational opportunities available to visitors, including boating, camping, hiking, and swimming.

Located on the East bank of the Allegheny river, just above the Kinzua dam, the Kinzua NRA is a relatively undisturbed area of the Allegheny National Forest and has heavy stands of second growth timber.

Among the attractions of the area are outcroppings of rock, large boulders, steep topography, and the Allegheny Reservoir, which surrounds the area on 3 sides.

Several hiking trails cross the NRA, including the renowned North Country Trail.

Two "boat-to" campgrounds within the NRA will also be accessible by trail.

Ninety-four percent of the subsurface rights underlying the Kinzua National Recreation Area are either reserved or outstanding in third parties.

WHAT OTHER AREAS WITHIN THE FOREST COULD BE INCLUDED AS FUTURE WILDERNESS AREAS?

All of the remaining lands within the Allegheny National Forest would be permanently released from future Wilderness consideration. However, the remaining islands on the Allegheny may be considered for future wilderness designation.

HOW WILL THE PARK SERVICE ACQUIRE THE SUBSURFACE RIGHTS IN THE WILDERNESS?

Condemnation, that is purchase through eminent domain, is much too expensive during this time of budget constraint. However, to preserve the "untouched" spirit of Wilderness areas, the Secretary of the Interior and the Secretary of Agriculture are authorized to enter into agreements with private subsurface rights owners.

The agreements will allow Interior and Agriculture to acquire the subsurface rights lying below the newly created Wilderness areas in exchange for similarly valued subsurface rights owned by the Federal government in non-wilderness areas anywhere in the United States.

For instance, the Secretary of the Interior could exchange Federal subsurface rights in Wyoming with subsurface rights in the Hickory Creek Wilderness.

Thus, the Wilderness would be gradually acquired in its entirety by the Federal government.

WHY IS THE "EXCHANGE" PROVISION NECESSARY?

There are many competing demands placed upon the Allegheny National Forest. While most of the surface rights are owned by the Federal government, more than 90 percent of the subsurface rights under the land considered for Wilderness designation is outstanding in third parties.

The normal procedure in these instances is to condemn the subsurface rights under the Federal government's eminent domaine power, which involves paying just compensation, as required by the Constitution, for the fair value of the condemned property rights.

However, in a time of fiscal restraint, it is unlikely that Congress could appropriate the millions of dollars necessary to pay for the fair value of the subsurface rights owned by third parties.

Therefore, the "exchange" provision is necessary to balance the competing demands on the future Wilderness areas.●

By Mr. GORTON (for himself and Mr. JACKSON):

S. 2133. A bill to designate certain lands in the State of Washington as a national volcanic area, and for other purposes; to the Committee on Energy and Natural Resources.

MOUNT ST. HELENS NATIONAL VOLCANIC AREA ACT OF 1982

Mr. GORTON. Mr. President, today I am pleased to introduce legislation, with Senator JACKSON, entitled the "Mount St. Helens National Volcanic Area Act of 1982."

At 8:32 a.m. on May 18, 1980, after nearly 2 months of tremors and seismic activity, Mount St. Helens, located in southwest Washington State, exploded in a cataclysmic volcanic eruption that displaced an estimated 4 billion cubic yards of material onto the land and into the atmosphere. More than 235 square miles of National Forest, State and private lands were devastated by the explosion, hot gasses, pumice, mud flows and ash. The large ash cloud that accompanied the eruption reached 63,000 feet in elevation and drifted around the world. Thirty-four persons were killed and 28 others are still missing and presumed dead. Along with the human tragedy of the event, over 3 billion board feet of timber was downed or destroyed, anadromous fisheries were heavily damaged, as well as a large number of wildlife.

This awesome display of nature's power has attracted worldwide attention. Hundreds of studies have been initiated by researchers in the United States, Canada, Japan, and Germany. The unprecedented circumstances created by the volcano are of immeasurable scientific importance. The unique nature of the eruption—including the geologic events and features and the wide variety of unusual biologic impacts—have made Mount St. Helens an area of intense interest for researchers and the general public. The volcano has also become a worldwide tourist attraction.

The U.S. Forest Service released the final environmental impact statement on a land management plan for Mount St. Helens on October 15, 1981. It designates the area as a national volcanic area. Due to the importance and uniqueness of the eruption, I believe that Congress should pass legislation designating the area as a national volcanic area under the administration of the Forest Service. The Forest Service has done a competent and professional job in putting together its land management plan for the area. The designation by statute of a national volcanic area will give added significance and importance to the Forest Service plan. Special designation status for the area is necessary to preserve and protect the scientific, historic, and natural resources presented by the volcano. This designation will preserve this area for future generations and will allow us to study and learn as much as possible from this rare phenomenon.

In introducing this legislation today, it is my intention and that of Senator JACKSON to offer the Forest Service plan as the starting vehicle for holding hearings so that all interested parties can express their views on boundaries, land management plans, and other significant issues concerning the Mount St. Helens volcanic area. This legislation provides the Forest Service with the additional authorities it needs to implement the Mount St. Helens land management plan and also provides a section dealing with the State and private lands that are located within the boundaries of the Mount St. Helens National Volcanic Area.

The bill directs the Secretary to acquire by exchange, purchase, or donation, the approximately 26,000 acres of non-Federal lands located within the boundaries of the national volcanic area. This is an important section of the legislation which we will need to examine extensively during the hearing process. It is my strong belief that as we begin deliberations on this legis-

lation, it will become evident that specific exchange language will need to be included in the bill in order to expedite the acquisition of the non-Federal lands by the Secretary. I hope that hearings will be scheduled on this bill at the earliest possible date and I look forward to working with all interested parties to reach a consensus on Mount St. Helens legislation.

By designating Mount St. Helens a national volcanic area, the significant geologic features in the impact area of the volcano will be preserved and protected for future generations as well as providing immediate, unique opportunities for public education, interpretation and recreation, and research.

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. 2133

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 "Mount St. Helens National Volcanic Area Act of 1982."

DESIGNATION OF NATIONAL VOLCANIC AREA

SEC. 2. (a) That in furtherance of the purposes of this Act, certain lands within and adjacent to the Gifford Pinchot National Forest, Washington, which comprise of approximately 84,700 acres, as generally depicted on a map entitled "Mount St. Helens National Volcanic Area, October 15, 1981," are hereby designated as the Mount St. Helens National Volcanic Area (hereinafter referred to as the "Volcanic Area").

(b) As soon as practicable after the date of enactment of this Act, the Secretary of Agriculture (hereinafter referred to as the "Secretary") shall file a map and a legal description of the Volcanic Area designated under subsection (a) with the Committee on Energy and natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives. Such map and description shall have the same force and effect as if included in this Act: *Provided,* That correction of clerical and typographic errors in such legal description may be made.

EXTENSION OF NATIONAL FOREST BOUNDARY

SEC. 3. (a) The exterior boundary of the Gifford Pinchot National Forest in the State of Washington, is hereby modified to include approximately 20,000 additional acres in Cowlitz County, as generally depicted on the map referenced in Sec. 2 of this Act.

(b) For the purposes of section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), as amended, the boundary of the Gifford Pinchot National Forest, as modified by this section, shall be treated as if it were the boundary of that forest on January 1, 1965.

ADMINISTRATION

SEC. 4. (a) The volcanic Area designated by this Act shall be administered by the Secretary in accordance with the provisions of this Act, appropriate laws pertaining to administration of the National Forest System, the Mount St. Helens Management plan prepared by the Forest Service, U.S. Department of Agriculture of subsequent revisions of that plan, or other applicable forest plans prepared in accordance with existing law.

(b) In furtherance of the purposes for which the Volcanic Area is established, the Secretary is authorized and directed to acquire all non-federal lands and interests therein within the boundaries of the Volcanic Area by exchange, purchase with donated or appropriated funds, or donation: *Provided,* That any lands owned by the State of Washington or any political subdivision thereof may be acquired only by exchange or donations.

(c) In recognition of the rapidly deteriorating nature of much of the timber in the Volcanic Area, any timber acquired pursuant to this section shall be valued at an amount not less than the fair market value of such timber on July 1, 1982.

(d) Lands and interests therein acquired pursuant to this section shall become National Forest System Lands under the jurisdiction of the Secretary to be managed in accordance with the provisions of this Act and other laws applicable to the management of the National Forest System.

AUTHORIZATION OF APPROPRIATIONS

SEC. 5. There is hereby authorized to be appropriated for such sums as may be necessary to carry out the provisions of this Act.

Mr. JACKSON. Mr. President, I am pleased to join with my colleague Senator GORTON in cosponsoring this legislation to designate the Mount St. Helens National Volcanic Area.

On March 20, 1980, Mount St. Helens awoke from a 125-year dormant period with numerous small earthquakes. In the ensuing 2 months larger quakes and significant venting of steam occurred. On May 18, following an earthquake measuring 5 on the Richter scale, an avalanche and lateral explosion destroyed the northern portion of Mount St. Helens. The blast, accompanied by hot gases, pumice, and ash, devastated more than 235 square miles of national forest and State and private lands north of the mountain; all vegetation was killed, trees were destroyed or blown down, and 60 people were killed or missing and presumed dead. The large ash cloud that accompanied the eruption reached 63,000 feet in the air and drifted around the world. A covering of ash fallout blanketed large portions of the area. Smaller eruptions, pyroclastic flows; ash clouds, and episodes of nonexplosive dome growth have occurred since.

By any measure, the events that took place on and around May 18, 1981, were of national and international significance. The eruption of Mount St. Helens had a profound and permanent effect on the environment and the people directly and indirectly involved. I believe, therefore, that it is important, Mr. President, for the Congress to commemorate this event in an appropriate manner.

The bill Senator GORTON and I are introducting today is designed to help implement the recommendations contained in the Forest Service's Mount St. Helens land management plan. On balance, I believe the Forest Service's preferred alternative for the Mount St. Helens area is fair and balanced. It provides for protection of important volcanic features for public education interpretation, recreation, and research. The plan also provides for timber salvage and rehabilitation of much of the area.

This measure legislatively designates the 84,700-acre interpretative area as outlined in the land management plan (LMP) as a national volcanic area. The area is to be managed in accordance with the final LMP and other authorities available to the Forest Service for the administration and management for national forest system lands. The Secretary is directed to acquire the approximate 26,000 acres of non-Federal lands within the volcanic area using his existing authority to acquire land by donation, exchange, or purchase with appropriated funds. One of the factors we want to carefully explore at the hearings on this measure is the best way to acquire these non-Federal lands. The language in the bill now simply parallels the Forest Service's existing land acquisition authority. It may be that we will want to be more specific in our recommendations on this score as a result of our hearings and public input on this measure.

The bill also extends the boundary of the Gifford Pinchot National Forest to include approximately 20,000 additional acres of land not currently in the forest. Most of this land is also included within the volcanic area. Finally, because much of the down timber in the area is deteriorating at a rapid rate, the measure insures that the value of the timber will be fixed as of a date certain so that any delay in completing the acquisition of the non-Federal lands will be less burdensome to the affected landowner.

Mr. President, I think that both Senator GORTON and I believe that this bill will serve as a good vehicle to begin the process of deciding what to do legislatively about Mount St. Helens. There may be some changes before the measure is enacted—in fact, I am confident there will be changes made. But the important thing is to begin the process now so that a bill can be enacted before the end of this Congress. I look foward to working with Senator GORTON and all interested parties in arriving at a consensus on this matter.

By Mr. STAFFORD:

S. 2134. A bill authorizing appropriations to the Secretary of the Interior for services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts, and for other purposes; to the Committee on Environment and Public Works.

AUTHORIZATION OF APPROPRIATIONS FOR JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

Mr. STAFFORD. Mr. President, I send to the desk a bill submitted on behalf of the administration to extend the monetary authorization of the John F. Kennedy Center Act so as to provide the Center with the usual Federal funding, and ask that it be appropriately referred.

Under the John F. Kennedy Center Act, the Secretary of the Interior, acting through the National Park Service, is required to provide services necessary to the nonperforming arts or memorial functions of the Center, including informational, interpretation, janitorial, maintenance, and security services. However, the Congress has only authorized and appropriated funds for this purpose through the close of fiscal year 1982.

The bill would authorize $3,986,000 for the fiscal year 1983. The request of the administration is contained in Executive Communication No. 2651, dated February 5, 1982, from the Department of Interior, which has responsibility for the Park Service.

The John F. Kennedy Center Act is one of the responsibilities of the Senate Committee on Environment and Public Works. As chairman of the committee, I am pleased to introduce this administration's bill so that it may be properly considered by the committee.

By Mr. LAXALT:

S. 2135. A bill to amend the Administrative Conference Act, by authorizing appropriations therefor; to the Committee on the Judiciary.

AUTHORIZATION OF APPROPRIATIONS FOR THE ADMINISTRATIVE CONFERENCE ACT

● Mr. LAXALT. Mr. President, I am introducing S. 2135, a bill to extend for 4 years the authorization of the Administrative Conference of the United States.

The Administrative Conference of the United States as an independent Federal Agency whose principal mission is to perform studies and to recommend improvements in the administrative procedures used by all Federal departments and agencies. Its members are drawn from the Federal agencies and from the private sector. They meet in plenary session usually twice a year, to consider reports and proposed recommendations which have been prepared by the Conference's consultants and its standing committees. From 1968 through 1980 the Conference issued 84 formal recommendations. The Conference also collects information and furnishes informal advice to the agencies and to Congress on the whole range of administrative procedure problems. I know that the work of the Conference has been extremely valuable to those of us who have been engaged in the exceedingly difficult task of preparing regulatory reform legislation.

The Conference is, I must emphasize, a very small agency with a budget of approximately $1.1 million and a permanent staff of 20. In 1978 Congress was sufficiently impressed by the achievements of the Conference to enact legislation substantially increasing the Conference's authorization for fiscal year 1979 through 1982 so as to provide for an expanded Conference program. However, because of uncertainty over the role the Conference would play in the Carter administration's regulatory reform program, that authorization was not translated into an increased budget, and consequently the Conference has not been able to carry out the program expansion which it had hoped for.

The Conference now has a new Chairman, Loren A. Smith, formerly a professor at Delaware Law School, whom I know personally and for whom I have a high regard. President Reagan has recently appointed a very strong and able slate of council members to serve as the Board of Directors of the Conference. With this leadership and the support of the administration, the Conference is in a position to fulfill the potential role which Congress saw for it in 1978. I hope the Judiciary Committee will be able to give prompt consideration to this bill to extend the authorization of the Administrative Conference.●

By Mr. DECONCINI (for himself and Mr. THURMOND):

S. 2136. A bill to amend the Communications Act of 1934; to the Committee on the Judiciary.

TRANSMISSION OF PORNOGRAPHY OVER CABLE TELEVISION

● Mr. DeCONCINI. Mr. President, today, on behalf of myself and Senator THURMOND, I am introducing S. 2136, a bill to make illegal the transmission, either over broadcast television or cable television, of obscene, indecent or profane language or material.

A serious question arises concerning the jurisdiction of the Federal Communications Commission to prohibit such material on television or cable television. This legislation would establish the fact that such transmission, whether over the airwaves or over cable, is illegal.

Mr. President, with the advent of cable television, it is more difficult to restrict the flow of pornographic and obscene materials into the American home. I understand that there are certain channels on some cable systems that are devoted entirely to transmitting pornographic movies and other materials. I believe this legislation will stop the use of such public facilities for these purposes.

Mr. President, one of the most pressing problems facing the traditional moral fabric of America today exists in relation to the present exploitation of pornography and sexual exploitation in all facets of communication and commerce. Particularly, recent years have seen pornography and obscenity removed from the back alleys and so-called adult bookstores and theaters of our major urban centers and spread across the newsstands, movie screens, and televisions in virtually every urban and rural community. With the great technological advances recently accomplished in video, television, and electronic industries, the availability of nudity and sexual activity is now increasingly common. This is noteworthy especially in the increasing appearance of sex and nudity on cable and subscription television. This bill will add 47 U.S.C. section 511 to codify and clarify existing law on the applicability of its prohibition of obscenity and indecency on television, cable television, and radio communication.

The Communications Act of 1934, predated the present cable and subscription television ventures.

However, Congress, by those acts, sought to set a policy of importance to accept standards of morality for those forms of mass communication by radio or television which reach the American public on a grand scale. Thirty years ago, the courts construed the term "radio" in section 1464 to include both radio and television. *Du Mont Laboratories* v. *Carroll*, 184, F.2d 153 (3d Cir. 1950), cert. denied, 340 U.S. 929 (1951). However, the development of cable television or CATV took place during and after the 1950's and the reach of existing laws had been somewhat uncertain, as noted by the Supreme Court in *United States* v. *Southern Cable Co.*, 392 U.S. 157 (1968).

The courts are now dealing with the complex differences and similarities between cable and broadcast television, they have generally recognized that under 47 U.S.C. section 152(2) the FCC has the power of certain regulations over cable television where the ends to be achieved are long established in the field of television or are congressionally approved. See: *United States* v. *Midwest Video Corp.*, 406 U.S. 649 (1972); *United States* v. *Southwestern Cable Co., supra;* and *HBO* v. *FCC*, 567 F.2d 9, 13 (D.C. Cir. 1977). Clarifying that section 1464 applies to cable television as well as broadcast television satisfies both criteria, and such is the intent of this bill.

The primary purpose of section 1464 has always been to insure basic standards of decency in mass communications. Such standards are required as part of a civilized society's commitment not only to setting a proper example for our children and young people but also for the common good inherent in traditional public morality for citizens of all ages.

The Government's interest in private morality, however, is very limited

and highly restricted. Context is important in first amendment considerations. One can scream "fire" during a fire but not in a theater. One can keep and use obscenity in his home but cannot sell or buy it in the marketplace or carry it in interstate or foreign commerce. Similarly, one can exhibit simple nudity is some settings but not in public streets. As the Supreme Court made clear even as to pure speech, one can discuss censorship and even use dirty words but not on the radio when their use would be patently offensive.

In the cornerstone case of *FCC* v. *Pacifica Foundation*, 438 U.S. 726 (1978), the Commission had ruled that a radio broadcast of certain expletives and so-called dirty words during daytime hours was patently offensive and therefore indecent under section 1464. The Court noted the distinctions in content restrictions between broadcastings and other forms of commerce such as newspapers and other bookstores. Two reasons for these distinctions were highlighted in the Pacifica decision, 438 U.S., 748-49:

The reasons for these distinctions are complex, but two have relevance to the present case. First, the broadcast media have established a uniquely pervasive presence in the lives of all Americans. Patently offensive, indecent material presented over the airwaves confronts the citizen, not only in public, but also in the privacy of the home, where the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder. *Rowan* v. *Post Office Dept.* 397 U.S. 728, 25 L. Ed. 2d 736, 90 S Ct. 1484. Because the broadcast audience is constantly tuning in and out, prior warnings cannot completely protect the listener or viewer from unexpected program content. To say that one may avoid further offense by turning off the radio when he hears indecent language is like saying that the remedy for an assault is to run away after the first blow. One may hang up on an indecent phone call, but that option does not give the caller a constitutional immunity or avoid a harm that has already taken place.

Second, broadcasting is uniquely accessible to children. even those too young to read. Although Cohen's written message might have been comprehensible to a first grader, Pacifica's broadcast could have enlarged a child's vocabulary in an instant. Other forms of offensive expression may be withheld from the young without restricting the expression at its source. Bookstores and motion picture theaters, for example, may be prohibited from making indecent material available to children. We held in *Ginsberg* v. *New York*, 390 U.S. 629, 20 L. Ed. 2d 195, 88 S. Ct. 1274, 44 Ohio Ops 2d 229, that the Government's interest in the "well-being of its youth" and in supporting "parents' claim to authority in their own household" justified the regulation of otherwise protected expression. Id., at 640 and 639, 20 L. Ed. 2d 195, 88 S. Ct. 1274, 44 Ohio Ops 2d 339. The ease with which children may obtain access to broadcast materials, coupled with the concerns recognized in Ginsberg, amply justify special treatment of indecent broadcasting.

The Court also noted that context was central to the consideration of whether certain subject matter is "patently offensive" and therefore "indecent":

The Commission's decision rested entirely on a nuisance rationale under which context is all-important. The concept requires consideration of a host of variables. The time of day was emphasized by the Commission. The content of the program in which the language is used will also affect the composition of the audience, and differences between radio, television, and perhaps closed-circuit transmissions, may also be relevant.

The term "obscene" has been defined by the Court in *Miller* v. *California*, 413 U.S. 15, at 24-25 (1973), and need be modified only to provide that it will be applied under community standards for radio or television communication, whichever is applicable in the context of the particular case.

The term "indecent" has been used by the FCC and the courts as patently offensive representations as utterances related to sexual organs and activities. See Pacifica, supra, 438 U.S., at 741, footnote 15, and at 743. See also *United States* v. *Simpson*, 561 F. 2d 58 (7th Cir. 1977). *NAITPD* v. *FCC*, 516 F. 2d 526 (2d Cir. 1975). The Commission has also recognized the need for new legislation to amend section 1464. See *Midwest Video Corp. and ACLU* v. *FCC*, 571 F. 2d 1025 (8th Cir. 1978); Report on the Broadcast of Violent, Indecent, and Obscene Material, 51 F.C.C. 2d 418, release No. FCC 75-202 (February 19, 1975). FCC Regulation of Cable Television Content, 31 Rutgers Law Review 238, 239 (1978) (discussing the Commission's proposal for legislation).

We think that the term "indecent" has come to, and should, mean the following:

"Indecent language or material" means a depiction or description of: a human sexual or excretory organ or function; or nudity; or an ultimate sexual act, normal or perverted, actual or simulated; or masturbation; or of flagellation, torture, or other violence indicating a sadomasochistic sexual relationship; which under contemporary community standards for radio or television is presented in a patently offensive way.

We feel that the use of the term by the FCC and the courts as patently offensive sex or nudity is a proper criterion for its application in any given circumstance. Because of the differences inherent in the technology and uses of radio, television, and cable television, we feel that the continued development of the "indecency" standard will naturally take place in the courts and by the FCC and the States. As the Court noted in the Pacifica case, supra at 748:

We have long recognized that each medium of expression presents special First Amendment problems. . . . And of all forms of communication, it is broadcasting that has received the most limited First Amendment protection.

The Court in Pacifica explicitly held that the term "indecent" in section 1464 includes more than the obscene and that special considerations apply to public broadcasts which would make certain material inappropriate for mass communications which may be protected in other forms of commerce. As stated at 438 U.S., 741, note 16:

"[W]hile a nudist magazine may be within the protection of the First Amendment. . . . the televising of nudes might well raise a serious question of programming contrary to 18 U.S.C. Section 1464. . . . Similarly, regardless of whether the "4-letter words" and sexual description, set forth in "Lady Chatterly's Lover", (when considered in the context of the whole book) make the book obscene for mailability purposes, the utterance of such words or the depiction of such sexual activity on radio or TV would raise similar public interest and section 1464 questions."

The Court made clear that banning indecency under the "patently offensive" criterion would have the limited effect of preventing only the most universally improper matter; 438 U.S., 743;

At most, however, the Commission's definition of indecency will deter only the broadcasting of patently offensive references to excretory and sexual organs and activities. While some of these references may be protected, they surely lie at the periphery of First Amendment concern.

The Court made the further observation, in footnote 18, that;

A requirement that indecent language be avoided will have its primary effect on the form, rather than the content, of serious communication. There are few, if any, thoughts that cannot be expressed by the use of less offensive language.

In answering the question of whether the first amendment denies Government any power to restrict the public broadcast of indecent language in any circumstances the Court said that past cases demonstrate the existence of such power wholly apart from the power to restrict obscenity. Id., 438 U.S., 744. The court clarified the practical necessity for such power as demonstrated by the existence of such offensive programming in today's markets. As stated in footnote 19:

Pacifica's position would, of course, deprive the Commission of any power to regulate erotic telecasts unless they were obscene under Miller. . . . Anything that would be sold at a newsstand for private examination could be publicly displayed on television.

We are assured by Pacifica that the free play of market forces will discourage indecent programming. "Smut may," as Judge Lenenthal put it, "drive itself from the market and confound Gresham," . . . the prosperity of those who traffic in pornographic literature and films would appear to justify skepticism.

It is the purpose of this bill to have Congress exercise its function in protecting the American public from obscene and indecent television program-

ming, however, it enters the home. As the Court rejected the "consenting adults" argument in *Paris Adult Theatre* v. *Slaton*, 413 U.S. 49, 63-69 (1973), we also find such excuse for televising obscene and patently offensive programs by broadcast or cable totally without merit. Public morality demands uniformity and fairness to all who enter the television business. And all television viewers deserve equal treatment under this section.

Mr. President, I ask unanimous consent that the text of my remarks before the Pornography Convention be inserted in the RECORD at this point, followed by the text of the bill.

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

S. 2136

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Communications Act of 1934, as amended, is amended by adding at the end of title V of such Act the following new section:

"OBSCENE, INDECENT, OR PROFANE LANGUAGE OR MATERIAL

"SEC. 511. (a) Whoever knowingly utters any obscene language or distributes any obscene material, by means of television or cable television communications shall be fined not more than $10,000 or imprisoned not more than two years, or both.

"(b) Whoever knowingly utters any indecent or profane language or distributes any indecent or profane material by means of television or cable television communications shall be fined not more than $5,000 or imprisoned not more than one year, or both.

"(c) As used in this section, the term 'distribute' means to send, transmit, retransmit, telecast, broadcast, or cablecast, including by wire or satellite, or produce or provide such language or material for distribution.

"(d) Nothing in this section shall be construed as interfering with, or preempting the power and right of, the States and their political subdivisions over franchises.".

SPEECH BY SENATOR DENNIS DECONCINI BEFORE THE PORNOGRAPHY CONVENTION, DECEMBER 2, 1981

Western civilization—indeed, all civilization—rests upon the integrity of the human family. It would be no exaggeration to state that without the family there could be no civilization. It is the family that nurtures and rears our young, teaching them not only the skills necessary to survive and prosper, but the eternal truths necessary to sustain the human soul. Through the family we learn love; we learn respect; and we learn responsibility.

The fate of empires and nations is intimately tied to the vitality and stability of the family. When moral decay sets in, eroding the values upon which the family rests, the result is political instability and even collapse.

During Rome's early years before Julius Caesar transformed it into an empire, strong family ties and traditions were the source of much inner strength. But empire brought wealth together with conflicting moral and religious ideas. The romans were seduced by their own success and eventually became consumed by debauchery. Private and public immorality undermined the family, sapping the empire of that very strength that made it great, and so the once invincible empire slipped slowly from the center stage of world history.

There is a lesson in Rome's experience that each of us should heed. We allow the family to disintegrate at our own peril, and, quite frankly, the American family is today becoming an endangered species. There are forces at work in our society that must be reversed, or we shall perish.

Statistics about the American family are far from encouraging. The ratio between marriages and divorces in 1978 was about 2 to 1. There were 2.24 million marriages and 1.2 million divorces. Those marriages which ended in divorce—and that includes one out of every two—had a median duration of only 6.6 years! That is hardly enough time for a man and woman to grow to know and understand each other, and just enough time to have one or two children.

We have become a society filled with lonely divorced and separated individuals who have been deprived of the joys of family life. There are 33.9 million men and 37.6 million women who are either separated or divorced. Are we becoming a society of singles bars and T.V. dinners for one?

But in any divorce or separation, it is the children who suffer most. Last year, about 1.1 million children were involved in divorce. Almost 30 million American families are one-parent families. "Kramer vs. Kramer," the movie that swept the Academy Awards 2 years ago, reflected this growing reality in its examination of the question of custody.

Last year, over one-half million children were born out of wedlock, and many of those children will never experience the stabilizing and strengthening effects of family life. Sadder yet, is the terrible fact that almost 1.4 million abortions were performed. Human beings, endowed by God with a soul, who were never given a opportunity to experience the miracle of life. And that figure represents 40 percent of all births. In other words, for every 10 live births there are 4 abortions!

The destruction of human life associated with abortion is appalling, and it must be stopped. Each year we kill twice as many unborn babies as the total number of battlefield casualties in our 200 year history. Think about that for a moment. In all the wars we have ever fought, we have lost less than 700,000 lives. Each year, we allow 1,400,000 unborn babies to die, and most of them legally. More frightening yet, the number of abortions performed is increasing by 8 to 10 percent each year.

I do not believe that our society can continue to condone this massive and tragic slaughter. I believe that an unborn baby is alive and possesses a soul instilled by the Almighty. That unborn baby is entitled to his or her life. Yet, we treat that unborn baby as a lifeless entity—without rights and without due process. This must be changed.

Abortion is a reflection of the growing disintegration of the American family—a symptom of the problem, not its underlying cause. If we can restore America to a proper and traditional moral climate, I am convinced that the number of abortions and divorces will decrease. But a return to traditional values is difficult when young people are constantly exposed to such corrupting influences as pornography and drugs.

There was a time when drugs were confined to certain urban areas and a very limited population. Since the 1960's, however, drug use has been on the rise. By the late 1960's and early 1970's, we spoke of the drug culture or the counterculture. But even that was a relatively narrow group, concentrated in certain sections or our coastal cities and, to a lesser extent, around our universities.

Today, the drug problem is a universal problem. No section of the country is immune. No city or town, regardless of size, is immune. No social or ethnic group is immune. No age group is immune.

The facts about illicit narcotics in the United States paint a picture of society gone astray; a society no longer at peace with itself; a society unable to cope with reality; and a society that is trying to escape from itself because it no longer believes in itself. One-half million Americans use heroin daily. Another 1½ million Americans use heroin less frequently. PCP is used by 6.9 million Americans. Cocaine is used by 10 million Americans. And marijuana has been used by at least 43 million Americans. We consume almost 100,000 pounds of marijuana every single day at a cost of about $20 billion a year.

As parents, many of you are aware that the drug problem is now an accepted part of school life. For example, most of the 10 million Americans who use cocaine are in the age group 12 to 25. The first use of cocaine is generally at the sixth grade level and in many cases earlier. The use of marijuana among students is almost as commonplace as smoking a cigarette was during my high school days. Recent studies indicate that at least 9 percent of high school seniors use marijuana, among children 12 to 13 years old, at least 1 in 25 uses marijuana; while among 14 and 15 year olds, 1 in 7 uses marijuana. Almost 8,000 drug overdose deaths were reported in 1977, the last year of complete data.

During Senate hearings I conducted on this problem, we were told that almost any drug in any quantity is readily available in most high schools throughout the country. Little is being done to stop this corruption of our Nation's youth. Unless we begin to give this problem the serious attention it deserves, we will be devoured by it.

Pornography in America is big business, very big business. The Justice Department estimates that pornography sales total about $4 billion annually—and that may be conservative. But even if it is correct, it means that Americans spend almost a third as much on pornography as they do on fast foods.

Roger Sturman, reportedly the largest pornography dealer in the United States, made well in excess of $20 million in 1 year. The 10 leading sexually oriented magazines—publications like Playboy and Penthouse—made about one-half billion dollars in income last year.

Much of the pornography business is now in the hands of organized crime. According to a Time magazine analysis, the Mafia now dominates the manufacture and distribution of pornographic books and movies. Another study cited pornography and drugs as the two growth industries within the underworld.

But perhaps the most degrading and revolting aspect of the depressing pornography wave that is engulfing decency is child pornography. It is almost beyond comprehension that men and women sexually exploit little children. Many of the youngsters are runaways who have fallen into criminal hands. But a reliable study of the problem by NBC news indicates that most of the children under the age of 8 are provided to the pornographers by parents and guardians.

During the 95th Congress, I had the distinct pleasure of being one of the authors of S. 1585 which was eventually enacted into law. The law provides stiff penalties for the purveyors of child pornography. We provided prison terms of up to 10 years for a first offense and 15 for a second. Frankly, I would have been happy if the penalties were stiffer.

The courts have played an ambivalent role in the fight against pornography—some of it good and some bad. The good part is that the Supreme Court has consistently held that the first amendment which protects the right to free expression does not protect obscenity. In 1942, the Court declared that because obscenity is "no essential part of any exposition of ideas and (is) of slight social value as a step to truth" it was not protected by the Constitution. Unfortunately, however, the judicial system has been frankly incapable of defining pornography, except on a case-by-case basis. Because of this unsettled situation, law enforcement agencies simply do not bother arresting and prosecuting pornographers. While the lawyers bicker, our children cannot even step inside a drug store without being exposed to obscene materials. Small wonder that they grow up having little respect for traditional family values.

The American family is an endangered species today. And unless we can find ways to reestablish it on a sounder footing, the fate of American society is in jeopardy. If divorce and separations continue to rise as they have been, and if young people refuse to make the commitment associated with marriage, the social ills which that instability spawns will spread. And how can we expect our young people to accept the responsibilities of family when they are constantly bombarded by the hedonistic seductions of pornography and drugs? These things are interrelated. If we do nothing to bemoan the sorry state of the family without resolving to address in a positive and meaningful manner some of the underlying problems, we are guilty of shirking our responsibility to the future.

I am both a realist and an optimist. I am a realist about the severity of the problems which face us. But I am an optimist because Americans have faced problems and adversity in the past, and we have always managed to call upon reserves of strength and character to overcome our hurdles. We are basically a good and moral people who simply need to be shown the way back to traditional moral values. This can be done, and I believe it will be done as long as each of us is willing to make the necessary commitment.●

By Mr. MATHIAS:

S. 2137. A bill to amend the Policemen and Firemen's Retirement and Disability Act and other relevent provisions of law to correct an inequity created by the merit pay system; to the Committee on Governmental Affairs.

ADJUSTMENTS TO ANNUITIES OF FORMER PARK POLICE MEMBERS

● Mr. MATHIAS. Mr. President, I send to the desk a bill to adjust the method of computing cost-of-living adjustments for annuities received by former officers of the U.S. Park Police Force, the U.S. Secret Service Uniformed Division, and the U.S. Secret Service Division. This adjustment is necessary to prevent an inequity that would otherwise result when the merit pay system for Federal employees is implemented.

These Federal law enforcement officers retire under the provisions of the District of Columbia Code, section 4, chapter 6. Currently, their cost-of-living adjustment is equal to the pay comparability adjustment received by their counterparts on active duty. When the merit pay system is implemented, however, some active duty personnel will receive only half of the pay comparability adjustment, with additional increases depending on job performance. Retirees whose annuity adjustments are equated with the increases given to those employees will therefore be entitled to only half of the pay comparability adjustment.

To correct this unintended consequence of the merit pay system, I am proposing that these annuitants be given the same cost-of-living adjustment as certain District of Columbia police and firefighter retirees. This biannual adjustment, which is determined by the Mayor of the District, is based on the increase in the Consumer Price Index.

Mr. President, this bill will eliminate the uncertainty faced by officers who are approaching retirement and will guarantee them annuity adjustments that keep pace with the rising cost of living. I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 2137

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 301 of the District of Columbia Police and Firemen's Salary Act of 1953 (D.C. Code, sec. 4-605) is amended by adding at the end thereof the following:

"(f) The provisions of this section shall not apply with respect to annuities received by former officers and members of the United States Park Police Force, the United States Secret Service Uniformed Division, or the United States Secret Service Division after July 1, 1982.".

SEC. 2. Subsection (m) of the Policemen and Firemen's Retirement and Disability Act (D.C. Code, sec. 4-624) is amended—

(1) in paragraph (2) by striking out "who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia";

(2) by adding at the end thereof the following new paragraph:

"(6) Former officers and members of the United States Park Police Force, the United States Secret Service Uniformed Division, and the United States Secret Service Division shall be eligible under paragraph (2) for cost-of-living adjustments of annuities effective September 1, 1982.".

By Mr. HELMS (for himself, Mr. HUDDLESTON, Mr. ABDNOR, Mr. ANDREWS, Mr. BAUCUS, Mr. BENTSEN, Mr. BOREN, Mr. BOSCHWITZ, Mr. CHILES, Mr. COCHRAN, Mr. DIXON, Mr. DOLE, Mr. DOMENICI, Mr. EAST, Mr. EXON, Mr. FORD, Mr. GORTON, Mrs. HAWKINS, Mr. HEFLIN, Mr. HOLLINGS, Mr. INOUYE, Mr. JEPSEN, Mr. KASTEN, Mr. LEAHY, Mr. LONG, Mr. LUGAR, Mr. MCCLURE, Mr. MELCHER, Mr. NUNN, Mr. PERCY, Mr. PRYOR, Mr. QUAYLE, Mr. RANDOLPH, Mr. SARBANES, Mr. SASSER, Mr. TOWER, and Mr. ZORINSKY):

S.J. Res. 148. Joint resolution to proclaim March 18, 1982, as "National Agriculture Day"; to the Committee on the Judiciary.

NATIONAL AGRICULTURE DAY

● Mr. HELMS. Mr. President, the creed of the Future Farmers of America, a truly outstanding rural youth movement, includes these words: "I believe in the future of farming with a faith born not of words but of deeds."

I strongly believe in the future of American agriculture and am introducing a joint resolution, on behalf of myself, Senator HUDDLESTON, and 36 of our other fellow Senators, proclaiming March 18, 1982, as "National Agriculture Day."

Mr. President, a similar joint resolution has been introduced in the House of Representatives by the chairman and ranking minority member of the Committee on Agriculture with more than 200 cosponsors.

By passing this joint resolution, the U.S. Congress can pay a fitting tribute to American farmers and ranchers. In view of the tremendous accomplishments and contributions that American farmers make to the Nation and the world economies, it is appropriate to recognize American agriculture in this manner.

American farmers and ranchers are major contributors to this Nation's moral and economic fiber. American agriculture is the very backbone of this Nation. Agricultural producers represent the independent spirit, the high moral principles, and the willingness to work, which have made this Nation the strongest in the world.

However, in spite of the farmer's obvious strengths, the last year—in fact, the last 2 or 3 years—have been extremely difficult for them. Sagging incomes and ever-increasing costs of production have caught farmers in cost-price squeeze, which will not be easy to remedy.

While it is important for us to pay tribute to American farmers, we should not lose sight of the important efforts that we must undertake to provide American agricultural producers the opportunity to operate their businesses profitably.

We all are familiar with the tremendous accomplishments in American ag-

riculture. But the following points should be noted:

American agriculture is the world's largest commercial industry with nearly 23 million workers and assets of over $1 trillion;

One farmworker supplies enough food and fiber for 78 people;

Farm exports—about $45 billion in 1981—are the single most important factor in our balance of trade;

The United States, with less than three-tenths of 1 percent of the world's farmers and farmworkers, produces 66 percent of the world's soybeans, half of its corn, 22 percent of its beef, 14 percent of its wheat, and 30 percent of its poultry.

During my service in the Senate, I have had the opportunity to participate in several Agriculture Day activities. Each year the importance of the programs sponsored by the Agriculture Day Foundation grow. American farmers and nonfarmers are brought closer together through the efforts of this program. I commend the Agriculture Day Foundation and the Agriculture Council of America for their outstanding leadership in this worthwhile endeavor.

We have the opportunity to recognize officially the amazing record of progress and achievement in American agriculture. We have the opportunity to let our actions and deeds lend to American agriculture the prestige and importance that it deserves.

I urge early passage of this joint resolution.●

By Mr. METZENBAUM (for himself, Mr. DECONCINI, Mr. MATHIAS, Mr. PRYOR, Mr. BUMPERS, Mr. EAGLETON, Mr. BURDICK, Mr. PELL, Mr. WEICKER, Mr. SASSER, Mr. ARMSTRONG, Mr. HEINZ, Mr. STENNIS, Mr. CRANSTON, Mr. RANDOLPH, Mr. GOLDWATER, Mr. MATSUNAGA, Mr. TOWER, Mr. CHAFEE, Mr. HUDDLESTON, Mr. DURENBERGER, Mr. DENTON, Mr. FORD, Mr. BAUCUS, Mr. PROXMIRE, and Mr. PACKWOOD):

S.J. Res. 149. Joint resolution to designate the week of June 6, 1982, through June 12, 1982, as "National Child Abuse Prevention Week"; to the Committee on the Judiciary.

NATIONAL CHILD ABUSE PREVENTION WEEK

● Mr. METZENBAUM. Mr. President, today Senators DECONCINI, MATHIAS, myself, and 23 other cosponsors are introducing a joint resolution designating the week of June 6, 1982, through June 12, 1982, as "National Child Abuse Prevention Week," and calling upon all Government agencies and the people of the United States to observe the week with appropriate programs and activities.

Mr. President, the abuse and neglect of children, whether in the form of physical or mental injury, sexual exploitation, or negligent treatment by those responsible for the well-being of children is a growing problem in every region of the country and for every group in our society. Data collected by HHS indicates that in the past 4 years, the number of reported cases of abuse and neglect has risen over 100 percent. The National Exchange Club Foundation for the Prevention of Child Abuse and Parents Anonymous estimate that each year, approximately 2 million children are either neglected or abused. Approximately 5,000 of these children die. Child abuse is a complex problem threatening to destroy the basic unit of our society, the family.

Mr. President, even though the Federal Government has been involved since 1912 with the welfare of children, it was not until 1974 that the Congress mandated a coordinated Federal focus on child abuse. That action came as the result of hearings conducted in 1973 in both the House and the Senate—hearings that revealed a lack of coordination in child protection activities, differences in the definitions of child abuse and neglect among States, incomplete identification and reporting, understaffed child protective service units, and inadequate resources for conducting investigations. In response, Congress enacted the Child Abuse Prevention and Treatment Act which authorized and coordinated Federal leadership in dealing with child abuse.

Mr. President, I believe that much of the progress we have made in our knowledge of and action against child abuse can be attributed to the cooperation between governmental and voluntary efforts in this area. For example, the National Exchange Club Foundation for the Prevention of Child Abuse, a tax-exempt, nonprofit organization has been instrumental in raising public awareness of child abuse and neglect and the problems that it causes. In 1980, the National Exchange Club Foundation joined forces with SCAN America for the purpose of combating child abuse and by building child abuse treatment centers throughout the country. Since the summer of 1980, the two organizations, with the generous contributions of both private individuals and corporations, have been able to build six centers nationwide.

The primary objective of SCAN, with the financial assistance of the National Exchange Club Foundation for the Prevention of Child Abuse are to serve as a 24-hour referral service for the reporting of child abuse and neglect, to recruit, train, administer, and to provide supervision of volunteers who work directly with abusive parents and their children, and to teach abusive parents positive patterns of child development and caring. Another objective of the organization is to increase public awareness of this growing problem and to increase the responsiveness of social institutions to the needs of abusive parents and their children.

As our joint resolution recognizes, National Exchange Club Foundation is not alone in its efforts to combat this problem. Many other worthy organizations, such as Parents Anonymous, the National Committee for the Prevention of Child Abuse, American Humane Association, and other members of the National Child Abuse Coalition are undertaking effective programs to prevent child abuse and to assist parents and other family members.

Mr. President, I realize that the problem of child abuse and neglect in our society will not disappear overnight. I believe, however, that establishing a "National Child Abuse Prevention Week," will be a useful start in bringing public attention to the problem and to the outstanding efforts that are underway to better serve the needs of America's children.●

● Mr. DECONCINI. Mr. President, today, I join Senators METZENBAUM and MATHIAS in introducing legislation that would authorize the President to proclaim the week of June 6, 1982, through June 12, 1982, "National Child Abuse Prevention Week."

Child abuse is one of the most serious problems facing the family in our country today. Over 2 million children each year are victims of child abuse and at least 5,000 die as a result. Many, if not most, of these children are under 3 years of age.

In response to these serious threats to the well-being of our Nation's children, a number of organizations, including Parents Anonymous, the National Exchange Club Foundation for the Prevention of Child Abuse, and other members of the National Child Abuse Coalition, actively work with parents to prevent child abuse, and work with abused children to keep this plague from spreading to a new generation.

I hope that by recognizing the severity of the problem of child abuse through a prevention week, we will begin to solve this serious crisis which threatens the American family.●

ADDITIONAL COSPONSORS

S. 101

At the request of Mr. DECONCINI, the Senator from Louisiana (Mr. LONG) was added as a cosponsor of S. 101, a bill to amend title 18 of the United States Code to define and limit the exclusionary rule in Federal criminal proceedings.

S. 312

At the request of Mr. LEVIN, the Senator from Delaware (Mr. ROTH) was added as a cosponsor of S. 312, a bill for the relief of Maria and Timofei

Chmykhalov, and for Lilia, Peter, Liubov, Lidia, and Augustina Vashchenko.

S. 1141

At the request of Mr. BAUCUS, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of S. 1141, a bill to establish the National Forest Investment Fund, and for other purposes.

S. 1215

At the request of Mr. PROXMIRE, the Senator from Maryland (Mr. SARBANES) and the Senator from South Dakota (Mr. ABDNOR) were added as cosponsors of S. 1215, a bill to clarify the circumstances under which territorial provisions in licenses to distribute and sell trademarked malt beverage products are lawful under the antitrust laws.

S. 1448

At the request of Mr. MATHIAS, the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Florida (Mrs. HAWKINS), the Senator from New Mexico (Mr. DOMENICI), and the Senator from Rhode Island (Mr. CHAFEE) were added as cosponsors of S. 1448, a bill to provide for the issuance of a postage stamp to commemorate the 70th anniversary of the founding of the Girl Scouts of the United States of America.

S. 1686

At the request of Mr. LUGAR, the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1686, a bill to amend the Federal Reserve Act to provide that deposits of State and local governments will not be subject to reserve requirements, and for other purposes.

S.1881

At the request of Mr. SASSER, the Senator from South Carolina (Mr. THURMOND) and the Senator from Iowa (Mr. GRASSLEY) were added as cosponsors of S. 1881, a bill to provide for the issuance of a commemorative stamp to honor the dedication of the Vietnam Veterans Memorial.

S. 1928

At the request of Mr. DANFORTH, the Senator from Kansas (Mrs. KASSEBAUM) was added as a cosponsor of S. 1928, a bill to clarify the income tax treatment of amounts realized by certain regulated public utilities in settlement of damages under contracts for the purchase of fuel.

S. 1943

At the request of Mr. SCHMITT, the Senator from Georgia (Mr. NUNN) and the Senator from Idaho (Mr. SYMMS) were added as cosponsors of S. 1943, to increase the penalties for smuggling quantities of marihuana exceeding 1,000 pounds.

S. 1992

At the request of Mr. MATHIAS, the Senator from Indiana (Mr. LUGAR) 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. 2019

At the request of Mr. BUMPERS, the Senator from Oklahoma (Mr. BOREN) and the Senator from Nevada (Mr. CANNON) were added as cosponsors of S. 2019, a bill to amend title 38, United States Code, to authorize the Administrator of Veterans Affairs to pay certain burial and funeral expenses of certain veterans and to provide a cemetery plot allowance for certain veterans.

S. 2062

At the request of Mr. BUMPERS, the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 2062, a bill to amend the Tennessee Valley Authority Act.

SENATE JOINT RESOLUTION 72

At the request of Mr. HAYAKAWA, the Senator from Idaho (Mr. SYMMS) was added as a cosponsor of Senate Joint Resolution 72, a joint resolution proposing an amendment to the Constitution of the United States with respect to proceedings and documents in the English language.

SENATE JOINT RESOLUTION 109

At the request of Mr. KENNEDY, the Senator from Delaware (Mr. ROTH) was added as a cosponsor of Senate Joint Resolution 109, a joint resolution to designate August 30, 1982, as "Roy Wilkins Day."

SENATE JOINT RESOLUTION 140

At the request of Mr. MATHIAS, the Senator from Iowa (Mr. GRASSLEY), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Virginia (Mr. HARRY F. BYRD, JR.), and the Senator from New Mexico (Mr. SCHMITT) were added as cosponsors of Senate Joint Resolution 140, a joint resolution designating February 11, 1982, "National Inventors' Day."

SENATE RESOLUTION 318

At the request of Mr. TSONGAS, the Senator from New Jersey (Mr. WILLIAMS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Nevada (Mr. CANNON), the Senator from New York (Mr. MOYNIHAN), the Senator from New York (Mr. D'AMATO), the Senator from Maryland (Mr. SARBANES), the Senator from Arkansas (Mr. BUMPERS), and the Senator from Montana (Mr. MELCHER) were added as cosponsors of Senate Resolution 318, a resolution expressing the sense of the Senate concerning guaranteed student loans for graduate and professional students.

AMENDMENT NO. 1242

At the request of Mr. MATHIAS, the Senator from Colorado (Mr. HART) was added as a cosponsor of amendment No. 1242 intended to be proposed to S. 1758, a bill to amend title 17 of the United States Code to exempt the private noncommercial recording of copyrighted works on video recorders from copyright infringement.

AMENDMENT NO. 1267

At the request of Mr. DECONCINI, the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of amendment No. 1267 intended to be proposed to S. 1080, a bill to amend the Administrative Procedures Act to require Federal agencies to analyze the effects of rules to improve their effectiveness and to decrease their compliance costs; to provide for a periodic review of regulations; and for other purposes.

SENATE RESOLUTION 322—RESOLUTION RELATIVE TO ISRAEL'S POSITION IN THE UNITED NATIONS

Mr. ROBERT C. BYRD (for himself, Mr. MOYNIHAN, and Mr. JOHNSTON) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 322

Whereas the United Nations was founded on the principle of universality; and

Whereas the Charter further stipulates that U.N. members may be suspended by the General Assembly only "upon the recommendation of the Security Council"; and

Whereas a move by the General Assembly that would deny Israel its credentials in the Assembly would be a direct violation of these provisions of the Charter: Now, therefore, be it

Resolved, That it is the sense of the Senate that if such provisions of the Charter are violated by the expulsion, suspension, or denial of the credentials of Israel in the General Assembly, the United States will:

(1) Withhold its participation from the General Assembly; and

(2) Withhold its assessed contributions to the United Nations until the Assembly majority overturns this illegal action.

SENATE RESOLUTION 323—RESOLUTION RELATIVE TO THE STRATEGIC TALKS ON PREVENTION

Mr. HART submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 323

Whereas a nuclear war would kill or injure millions of Americans, destroy most of our population centers, devastate our industrial and technological base, and threaten the survival of the Republic, and

Whereas there can be no assurance that a nuclear war, once initiated would remain limited in scope, and

Whereas there have been no negotiations between the United States and the Soviet Union since June 1979 to prevent the use of strategic nuclear weapons and to limit their numbers, and

Whereas there exists the ever-present risk that nuclear weapons might be employed through accident or miscalculation, and

Whereas the unregulated spread of nuclear technology increases the number of coun-

tries or terrorist groups which can detonate a nuclear bomb: Now, therefore, be it

Resolved, That it is the sense of the Senate that the United States and the Soviet Union enter into negotiations without delay on the prevention of the use of nuclear weapons: to reduce the danger of nuclear war through accident or miscalculation; to agree on steps to prevent the use of nuclear weapons by third parties, including terrorists; to reduce the vulnerability of the two sides' nuclear retaliatory forces to preemptive attack; and to achieve sizable, mutual and verifiable reductions in the number of strategic nuclear warheads and their delivery vehicles, consistent with the requirements for national security and international stability.

STRATEGIC TALKS ON PREVENTION (STOP)

● Mr. HART. Mr. President, I am today submitting a resolution expressing the sense of the Senate that the Government of the United States initiate, without delay, negotiations with the Soviet Union to prevent the use of nuclear weapons. The purpose of STOP, strategic talks on prevention, is to reduce, through concrete and effective measures, the likelihood of nuclear war.

Twenty-five years ago, one of this Nation's most decorated military commanders, Gen. Omar Bradley, eloquently captured the essence of the problem we face with nuclear weapons. General Bradley observed:

> If I am sometimes discouraged, it is not by the magnitude of the problem, but by our colossal indifference to it. I am unable to understand why, if we are willing to trust in reason as a restraint on the use of a ready-made ready-to-fire bomb, we do not make greater, more diligent and more imaginative use of reason and human intelligence in seeking an accord and compromise which will make it possible for mankind to control the atom and banish it as an instrument of war.

For more than 30 years, we have had to live with the reality that at any given moment, on any given day, the nuclear weapons of the two superpowers might be unleashed, leaving in their aftermath a level of death and destruction beyond the comprehension of the human mind. To this point, we have been spared this holocaust. But how much longer can our luck hold?

Nuclear war means tens of millions dead. It means millions more severely burned and injured, unable to reach hospitals that, at best, could treat only a tiny fraction. It means millions more blinded, wandering sightless in a post-attack world, simply because they looked up when the first flash came. It means rebuilding on a scale that may be impossible—not just repairing physical injury, but restoring a sense of order in a world ruled by mobs, struggling over scraps of food, with no reason for human restraint.

Too many leaders seem to have forgotten the awesome destructive power of nuclear weapons. It is time to reawaken these leaders to their most solemn responsibility—the prevention of nuclear war.

Since the late 1960's, we have sought to negotiate equitable, verifiable and significant strategic arms limitation agreements with the Soviet Union. At best, our achievements have been modest. It is unnecessary to recount the fate of the second strategic arms limitation treaty, signed in June 1979, but never ratified by the Senate. I was, and continue to be, a strong supporter of that treaty. We should abide by the provisions of SALT II, as long as the Soviets do the same.

We are now engaged in negotiations with the Soviet Union to reduce intermediate-range nuclear forces in Europe. I applauded the President's decision of November 1981 to participate in these talks. The administration's "zero-option" plan for reducing nuclear weapons in Europe is an imaginative initiative, worthy of our support. But the INF negotiations will be both long and arduous. We cannot anticipate a quick agreement. More importantly, the negotiations deal with only one, relatively limited dimension of the nuclear arms race.

While endorsing the Geneva talks, I am convinced that we must do much more. We must rethink, fundamentally, our approach to nuclear arms control. We must refocus our efforts to reduce the extraordinary dangers of nuclear war. We confront four special risks in this regard. First, the possibility of nuclear war by accident. Our own forces are maintained under tight and continuous control. But can we say the same for Soviet forces? Second, the possibility of nuclear war through miscalculation. The SALT II Treaty contained a provision for the prior notification of missile test flights, in an effort to reduce uncertainty over intentions. We need to reaffirm and extend that principle. Third, the procurement of hard-target countersilo capabilities by both superpowers undercuts confidence in the survivability of retaliatory forces, in effect placing weapons on a hair trigger. We must take steps to reduce the vulnerability of weapons systems to preemption. Fourth, we and the Soviets have a special responsibility to restrain the export of sensitive nuclear technologies, to prevent the use of nuclear weapons by other countries and by extranational groups.

As we seek to negotiate constraints on strategic nuclear weapons, we must be careful to define our objectives as precisely as possible. It is this requirement which has led me to introduce today's resolution. The determination to reduce the number of weapons is not enough. We must also seek to control their capabilities. The STOP negotiations should focus on:

The adoption of new measures to prevent the use of nuclear weapons through accident or miscalculation, to expand the 1973 United States-Soviet Agreement on the Prevention of Nuclear War.

The enactment of concrete steps to reduce the vulnerability of the two sides' nuclear retaliatory forces to preemptive attack. A secure capacity to respond to an adversary's nuclear strike with an appropriate level of force is the very foundation of mutual deterrence.

The achievement of sizable, mutual and verifiable reductions in the number of strategic nuclear warheads and delivery vehicles, consistent with the requirements for national security and international stability.

The adoption by both sides of principles to prevent the use of nuclear weapons by third parties, including terrorists.

These four objectives for STOP are well within our collective grasp. But we and the Soviets must have the will to pursue them.

Administration spokesmen indicate that the United States will initiate discussions with the Soviet Union on the reduction of strategic nuclear weapons sometime in the future. The President has said that the START talks will concentrate on the issue of numbers. STOP moves significantly beyond the question of force levels and redirects our attention to the more fundamental problems of prevention and capabilities. Without such a comprehensive approach, the danger of nuclear war will continue to grow rather than diminish.

There have also appeared in this country several grassroots initiatives calling on the Governments of the United States and the Soviet Union to halt the testing, production, and deployment of all nuclear weapons and their means of delivery. These initiatives are the expressions of a profound and deeply held belief that the superpower competition in nuclear weapons must be brought under control immediately or we may all be engulfed in the greatest catastrophe in human history.

The logic of a nuclear weapons freeze is compelling in its simplicity. I sympathize with those who argue "enough is enough."

But my own strong feeling is that a nuclear weapons freeze is not an adequate answer to the danger that confronts us. My principal reservation is not that a nuclear weapons freeze goes too far, but that it does not go far enough.

A bilateral agreement to halt the testing, production and deployment of nuclear weapons would not, in and of itself, significantly reduce the likelihood of nuclear war. Even with a freeze, the United States and the Soviet Union would have at their disposal more than 15,000 strategic nuclear warheads, deployed on bombers, submarines and on land-based ballistic

missiles. Many of these weapons possess, and would continue to possess, impressive counterforce and countersilo capabilities. It is this relentless technological advance that concerns me. Our efforts to restrain this advance have been unsuccessful.

Nuclear war is the greatest single threat we face. That threat grows every day. We must seize every opportunity to draw back from the nuclear abyss. The STOP negotiations could be an important first step in this direction.

Without a renewed and committed effort to prevent the outbreak of nuclear war and to negotiate limits on the nuclear arms race, I fear for our future.

How much longer can our luck hold?

I urge my colleagues to join me in support of this resolution.

SENATE RESOLUTION 324—RESOLUTION RELATIVE TO PRODUCTION AND IMPORTATION OF NARCOTICS

Mrs. HAWKINS submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 324

Whereas the importation and use of illicit narcotics in the United States has reached an alarming level;

Whereas the use of illicit narcotics annually destroys the lives of many Americans, especially children, who do not fully recognize the danger of narcotics;

Whereas narcotics addiction places enormous burdens on the families and friends of individuals who use narcotics, and on society as a whole;

Whereas narcotics addiction endangers all Americans by subjecting them to crimes committed by addicts in efforts to obtain money to procure additional narcotics;

Whereas international narcotics trafficking constitutes a major source of revenue for persons engaged in organized crime; and

Whereas the governments of many nations fail to adequately control the production, and exportation to the United States, of illicit narcotics; Now, therefore, be it

Resolved, That it is the sense of the Senate that the President of the United States and the Secretary of State should—

(1) express to the governments of nations that fail to adequately control the production, and exportation to the United States, of illicit narcotics the concern of the United States with respect to such unregulated drug trafficking;

(2) urge such governments to take appropriate measures to eliminate such production and exportation of illicit narcotics;

(3) solicit from such governments recommendations for additional action by the United States to assist such governments in their efforts to control such production and exportation of illicit narcotics; and

(4) consider the desirability of imposing appropriate sanctions on any nation in which such production and exportation of illicit narcotics continues unabated.

PRODUCTION AND IMPORTATION OF ILLEGAL NARCOTICS

● Mrs. HAWKINS. Mr. President, today I am submitting a Senate companion to House Resolution 230 submitted by Representative CARMAN urging the President and the Secretary of State to impose economic sanctions against countries which permit the production and exportation of narcotics to the United States. My resolution also limits foreign aid to such countries.

The most effective and least expensive means of fighting the entry of illegal drugs into the United States is to destroy them at their sources. For that reason, any successful control program must enlist the active cooperation of governments of major producer and transit countries. Where persuasion is necessary, I believe U.S. foreign aid and economic sanctions should be used as preventive tools for stopping crime on our streets.

Currently, the United States recognizes six nations as leading producers of illegal narcotics: Thailand, Burma, Pakistan, Peru, Bolivia, and Colombia. All except Colombia receive, or hope to receive, U.S. foreign aid, and the United States also has active economic relations with all of them. While our foreign policy interests with these countries are broad, none of those interests should supersede our desire for Americans at home to live free from crime and illegal narcotics. We should consider no nation our friend that takes a cavalier attitude toward their contribution to some of the most serious domestic problems facing us. And we should not use taxpayers' dollars to help those who are unfriendly.

Adoption of this resolution will prove that drug enforcement is an American foreign policy priority. I urge my colleagues to join me in this effort to destroy drugs before they can reach our children and our communities. We must consider foreign aid and trade in a broader context that we have in the past. Illegal drugs have destroyed too many lives in America to continue business as usual.●

ADDITIONAL STATEMENTS

THE NATIONAL PRAYER BREAKFAST

Mr. ARMSTRONG. Mr. President, I submit for the RECORD the transcript of the proceedings of the National Prayer Breakfast which was held at 8 a.m. on February 4, 1982.

The transcript follows:

THE 1982 NATIONAL PRAYER BREAKFAST

Senator JOHN STENNIS. Former Senator Harold Hughes of Iowa will now give us the grace for our breakfast:

PRAYER BY FORMER SENATOR HUGHES

Our dear heavenly Father, we come to you this morning with humble hearts. Help us to have an open mind, and help us to realize the unity of all peoples of the earth as we are gathered here in this congregation. We ask an annointing of those who speak. Shield and protect us from evil. Forgive us our sins. And dear Father, we're deeply grateful for the abundance of the earth which you provide this morning. May it help us to remember the hungry and the suffering of the world who cannot be served as we are. Now bless this food in the name of Jesus Christ. Amen.

United States Navy "Sea Chanters"—"We will do one selection for you at this time, 'Great Day' arranged by Warren Martin." (singing)

Senator JOHN STENNIS. Let me thank the United States Navy Sea Chanters for this fine rendition. Now please remain standing while our opening prayer is led by His Excellency Mbogua, ambassador of Kenya.

Ambassador MBOGUA. Let us pray. Our Father, we come before you this morning with much on our hearts. Much for which to thank you, much for which to ask you, and much for which to listen. We thank you, Father, for the privilege to assemble together and pray together. We acknowledge that you are in our midst, and we ask for your guidance and wisdom. We thank you for the privilege of being able to experience what it means to be alive. We are aware of the potential you have put among us—of the great gifts we have and the creative talents we possess. For these things we are thankful. But also in the midst of all these good things, we are painfully aware of our own shortcomings. As we approach this morning, we want to confess our witness before you, to confess our pride before you. Make us humble. We pray for your blessing for all the peoples of this great nation of the United States and its leaders. We pray especially for President Reagan and Mrs. Reagan, the Cabinet ministers, the senators and congressmen. We are mindful that this is a country whose institutions have been molded through trust in God and love of freedom. How grateful many of us have been to have received encouragement from people who are in this audience who contribute so much of themselves for the alleviation of hunger and proverty in many parts of the world. We remember this morning, dear Lord, those who suffer. Ease their pain and give them hope, and where possible, meet their needs. We pray for your justice in the world. Coming before you like this this morning with so many from around the world reminds us that you are not bound by cultural barriers, boundary limitations, racio-ethnic differences, or political ideology—that you alone stand above those differences to give hope to all of us. Lastly, we ask for your guidance in our deliberation this morning. In the name of Him who was proclaimed the Prince of Peace, Jesus Christ. Amen.

Senator STENNIS. Please remain standing. It's my privilege now to present the general chairman of this prayer breakfast, a senator from Colorado, The Honorable William L. Armstrong.

Senator WILLIAM ARMSTRONG. Thank you, Mr. Stennis, and thank you ladies and gentlemen for coming to be with us this morning, on behalf of all who have participated—hundreds of people around the world—who have made this breakfast possible. I am honored to welcome you.

Consider for the moment the potential of a world at peace, a world filled with hope, a world where all people live together as brothers and sisters, where none seeks to take advantage of another, but only to serve one another. Impossible, men may say. But Jesus says all men are brothers. Jesus lived and died and rose again that we may have peace, hope, abundant and eternal life to-

gether as brothers and sisters. And even now he is creating such a world. We are gathered here together as a part of his recreation of the world. And for the very reason that St. Paul pointed out to the Hebrews when he said, "Let us hold fast to the confession of our hope, without wavering, for He who promised is faithful. And let us consider how to stir up one another and to love and good works, not neglecting to meet together as is the habit of some, but encouraging one another and all the more as you see the day drawing near." Ladies and gentlemen, it is in that spirit that we gather this morning. And I think you would want to know that there are literally hundreds of meetings in every state and around the world at this very moment praying for what will occur at this National Prayer Breakfast. Again, thank you for coming, and welcome.

Senator STENNIS. If I may have your attention now, please, I'm not asking you to discontinue your eating, but eat in as much silence as you can produce. It's my privilege to say a word of welcome, a special word of welcome, and I have a feeling that this applies to every one of you on an individual basis. In this vast audience this morning, we actually have representatives here from each of our fifty states and the District, and also, we have representatives from 120 other nations. Well, that fact is worth a cheer. Further, we have with us the President and the Vice President of the United States, and their charming wives to whom we give a special welcome, and speaking for the management of this program, let me emphasize that this cordial welcome does extend to every individual here. President Reagan did not come here to lead a financial conference nor a trade conference or a limitation of arms conference. Instead, though, all of us are here—not as chiefs of state, of course, but as segments of all the areas of society in our respective countries. What a foundation that is. Even though this is an era of scientific and physical achievements with amazing developments in technology, we come together today with our hope and our faith centered on spiritual values. The cords of a basic faith in these spiritual values tie us together. As an illustration . . . we cling to the values of the family, the bedrock of our civilization. And we'll move more and more together on these high roads. This audience is a moving sight to behold. I wish each could view it from here. As I've said, we are here from our respective lands forming these 121 nations, bound together by the common courses that make us seek further life and further strength to sustain us as we seek to move forward to meet the challenges of our time. We all move forward in a spirit of Christ. And let each of us and every individual know that you have this special deep-seated welcome from the people of America and then from each of us to the other. And now, I want the privilege here of presenting to this audience those on the platform here who are with us but will not be participating with other parts of this program, and I'll start on my left. Mrs. Hefner, here, the wife of the representative from North Carolina. And next, and we're delighted to have, next we have General Curry, the husband of Mrs. Curry, and commander of the District. We have Mrs. White, the wife of Governor White, of the state of Arkansas. We have Mrs. Armstrong, the wife of the Senator from Colorado. And now on my right we have Mrs. Nichols, wife of Representative Nichols of Alabama. And we have then Mrs. Allen, who is the wife of General Allen of the Air Force. And we have Mrs. Mbogua, wife of the ambassador of Kenya. And we have Mrs. Domenici, the wife of Senator Pete Domenici of the state of New Mexico. And we are of course deeply honored to have with us Mrs. Bush, the wife of the Vice President. And the First Lady of the land, our own Mrs. Nancy Reagan. And then we are delighted to also have as our special guests on the platform, General and Mrs. James L. Dozier. I hope both of you will stand. That rising salute of joy was not planned and planted. It's original and genuine with reflects the great honor that you've earned for yourselves, but further, the deep spirit of pride and old-fashioned patriotism that's among all of us and extends to all kindred nations. You are a great example of faith, and we've proud that you have the spiritual value and also give God credit for your return. Now we have here a program that will move along just a little rapidly without the usual words of introduction. It's my privilege to—I'm assuming all of you are through eating—we have greetings here from the House of Representatives prayer group. The spokesman will be a representative, Bill Nichols, of the state of Alabama.

Representative BILL NICHOLS. Mr. President, Mrs. Reagan, Mr. Vice President, Mrs. Bush, distinguished guests, ladies and gentlemen, on behalf of the House Prayer Breakfast Group of the United States House of Representatives, I extend to you this morning our warmest welcome and to more than a hundred thousand members of our armed services who will hear this program throughout the entire world through the medium of armed services radio. As we gather here this morning to worship God in prayer, we would agree that one of the most important and one of the most enduring qualities of our great heritage is our deep and abiding faith in almighty God. God has blessed us both as individuals and as a nation. Surely indeed our cup runneth over. But America was founded on a basic and a fundamental belief in God, and for 205 years now, each day's session of the Congress is opened with prayer. This custom goes back to the Continental Congress meeting in Philadelphia when things were not going well. There was much arguing and bickering among the small states who desired equal representation with that of New York and of Massachusetts. There seemed no possibility of reaching an agreement. And after considerable debate, it was Benjamin Franklin, who was 81 years of age at the time, who rose to his feet and suggested the need for prayer. His exact words were, and I quote, "Gentlemen, I have lived a long time. And the longer I live, the more I am convinced that God governs in the affairs of men. And if a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without his aid? I therefore beg leave to move that henceforth prayers employing the assistance of heaven and His blessing be held each morning in this assembly before we proceed to business". And so the delegates knelt in prayer and the Constitution of this great nation was agreed upon. Our House Prayer Breakfast Group meets each Thursday morning, and to me, Mr. President, this is the best day of the week. It's open only to members and to former members of the Congress when members of both political parties put aside for the moment partisan politics to seek guidance from the Almighty as we endeavor to conduct the legislative affairs of our country. It's a time when we ask God's mercy for the sick and the bereaved. And we turn to Him for the strength and for the wisdom that all of us need as we work to make our nation and our world a better place to live. Recognizing our dependence on our Creator, this morning we solicit the prayers of each of you in attendance at this Breakfast. We ask that we might have the knowledge to know what is right in the sight of our Maker, and that He might grant us the courage to support those convictions to the end that the words of our mouth and the meditations of each of our hearts might be acceptable in His sight.

Senator STENNIS. Thank you. We will now have an Old Testament reading by Mrs. Jerry R. Curry. Mrs. Curry.

Mrs. CURRY. Mr. Chairman, President Reagan, ladies and gentlemen, there is hope for every nation who recognizes God as their source of strength and power. And Psalm 46 expresses the kind of confidence that we all should have in Him:

"God is our refuge and strength, a very present help in trouble. Therefore, will we not fear. Though the earth be removed, and though the mountains be carried into the midst of the sea. Though the waters thereof roar, and be troubled. Though the mountains shake with the swelling thereof. There is a river, the streams whereof shall make glad the city of God, the Holy Place of the tabernacles of the most high. God is in the midst of her. She shall not be moved. God shall help her and that right early. The heathen raged. The kingdoms were moved. He uttered his voice, the earth melted. The Lord of host is with us. The God of Jacob is our refuge. Come, behold the works of the Lord. What desolations he hath made in the earth. He maketh wars to cease unto the end of the earth. He breaketh the bow, and cutteth the spear in sunder. He burneth the chariot in the fire. Be still, and know that I am God. I will be exalted among the heathen. I will be exalted in the earth. The Lord of host is with us. The God of Jacob is our refuge."

Senator STENNIS. We're going to be blessed now with a rendition of a solo by Miss Carla Davis singing the Lord's Prayer. (Solo by Miss Carla Davis.)

Senator STENNIS. I want 30 seconds indulgence here before presenting the next speaker or greeter. The name of Frank Carlson, formerly a senator from the state of Kansas, still active to a degree out there in retirement, should be mentioned here today I think. More than anyone else, he was the man that put together the first meeting of this what has become the National Prayer Group meeting. We're indebted to him for many other fine things that he did. But he and the late President Eisenhower were the ones that started this off in 1952 and with just a handful—I don't know—don't remember exactly but * * * 40, 50 or 60—something like that. Now it's my privilege to present for the bringing of a message from the Senate Breakfast Group, the senator from Oklahoma, Mr. Boren.

Senator DAVID BOREN. Thank you, John. Mr. President, Mrs. Reagan, Mr. Vice President and Mrs. Bush, and ladies and gentlemen, it's a special privilege for me to be able to bring greetings to you today from my colleagues in the Senate Prayer Breakfast, and to try to share with you a little of the spirit that we share together every Wednesday morning. I think all of us would say, and I can say this without contradiction, that that hour that we spend together on Wednesday morning is for us the most important hour of the week. It's the hour of the week in which we are most ourselves, and in which we have the most real commu-

nication between each other as human beings. Our responsibilities and those of others who are gathered together here in this room cause us very often to lose our perspective. We are so busy reacting to the headlines of the morning, caught up in the events of the day, so taken up with playing our role and the events around us, that we sometimes forget what's truly important. We sometimes forget that the titles that we temporarily wear are just that—very temporary. We forget that the affairs that consume our minds this morning are but a small part of history that will pass away tomorrow. We get so caught up in the course of debate over issues that we lose our perspective to the point, Mr. President, that even sometimes some of us Democrats forget in the heat of debate that even Republicans are children of God. But when those doors close on Wednesday morning, the unimportant things are put aside. And we look across the table at the person with whom we've been engaged with debate the day before, and we see him as a person. We think about the love that he or she feels for his wife or his husband, the hopes that he has for his children, the moments that he shared with his friends, the insecurities that he may feel about his ability to do his job as he should, to keep faith with the people who sent him there. It's a time for realizing that each one of us is not alone. That we do share common problems. In short, it's a time of fellowship, a time of separating out what is really important, casting aside the false sophistication with which we're surrounded, to realize that it's the simple and fundamental things that really matter. And it's a time in which we also reexamine ourselves and put aside a sense of our own self-importance to realize that the offices that we temporarily hold are not ours, they belong to others, they'll be held by others, and that above all that they're a trust from God. And for a moment we are aware, as I wish we could be aware in every hour of debate and every hour of committee deliberations, that God is there with us. That He is present with us. And for a moment, I think, we truly stop to pray, not that God will be on our side and will fit Himself into all of our plans and hopes for ourselves and our constituents, but that we can truly pray that perhaps we could be on God's side. And then finally, we're reminded, as we bring all the burdens that we feel as we come together each week, that we don't have to carry those burdens ourselves. That thankfully, the country is not dependent only on our own insights and our own abilities, but that God will bear for us the burden which we're trying to shoulder if we will truly turn it over to Him. We pause to remember, as Paul said, that He will give us the strength if we will only let him. It's difficult, in the artificial society in which we live. It's perhaps difficult for over 3,000 of us gathered together this morning. But our hope and our prayer this morning is that each one of you will leave here with that same feeling that we have as we leave each Wednesday morning, as we join hands and close with a word of prayer, that we have felt love, that we felt a true fellowship and sharing. And above all, that we have known that God, a loving and a caring God, is here with us. Not only now, but in every single hour of our lives.

Senator STENNIS. Friends, we will now have a New Testament reading to be given by General Lew Allen, Chief of Staff of the Air Force.

General LEW ALLEN. The New Testament reading is taken from Matthew 6, beginning immediately after the Lord's Prayer.

For if you forgive men their trespasses, your Heavenly Father also will forgive you. But if you do not forgive them their trespasses, neither will your Father forgive your trespasses. And when you fast, do not look dismal like the hyprocrites. For they disfigure their faces that their fasting may be seen by men. Truly I say to you, they have their reward. But when you fast, annoint your head and wash your face that your fasting may not be seen by men, but by your Father who is in secret. And your Father who sees in secret will reward you. Do not lay up for yourselves treasures on earth where moth and rust consume, and where thieves break in and steal. But lay up for yourselves treasures in heaven, where neither moth nor rust consumes, and where thieves do not break in and steal. For where your treasure is, there will your heart be also. The eye is the lamp of the body, so if your eye is sound your whole body will be full of light, but if your eye is not sound, your whole body will be full of darkness. If then the light in you is darkness, how great is the darkness. No one can serve two masters, for either he will hate the one and love the other, or he will be devoted to the one and despise the other. You cannot serve God and mammon. Therefore I tell you, do not be anxious about your life—what you shall eat, what you shall drink, nor about your body, what you shall put on. Is not life more than food, and the body more than clothing? Look at the birds of the air. They neither sow, nor reap, nor gather into barns. And yet your heavenly Father feeds them. Are you not of more value than they? And which of you by being anxious can add one cubit to his span of life? And why are you anxious about clothing? Consider the lilies of the field, how they grow. They neither toil nor spin. And yet I tell you, even Solomon in all his glory was not arrayed like one of these. But if God so clothes the grass of the field, which today is alive and tomorrow is thrown into the oven, will he not much more clothe you, O men of little faith? Therefore, do not be anxious, saying what shall we eat or what shall we drink or what shall we wear, for the Gentiles seek all these things and your heavenly Father knows that you need them all. But seek first His kingdom and His righteousness, and all of these things shall be yours as well. Therefore, do not be anxious about tomorrow, for tomorrow will be anxious for itself. Let the day's own trouble be sufficient for the day.

Senator STENNIS. We will now be led in a special prayer by Governor Frank White, governor of the state of Arkansas.

Governor FRANK WHITE. Mr. President, Nancy, Mr. Vice President and Barbara, distinguished head table, ladies and gentlemen, please bow your heads as I pray for our leaders. Our heavenly Father, we meet this morning to praise your name and to acknowledge that you have richly blessed us as a people. We come before you as those chosen by men to lead the nations of the world, as those in whom awesome power and responsibility has been placed. But we also come aware of our uniquely human traits, knowing the ease with which we sin and conscious of our feet of clay. As we face the grave issues of our time and lament the wrongs of the world, show us first what is wrong with ourselves. When we begin to take ourselves too seriously, dear Lord, remind us that you are king of Kings and lord of Lords. Father, when we become heady with the power and authority given by man, cause us to remember your words in Zechariah, "not by might, nor by power, but by my spirit." As we struggle and strive to achieve world peace, cause us to remember that there can be no peace until we resolve our own inner struggles. There can be no peace until we are at peace with you. Father, search us and know our hearts. Try us and know our anxious thoughts. See if there is any hurtful way in us, and lead us in your everlasting way. And now, dear Father, for the Congress and the state houses of this great land, we ask an understanding of the times, a concern and a compassion for those they represent, and a gift of zeal and dedication for their work. We confess our inadequacy in our own power to deal with the madness of this earth—terrorism, bigotry, racism, war, economic despair, starvation, hatred, and all that is false and deadly. We take heart in your answer to Jehoshaphat: "do not fear or be dismayed because of all these problems, for the battle is not yours, but God's" And for our President, dear Lord, we ask strength and wisdom through his daily walk with you. Lighten his heart as he accepts the hope of your calling, the riches of God's glory and promises, and above all, the power that is available to all who believe. Strengthen President Reagan by your might, dear Father. Father, we ask a special blessing on Mrs. Reagan. Let her be secure in the knowledge that you are sovereign in all affairs of life. May she continue to possess the imperishable quality of a gentle and quite spirit which is precious in the sight of God. Grant her grace and strength as she works alongside her husband. Bless also, dear Lord, Vice President Bush and his wife, Barbara, as they serve. Support them in their role, and strengthen them that they may lighten the load for President and Mrs. Reagan, and that they may bring inspiration and joy and courage to those whose lives they touch. And finally, dear Father, we pray for and with all those gathered here today, and the many others that are here in spirit. We seek thy guidance, we ask thy blessings. Touch our lives. Live in our hearts. Guide our footsteps. Use our hands for your task and cause us to persevere until thy kingdom come, thy will be done, on earth as it is in heaven. I pray these things in the name of Jesus Christ, who is the way, the truth, and the life. Amen.

Senator STENNIS. Ladies and gentleman, the next speaker has a special message. I might say he's kind of a special Senator, too. I wrote him when he became chairman of our Senate budget committee. The old shoulders are broad, but nevertheless, fasten your seat belt. But he came through in a fine way. The Honorable PETE DOMENICI, a Senator from the state of New Mexico.

Senator PETE DOMENICI. Thank you, John. Mr. President, Mrs. Reagan, Mr. Vice President, Mrs. Bush, distinguished friends at the head table, visitors from around the world, fellow elected officials, and Americans. I must admit to a certain feeling of awe at my assignment today. I'm in awe not only of my assignment, but of you, distinguished visitors, and of the presence of our President and General Dozier. Mr. President, you've heard me worry about the federal budget so much that you may think that that's what I talk about every time I open my mouth. Well today, I promise that I won't mention the budget. I want to talk about one of the few things that occupies me more than federal budgets. Society and

families and the love that binds society and families together. As I began preparing this little talk, I wondered why anyone would have chosen me for such a task since I am neither a great religious leader nor a great speaker nor one learned in history or philosophy nor a biblical scholar of any sort. But it dawns on me today that neither are most of you. I have to conclude that I was chosen because of my constant concern for my family and my broader concern for family and community life in the United States and the rest of the world. And I think you are concerned, too. Obviously, what I say today may be better said by others, and probably has been indeed. For the words of our Lord Jesus are more powerful than anything I might say here today. But I hope that no one among mortals exceeds me in trying. So let me start with something of a confession. I am not one who always and invariably is considerate. It's a struggle for me to be loving, to be forgiving, to do good to others. Preoccupied by my job and myself all too often, I find that I don't take the time or make the effort to love. I confess that even with my family I don't show the love I have. At one time, I was bothered by this trait and I guess I wouldn't be mentioning it here today if I weren't still somewhat bothered about it. After all, I reasoned, how good could I be? How strong a witness could I be if I had to struggle to show my love and be considerate to others? After all, the apostle Paul said in his first letter to the Corinthians, "Love is patient, love is kind. Love is not jealous. It does not put on airs. It's not snobbish. Love is never rude. It's not self-seeking. It's not prone to anger, neither does it brood over injuries. Love does not rejoice in what is wrong, but rejoices with truth. There is no limit to love's forbearance, to its trust, its hope, its power to endure," said the great apostle. I was bothered by my own difficulty in feeling a love as unselfish as the love that Paul described because my impression was that truly religious feelings or Christian love would be spontaneous and constant. But I have come to think virtually all of us have to struggle to take the time to love and show love. Indeed, the most important persons in the world may be those who like all of us in this room struggle to do good against an inherently self-occupied inward-looking nature. Thomas a Kempis said, There is not living in love without suffering. He's talking about bearing a cross; about living in love the way Jesus lived in love. Choosing to love even though this choice means personal sacrifices. There is no living in love without suffering. There's a world of wisdom in that statement. I believe that struggle is the key to good works, the key to successful loving. In everyday terms, most people who don't put some real effort into it will not have a successful marriage, will not raise their children lovingly, and will not know all the joys that a family can bring. And if we don't extend our notion of family into a notion of our entire society as a family that needs our daily love, we aren't doing what we should. We all struggle in our own private ways to be better, more loving persons. But sometimes we are privileged to get a glimpse of how others struggle. Once my wife, Nancy, and I went to Russia. Through unofficial channels, we let it be known that we would like to meet with members of the clergy there in that country. Then one evening at an elaborate reception in the Kremlin for 700 or 800 people, we were presented to a Russian orthodox priest. At first, he was reluctant to talk to us. But, bit by bit, he opened up. Finally, in the humdrum of that huge pompous gathering, he took us aside and told us of the difficulties he faced. And then, tears streaming down his face, he opened his shirt, showed us the cross around his neck, and he gathered us around him so that no one would see, and he prayed over us. The tears flowed from everyone. You—how much easier you have it. Yet, it is that same private, personal struggle to express our love that keeps families together and keeps communities together in spite of the many forces in today's society that make this a most formidable task. Loving, my friends, is an act of the will—perhaps the supreme act of will. And if one's will to love is strong enough, no power on earth can defeat it. That this struggle is everywhere is evident. Who here cannot remember the extraordinary faith, strength, and love shown by the family of General Dozier when the general was going through his terrible ordeal in the hands of his kidnappers. And who here was not moved when we saw the picture of his family's joyful reunion after so many dark and fearful days. Earlier, I said that I was ashamed that I was not always spontaneous in my caring. One of my closest and dearest friends who refuses to let me use her name here today has shown me that even someone loving and considerate must work to show love. Because she has children and a crazy schedule between her husband's work and her own burdens, it's easy for her expressions of love or consideration to be forgotten in the hubbub. So she makes an effort so that love might not be lost. Each day, she does something special that has been planned the night before to show one of her children that she cares about him or her. But she plans it. My friends, realize that if she merely depends on an emotion or spontaneous demonstration of love, the pressures of the day might never allow such an expression. From the start, she pledged to herself that she would avoid that, and because she worked at it, love has shown and love grew. As the Russian priest struggled to show his faith against all odds, as General Dozier's family showed their love when they could not even be sure that he was alive, as my dear friend struggles each day to show her love despite almost overwhelming schedules, so all of us must struggle. We underestimate our capacity for good. Yet, we also underestimate how much hard work goes into being loving. I know that to put this event together today, much work was necessary. This expression of love was no spontaneous event, but it is no less important for that. Love that comes spontaneously may be beautiful, but more beautiful still is love that comes of diligence, care, and effort. Let me conclude by reiterating my thoughts on God's greatest gift—love. First, love at its highest contains more than emotion. It embodies struggle. It demands expression and will. Second, that love and struggle occurs in silence or in places far from notice—detracts not at all from its grace or its necessity. And finally, each of us, as people who struggle to love, are the most important people alive. Without our struggle, without our love, without our work to overcome our failings, our families and our very society will cease to exist and the world may never be the place of grace and peace we so devotedly wish. I don't want to start an organization to preserve the family or to combat the forces that tear at our society. I would much prefer that each of us privately and individually work at caring and loving so that no such organization is necessary. What, in the end, is the purpose of struggle, of love? It is, I believe, that we can make the difference—of all us—great and small, famous and nameless. Indeed, only we can make a difference. Yet, have we made a difference? Too many in this land and all over the world are hungry. Too many are lonely. Too many neighborhoods exist where people neglect each other. Too many young people need counseling and love and simple friendship. Too many prisoners sit in despair without hope. Too many elderly lie unvisited in too many hospitals or nursing homes. How can this be, when so many tens of millions of us profess Christ? If we really witnessed, we could by ourselves make everyone celebrate life. I'm not impressed by the fact that many persons have filled out questionnaires saying that they've found Christ. I'm not impressed even by the large numbers who attend church regularly, although I am glad they do so. I will be impressed when our words and our deeds combine to make this a land of strong families, strong communities, and strong love. (clapping) And for those of us who might think such work beneath us, recall Christ's words, 'For I was hungry and you gave me food. I was thirsty and you gave me drink. I was a stranger and you made me welcome, naked and you clothed me, sick and you visited me, in prison and you came to see me.' Then the virtuous will say to him in reply, 'Lord, did we see you hungry and feed you, or thirsty and give you drink? When did we see you a stranger and make you welcome, naked and clothe you, sick or in prison and go to see you? And the King will answer, 'I tell you solemnly, in so far as you did this to one of the least of my brothers, you did it to me.' " We are the salt, the Bible says, that seasons everything. We must now go forth and season the world around us. If today our words and encouragement to those who hear, let us work that tomorrow our deeds will bring the celebration of life to millions more. My prayer is that all of you, and the millions who profess but are not here, would do this. Thank you.

Senator STENNIS. Now, my friends, it's my great honor and indeed a rare privilege to present to you the President of the United States.

The PRESIDENT. Thank you. Thank you very much, John, all our friends and distinguished guests here at the head table and all of you very distinguished people. Nancy and I are delighted to be with you this morning and are honored to be here. General Dozier, I know you don't like being praised for what you only consider as doing your duty. Forgive me, I'm going to pull rank on you. We want to give thanks to God for answering our prayers. We want to salute the Italian authorities for their brilliant rescue. And Jim, we just want to thank both you and Judith for your gallantry. Welcome home, soldier. Someone once said that a hero is no braver than any other man. He's just brave five minutes longer. Well, General, you were brave 42 days longer. And now we know why prayer breakfasts are a time for praise and celebration. Last year, you all helped me begin celebrating the 31st anniversary of my 39th birthday. And I must say that all of that pile-up and increase of numbers doesn't bother me at all because I recall that Moses was 80 when God commissioned him for public service. And he lived to be 120. And Abraham was 100 and his wife Sarah 90 when they did something truly amazing. And he lived to be 175. Just imagine if he had put $2,000 a year into his IRA account. But

those of you who were here last year might remember that I shared a story by an unknown author; a story of a dream he had had. He had dreamt, as you recall, that he walked down the beach beside the Lord. And as they walked, above him in the sky was reflected each experience of his life. And then reaching the end of the beach, he looked back and saw the two sets of footprints extending down the way, but suddenly noticed that every once in a while there was only one set of footprints. And each time, they were opposite a reflection in the sky of a time of great trial and suffering in his life. And he turned to the Lord in surprise and said, "You promised that if I walked with you, you would always be by my side. Why did you desert me in my times of need?" And the Lord said, "My beloved child, I wouldn't desert you when you needed me. When you see only one set of footprints, it was then that I carried you." But when I told that story last year, I said I knew, having only been here in this position for a few weeks, that there would be many times for me in the days ahead when there would be only one set of footprints and I would need to be carried. And if I didn't believe that I would be, I wouldn't have the courage to do what I was doing. Shortly thereafter, there came a moment when without doubt I was carried. And now, we've seen in General Dozier's life such a moment. Well God is with us. We need only to believe. The Psalmist says, 'Weeping may endure for a night, but joy cometh in the morning.' Speaking for Nancy and myself, we thank you for your faith and for all your prayers on our behalf. And it is true that you can sense and feel that power. I've always believed that we were, each of us, put here for a reason. That there is a plan, somehow—a divine plan for all of us. I know now that whatever days are left of me belong to Him. I also believe this blessed land was set apart in a very special way. A country created by men and women who came here not in search of gold, but in search of God. They would be free people, living under the law with faith in their Maker and their future. Sometimes, it seems we've strayed from that noble beginning, from our conviction that standards of right and wrong do exist and must be lived up to. God, the source of our knowledge, has been expelled from the classroom. He gives us His greatest blessing: life—and yet many would condone the taking of innocent life. We expect Him to protect us in a crisis, but turn away from Him too often in our day-to-day living. And I wonder if He isn't waiting for us to wake up. There is, as Pete so eloquently said, in the American heart a spirit of love, of caring, and a willingness to work together. If we remember the parable of the Good Samaritan . . . he crossed the road, knelt down, and bound up the wounds of the beaten traveler, the pilgrim, and then carried him into the nearest town. He didn't just hurry on by into town and then look up a caseworker and tell him there was a fellow back out on the road that looked like he might need help. Isn't it time for us to get personally involved? For our churches and synagogues to restore our spirit of neighbor caring for neighbor? But talking to this particular gathering, I realize I'm preaching to the choir. If all of you worked for the federal government, you would be classified as essential. We need you now more than ever to remind us that we should be doing God's work on earth. We'll never find every answer solved, every problem, or heal every wound, but we can do a lot if we walk together down that one path that we know provides real hope. You know, in one of the conflicts that was going on throughout the past year when views were held deeply on both sides of the debate, I recall talking to one Senator who came into my office. We both deeply believed what it was we were espousing, but we were on opposite sides. And when we finished talking, as he rose, he said, 'I'm going out of here and do some praying.' And I said, 'Well, if you get a busy signal, it's me there ahead of you.' We have God's promise that what we give will be given back many times over. So let us go forth from here and rekindle the fire of our faith. Let our wisdom be vindicated by our deeds. We are told in II Timothy that when our work is done we can say, we have fought the good fight, we have finished the race, we have kept the faith. This is in evidence of it. I hope that on down through the centuries, not only is this great land preserved, but this great tradition is preserved. And that all over the land there will always be this one day in the year when we remind ourselves of what our real task is. God bless you. Thank you.

Senator STENNIS. Thank you, Mr. President. Friends, we're going to have a closing song and a closing prayer. We'll have that closing song now which will be led by Representative Bill Hefner of the great state of North Carolina.

Representative BILL HEFNER. Ladies and gentlemen, you have an insert in your program, and if you would be so kind, I need your help, and this in your time to participate in the program. And if you would, I would like for you to stand, and help me sing two verses of the great old hymn, "Amazing Grace, How Sweet the Sound that Saved a Wretch Like Me."

Senator STENNIS. Friends, please remain standing. Let me take less than 30 seconds, but nevertheless warmly thank our friend from Colorado, Senator Armstrong, and those that helped him for preparing this splendid program. Let me thank Doug Coe and other members of the professional staff for this achievement here that's been rendered today. Now we'll have a closing prayer by our own Vice President. Please remain standing after the prayer is concluded.

The VICE PRESIDENT. Shall we pray? Eternal God, universal Father of all mankind, we give you thanks. We thank you for our many blessings. You have asked all here to be the custodians of freedom and peace, and for that we are grateful. We thank you for safely returning James Dozier to us and to his family. Help us now, dear Lord, to do thy will and to leave here grateful for your love, renewed, refreshed in your spirit, blessed by your amazing grace. Amen.

MEDIA REPORTS ON IMMIGRATION PROBLEMS

● Mr. HUDDLESTON. Mr. President, the United States has been traditionally and remains the most generous Nation in the world in permitting immigration and in assisting and resettling refugees. This is as it should be. I fully support both the image and reality of a compassionate United States providing a home and new opportunity to those who seek to escape harsh and repressive political regimes. At the same time, we must consider the rights of our citizens already here. We must look at the illegal alien problem in the clear light of day. We must examine what has become of those large numbers of people legally permitted to immigrate to the United States. Last year alone 800,000 legal immigrants were admitted. Why do we continue to make a large number of exceptions to the legal immigration ceiling and why continue to condone an illegal alien population in the United States estimated by some at 10 million or more when the economic plight of our own poor and unemployed are frequent headlines?

I have looked to the media for examples of the real impact of our past and present policies. The Los Angeles Times in January 1982 reported "Beverly Hills Slavery Ring Is Uncovered."

Thirty illegal aliens from Indonesia who authorities say were sold into slavery to people in Beverly Hills and Los Angeles have been taken into custody by Federal agents.

The story goes on to say these illegal aliens were "sold as domestic workers for $1,500 to $3,000 each."

A Washington Post headline in January stated "Four Maryland Employees Arrested as Illegal Aliens." This story puts a crimp in the myth that illegal aliens only take menial jobs no American wants. It leads off:

Two Prince George's County social workers, a Maryland prison guard, and a former guard have been arrested by Immigration and Naturalization Service agents and charged with being illegal aliens. The guards, who are from Nigeria, worked at the Maryland House of Corrections in Jessup, and the social workers, who are from Sierra Leone, were employed by the State Department of Social Services.

Some believe our illegal alien problems are confined to a few large cities which represent points-of-entry for aliens. Let us look at a feature column by Mary Ann Esquivel from the Milwaukee Journal in January, entitled "Bad Times Plague Illegal Aliens." Ms. Esquivel sensitively describes the adverse living conditions common among undocumented workers in Milwaukee. Both employers and landlords take advantage of these people.

A December 29 article in the Los Angeles Times was titled "Two Aliens Win Battle to Get Welfare." It goes on to explain:

Two illegal aliens—one a paraplegic and one aged—Tuesday won a Los Angeles Superior Court order granting them access to State welfare payments.

From the Phoenix Gazette of December 9 comes the following headline, "Thirteen Suspected Aliens Arrested At Plant." Incredible as it seems, this plant is a nuclear reactor generating electricity. I quote, "Law enforcement officers searched the Palo Verde Nuclear Generating Station early today and arrested 13 suspected illegal aliens." The story states in a later paragraph, "Immigration officials said they believe the relatively

high wage scale, which begins at about $10.50 per hour, has attracted a large population of illegal workers."

A December 12 article by Palmer Stacy in Human Events was titled "Uncontrolled Immigration: Silent Threat to America." It summarized many national problems intensified by recent overly permissive government policies, and cited a case "in a foundry in Elgin, Ill., (where) the INS arrested 69 illegal aliens who earned between $4.50 and $13 an hour. Within hours, hundreds of local residents had applied for these jobs, all of which were filled within 3 days."

From the December 18 New York Times comes the headline "Moon Church Follower Agrees to Leave United States." This story from Akron, Ohio is neatly summarized in its first sentence:

A 20-year-old Australian woman, who came to the United States for a vacation but spent the last 14 months in the Rev. Sun Myung Moon's Unification Church, agreed today to leave the country voluntarily rather than face deportation as an illegal alien.

The Atlanta Journal ran an article on November 1 which estimated 2,000 "Moonies" are illegal aliens.

The imposition of martial law in Poland last December has created a new wave of legitimate refugees. Our American immigration system is clogged and backlogged. Thousands of Poles who may qualify as legitimate refugees have found an ingenious but illegal solution as described in the December 23 Milwaukee Journal story, "Taking U.S. 'Vacations,' Poles Work Here To Aid Families." It states:

Polish visitors holding tourist visas have been working up to 70 hours a week in factories in Brooklyn, Long Island, Chicago, and Buffalo, often at minimum wage, even though American law says foreign visitors cannot take jobs.

Are these isolated instances of economic disruption and human suffering for illegal aliens who are both victim and catalyst? I think not. In the Winter 1982 issue of Harvard Political Review, Kirk Jenkins states:

Most authorities believe two to three (illegal) immigrants successfully enter the United States for every one apprehended.

Soaring rates of immigration in the last few years have engendered an additional set of problems. Newsweek's feature article for February 1 described those Haitian illegal aliens hopefully waiting for Government rulings which may grant them asylum in this country. The first two paragraphs vividly give a flavor of their life in the land of promise:

Maxine Petit-Frere is not alone. There are 2,177 Haitians currently in detention in the United States, at seventeen locations from subarctic New York State to sunny Puerto Rico. Many have been held for as long as 6 months, their only contact with the outside world an occasional phone call or letter, or an infrequent visit from a harried lawyer. The facilities holding them are usually extremely overcrowded, often underequipped; sometimes the Haitians say, they resemble nothing so much as concentration camps.

The process of legally sorting out their claims, never designed for such an influx of illegal aliens, has stretched beyond anyone's expectations—and almost beyond its victims' endurance.

Immigration has placed a strain on social services and health facilities. A January 4 Washington Post article, "Third World Immigrants and TB: Spread of Lung Disease Traced to Asians and Latins", lists some astonishing figures:

According to the Los Angeles County Health Department, the tuberculosis rate for blacks here fell 27.8 percent and for whites 44.1 percent from 1970 to 1980. In that same period, the tuberculosis rate for Hispanics increased 66.3 percent and 219.3 percent for Asians from countries bordering the Pacific.

The article adds:

Health workers say cuts in health budgets and stiff registration rules have discouraged immigrants from seeking treatment for the disease, greatly increasing their chances of exposing other people.

There are other stories of health problems among immigrant groups. On December 5, a New York Times headline read, "A Mysterious Illness Has Killed 38 Refugees From Southeast Asia". It explained:

An unexplained affliction is killing Laotian refugees in the United States at an extremely high rate, striking its victims quickly and without warning while they sleep, the National Centers for Disease Control reported today.

Then on December 27, a UPI story carried in the Arizona Republic began:

FORT CHAFEE, ARK.—About half of the Cuban refugees who will be transferred soon from Arkansas to Montana need to be placed in mental institutions where they can be given long-term care, officials say.

In recent months, press reports about crimes linked to immigrants have become increasingly frequent. Some of these crimes may be attributed to cultural differences among the immigrant population. One example may be found in the following article from the New York Times of December 20, "Poaching by Asian Refugees Frustrates Utah Authorities".

SALT LAKE CITY, Dec. 19.—Utah officials say Indochinese refugees are poaching everything from porcupines to woodpeckers, and exasperated game wardens are stumped on how to convince them they are doing wrong.

James Ware, law-enforcement chief of the State's Division of Wildlife Resources, said that the wardens had tried to help Vietnamese, Cambodian and Laotian refugees understand hunting and fishing laws but that language had been a barrier.

The problem persists, Mr. Ware said, even though wardens have had fishing proclamations simplified and translated into the refugees' native tongues. Sign language, interpreters and slide shows have also been ineffective, he said.

"These people have historically relied on wildlife for sustenance, primarily fishing," Mr. Ware said. "They rely on methods and techniques from their native countries to gather food, methods illegal in Utah."

"It's just a cultural thing," he continued. "They are used to living off the land."

About 6,500 Indochinese refugees were relocated in Utah, and many took up hunting and fishing, said Paul Woodbury, chief of law enforcement in northern Utah, where most of the problems have occurred.

There has been an undeniable increase in violent crime as well. One small item under "Addenda" in the February 12 Washington Post stated "Police in Los Angeles have identified a Lebanese-Armenian immigrant as a second suspect in the assassination of the Turkish consul general."

Many recent headlines have dealt with violent crime resulting from immigration during the so-called "Freedom Flotilla" from Cuba in 1980. Under the headline "Castro's Thugs Find a Home," the Arlington (Va.) Journal describes a murder and two armed robberies in northern Virginia attributed to Cuban refugees. On December 8, a Washington Post story was titled "America's New Bandidos: Flotilla Toughs." This story stated:

There is bitterness in the Bronx and in New York City regarding the flotilla these days. In the last year, according to police, there have been an estimated 1,000 arrests in New York City of Cubans who came to this country in the Mariel, Cuba-to-Key West boat flotilla.

The most dramatic impact of this sharp increase in crime has been in Florida. News reports of serious violent crime appear almost weekly in the Miami Herald. One December headline read, "Violent Crime Rises 31% in (Dade) County." On December 5 the headline was, "Three Haitians Charged in Food-Stamp Theft." This story stated the three men were suspected of taking part in the theft of at least $100,000 in food stamps intended for Haitian refugees. On December 13, an Associated Press story from Miami proclaimed, "Data shows flotilla crime wave a flood." A December 28 Miami Herald headline read, "Miami coroner: 'we've been invaded'". This article described record numbers of homicides in Miami and stated:

Investigators place blame for the soaring murder rate squarely on the shoulders of hardcore drug traffickers—mostly Colombians—and the convicted criminals among the 125,000 Cubans who came to Key West during the 1980 Mariel boatlift.

In the February 1 issue, U.S. News & World Report ran a two-page story, "Crime Casts Cloud Over Nation's Playground." Among other examples of violent crime in Florida it cites:

Eighteen Cuban refugees were jailed on charges of operating a burglary ring that looted scores of homes and business in Miami. More than $600,000 in stolen merchandise was recovered, including a load of food hijacked en route to Dade County's jail.

Under the subheading "Boatlift legacy," the story goes on to state:

Also contributing to the violence are criminals who came ashore in the 1980 "boatlift" of refugees from Cuba. Officials believe as many as 20,000 thieves, sex offenders and other criminals were among the 125,000 exiles, most of whom settled in Miami.

Some authorities blame "freedom flotilla" Cubans for almost half of Miami's killings last year. Many, but not all, of the victims were other Cubans. "There has never been anything like it in our history," says detective Mike Gonzalez. "They are the most ruthless criminals I have seen in 31 years as a cop."

We should not be distracted by some of the more sensational language used in some news reports describing this crimewave. By any name, the numbers show large increases in crime as a legacy of U.S. immigration policy.

To complete the picture, we should also take a brief look at other costs to the taxpayers and impacts on State and Federal social services as a result of the recent waves of immigration. A story in the December 7 Washington Post, entitled "Montgomery's Newcomers" explained some of the problems with rapid changes in ethnic make-up in school populations. I quote,

Out of the 96,000 children enrolled in the Montgomery County schools, some 7,100 are not American citizens. Most of these children do not speak English as a first language, and many hardly speak it at all. What do they speak? The list runs to some 80 languages.

A Washington Post column by Joan Keefe on December 31 has some interesting observations about foreign students in the United States:

These 300,000 foreign students are temporarily resuscitating many of the less prestigious private and public U.S. colleges, or failing schools or departments within them, suffering from the decline in college-age population.

The students now come mainly from the Third World, with a steadily increasing number from OPEC countries, which are in urgent need of more technicians and managers than their educational institutions can provide. Surprisingly, the American taxpayer has not yet realized that he is footing part of the bill. An overwhelming 69 percent of these students are at tax-subsidized state or community colleges.

A December 22 Washington Post article entitled "Boatlift Bloat Sends Angry Florida Officials Into Tropical Politics" lists some side effects of the influx of refugees on Dade County, Florida.

Some Dade County women have given birth in the hallways at Jackson Memorial Hosptial because delivery rooms were jammed. One Haitian child is born every six hours at Jackson, which is battling Washington for $6 million in unreimbursed Medicaid costs for refugees. The hopsital is considering turning refugees away at the door, which a county official acknowledges would violate state law and leave the Haitians no place to go.

In one year, the Dade County school system has had to hire teachers and build classrooms for 16,000 refugee children, about one-fifth the total enrolled in District of Columbia public schools.

The county unemployment rate has doubled to 13 percent from the infusion of unskilled refugees seeking jobs, says Graham, and from the citrus groves come reports of migrants fighting over scarce work.

Housing is so tight, in a market where the normal vacancy rate is less than one-half of 1 percent, that some Haitians are packed 25 to a room meant for four, resulting in violence among a people that authorities regard as usually gentle.

The jails are so packed with Cubans from the Mariel boatlift that Dade County finds itself in contempt of a federal court order to stop overcrowding. The county is being fined $1,000 a day; it has appealed.

The medical examiner has rented a refrigerated van, at $12,000 a year, to accommodate the bodies of unidentified aliens slain in shooting and knifings. Autopsies on refugees cost the county almost $100,000 last year.

After hiring 200 recruits last year, an understaffed Miami police force of 820 plans to hire 200 more officers to help fight a crime rate that has jumped 40 percent since the refugee influx.

Finally, let me point out a contrast to these examples by quoting Newsweek for February 8. In a story headed "Dashed Hopes in Texas," the writers gave one example out of many occurrences of economic dislocation during the current recession.

Laid off from his job as a handyman in Chicago, Richard Anson, 43, bundled his wife and five of their six children into the family's Chevy van more than a year ago and set out for the Sun Belt. It was six months before Anson landed a steady job—as a $12.35-an-hour carpenter with a Houston construction firm. Last November he was laid off again. Now, after two months of searching, he has taken a job as an evening maintenance man for $5 an hour. "A lot of people from the Midwest come down thinking they're going to get a job overnight," Anson says. "They're in for a surprise."

Like Anson, thousands of other "economic exiles" from the deep recession in the Midwest have found that the phenomenal growth that lured them to Houston, Dallas, and other Sun Belt cities has slowed in recent months and good jobs aren't necessarily waiting.

Failure on the part of Congress to enact immediate immigration reform will mean more Richard Ansons. Public awareness of the need to control the number of immigrants to our country is growing rapidly. Let us consider these important topics before further damage is done.●

STEALTH: A TECHNOLOGICAL FILIBUSTER

● Mr. GOLDWATER. Mr. President, as we move forward in this current session of the Congress, there is bound to be a substantial amount of debate concerning the proposal to build the B-1 bomber while continuing research on the Stealth aircraft for possible use later. My distinguished colleague from Ohio, Senator JOHN GLENN, has recently written a guest editorial for the winter 1982 edition of Strategic Review. In that editorial, Senator GLENN makes a convincing argument that many who would favor the immediate production of the Stealth aircraft are, in fact, creating a technological filibuster. I urge my colleagues to study Senator GLENN'S comments based on not only his many years as an aviator, but his expensive involvement in the B-1 debate both currently and in years past.

Mr. President, I ask that the guest editorial by Senator GLENN be printed in the RECORD in its entirety.

STEALTH: A TECHNOLOGICAL FILIBUSTER

There has been an intense, and sometimes acrimonious debate during the past year over the issue of a new bomber for the U.S. Strategic Air Command. Essentially, the operations raised in that debate have narrowed down to four: (1) retain and modernize the present fleet of B-52s and FB-111s; (2) replace the B-52s and FB-111s with an updated B-1; (3) go into production immediately with the updated B-1 while continuing research on a "Stealth" aircraft for possible use later; or (4) forgo building the B-1 and accelerate the development and fielding of the Stealth aircraft. Although the Congress has approved appropriations for the B-1 bomber program as part of the fiscal year 1982 budget, the debate undoubtedly will continue.

Somewhat surprising is the enthusiastic support that the "Stealth-only" option has been receiving from those Americans, in and out of the U.S. Congress, who are not usually known for backing a strong U.S. defense posture. They include even those spokesmen who have consistently opposed high-technology procurements for our defense and who have made a fetish of the notion that "simpler (and cheaper) is better."

The surprise is lessened, however, when we look at the obvious motives involved. What we are witnessing is a time-honored tactic that reads: "Avoid buying weapons ready for production by supporting concepts still on the drawing board."

A good way to characterize this tactic is "technological filibuster." It has the added advantage of avoiding the stigma of being labeled "antidefense" in a country that is rightly worried over the relentless build-up of the Soviet war machine and unopposed Soviet aggression.

The objection to the B-1 in anti-defense circles, of course, is that it is a real airplane. Four prototypes have been built and flown. Stealth, on the other hand, has been called a "paper airplane" by the Secretary of the Air Force because it is at least a decade away from operational use—if indeed it ever becomes a reality. It is precisely the more distant prospects of Stealth that endear it to the opponents of a strong defense. If they can use the nonexistent Stealth to kill off the real B-1, the process can be repeated years hence to ground the Stealth by opting for some other futuristic scheme that is only on the drawing boards.

Stealth is particularly useful for technological filibuster because of the secrecy that surrounds it. Security, which normally is derided in the more liberal circles, is invaluable in the instance of Stealth because it deflects any real challenges to the most grandiose claims for a "wonder-weapon" since the last, desperate days of Hitler's Third Reich. The security veils can be lifted for a

brief, tantalizing glimpse of an ankle or thigh, but the whole of Stealth is hidden, along with its blemishes. After scrutinizing the classified Stealth papers, the renowned scientist, Edward Teller, warned in the Wall Street Journal of the danger "that the American people are being misled about the possibility of a practical and effectively invisible bomber."

I most strongly share Dr. Teller's views, having arrived at my conclusions after extensive classified briefings on all aspects of Stealth technology. Stealth's fundamental flaw is that its potential is greatly overblown. While Stealth might have a single strong point, that strength is gained at the expense of weakening other features of the aircraft. There are some things Stealth might be able to do. But there are many other things Stealth might not be able to do.

Ironically, it may be that Stealth will not be needed even if its production eventually proves to be practical. Stealth is intended for a very specialized bomber mission—flight through Soviet airspace in a nuclear war—a mission that will decrease in relative importance over the next decade as cruise missiles become more reliable.

However effective cruise missiles may become, manned bombers will still be crucial for nonnuclear or "conventional" missions where the United States has a need to project massive power far from its shores on short notice. And in a nuclear war, manned bombers will play a major role as cruise missile carriers. But because of the way that Stealth is designed to do the one thing it may not have to do, it cannot serve as a cruise missile carrier, nor would it be a cost-effective conventional bomber.

And this is where we arrive at the hidden reality of the "Stealth-only" option. For the option does not represent a decision to build a super-modern wonder bomber. Rather, it is a decision to stay with the B-52 for as long as twenty more years. The B-52 would be the only American aircraft that could perform the cruise missile and conventional long-range bombing missions even if Stealth can be produced.

Because of its age alone, the B-52 needs to be replaced. Originally designed in the mid-1940s as a propeller-driven bomber, the newest of the big planes is now almost twenty years old. Using the B-52 to remedy the deficiencies of Stealth would require that our airmen be prepared to go to war in aircraft that would be approaching forty years of service at the turn of the century. The increased costs of maintenance and modernization programs such as new engines for these military antiquities could equal the price of outfitting the Air Force with new B-1 bombers.

Both as a conventional bomber and cruise-missile launcher, the B-52 will be increasingly unsatisfactory because it lacks the capabilities of a more modern plane such as the B-1. Seventeen of the B-52s were lost to relatively primitive North Vietnamese air defenses in the early 1970s. During the next twenty years, increasingly deadly air defenses will become the property of many nations, thus greatly reducing the credible threat of the B-52 in conventional roles. In the event of nuclear war, even the less demanding mission of cruise missile carrier might be beyond the B-52, since the old plane's wiring, communications and navigation systems are not protected adequately from the disabling electromagnetic pulse (EMP) effects of nuclear detonations in the earth's atmosphere.

In their rush to sell the "Stealth-only" option, its proponents purposely ignore the fact that the B-1, superior in ability to carry conventional bombs and cruise missiles, would probably be a better aircraft in the primary role for which Stealth is intended—the penetration of Soviet airspace in a nuclear war.

Stealth's strong suit is the possibility that it may be able to avoid early detection by Soviet radars. Actually, what the supporters of the "Stealth-only" option are really saying is that Stealth might do well against the types of radars that our intelligence services estimate might be in existence ten to twenty years from now. If, of course, the Soviets do better than we estimate, Stealth will be useless and America will be stuck with the B-52—if it can still fly—and there will be no replacement in sight. The track record of our intelligence agencies is not one to inspire confidence, certainly not to the extent that one would hinge the fate of our bomber forces solely on their assessments. Since World War II, our policy landscape has been littered with the wreckages of American underestimates of Soviet intentions and capabilities.

That Stealth's cloak of "radar invisibility" can be completely shredded is a real possibility. The development of detection means other than the radars we know today—or theorize about ten years hence—may not be as difficult or as expensive as some have claimed. Edward Teller addressed this aspect in his Wall Street Journal article. "Counter-measures," Teller wrote, "seem so easy that even a couple of years, considerably less time than the actual production time requirement for Stealth, would suffice for their deployment."

A spate of recent articles in the technical literature supports Teller. Already in advanced research is an "optical" radar that could detect aircraft, not by radio frequency energy that Stealth is designed to contend with, but by amplified light waves. Another journal discusses the uses of lasers in air defense warning systems, while a third describes a method of tracking aircraft by the turbulence resulting from flight through the atmosphere. If these developments are not sufficient to prompt doubts about Stealth, there are other advances in long-wave infrared sensors and unconventional radars to worry about.

And these hints of Stealth's Achilles Heel are derived just from articles in the open literature. What might be going on behind the closed doors at Soviet test-sites? If any of these advanced technologies strip away the exaggerated and perishable advantage of "radar invisibility," the modernized B-1 would be a decidedly superior aircraft for nuclear warfare. In order to project a smaller radar picture, the Stealth designers traded off the very flight characteristics that are needed by a modern bomber. The B-1, in comparison, is faster, more maneuverable and has a much better low-altitude capability than Stealth. And because of certain limitations on Stealth, the B-1 can carry a much larger payload over greater distances.

A new bomber such as the B-1 would underscore a steadfast resolution that American defenses would not be structured for a Fortress America, but for an America determined to defend its vital interests throughout the world. Could it be that it is precisely this prospect that motivates some of the champions of the "Stealth-only" option?●

NEW DISCUSSION ON IMMIGRATION

● Mr. HUDDLESTON. Mr. President, in 1975 when I began talking about the need to reform our inadequate immigration system, there was very little public attention devoted to the topic. However, interest in this vital issue has recently increased dramatically and responsible publications are giving it the thorough coverage it deserves.

An example of this new interest is an article by Mr. Kirk Jenkins, associate editor of the Harvard Political Review, entitled "Is America a Closed Shop?" Mr. Jenkins correctly states that "consensus is growing that unlimited immigration can no longer be allowed" and that "now, the ball is in Congress court."

This type of discussion on major problems which are confronting the United States is very important to our political process. I ask that this article be printed in the RECORD.

The article follows:

[From the Harvard Political Review]

IS AMERICA A CLOSED SHOP?

(By Kirk Jenkins)

The United States accepts more immigrants as legal residents than do all other nations in the world combined. Immigration into this country in the later half of the 1970s was at its highest level in history. Still, consensus is growing that unlimited immigration can no longer be allowed. On March 1 of this year, the Select Commission on Immigration and Refugee Policy made its report. On March 24, a group of eight senators (seven Democrats and one Republican), led by Walter Huddleston of Kentucky, filed S.776, a bill to "more fully limit and control immigration to the United States." On July 30, President Reagan announced his immigration proposals.

Behind all the thousands of words that have been written on every aspect of the immigration problem lies a basic philosophical question: Is the concept of the nation-state legitimate? Is it morally right for the United States to define certain people as citizens and certain people as foreigners? Does the United States have a right to prevent anyone anywhere in the world from coming here? Many of the recent discussions of immigration seem to assume that every world inhabitant has an inherent human right to migrate to the United States. The Select Commission, the Reagan administration, and Senator Huddleston have all stated their belief that every nation must have the right to control the number of immigrants into the country. Several political philosophers have wondered how much control any government could exercise over its affairs if it cannot limit the number of immigrants it accepts.

This leads to another basic question which must be faced in setting immigration policy: for whose benefit, the source country, the receiving country, or the immigrants themselves, is immigration allowed? It has been proposed that accepting certain immigrants would help source countries fight certain problems, such as unemployment. But current complaints about the "brain drain" cast doubt on this belief. A cartoon which appeared late last year in the *Indian Express of New Delhi and Bombay*

indicates a common attitude. It shows the Statue of Liberty and this inscription: "Give me your scientists, your doctors, your teachers, but keep your other exports to yourselves."

It could easily be argued that immigration is allowed for the good of the immigrants themselves. Certainly the vast majority of people who come to the United States to live are better off for having made the move; many escape hostile economic or political conditions at home. But again, no possible ceiling could be high enough to allow everyone who wished to come to the United States to emigrate. We are picking and choosing among a large group of people; many deserving applicants must be turned away. Immigrants are required to have petitions filed by relatives in the United States or by employers who wish to employ them before they are cleared for admission. The preference system of immigration which has been in effect for many years states that immigration is for the benefit of the United States and its citizens, not for the benefit of the individual immigrant.

The resource limitations and population pressures currently facing the industrialized world have brought strong limits of immigration everywhere but in the United States, and sentiment for limitation is growing here. A recent poll showed that 80 per cent of the American people want legal immigration reduced below 400,000 per year (last year 800,000 legal immigrants were admitted). Seventy-two per cent support outlawing the knowing employment of illegal aliens. Most surprisingly, 62 per cent believe that whenever U.S. unemployment is above five per cent, immigration should be stopped completely.

Both President Reagan and Senator Huddleston say they want to bring immigration under control before public pressure for extreme measures becomes irresistible. Past attempts to set a ceiling on legal immigration have carried so many exemptions that immigration was nearly unlimited in practice. In 1965 a legal ceiling was passed, with certain exemptions, which sponsors promised would never exceed one hundred thousand people a year. In 1980, the legal ceiling was 290,000. Including admissions under the exemptions, total admissions numbered about 800,000. Both the Reagan and Huddleston proposals include a ceiling on immigration: Reagan's, 610,000; Huddleston's, 350,000. Both figures are substantially over the average yearly immigration since 1930, 200,000, both exceed total immigration for every year before 1977, and both figures would allow the United States to continue to accept more immigrants than do the rest of the countries in the world combined.

Huddleston's plan would go a step beyond Reagan's in guaranteeing that the ceiling is enforced. All exemptions would be dropped. To cope with emergency situations, the President would be authorized to borrow from the 350,000 limit for the next calendar year, but borrowing would only be allowed for one year. Further, a waiver power given to the Attorney General several years ago, intended for use on a case-by-case basis but used several times last year by Attorney General Civiletti to grant blanket waivers, would be severely restricted.

Certainly the most widely talked about aspect of the immigration issue is illegal immigration. In 1976 demographers at the Census Bureau estimated that there were then between 3.5 and 6 million illegal immigrants in the United States. In the years since then, there have been over one million apprehensions of illegal immigrants per year, and most authorities believe two to three immigrants successfully enter the United States for every one apprehended. In addition, almost one million people per year stay beyond the expiration dates on their visas. If we accept the conservative estimate that one-third of these people stay in this country permanently, we arrive at a figure of between 8.5 and 11 million illegal immigrants in the United States as of 1981. A recent Roper poll indicated that 91 per cent of the American people wanted an "all-out effort to stop illegal immigration."

President Reagan proposes a blanket amnesty for all illegal aliens in this country as of January 1, 1980. However, the residency requirement for citizenship would be extended to ten years from the current seven. The President's plan would retain the provision of the 1952 Immigration and Nationality Act which makes aliens, but not employers, criminally responsible for the employment of illegal aliens. Finally, Reagan proposes a guest-worker program by which 50,000 Mexican workers would be admitted for nine to twelve months to work in industries where the administration sees a shortage of seasonal labor.

The Huddleston bill has no provision for the general amnesty offered by Reagan. Senator Huddleston points out that any general amnesty in effect rewards with permanent residence and eventual citizenship those who have violated U.S. immigration law. Moreover, for those currently intending to stay here only temporarily, an amnesty offer represents a strong incentive to change their minds. The Huddleston bill offers amnesty only on a case-by-case basis for illegal immigrants who can demonstrate strong familial and cultural ties to the United States.

The guest-worker plan has drawn widespread criticism since it was announced. Dr. Phillip Martin of the University of California at Davis, a leading expert on such programs, claims that the European experience with guest-worker programs was disastrous. The steady flow of workers provoked racial clashes across Europe in the early 1970s, and in 1973 and 1974, every European nation which had been importing migrant workers was forced to abandon the practice. More ominous for American plans, however, is Martin's estimate that roughly one third of all workers who were admitted as "temporary" workers stayed permanently. Others have pointed to the Bracero program in this country, under which guest-workers were admitted from Mexico during the 1940s and 1950s. The program was finally killed in 1964 by a coalition of labor, religious, ethnic, and civil rights groups who claimed the program had become an abuse of human rights. Dr. Martin expresses doubt whether it is possible to limit the movement and freedom of guest-workers, protect their civil rights, and still prevent them from becoming permanent immigrants. He also attacks the belief that there are jobs in this country for which American workers cannot be found. He uses the example of the Alaskan oil pipeline to show that when wages are raised sufficiently, American workers can be found; he suspects that guest-workers would be a way to subsidize inefficient and unnecessary projects.

Senator Huddleston offers as an alternative a two-pronged attack: expansion of the Border Patrol from its current force of 2,200 to 6,000 phased in over the next several years, and a system he calls the "Fair Hiring" program. Through a system of fees and other revenues, he believes both steps would pay for themselves. Under the Fair Hiring program, the knowing employment of an illegal alien would become a criminal offense. Every prospective employee would be required to sign a statement added to the standard W-4 form that he or she is a legal resident of the United States and is eligible for employment under the law. The employer would then be required to call a Washington computer terminal and give the Social Security number of the applicant for verification. If the number is found to be valid, the employer will receive a transaction code similar to that now used by merchants in checking credit card purchases. Receipt of the code would give the employer a complete defense against prosecution for violating the prohibition against hiring illegal aliens. Unlike the Reagan plan, which simply forbids the hiring of illegal aliens, the Huddleston plan requires the verification of all hirings. There is less chance that an employer will deny employment to a minority member on the grounds that he or she might be an illegal alien, since the plan offers safeguards against wrongful prosecution. Moreover, there is a clear provision in the bill against the misuse of the system for discrimination, a provision which should facilitate redress of abuses.

Senator Huddleston's proposal for a new, more secure Social Security card has drawn criticism. The new card would carry a unique identifying element to ensure that it could not be forged. An individual would need it, like the social security card, only in connection with work, and would not be required to produce it at any time other than when applying for a job. It also would be illegal for government agencies to share the information gathered in connection with the new card. Still, some argue that such a card would become a national identity card. They point out that all the safeguards mentioned for the new card apply to the current Social Security card, and despite the fact that only an employer can insist on it, the number of agencies which routinely ask for a Social Security number is countless. If a secure card were introduced, the temptation to ask for the card as identification from a public which is unfamiliar with the law regarding use of the card would grow tremendously.

Since introduction of his plan in July, President Reagan, preoccupied with foreign policy initiatives and his domestic program, has said little about immigration. Just how the Congress will finally deal with the immigration question—by accepting the Reagan plan, the Huddleston plan, or a combination of both—is still an open question. For now, the ball is in Congress' court.●

THE SITUATION IN MICHIGAN IS WORSENING

● Mr. LEVIN. Mr. President, earlier this year, I wrote a letter to President Reagan pointing out the plight of hundreds of thousands of people in Michigan who were suffering economic distress. I suggested that the President visit Michigan to see for himself the effects that his policies are having on the people of my State.

Meanwhile the situation in Michigan is worsening. The unemployment rate for January in my State jumped 1.6 percent, to 16 percent. It is the highest

since the recession of 1958. Last month, 677,000 Michigan residents were unemployed, 63,000 more than the month before and nearly 100,000 more than a year ago.

A week ago, on Sunday, February 14, a newspaper in my State, the Ypsilanti Press, wrote an open letter to President Reagan describing the situation in Ypsilanti. Accompanying that letter, which was signed by Joe Matasich, the newspaper's editor, were a series of brief comments from people in Ypsilanti who were interviewed by the newspaper as they stood in line at the local unemployment office.

Mr. President, I ask to have printed for the benefit of my colleagues the letter to Mr. Reagan and the accompanying comments from people in Ypsilanti. I think it will provide greater understanding of what is happening to the people of this Nation.

The article is as follows:

LETTER TO THE PRESIDENT—WE'RE HURTIN' IN YPSILANTI

Dear Mr. President, this open letter is written on behalf of people of the Ypsilanti, Mi., area—people who this past week read stories in the Ypsilanti Press about your proposed budget cuts and telling critics to "put up or shut up."

I wish we could chuckle at your one-liners, but honestly, the only one line we know is the one that gets longer each week at the unemployment office (see above).

The Ypsilanti area, with 11.5 percent jobless, is an economically devastated blue-collar community in a state that has 16 percent unemployment, almost double the national rate of 8.5.

Our area is taking such a pounding that in some sectors we will never recover. We'll never get back hundreds who love this area but had to leave because there are no jobs.

We understand that you wish to cut back inflation so that we can experience an economic comeback next year. Thousands will not be able to hang on that long.

The auto industry, our lifeline, has 10,647 workers on indefinite layoff, a drop from 30,350 in 1979 to the current level of 19,703.

People without jobs, even if they are receiving some subsistence, aren't buying goods. And that's why auto dealers, mobile home dealers, realestate offices, chain clothiers and furniture stores have shut their doors. In two weeks a major supermarket chain closed six of its area stores and threw more skilled people into the jobless pit. This once vital and thriving area now has a regular bread and soup night at the Salvation Army hall, conveniently located a stone's throw from the Michigan Employment Security Office where 5,000 claims are processed a week.

There's a human side of the budget ledger, too. It's called people—live human beings who suffer real pain from social service cutbacks and who cannot cope from prolonged high unemployment. You blame all of the mess on the previous administration, but we remind you that our area joblessness hit a 6-year high in December 1981, the highest since August, 1975 when a man named Ford occupied your house.

We've been experiencing a rough winter, weatherwise. But we'd bet our last unemployment check that spring will come shortly.

We wouldn't bet a dime that, if we suffer for another year or so, things will get better, as you predict.

We've tried to paint you a picture on how hellish it is here in the Ypsilanti area.

To help make the picture even clearer, we've added the thoughts of scores of area persons who are experiencing the terrible times firsthand.

They were interviewed in zero temperatures while standing in that long line (as shown above) to get their jobless check, the last for many of them.—Joe Matasich, Editor, Ypsilanti Press.

Fred Harbertz, 23, currently employed as a security guard: "I think he's making the cuts in the wrong areas. His budget cuts are mostly for rich people instead of the poor."

Donald Clay, 24, laid off from Ford Rouge Plant since October: "I feel it's hurting working class. If you're not into big business, then you're hurt."

Kareem Swidan, 19, laid off as a gas station attendant since early January: "I think (the cuts are) pretty bad. He's cutting off benefits for people who really need the money and he don't need to give money to the rich people. The big man is making it today. He's more concerned about foreign affairs than his own country's affairs. He should take care of his people and then take care of other people."

Paul Wisniewski, 24, whose wife is expecting their first child, was laid off as a grocery store cashier in January: "I'm disappointed the way everything is because of what's happening. I worked for the A&P and I'm out of a job. My wife's pregnant, my insurance won't cover us any more . . . so that alone tells you how it's going. It's the worst it's ever been. I've worked ever since I was 11 and now this happens, when I'm 24 and supposed to be a supporting, responsible citizen."

Robert Markgraff, 25, laid off as a spring manufacturing plant employee since November: "I don't think it's going to work. It seems like he's cutting programs to help people who are laid off and on welfare and it seems like he's just cutting it from one place and putting it back into defense. Sooner or later we aren't going to have any jobs unless we go into the military. That's where the jobs are at."

Ralph Kyle, 42, father of three and a sheet metal worker laid off since Monday: "I think it stinks. I just don't like the way he's running things.

Freda Hobbs, 20, a GMAD cafeteria worker unemployed since November: "I don't think the budget will work. It's just so bad now I don't think anybody's going to be able to do anything."

Joseph C. Brooks, 50, father of three, laid off from Ford Transmission at Livonia two weeks ago: "I don't think he's doing a good job as president. He's letting this country down."

Carrie Weaver, 35, unemployed as a secretary since Jan. 22: "I really don't think (the cuts are) doing very much. (The cuts are) not doing what (they're) supposed to do."

Jim Smith, 25, father of one and his wife is expecting a second child, laid off from Spiffy carpet since November: "I think it's screwed. This is the worst state there is. I especially don't like more cutbacks in welfare and Social Security."

Kathleen Wolfe, 44, laid off from the Washtenaw County Health Department one year ago: "I don't think much of it. It's going to run Michigan into deeper debt. I don't think we can afford it."

Mike Jared, 22, father of one and his wife is expecting a second child, laid off from GMAD since January: "I don't think he ought to be cutting welfare for people who need it, or for old folks. Why do they call it Social Security? If they keep chopping it, then you don't have no security. My mom worries about it (Social Security cuts) all the time, that's no security."

Cheryl Jeske, 22, unemployed since January after losing a job as a shoe store clerk: "Because of unemployment around here, it (budget) doesn't help. People have to have welfare. They really need it."

Hilary Ellert, 22, laid off from South Coast Technology since January: "I wish he would cut defense spending instead of social services."

Dan Christy, 25, father of two, laid off from the Crystal House Motel since December: "I'm really concerned about domestic policy. I'm unemployed, and my student loans have run out. I'm two classes short of my degree, but don't have enough money to finish. It's really hurting me."

Wayne Justice, 35, father of one, laid off from GMAD since January: "I don't like it. We voted him in, and things have got a lot worse."

James Booker, 25, whose wife is also unemployed, laid off from the Michigan Employment Securities Commission for one week: "I think it stinks. He's more concerned with the man whose income is above $50,000 a year, not with the man on the bottom."

John O'Dell, 26, laid off from Ford Rawsonville since December: "You gotta start somewhere, but I'm not thrilled with his ideas. Some of the cuts seem pretty drastic, but he's making an effort."

Reginald Adams, 23, a seasonal worker who was laid off in October: "It seems like it's worst for the autoworkers, losing all their benefits and everything."

Willie Curts, 27, father of two, laid off from Motor Wheel since November: "I think it stinks. There's so much unemployment now. He's really cutting down on poor people. Poor people are really getting it."

Pat McGowan, 41, father of two, laid off from a construction job since December: "It's not the way to get people back to work. You've got to get money back into circulation. He's trying to keep the little man down, so he doesn't get too far ahead.

Frank Lozie, 20, laid off from seasonal work since December: "If he cuts off benefits for the elderly, that's not right. But there are able-bodied people taking advantage too. But if you don't give a person a chance to develop skills, how do you expect him to get a job?"

Flo Ferri, 33, mother of two, officially an under-employed worker who now gets about eight hours a week at Canteen Corp.'s Hydra-matic location: "It's really getting bad out there. I don't know how much more he can cut things.

Dave Crippen, 36, father of five, laid off from Hydra-matic since July: "I don't know if it's going to do any good or not. A lot of us are going broke while he's trying to straighten things out."

Evelyn McLean, 61, who is giving financial assistance to two children in college, laid off from seasonal work: "I think it's more for the rich than for the poor. Rich are getting richer, and poor are getting poorer. I voted for Reagan, but it seems like he doesn't realize the full extent of how the poor are getting depressed and need help bad."

Bob Cross, 41, father of two, laid off from Washtenaw County since July: "His priorities are all wrong. Cuts should be made in defense instead of social services."

Kerry Williams, 43, father of two, laid off from Ford Rawsonville since November: "Everything he does is backwards. That's all I've got to say."

Terry Carllington, 28, laid off from a construction job since November: "I'm for it. I say it's time for our generation to have a war. I'm serious. Our fathers went through it. It's the only thing that'll pull us out. That's what they're (Reagan and other national leaders) are working for anyway.

David Sanders, 26, father of two, currently employed in a white collar job at Hydramatic: "I don't mind the cuts. But if we're going to have a $90 billion deficit, we should have cuts in the military."

Joe Vargas, 32, father of three who has not worked a construction job since December: "I guess everybody's answer's the same. I think if the cuts continue, unemployment will continue to get worse than it is now. He's just continuing to irritate people."

Joe Chavis, 56, whose wife is hospitalized, laid off from Willow Run Schools since November: "I think it's screwy. He's taking everything away from schools and poor people. The only people he's helping are the rich."

Diana Kennedy, 26, laid off sporadically from Jac Products: "I'm poor, and he ain't helping me. I'm unemployed because of his Reaganomics. Thank you, Mr. Reagan."

Frank Hosmer, 26, whose wife is also unemployed, laid off from Wayne Assembly since January: "I think he's full of it."

Mark Byars, 26, a mechanic out of work for two years: "There's a lot of people cut down I feel. If he just stopped welfare—it's going to be tighter than it is now. Time is coming to an end. I feel he shouldn't cut like he has."

Arranis Schoffner, 20, a janitorial service employee laid off three months ago: "I think he's cutting too much and spending too much on defense."

James Wilson, 27, a truck driver out of full-time work for 1½ years: "I think (the budget) sucks. The cuts are definitely misaimed. They're all in the wrong place. I heard he was hiring back some people to open MESC offices—that's just a token gesture."

Steve Dornhos, 22, father of one, laid off for three months from GMAD plant: "I don't like (the budget cuts). I feel he's spending too much on defense and not enough people (are) making the money. There's too many people in Michigan out of work and the money he's spending on defenses ain't doing us any good."

James Johnson, 28, father of one and an apartment painter and auto repairman laid off since January: "I think it's really bad that he's cutting out from the people who can't get a job and the people who have jobs and making dollars are working. People being laid off—where are they going to get the work? My thing was auto body repair and I can't get a thing in the shops, they're all empty. For people who don't really make all the big dollars you're just in a hole, there's no way to get out."

Craig Jackson, 28, father of three, laid off as a computer technician and telecommunications expert since November 10: "I think it's done too fast, what has been done. The public should have been able to say what should be cut, how much and when. They should have voted on what should have been cut. America is supposed to be based on . . . not having to pay a great amount of taxes. It's almost like back when we were paying England . . . If they're spending money to make (the budget) work, they should have done it before. The way he's doing it isn't right."

Charlene Norris, 27, mother of one and an unemployed Ford Motor Co. cafeteria worker laid off two weeks ago: "I think (the budget cuts) stink. I think it hurts the people who work and collect food stamps and try to make it, because it really hurts them when people who aren't working at all are making more than people who are working."

Jan McCall, 29, currently employed at the local MESC office: "I'm not at liberty to say what I would like to say. He should take out his economics textbook and read it thoroughly and take into consideration the historical events that have taken place since the early 1900s. Most politicians need to reconsider the status of the U.S. now."

Patricia Curtis, 26, mother of two and since Sept. 9 an unemployed microfilm operator: "(Budget cuts) definitely have affected black minorities and it's going to be awful difficult, I feel, to do budget cuts at all, especially the Department of Social Services and (services) to the unemployed, the poor and senior citizens. I feel like they are being hurt the worst. I look at surveys daily and see 17.4 percent that are unemployed that are black and it was only 8.5 percent white. Something should be rectified."●

EXPORT TRADING COMPANIES ARE NECESSARY—I

● Mr. HEINZ. Mr. President, as the possibility of House action on export trading company legislation increases, it is appropriate to take a few minutes to detail the need for and advantages of this legislation, which the Senate has passed twice unanimously. In doing so, I want to draw on some of the scholarly discussions of the subject which have appeared since the bill was first passed in late 1980. Over the next few days I will be referring to an article by Franklin A. Cole, "Establishing American Trading Companies," which appeared in the Northwestern Journal of International Law and Business, autumn 1980.

The first excerpt, below, makes clear in a brief introduction, the need for the bill and the fact that it is not—and was not intended to be—a solution to all our exporting problems.

ESTABLISHING AMERICAN TRADING COMPANIES

(By Franklin A. Cole[1])

On September 3, 1980, the United States Senate, by unanimous vote, passed landmark legislation designed to increase American exports of products and services by encouraging formation of U.S. export trading companies.[2] The Export Trading Company Act of 1980,[3] reintroduced and at this writing awaiting approval by a new Congress,[4] is a significant first step in offering American companies, particularly those of small and medium size, the opportunity to enter markets on a par with their international foreign competitors. The Act moderates restrictions that have blocked the growth of full-range export trade service companies that would help average-sized firms enter international markets. The effectiveness of the all-encompassing "one-stop" service organization is indicated by the success of the general trading companies of Japan. American export trading companies, organized to meet the needs of our own economy, could help to resolve the problems and business-related fears that have inhibited the average American manufacturer from international trade. While the Act is no panacea, it would promote the development of our export strength, and put us in a better position for the future. Its swift enactment should be supported.

After a brief review of the United States export balance, this article will explore the operation of the Japanese general trading companies, which have aroused interest in the American business community and have been proposed as a partial model for our own export trade.[5] The provisions of the Export Trading Company Act of 1980 will then be examined to assess Congress' approach to the formation of export trading companies in the United States.

LITHUANIAN INDEPENDENCE DAY REMEMBRANCE

● Mr. GLENN. Mr. President, human rights to most Americans is the embodiment of freedom. We insist on the freedom to speak without retaliation, the freedom to worship as we please, the freedom to read and write without censorship, and the freedom to enjoy traditional cultures. But for many nations these human rights are the exception rather than the rule. This month we join together to commemo-

[1] Chairman of the Board, Walter E. Heller International Corporation; B.S., University of Illinois, 1947; J.D., Northwestern University, 1950. The author acknowledges with gratitude the help over many years of Harvey S. Lederman, Vice President, Marketing and Public Relations of Walter E. Heller & Company; Charles A. Brizzolara, Vice President, Secretary and General Counsel of Walter E. Heller International Corporation; and Burton R. Abrahams, President of Walter E. Heller Overseas Corporation, in trying to impress upon Congress and regulators the need to provide the means to enable small and medium size firms to export, and the vast potential inherent in that activity.

[2] The Senate vote was 77-0. [1980] 323 Int'l Trade Rpt. U.S. Export Wkly. (BNA) at C-1.

[3] S. 2718, 96th Cong., 2d Sess. (1980). "The purpose of this Act is to increase United States exports of products and services, particularly by small, medium-sized and minority concerns, by encouraging more efficient provision of export trade services to American producers and suppliers." 126 Cong. Rec. S11,935 (daily ed. Sept. 3, 1980).

[4] The Export Trading Company Act of 1981, S. 144, which is almost identical to S. 2718, was introduced on January 19, 1981, with the co-sponsorship of 49 U.S. senators. [1980] 342 Int'l Trade Rpt. U.S. Export Wkly. (BNA) at C-5. Three separate bills have been introduced in the House: H.R. 1799, H.R. 1321, and H.R. 1648. [1980] 344 Int'l Trade Rpt. U.S. Export Wkly. (BNA) at C-6.

[5] Export Trading Companies and Trade Associations: Hearings on S. 864, S. 1499, S. 1633, and S. 1744 Before the Subcomm. on Int'l Finance of the Senate Comm. on Banking, Housing, & Urban Affairs, 96th Cong., 1st Sess. 55 (1979) (statement of Frederick W. Huszagh, Executive Director, Dean Rusk Center, University of Georgia) [hereinafter cited as S. 864 Hearings]; see Financial Institutions and Export Trading Companies Hearings on S. 2718 Before the Senate Comm. on Banking, Housing & Urban Affairs, 96th Cong., 2d Sess. 21 (1980) (statement of Sen. Stevenson) [hereinafter cited as S. 2718 Hearings].●

rate the 64th anniversary of the establishment of the Republic of Lithuania, a country of strong and determined people. Lithuanians suffered under Russian rule from 1795 to 1915. German troops occupied their country until 1918. But they then enjoyed two decades of independence until June 15, 1940, when the Soviet Union shattered their hopes for freedom. The ruthless and continued occupation of Lithuania by the Soviet Union coincides with Soviet imperialistic domination and its refusal to allow many other nations to direct their own course.

The Lithuanian struggle for independence did not die on that fateful day in 1940 when the Soviet Union incorporated them into its dominion. Rather, the Lithuanian people's sense of nationalism, self-determination, and passion for liberty has persisted despite Soviet persecution. And although the Soviet Constitution of 1977 provides for most commonly accepted civil and political liberties, it also states that "enjoyment by citizens of their rights and freedoms must not be to the detriment of the interests of society or the state." This intolerance of activity deemed incompatible with Communist Party control remains the basis for the campaigns of suppression and persecution continuing in Lithuania today.

It is deplorable that the Soviet Union makes a mockery of the Helsinki accord, an agreement they signed along with 34 other countries and in which they pledged to respect fundamental human rights. For the people of Soviet-occupied countries this agreement has proved to be nothing more than empty words.

It was 42 years ago that the Russians took Lithuania by force yet the resistance is still alive. An important aspect of the resistance is the struggle against what Lithuanians and Lithuanian Americans perceive to be "cultural genocide," an attempt to destroy and transform the indigenous culture of their homeland, remaking it in the sterile Soviet image.

The Soviet regime is particularly sensitive to dissent in the form of religious manifestations and they have attempted to break the spirit of the Lithuanian people by systematically conducting a campaign of religious and cultural suppression. This continued Soviet violation of human rights cannot go unchallenged. To a country such as ours that recognizes the vitality of human freedom this illegal Soviet occupation is a gross violation of basic and universal human rights.

I am proud that the United States has not recognized the illegitimate takeover of Lithuania. One must view that anguished country as a sovereign nation whose independence is only temporarily suspended. Today Soviet forces occupy Afghanistan, and there is little doubt that Soviet authorities have played a major part in the attempts to stifle the will of the people of Poland. These unconscionable attempts by the Soviet Union to choke the voice of freedom crying for recognition in Lithuania, Poland, and other Soviet-oppressed nations must end.

Henry David Thoreau once said:

I know of no more encouraging fact than the unquestionable ability of man to elevate his life by a conscious endeavor. I do not wish to live what is not life.

We, who so often take for granted the rights that our forefathers fought so valiantly to attain, must look to the character and faith exhibited by the peoples of Lithuania and Poland. We must ask, What do human rights mean to those who do not enjoy them? And we must keep our commitment to fight the suppression of human liberties in every corner of the world.●

NOTICE OF DETERMINATIONS BY THE SELECT COMMITTEE ON ETHICS

● Mr. WALLOP. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD this notice of Senators and Senate employees who propose to participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The Select Committee on Ethics has received a request for a determination under rule 35 which would permit Senator JOHN TOWER to participate in a program sponsored by the Wehrkunde Foundation, a foreign educational organization, in Munich, West Germany, from February 12 to 14, 1982.

The committee has determined that participation by Senator TOWER at the Wehrkunde Conference in Munich, at the foundation's expense, is in the interest of the Senate and the United States.

The Select Committee on Ethics has received requests from Senators CHAFEE and DANFORTH for a determination under rule 35 which would permit them to participate in a program sponsored by a foreign educational organization, the Japan Institute for Social and Economic Affairs, in Tokyo, Japan, from January 7 to 14, 1982.

The committee has determined that participation by Senators CHAFEE and DANFORTH in the program in Tokyo, at the expense of the Japan Institute for Social and Economic Affairs, to discuss economic and social issues affecting United States-Japanese relations, is in the interest of the Senate and the United States.

The Select Committee on Ethics has received a request for a determination that will permit Senator GRASSLEY to participate in a program on economic and cultural issues sponsored by the Chinese National Association of Industry and Commerce in Taiwan in late December 1981.

In addition, the committee has received a request for a determination that will permit Senator MURKOWSKI to participate in a program on alternative energy sources sponsored by the Solar Energy Society of the Republic of China in Taiwan from January 18 to 23, 1982.

The committee has determined that their participation in these programs, at the expense of the sponsoring organizations, is in the interests of the Senate and of the United States.

The Select Committee on Ethics has received a request for a determination under rule 35 which would permit Dr. Constance Hilliard, a staff member of the Republican Policy Committee, to participate in a program sponsored by a foreign educational organization, Tamkang University, in the Republic of China from November 22 to November 29, 1981.

The committee had determined that participation by Dr. Hilliard in the program in the Republic of China, at the expense of Tamkang University, to discuss foreign policy and international relations, is in the interests of the Senate and the United States.

The Select Committee on Ethics has received a request for a determination under rule 35 which permits Ms. Beverly K. Hubble of the staff of Senator GRASSLEY to participate in a program sponsored by a foreign educational organization, Soochow University in Taipei, Taiwan on October 5 to 11, 1981.

The committee has determined that Ms. Hubble's participation in the program in Taiwan, at the expense of Soochow University, to discuss relations between the United States and the Republic of China, is in the interests of the Senate and the United States.

The Select Committee on Ethics has received a request for a determination under rule 35 which would permit Mr. Casimir Yost, of the staff of Senator MATHIAS, to participate in an International visitors program of the Government of France, sponsored by the Government of France, from January 7 to 17, 1982 in France.

The committee has determined that participation by Mr. Yost in the program in France, at the expense of the French Government, to discuss foreign and defense policy issues, is in the interests of the Senate and the United States.

The Select Committee on Ethics has received a request for a determination under rule 35 which would permit Mr. Don Massey, a member of the staff of the Committee on Appropriations, to participate in a program sponsored by

a foreign educational organization, Tamkang University School of American Studies in Taipai, Taiwan from January 3 to 11, 1982.

The committee has determined that participation by Mr. Massey in the program in Taiwan, at the expense of Tamkang University, to discuss matters of mutual interest and international relations, is in the interests of the Senate and the United States.

The Select Committee on Ethics has received a request for a determination under rule 35 which would permit Mr. Christopher Chamberlin of the staff of Senator TSONGAS to participate in a program sponsored by a foreign educational organization, Tunghai University in Taichung, Taiwan from January 5 through 12, 1982.

The committee has determined that participation by Dr. Chamberlin in the program in Taiwan, at the expense of Tunghai University, to discuss Taiwanese culture and institutions, is in the interests of the Senate and the United States.

The Select Committee on Ethics has received a request for a determination under rule 35 which would permit Ms. Margo Carlisle of the staff of Senator MCCLURE, and Mr. Joel S. Lisker, Chief Counsel and staff director of Senator DENTON'S Judiciary Subcommittee on Security and Terrorism, to participate in a program sponsored by a foreign educational organization, the Fundacion Argentina 2000, and a domestic nonprofit educational foundation, the Institute of American Relations, in Buenos Aires, from December 1 to 4, 1981.

The committee has determined that participation by Ms. Carlisle, and Mr. Lisker, in the program in Argentina, at the expense of Fundacion Argentina 2000 and the Institute of American Relations, to discuss recent events in the Caribbean and Central America and the security problems of the Southern Atlantic, is in the interest of the Senate and the United States.

The Select Committee on Ethics has received a request for a determination under rule 35 which would permit Mr. Mark Aldrich, of the staff of Senator HUMPHREY, to participate in a program sponsored by the government of Canada, in Ottawa and Toronto from October 7 to 9, 1981.

The committee has determined that participation by Mr. Aldrich in the program in Canada, at the expense of the Canadian Government, to discuss transnational pollution, is in the interests of the Senate and the United States.

The Select Committee on Ethics has received a request for a determination under rule 35 which would permit Mr. Robert Atchison, of the staff of Senator MATTINGLY, to participate in a program sponsored by a foreign educational organization, Tamkang University, in the Republic of China in early January 1982.

The committee has determined that participation by Mr. Atchison in the program in Taiwan, at the expense of Tamkang University, to discuss Taiwanese culture and institutions, is in the interest of the Senate and the United States.

The Select Committee on Ethics has recieved a request for a determination under rule 35 which would permit Mr. Ryan Conroy, of the staff of Senator CRANSTON, to participate in a program sponsored by a foreign educational organization, Tunghai University, in Taichung, Taiwan from January 5 to 13, 1982.

The committee has determined that participation by Mr. Conroy in the program in Taiwan, at the expense of Tunghai University, to discuss Taiwanese culture and institutions, is in the interest of the Senate and the United States.●

OLD ACCOMPLISHMENTS BEAR FRUIT

● Mr. HUDDLESTON. Mr. President, one can easily get the impression that cutting out unnecessary regulation and giving a fair break to small business is a new goal we have to achieve. This, however, is an erroneous impression which should be corrected.

Many Senators and Congressmen have been working on this problem for years and during the last session of Congress in 1980, we had two significant successes. The Regulatory Flexibility Act and the Equal Access to Justice Act, which were both passed under the last administration, are now considered to be milestones in regulatory reform. A recent article in the Nation's Business concludes that this legislation is now beginning to take hold and that it is "an important change for millions of small business people."

I ask that this article entitled "A Fairer Shake for Small Business" be printed in the RECORD.

The article follows:

A FAIRER SHAKE FOR SMALL BUSINESS

(By Michael Thoryn)

Says an irreverent Capitol Hill staffer, "Regflex goes after crazy regulations and Equal Access aims at crazy enforcement." His quip sums up the intent of two laws hailed as "milestones" and "significant wins for small business" when they were passed in the fall of 1980.

The Equal Access to Justice Act, which took effect in October, is intended to tear a hole in the deep pockets of litigation-happy federal agencies. Small business people can now recover their legal fees from the agency budget when they challenge a tax or regulatory ruling and win. Supporters say the act restores balance between citizens and government when a disagreement arises.

The Regulatory Flexibility Act, which took effect a year ago, requires the federal government to tailor regulations to the ability of small firms to comply. It is slowly taking hold: Federal agencies and departments, with some reluctance, are revising or dropping burdensome rules.

"It's really good to see something work," says Rep. Andy Ireland (D-Fla.), who labored for three years to move the Regflex legislation through Congress. Ireland, chairman of the Small Business Subcommittee on Export Opportunities and Special Small Business Problems, plans regular oversight hearings to make sure the intent of Regflex isn't scuttled.

Government agencies are now required to give public notice of impending major rules so small business can comment; to weigh the effect of proposed rules on small business; to explain the need for and objective of each proposed rule; and to review all existing rules within 10 years with an eye toward eliminating those that aren't needed.

Regflex sits well with Robert E. Carr, president of Seacor, a marine engineering firm in Cherry Hill, N.J. A delegate to the 1980 White House Conference on Small Business, Carr observes: "Regulatory agencies have made a living out of beating up on the small guy, who had no defenders."

Ireland says Regflex's impact is difficult to measure because of the difficulty of separating it from the impact of two other deregulatory efforts—the Reagan administration Executive Order 12991, which directs the Office of Management and Budget to monitor regulations for cost effectiveness, and Vice President George Bush's Task Force on Regulatory Relief.

Monitoring Regflex compliance at federal agencies is a top priority of the Small Business Administration, says Administrator Michael Cardenas. Frank Swain, SBA's chief counsel for advocacy, whose office the act charges with making sure that Regflex works, likes much of what he surveys. "The act is well on its way to becoming the landmark legislation many believed it to be," Swain says.

It may also be a path to redemption for the often criticized SBA. The agency's loan and management assistance programs help relatively few of the estimated 10 million small businesses. Regflex gives SBA a chance to work for—and thus protect—its entire constituency.

Does small business need protection? Small banks must struggle with the same forms given to giant rivals. A 1980 Department of Energy regulatory analysis proposed an energy efficiency rule for appliances that would have put 80 percent of appliance manufacturers out of business; the rule was withdrawn after protests from business groups.

Regflex does not lengthen the regulatory process dramatically, but it does add a few more steps. The required analysis is "basically a self-help mechanism for the federal regulator, making him think before acting," Swain says.

Among the new considerations: Regulators must estimate the number and kind of small firms a regulation will affect and make a detailed evaluation of the reporting, record-keeping and compliance requirements they anticipate.

As you might expect, agencies aren't enthusiastic about Regflex. Most haven't had to consider small business needs before.

"Bureaucrats are making a stab at it," says Jere W. Glover, a top official in SBA's advocacy office during the Carter administration. "However, I sense an undercurrent of 'Oh my, what am I going to do?'"

Voices rose at Regflex oversight hearings last October when Commissioner Bevis

Longstreth of the Securities and Exchange Commission said Regflex was a burden—to the SEC.

"The Regflex act has added little of value to our processes while at the same time imposing internal burdens," Longstreth said. Why, he asked, does the agency have to spend extra staff time on regulatory analysis and review?

"We're not here to discuss the inconvenience to your staff," snapped Rep. Ireland. "You are complaining about your workload. We're concerned about the day-to-day workload of small businesses."

While the SEC, which has simplified stock issue requirements and reporting rules for small business, wishes compliance were easier, the Department of Defense and the Internal Revenue Service don't want to comply, period.

IRS says it only interprets laws and doesn't write regulations—and therefore it can generally ignore Regflex.

"That interpretation [of the act] is unacceptable," says the SBA's Swain.

The Department of Defense argues that military functions are exempt from the Administrative Procedure Act, which Regflex amends. New legislation may be needed to snare the two holdouts.

Other agencies are already complying:

The Interstate Commerce Commission has eliminated the requirement that small motor carriers file annual reports with the commission.

The Labor Department is planning to eliminate a piece of Davis-Bacon Act paper work—a weekly report on each worker. Davis-Bacon requires contractors to pay prevailing wages—usually the highest union wage in the area—on federally funded construction projects.

The Department of Transportation is holding public hearings in the evening to enable small business people to attend.

For Regflex to build on its success—and not be just another regulatory procedure—constant monitoring is needed by both SBA's advocacy office and small business groups. The advocacy office, which has about 25 professionals working on Regflex, aids the writers of agency regulations, tracks their progress and reviews their efforts when regulations appear in the *Federal Register*. But the real check on abuses, Ireland insists, "is the small business person and his trade association. If silly rules start creeping back in, I'll hear about it."

Federal agencies may not be prepared for Equal Access. "I get the impression agencies will not give Equal Access nearly sufficient thought until some agency gets banged," says Raymond S. Wittig, minority counsel for the House Small Business Committee, adding that eventually there will be "plenty of goverment losses."

Wittig points out that government attorneys lose about 25 percent of their cases. His best guess for the first small business victory: the Occupational Safety and Health Administration. "Equal Access applies to existing cases, and about 90 percent of the cases that come to the OSHA Review Commission are overturned," Wittig says.

To be eligible to recover fees and related costs—the top rate is $75 an hour—businesses must have had a net worth of less than $5 million or fewer than 500 employes when the action was filed. Individuals' net worth at the beginning of proceedings cannot exceed $1 million.

Equal Access has five key provisions.

It is irrelevant whether it is the government or the taxpayer who initiates litigation.

It is not necessary to prove bad faith by the agency.

The agency must show that its actions were "substantially justified."

It is not necessary to prevail on all issues to receive an award.

There is no dollar limit on awards.

Unfortunately, says Steven F. Holub, national director of tax services at the Leventhol & Horwath accounting firm, the act "has a gaping hole in terms of protecting taxpayer rights." It does not apply to the U.S. Tax Court, which is where litigants often try to get their cases heard, since they may dispute their taxes with IRS without first having to pay the tax allegedly due.

Holub adds, "Equal Access is going to help the small business executive only if he wins. Companies have to weigh the hazard of litigation—they might lose."

Glover, the former official of SBA's advocacy office and now a Washington attorney, points out that if the government agency loses, the money would come out of the agency's budget. Therefore, he says, "the government might think twice about the cost of litigation and change the kind of issues it contests. That is the cure the law envisions."

To Rep. Ireland, Regflex and Equal Access represent "a big stick for attitude change—the bureaucracy must consider small business needs."

It's an important change for millions of small business people.●

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. I submit for the RECORD and bring to my colleagues' attention the following article honoring Mr. Foley which appeared in the Durham Morning Herald on December 3, 1981.

The article follows:

VILLAGE HONORS DURHAM HERO

(By Paul Vancil)

Thirty-seven years later in the Dutch village of Beek, they remember John Foley.

It was World War II, Holland, Sept. 19, 1944. Foley, now a Durham resident but then an Army lieutenant, led 110 soldiers up a German-held rise known as Devil's Hill. Foley and Company A lost 12 men but took the hill and held it for five days. The Germans surrounded them and invited them to surrender. Foley and his men, low on ammunition but high on chutzpah, said they'd rather not, thank you very much.

Despite repeated attempts, the Germans never got their hill back. As a result, the folks of Beek, near Devil's Hill, got their town back.

The Army gave Foley the Distinguished Service Cross for bravery. That's no small trophy—the cross is outranked only by the Congressional Medal of Honor—and the young lieutenant thought the honor was more than enough.

In Beek, they didn't agree. So last September, 37 years after their liberation from the Germans, the residents of the village (population 5,500) decided they too would honor Foley, now 63. They named the park across from Town Hall in his honor—the Lt. John P. Foley Public Garden.

Foley, who has not seen Beek since 1950, does not offer many words about the battle. "It was a hill and it had to be taken," he says matter-of-factly. "That's about all I can say."

But he will, when asked, produce an album of newspaper clippings and other papers from his military years. One page is reserved for the typewritten citation that came with his Distinguished Service Cross. The citation, military verbiage notwithstanding, tells much better than Foley what happened on that hill near the Dutch-German border.

"During an attack, Lt. Foley moved with his attacking groups, coordinating their movement and directing their fire with such complete disregard to enemy fire that he imbued his men with much courage and daring.

"He controlled the action of his three platoons with assurance, leading the attack and driving the enemy from the hill. He reorganized his company and staved off six vicious attacks by a determined enemy while the company position was raked with artillery and automatic fire.

"The second day, enemy infiltration had encircled his position and cut off all communication and supply routes to battalion. A redistribution of ammunition revealed only five rounds per rifle and none for the automatic weapons.

"When called upon by the enemy to surrender his position, Lt. Foley defiantly refused, and continued to hold the hill. For five days, Lt. Foley defended his position under ceaseless artillery and mortar bombardment, repelling attacks by vastly superior forces and countering aggressive enemy patrol action, both day and night."

Not for nothing are they fond of Foley in Beek.

Foley, of 1405 Cole Mill Road, says Beek's gesture is "a great honor." But, like the battle for Devil's Hill, he doesn't seem to know what else to say about it. The truth is that he finds it just a tad embarrassing.

"That's a good way to put it," he says. "I am basically a private individual. I don't go out of my way to get my name in the paper. I just mind my own business.

"It's part of your life that happened. I'm very fortunate I didn't get wounded. I lost some very close friends. Now, 37 years later, people have honored me with this. It is difficult to talk about."

Foley was drafted in February 1941. By September 1944 he was a lieutenant by way of Officers Candidate School and was assigned to the 508th Parachute Infantry Regiment, 1st Battalion, Company A.

On Sept. 17, the 508th parachuted into the Netherlands near the city of Nijmegen. Their mission—at which they were not immediately successful—was to take a bridge. During the operation, Company A's three platoons were separated. Two of them, including Foley's, withdrew to the east of the city on Sept. 18.

Here Foley was assigned a third platoon, was made company commander and was told to take Devil's Hill. The rest of that story is told in Foley's citation.

Before Devil's Hill, Foley was part of the Allied invasion force at Normandy. After Devil's Hill, he fought in the Battle of the Bulge. Through it all, he was never hit by enemy fire. "Of 109 officers in the original regiment, only two of us went through the war without being wounded," he says.

Foley went on to make a career out of the Army. He retired in 1961 as a lieutenant colonel after seeing service in the Far East and several U.S. posts.

Foley, a New Jersey native, and his wife Jeanette decided to retire in Durham, because they were familiar with the area through friends and from their military days. After moving to Durham, the couple operated J&J frame shop for 17 years. They sold it last year.

In 1950, Foley and his wife took a trip to Beek.

"I really don't know how to explain what it feels like to go back to the site," he says. "I walked the same grounds. It's an emotional thing. When you figure what you lost to accomplish this thing, it brings back very unpleasant memories. That's why I don't go to cemeteries and why I don't go to reunions. Some people thrive on those things. I'm not one of those. That's past. I don't live in the past."

But now there stands in Beek a park named for him in gratitude for five heroic days from his past. There are few people in the world who can tell of such things. Can it really be that he feels no urge to see the sign bearing his name, unpleasant war memories or not?

"I would like to do that," Foley concedes. "One day I may gather up my grandsons and go."●

THE RULES OF THE COMMITTEE ON LABOR AND HUMAN RESOURCES

● Mr. HATCH. Mr. President, pursuant to Senate rule XXVI, which requires that the rules of each committee be published in the RECORD not later than March 1, of each year, I am submitting the rules of the Committee on Labor and Human Resources.

The rules referred to are as follows:

RULES OF PROCEDURE (AS AMENDED FEB. 25, 1981)

Rule 1.—Unless the Senate is meeting at the time, or it is otherwise ordered, the Committee shall meet regularly at 10:30 a.m. on the fourth Thursday of each month in room 4232, Dirksen Senate Office Building. The Chairman may, upon proper notice, call such additional meetings as he may deem necessary.

Rule 2.—The Chairman of the Committee or of a subcommittee, or if the Chairman is not present, the ranking Majority member present, shall preside at all meetings.

Rule 3.—Meetings of the Committee or a subcommittee, including meetings to conduct hearings, shall be open to the public except as otherwise specifically provided in subsections (b) and (d) of Rule 25.7 of the Standing Rules of the Senate.

Rule 4.—(a) Subject to paragraph (b), one-third of the membership of the Committee, actually present, shall constitute a quorum for the purpose of transacting business. Any quorum of the Committee which is composed of less than a majority of the members of the Committee shall include at least one member of the Majority and one member of the Minority.

(b) A majority of the members of a subcommittee, actually present, shall constitute a quorum for the purpose of transacting business: provided, no measure or matter shall be ordered reported unless such majority shall include at least one member of the Minority who is a member of the subcommittee. If, at any subcommittee meeting, a measure or matter cannot be ordered reported because of the absence of such a Minority member, the measure or matter shall lay over for a day. If the presence of a member of the Minority is not then obtained, a majority of the members of the subcommittee, actually present, may order such measure or matter reported.

(c) No measure or matter shall be ordered reported from the Committee or a subcommittee unless a majority of the Committee or subcommittee is actually present at the time such action is taken.

Rule 5.—With the approval of the Chairman of the Committee or subcommittee, one member thereof may conduct public hearings other than taking sworn testimony.

Rule 6.—Proxy voting shall be allowed on all measures and matters before the Committee or a subcommittee if the absent member has been informed of the matter on which he is being recorded and has affirmatively requested that he be so recorded. While proxies may be voted on a motion to report a measure or matter from the Committee, such a motion shall also require the concurrence of a majority of the members who are actually present at the time such action is taken.

The Committee may poll any matters of Committee business as a matter of unanimous consent; provided that every member is polled and every pool consists of the following two questions:

(1) Do you agree or disagree to poll the proposal; and

(2) Do you favor or oppose the proposal.

Rule 7.—There shall be prepared and kept a complete transcript or electronic recording adequate to fully record the proceedings of each Committee or subcommittee meeting or conference whether or not such meetings or any part thereof is closed pursuant to the specific provisions of subsections (b) and (d) of Rule 25.7 of the Standing Rules of the Senate, unless a majority of said members vote to forego such a record. Such records shall contain the vote cast by each member of the Committee or subcommittee on any question on which a "yea and nay" vote is demanded, and shall be available for inspection by any Committee member. The Clerk of the Committee, or the Clerk's designee, shall have the responsibility to make appropriate arrangements to implement this Rule.

Rule 8.—The Committee, and each subcommittee, shall undertake, consistent with the provisions of section 133A of the Legislative Reorganization Act of 1946, as amended, to issue public announcement of any hearing it intends to hold at least one week prior to the commencement of such hearing.

Rule 9.—The Committee or a subcommittee shall, so far as practicable, require all witnesses heard before it to file written statements of their proposed testimony at least 24 hours before a hearing, unless the Chairman and the ranking Minority member determine that there is good cause for failure to so file, and to limit their oral presentation to brief summaries of their arguments. The presiding officer at any hearing is authorized to limit the time of each witness appearing before the Committee or a subcommittee. The Committee or a subcommittee shall, as far as practicable, utilize testimony previously taken on bills and measures similar to those before it for consideration.

Rule 10.—Should a subcommittee fail to report back to the full Committee on any measure within a reasonable time, the Chairman may withdraw the measure from such subcommittee and report that fact to the full Committee for further disposition.

Rule 11.—No subcommittee may schedule a meeting or hearing at a time designated for a hearing or meeting of the full Committee. No more than one subcommittee executive meeting may be held at the same time.

Rule 12.—It shall be the duty of the Chairman in accordance with section 133(c) of the Legislative Reorganization Act of 1946, as amended, to report or cause to be reported to the Senate, any measure or recommendation approved by the Committee and to take or cause to be taken, necessary

steps to bring the matter to a vote in the Senate.

Rule 13.—Whenever a meeting of the Committee or subcommittee is closed pursuant to the provisions of subsection (b) or (d) of Rule 25.7 of the Standing Rules of the Senate, no person other than members of the Committee, members of the staff of the Committee, and designated assistants to members of the Committee shall be permitted to attend such closed session, except by special dispensation of the Committee or subcommittee or the Chairman thereof.

Rule 14.—The Chairman of the Committee or a subcommittee shall be empowered to adjourn any meeting of the Committee or a subcommittee if a quorum is not present within fifteen minutes of the time scheduled for such meeting.

Rule 15.—Whenever a bill or joint resolution repealing or amending any statute or part thereof shall be before the Committee or a subcommittee for final consideration, the Clerk shall place before each member of the Committee or subcommittee a print of the statute or the part or section thereof to be amended or replaced showing by stricken-through type, the part or parts to be omitted, and in italics, the matter proposed to be added.

Rule 16.—An appropriate opportunity shall be given the Minority to examine the proposed text of Committee reports prior to their filing or publication. In the event there are supplemental, minority, or additional views, an appropriate opportunity shall be given the Majority to examine the proposed text prior to filing or publication.

Rule 17.—(a) The Committee, or any subcommittee, may issue subpoenas, or hold hearings to take sworn testimony or hear subpoenaed witnesses, only if such investigative activity has been authorized by majority vote of the Committee.

(b) For the purpose of holding a hearing to take sworn testimony or hear subpoenaed witnesses, three members of the Committee or subcommittee shall constitute a quorum: provided, with the concurrence of the Chairman and ranking minority member of the Committee or subcommittee, a single member may hear subpoenaed witnesses or take sworn testimony.

(c) The Committee may, by a majority vote, delegate the authority to issue subpoenas to the Chairman of the Committee or a subcommittee, or to any member designated by such Chairman. Prior to the issuance of each subpoena, the ranking minority member of the Committee or subcommittee, and any other member so requesting, shall be notified regarding the identity of the person to whom it will be issued and the nature of the information sought and its relationship to the authorized investigative activity, except where the Chairman of the Committee or subcommittee, in consultation with the ranking minority member, determines that such notice would unduly impede the investigation. All information obtained pursuant to such investigative activity shall be made available as promptly as possible to each member of the Committee requesting same, or to any assistant to a member of the Committee designated by such member in writing, but the use of any such information is subject to restrictions imposed by the Rules of the Senate. Such information, to the extent that it is relevant to the investigation shall, if requested by a member, be summarized in writing as soon as practicable. Upon the request of any member, the Chairman of the Committee or subcommittee shall call an executive session to discuss such investigative activity or the issuance of any subpoena in connection therewith.

(d) Any witness summoned to testify at a hearing, or any witness giving sworn testimony, may be accompanied by counsel of his own choosing who shall be permitted, while the witness is testifying, to advise him of his legal rights.

(e) No confidential testimony taken or confidential material presented in an executive hearing, or any report of the proceedings of such an executive hearing, shall be made public, either in whole or in part or by way of summary, unless authorized by a majority of the members of the Committee or subcommittee.

Rule 18.—Presidential nominees shall submit a statement of their background and financial interests, including the financial interests of their spouse and children living in their household, on a form approved by the Committee which shall be sworn to as to its completeness and accuracy. The Committee form shall be in two parts—

(I) information relating to employment, education and background of the nominee relating to the position to which the individual is nominated, and which is to be made public; and,

(II) information relating to financial and other background of the nominee, to be made public when the Committee determines that such information bears directly on the nominee's qualifications to hold the position to which the individual is nominated.

Information relating to background and financial interests (Part I and II) shall not be required of (a) candidates for appointment and promotion in the Public Health Service Corps; and (b) nominees for less than full-time appointments to councils, commissions or boards when the Committee determines that some or all of the information is not relevant to the nature of the position. Information relating to other background and financial interests (Part II) shall not be required of any nominee when the Committee determines that it is not relevant to the nature of the position.

Committee action on a nomination, including hearings or meetings to consider a motion to recommend confirmation, shall not be initiated until at least five days after the nominee submits the form required by this rule unless the Chairman, with the concurrence of the ranking minority member, waives this waiting period.

Rule 19.—Subject to statutory requirements imposed on the Committee with respect to procedure, the rules of the Committee may be changed, modified, amended or suspended at any time: provided, not less than a majority of the entire membership so determine at a regular meeting with due notice, or at a meeting specifically called for that purpose.

Rule 20.—In addition to the foregoing, the proceedings of the Committee shall be governed by the Standing Rules of the Senate and the provisions of the Legislative Reorganization Act of 1946, as amended.●

HEALTH CARE IN THE ARMED FORCES

● Mr. NUNN. Mr. President, last December the Atlanta Constitution published a comprehensive three part series on health care in the Armed Forces. The series was written by Paul Lieberman and Jim Stewart.

The military health care system directly affects millions of Americans—active duty members of the armed services, families of service members, reservists in training, and retired military members and their dependents. For that reason, it is a vitally important subject to everyone concerned about the overall state of the Armed Forces.

The authors of the Atlanta Constitution series have provided an indepth look at military health care from a variety of viewpoints. They have examined the system from the perspective of military physicians, the patients who use military health facilities and services, and the services themselves. In so doing, they have identified several problem areas and raised important questions about the quality of the services provided. The issues raised by the writers deserve careful consideration from both the Congress and the leadership in the Department of Defense.

As part of their overall assessment of military health care, the authors looked into medical practices at the Wilford Hall Hospital at Lackland Air Force Base in Texas, which subsequently has received wide notice in the media. This series represents only a small portion of their reporting on the situation at Wilford Hall, about which the writers have published numerous articles over the past several months. The Wilford Hall case was first brought to the attention of the public by Mr. Leiberman and Mr. Stewart in reports printed in the Constitution, and the Department of the Air Force and the appropriate committees are currently investigating this matter.

Mr. President, this series represents exhaustive research and perceptive reporting. The writers have already established firm reputations as insightful and thorough journalists, and their reporting on military health care will contribute further to their professional stature. I recommend this series to all Senators and ask that the articles be printed in the RECORD.

The articles follow:

[From the Atlanta Constitution, Dec. 9, 1981]

DOCTORS CRITICAL OF HEALTH CARE IN ARMED FORCES

(By Paul Lieberman and Jim Stewart)

Inferior health care is being delivered to America's 9 million servicemen and military dependents, according to physicians who have worked in both military and civilian medical practices in recent years.

A nationwide survey of physicians who have served as military doctors in the post-Vietnam era described a health-care system plagued by poor equipment and supervision and too many incompetent practitioners.

The physicians told of trying to mend broken bones without the simple screws needed for the job, of seeing medical colleagues refuse to come to the emergency room to tend to patients, and of a system

that might assign a psychiatrist to decide what to do with accident victims.

The physicians, who completed a questionnaire comparing their experiences in military and civilian medicine, overwhelmingly made one judgment: Given a choice, they would not want members of their own families treated in military health-care facilities.

Of 202 physicians who answered the questionnaire prepared by The Atlanta Constitution, only four said they would prefer that their own families be treated under the military health-care system.

The words of Dr. Philip Altus, an internist from Tampa, Fla., who served two years in the Air Force, coincide with the conclusions of many of those surveyed. "The military guarantees you care, but not quality care," he said. "I would hate to depend on them for my medical care."

The Constitution sent a two-page questionnaire to 300 physicians across the country who recently served in the Air Force, Army, or Navy. Two-thirds of the physicians responded. Most explained their evaluations in written comments or agreed to follow-up interviews.

Twelve questions asked them to compare aspects of military and civilian medicine, including the availability and condition of equipment, the quality of support personnel and fellow physicians, and work demand.

Many of the physicians praised selected features of the military health-care system. A majority reported that their workload was easier in the military than in civilian practice. Some said the relief from worry about patient fees and the reduced threat of malpractice suits in the military improved medical practice.

And while many doctors predictably did not welcome military regimen—having to worry about the positioning of their belt buckles and the sparkle of their shoeshines—21 percent reported that life was more enjoyable in the military than in the civilian world.

When asked, however, to compare the overall quality of health care practiced in the armed services and civilian institutions, 56 percent of the physicians termed military health care "worse" or "much worse."

Only 6 percent evaluated military health care as better than health care in civilian society.

And other survey results detailed reasons for the critical assessment:

Sixty-nine percent said the availability of medical equipment was "worse" or "much worse" in the military. Only 6 percent found equipment more available in the military.

Sixty-three percent said equipment and facilities in the military were in worse condition than equipment and facilities in civilian medicine. Only five doctors (2.5 percent) said equipment was better maintained in the military.

Fifty-three percent evaluated the quality of supervision for physicians as inferior in the military. Only 13 percent rated the supervision as better.

Thrity-seven percent said they found more colleagues whom they would call "incompetent or dangerous" in the military than in civilian medical practice. Only 9 percent found fewer such doctors in the military.

SOLVING A DESPERATE DOCTOR SHORTAGE

The bleak appraisal of military medicine was given at a time when the promise of free, high-quality medical care is one of the major inducements used to gain recruits for the country's all-volunteer armed services.

Polls of armed forces enlisted personnel show that they rate health care as second in importance, after salary. "It is a strong incentive for people (to join). It seems to be viewed as a high priority," said Dr. John H. Moxley III, who recently completed two years as assistant secretary of defense for health affairs.

Military health officials admit that serious problems have beset the system in recent years, many of the problems stemming from a severe shortage of military doctors following the abolition of the physician draft in 1973.

Lt. Gen. Charles Pixley, who recently completed four years as Army surgeon general, said the Army was "desperate" for physicians when he took office in 1977. Pixley said equipment shortages also were a fact of life in some hospitals and clinics.

But Pixley, like other military health-care officials, insisted that "great progress has been made" to increase the number of doctors and provide them with proper equipment. "I really believe," the three-star general said, 'that if you were to go out make a survey today, those complaints . . . are certainly not prominent today."

Pixley added: "You don't encounter today the bitterness and hostility, the absolute bitterness that was so prevalent for nearly 25 years among some of our drafted doctors who resented being drafted, who felt their talents were not being utilized properly."

Many of the physicians included in The Contitution's survey were among the last of the drafted doctors. Their entry into the armed forces often was postponed past 1973 under the "Berry Plan," which allowed physicians to complete training in a medical speciality before reporting for active duty.

Many other physicians included in the survey, however, entered the armed forces under scholarship programs in which the military paid for, or provided, part of their medical training.

With civilian society offering far greater professional and personal freedom—and, usually, far greater income—it was not surprising that a majority of the physicians surveyed did not enjoy life in the military. More than 20 percent, in fact, termed military life "much less enjoyable" than civilian life.

Many seemingly fit the profile of the irreverent Army doctors of "M*A*S*H," never quite comfortable with the dual role of physician and military officer.

But even the minority of physicians who found military life "more enjoyable" or "much more enjoyable" were not impressed by the health care delivered to servicemen, military retirees and their dependents.

Only three of the physicians who preferred military life rated military health care as superior to civilian health care. Fifteen rated military health care as worse than civilian health care.

FOR THE LACK OF A SIMPLE SCREW * * *

The survey identified the shortages of medical equipment and its poor condition when available as factors that often made the practice of medicine difficult in the armed services. "I and my peers were unable to deliver the quality of care we were trained to deliver," said Boston radiologist R. A. Novelline, who served to the Navy.

Dr. G. Lee Cross III, as orthopedic surgeon formerly stationed at an Army hospital in Korea, had to write his senator to get "screws to put the plates on the bones of boys who had busted themselves up."

Dr. Lawrence N. Reckles, another orthopedic surgeon, spoke of his very first operation to repair a broken hip after leaving the prestigious Mayo Clinic to become a Navy doctor in Orlando, Fla. With a 90-year-old woman on the operating table already under anesthesia, he asked for a nail to refasten the broken hip, expecting the nail to be in abundant supply in any orthopedic service.

"I turned to the (medical) corpsman and said, 'We need a 2¼-inch nail,'" Reckles recalled. "And he looked at me and said, 'That's too bad, because the shortest one we have is 3½ inches.'"

"That nail," Reckles said, "would have gone right up into the pelvis. It would have been malpractice."

Reckles said he had to get a nail from a civilian hospital, and the delay put the elderly patient's life in jeopardy. "In spite of us, she survived," he said.

Dr. W. L. Amos, an obstetrician, cited equipment problems at the Navy Regional Medical Center in Charleston, S.C. "I remember one particular December," he said, "Our hospital ran out of the most common birth-control pills, the most common antibiotic, the most common-size surgical suture and the most common-size surgical gloves. The hospital commander could not begin to reorder them until the end of the month and a new quarter began."

The surveyed physicians' appraisal of military medical equipment is supported by other observers of military health care.

Bill Stanhope, a professor of community medicine in Oklahoma City, Okla., spent a year touring military medical facilities in his capacity as an aide to U.S. Rep. Robin L. Beard Jr., R-Tenn., a member of the House Armed Services Committee. "When I was in Europe, the orthopods hadn't had simple ankle screws for several months," Stanhope recalled.

At Georgia's Fort Stewart, division surgeon Maj. Steve Herman recently explained that circumventing official channels is a continuing necessity for a military doctor who wants the best equipment. Dr. Herman, who attended medical school after serving as a tank commander in Vietnam, said he recently called Army medical headquarters about his need for new devices which can monitor heart functions at medical units in the field.

"The guy in charge said they had identified the need and that they are going to start field testing in those in January," Herman said. "That means it will take maybe a year or two before we get them. But we need them for our field exercises. I intend to get it for my division long before the Army gets around to that."

DOCTOR WENT AWOL OVER EQUIPMENT

The Association of the United States Army, a lobbying group on behalf of soldiers, has complained about conditions even at the Army's eight elite medical centers. The association said 41 percent of the doctors assigned to the prime hospitals indicated in a survey several years ago "that inadequate facilities played a part in their decision to leave (the Army)."

In one unusual incident, an Army physician charged with going AWOL argued that his flight from the military was justified because recruiters had lied when they promised he could work with the latest equipment. Although Dr. Leon Davis had been assigned as a radiologist to Walter Reed Army Medical Center in Washington, D.C., the centerpiece of the Army medical system, he complained that facilities were "poor and outdated."

Davis lost his court-martial trial, but the military judge imposed only a fine, and not a possible three-year jail term. And the judge warned military recruiters to "clean up their recruiting act" if they expected to attract physicians.

While the physicians were harsh in their appraisal of medical equipment and facilities in the military, a majority (59 percent) rated the quality of support personnel—such as nurses and lab technicians—as equal in military and civilian medical institutions.

Ten percent said their support personnel had been superior in the military. Dr. Paul A. Whitlock Jr., a surgeon now practicing in Statesboro, Ga., said seven years at Navy hospitals in San Diego, Calif., and Corpus Christi, Texas, convinced him that "the military has far better trained paramedical personnel," particularly when compared with those at smaller civilian hospitals.

Nearly one-third of the physicians rated support personnel as inferior in the military. This group cited staffing shortages and the difficulty of removing bad workers: In the military, they learned, a doctor cannot fire his nurse.

When military recruiters turn their attention to physicians, a strong pitch is that the work schedule will be easier than in civilian practice. "Your duties will allow more time with your family," promises one brochure titled "Your Future in Army Medicine."

For the physicians surveyed, this promise held true. Three-quarters said their workload was easier in the military than in civilian practice. Only 9 percent said they worked harder as military doctors.

Dr. Randy Barfield, a pediatrician, had the good fortune to be stationed at the Navy base in Key West, Fla. He recalled fondly a work pace that left time for one of his colleagues to keep his water-skiing skill near the level that once won him a world championship.

For some of the physicians, however, the shorter hours were a negative factor. Some said they could not practice enough in their specialties. And many said their experience led them to believe that the promise of an easier life attracted too many poorly motivated or incompetent physicians to the military.

More than half of those surveyed found no overall difference between the quality of their colleagues in military and civilian medical institutions. Many pointed out the simple fact that the same doctor who was a civilian one day might be a serviceman the next—and vice versa.

But more than a third of the doctors surveyed rated the quality of physicians as lower in the armed services.

I'M IN MY SANDALS AT THE BEACH

Military recruiters and health officials do not dispute the fact that some physicians flee into the military to get away from troubles in civilian practice. Gen. Pixley said that during the extreme physician shortages, "the fact is, a number of older physicians did join who did not turn out well."

In written comments and interviews, the surveyed doctors told frequently of colleagues whose desire for an easy life meant poor medical care for patients.

A recollection of Barfield, the former Key West naval doctor, was not untypical. "I was in the emergency room, and I went up to look at a patient a nurse said didn't look well. The patient was dying," he said.

Barfield said he made several calls to locate the physician who had been treating the patient. "He was at the beach and didn't want to come. He basically said, 'We've done what we can do,'" Barfield recalled.

"I guess he had in effect written her off. He said, 'I'm in my sandals at the beach.'"

Dr. Thomas S. Breza, a former Army dermatologist now practicing in Lauderdale-By-the-Sea, Fla., was most cynical in questioning some colleagues who volunteered for military service. "What physician would work in the worst facilities, understaffed, (and be) moved frequently unless he was incompetent?" he asked. "One can earn much more on the outside—I earn 15 times more—see less patients and live where he wants."

Like Breza, other surveyed physicians claimed there are structural flaws in the military health-care system.

Dr. M. A. Wentworth of Waimea, Hawaii, noted that direct patient care is largely left to younger, less experienced practitioners fulfilling their military obligations. Veteran physicians in the military, he said, often aspire to administrative positions in which they "see less patients. If they were good (physicians), this was unfortunate."

Dr. David B. Crawley of Coer d'Alene, Idaho, found doctors competent in the military but health care "somewhat inferior." This was due, he said, to "lack of continuity of care," which was inevitable because both doctors and patients were routinely transferred from post to post.

"Military medicine is cheap to the patient but very impersonal," said orthopedic surgeon Dr. James G. Killebrew Jr. of Atlanta. He and others remarked on the drawbacks of the constant moving and having to practice in busy clinics. "There is little room for any meaningful doctor-patient relationship," he said.

The final question asked the physicians where they would prefer their own families to receive health care. Nearly 85 percent said they preferred treatment outside the military.

Dr. David Arrowsmith, a dermatologist in Pensacola, Fla., was uncomfortable with the military system under which almost all physicians—regardless of their specialty—take turns as "medical officer of the day," making them responsible for the hospital emergency room during the evening and through the night.

"If you were seriously injured in an automobile accident, would you want to trust the initial decision-making of your care to a pathologist, radiologist or psychiatrist?" Arrowsmith asked, then answered the question himself: "That's not fair to the patient or to the physician, who is too far from medical school and internship to feel competent in emergency care."

A FEW PRAISE THE MILITARY WAY

Army psychiatrist Dr. Lee Haller said he did not wait until his discharge to act on his conviction that civilian health care was preferable. "My wife was pregnant, and she delivered in a civilian hospital," said Haller, who now practices in Washington, D.C. "We wouldn't have let her get pregnant if she had to deliver in my Army hospital."

On the other hand, Dr. Kent N. Leifer rated the quality of health care as much better in the military than in civilian society. He was one of the four surveyed doctors who said he would choose to be treated in the military—"depending on which facility, obviously," Leifer explained.

An allergy specialist now practicing in Merritt Island, Fla., Leifer recited the dangers of civilian medical practice; physicians who do unnecessary surgery because they make a profit from it; physicians who order excessive laboratory tests because they fear malpractice suits; and the poor self-policing in the ranks of private practitioners.

"Too many civilian physicians can't afford to be honest," he said. "I found military medicine more honest."

Leifer recalled his first year at Fort Benning in Columbus, when he was left alone to run an Army allergy clinic, as a glorious time. In his second year, Leifer was asked to serve also as a pediatrician, which disturbed him, and he left the Army at the end of his commitment.

Leifer said he has not enjoyed the business demands of private practice ("you learn by goofing up") and considers reenlisting so he can simply "practice medicine."

Dr. Daniel G. Knauf, a Gainesville, Fla., heart surgeon who served 14 years in the Air Force, also rated military health care as superior to its civilian counterpart. He, too, said he would choose to get his own health care in the military.

But Knauf added a qualification to his evaluation:

"Quality of medical care and care providers is declining in the military, because of the military MD shortage," he wrote. "Recruitment programs are too lenient as to quality of physicians obtained. . . . (There are) too many private-practice failures."

[From the Atlanta Constitution, Dec. 9, 1981]

"TAKING CARE OF OUR OWN": A MILITARY PLEDGE UNMET?

(By Paul Lieberman and Jim Stewart)

Twenty years in the U.S. Army left Donald Bowman with lasting admiration for the work of the military medical system in wartime. "If you have a sucking chest wound, there's nothing like Army medicine," Bowman said recently, recalling with awe a battalion medical officer he saw in Vietnam who calmly went about the work of saving lives during a savage hilltop battle.

Now, as a military retiree, Bowman can get free health care from the military medical system in peacetime, a retirement benefit he thinks he earned. "I spent those years moving around," he said. "My children grew up always leaving their friends. I spent time in a war doing a lot of ducking. Those are some of the prices we paid for those benefits."

Yet now that the dues have been paid and Bowman can collect free medical and hospital care, the retired West Pointer and Silver Star recipient buys health insurance for himself and his family. Of the modern, 377-bed Army hospital only 10 miles from his home in Columbus, Ga., Bowman says, "I stay away from it. My family flat won't go. They feel they are treated like cattle there."

Donald Bowman is not alone in his belief that the distinction of U.S. military medicine in war has not carried over into peacetime.

Responding to a nationwide survey, physicians who had served in the armed forces in recent years agreed with Bowman. They, too, said they would prefer that their own families receive health care from civilian institutions.

Results of the physician survey, together with inside observations of military doctors, are described today in Part I of a series of reports on America's peacetime military medical system.

For the United States, military health care is a $6 billion-a-year operation. It is a worldwide network of 160 hospitals and 310 clinics staffed by 11,200 physicians charged with a staggering double assignment; staying ready to support troops in the event of

war, while providing daily care for 9 million servicemen, retirees and dependents.

The American military health-care system is capable of handling 12 million patient visits and delivering almost 100,000 babies a year. Nevertheless, a military which long has prided itself on self-sufficiency is having to qualify its traditional pledge, "The Army Takes Care of Its Own."

With a shortage of more than 1,700 specialist physicians, the armed services increasingly are shifting to the private sector the burden of filling military health needs. The government expects to pay civilian physicians $1.1 billion next year to treat an overflow of military patients.

The Atlanta Constitution's reports are based on the poll of physicians, a survey of medical boards in the 50 states, court records, visits to military health facilities, and more than 200 interviews conducted around the country over a four-month period.

The examination of military medicine was prompted, in part, by a series of events at one of the largest military hospitals in the country, Wilford Hall Medical Center at Lackland Air Force Base in San Antonio, Texas.

The Constitution reported in October that Air Force medical officials had ignored—and later denied knowledge of—repeated warnings that too many heart-surgery patients were dying at the 1,000-bed hospital, the centerpiece of the Air Force health-care system. The warnings stemmed from internal hospital studies showing that operations performed by the Air Force's chief heart surgeon resulted in a 43 percent patient mortality rate.

In late October, two former officials of the Air Force hospital alleged that their names had been forged on documents covering up the problems in the heart unit.

On Thursday, Part II of the series will examine one of the questions raised by the Wilford Hall incident: What happens when the military has problems with a physician? Case studies and a nationwide survey of state medical boards show that the armed services routinely send problem physicians out to practice on civilians—without any warning to civilian medical authorities.

On Friday, Part III of the series takes a ground-level look at health-care delivery at two Army bases where overcrowded clinics sometimes cause uneasiness and frustration among doctors and patients alike.

Military officials are well aware of the significance of medical care to the military community. Polls of armed forces enlisted personnel show that they rate healthcare as second in importance after salary.

"The military is a worldwide operation populated by young people with growing families," said Dr. John H. Moxley III, who recently completed two years as assistant secretary of defense for health affairs. "One of the things they like to insure themselves (of) is that the basic services for their families will be taken care of."

But speaking last year to a meeting of military physicians, U.S. Rep. G. V. Montgomery, D-Mass., of the House Armed Services Committee, said he was hearing many complaints from servicemen and retirees about their health care.

"There can be little doubt that many of these complaints are justified," Montgomery said. "The administrative headaches, shortages in medical specialties, and day-to-day problems in particular locations have greatly angered the military community."

Montgomery warned of the implications of inferior health care during the era of all volunteer armed forces.

"Good health care is one of the benefits we have promised our military personnel and their dependents, while on active duty and once they retire," he said. "If this benefit is lacking, along with other reduced benefits, it is no wonder that we are experiencing great problems in retaining career personnel.

"We simply must provide better health care for peacetime."

[From the Atlanta Constitution, Dec. 10, 1981]

WHEN MILITARY DOCTORS FOUL UP

MEDICAL BOARDS NOT WARNED AS PHYSICIANS ENTER CIVILIAN WORK

(By Jim Stewart and Paul Lieberman)

The U.S. armed forces routinely send their problem physicians into civilian practice without any warning to civilian health authorities, according to records of state medical boards and the military itself.

A survey of all 50 state medical boards by The Atlanta Constitution found that only one board has recorded an instance in which the military alerted it to problems with a doctor.

Military health officials concede that while some of the hundreds of physicians who depart the military every year likely have been forced out because of incompetence, alcoholism or other impairments, there is no policy in any of the three branches of service of notifying civilian licensing boards.

"We have never done it," said Margaret Tackley, a spokeswoman for the Department of the Army. "It has not come up and was only recently considered."

As a result, the only reported instance of the military issuing a warning to civilians about a bad practitioner resulted from the efforts of an individual hospital commander, and not from official policy.

Earlier this year, Col. John Canby, commander of Ireland Army hospital at Fort Knox, Ky., fired a doctor for assaulting a nurse on a hospital elevator. Canby immediately notified a federal prosecutor of the incident and then wrote the medical society in nearby Louisville, telling it of the case. The medical society, in turn, forwarded the letter to the Kentucky State Board of Medical Licensure.

"If I don't do it, who is going to?" said Canby, himself a veteran Army doctor. Mere dismissal from one job "is not real punishment for a physician,'" he said. "He can still get a job anywhere."

The procedures that seemed natural to Canby seem unique in the military. Officials of none of the other 49 medical boards could recall receiving a bad-doctor alert from the military.

"They should report if someone gets kicked out of the service," said Douglas N. Cerf, executive director of the Arizona State Board of Medical Examiners. But he added, "I don't think we're advised when someone gets astray."

The survey of medical boards, statistics provided by the armed services, and a series of case studies all point to a pattern of the military handling medical problems much the same way it handles all disciplinary matters—quietly and in-house:

While military health officials boast that military regimen makes it easier for them to weed out "bad apples" than it is for civilian institutions, the armed services keep no central record of disciplinary actions against physicians.

Only one military doctor in memory has been court-martialed for actions relating to his care of a patient, according to the Defense Department.

At a time when most states routinely notify each other of disciplinary actions against physicians, and have passed laws to help their medical boards learn of potentially dangerous practitioners in civilian institutions, medical mishaps in the armed services regularly go unreported.

"As for the military, I don't think any medical board has an idea what goes on there," said Robert Rowland, executive director of the California Board of Medical Quality Assurance. "I don't know anything about their quality assurance. I'm worried about the physician who gets out and comes back (to California) like nothing ever happened."

AIR FORCE WITHHELD INFORMATION

The Atlanta Constitution's examination of the disciplinary process within the military medical system was prompted by a series of events at one of the largest military hospitals in the country, Wilford Hall Medical Center at Lackland Air Force Base in San Antonio, Texas. In those events, the failure of Air Force officials to communicate information about a physician may have helped cause a tragedy in an operation on a civilian patient.

After internal studies at the 1,000-bed hospital showed that operations performed by the Air Force's chief heart surgeon resulted in a 43 percent patient-mortality rate, Air Force officials approved the transfer of the surgeon, Col. William Stanford, into a fellowship with civilian physicians in Milwaukee. The civilian physicians were not told of the internal hospital data on Stanford. They later said they would not have accepted the Air Force's offer of Stanford had they known of the high death rate.

On May 2, 1978, Stanford hooked up a heart-lung machine backward to a Milwaukee woman undergoing a routine coronary-artery bypass operation, and the patient went into a coma.

Stanford later returned to Wilford Hall, retired from the Air Force and entered private practice last year.

A recent incident in Georgia showed a similar failure to share information within the armed services themselves. An Air Force physician was transferred to the Army with good recommendations and was appointed head of pediatrics at Fort Stewart, the huge post west of Savannah. Within months, angry Fort Stewart medical officials moved the man to a much less sensitive post as a general practitioner at an out-patient clinic.

"He was not capable of providing adequate care, especially to critically ill youngsters," said Col. Herb Segal, chief of staff at the Fort Stewart hospital. "He had been chief of the (pediatric) service at the Air Force facilities he left. I believe they lied about him just to get him out of the Air Force."

Segal said the experience reinforced his belief in "the need to police ourselves."

America's military health-care system spans 160 hospitals and 310 clinics worldwide. A force of 11,200 physicians serves 9 million active-duty servicemen, retirees and military dependents.

Military medical officials readily concede that more than a few bad doctors have tried to hide in the huge health-care network, especially when manpower shortages have

made the armed services desperate for volunteers. "The Army, Navy and Air Force currently list combined shortages of 1,700 medical specialists.

"No ifs, ands or buts about it, we get a lot of applicants on the run from something," said Lt. Col. Richard F. Helmbold, a recruiter at the Army's medical-officer procurement office in Atlanta.

"The fact is, a number of older physicians did join who did not turn out well," agreed Lt. Gen. Charles Pixley, who recently completed four years as Army surgeon general. "We've had a number terminated."

Asked whether civilian licensing boards were notified when the Army took its own disciplinary action against a doctor, Pixley said, "I have never felt there was a problem there, never thought too much about it."

FEW DOCTORS GET NEGATIVE REPORTS

A Department of Defense spokesman said that while the armed services may not volunteer information about problems with doctors, they will answer inquiries from civilian authorities "with the 'right or need to know.'" This occurs, said spokesman Bill Caldwell, "when a physician applies for licensing in a given state and signs a waiver giving the state board access to information held by the services."

Many military physicians, however, do not have to apply for a state medical license when they leave the armed services to enter civilian practice. Although active-duty military doctors are not required to be licensed in states in which they are stationed, most hold licenses in their home state or others—and can return to any of those states without filing a new application.

When military doctors do apply for licenses in new states, medical boards report varying success in getting information out of the military.

Robert Dobart, administrator of the Maryland Commission for Medical Discipline, recalled his frustration trying to learn details of an operation in a Maryland Army hospital in which a child got a drug overdose and "wound up being more or less a vegetable." Dobart said he wanted to find out who the doctors were so he could check on whether they were licensed in Maryland.

"We had a great deal of difficulty getting any information," he said. "I'm not saying it was a deliberate attempt to impede us. It was just more difficult than dealing with civilian hospitals."

Dobart said he finally learned that the physician who performed the operation was not locally licensed.

John J. Ulwelling, executive secretary of Oregon's medical board, said that "it's hard to get good information" simply because both military doctors and hospital commanders frequently move from post to post. A background check, Ulwelling said, may gain the physican's discharge papers "and maybe one reference letter. Very seldom do you get a negative report."

In the Wilford Hall case, negative information apparently was carefully kept off official records.

Dr. Clifford Buckley, the former chief of surgery at the huge Air Force medical center, said it was suggested to him by top hospital officials that he write a favorable "OER"—Officer Effectiveness Report—on Dr. Stanford, the Air Force's senior heart surgeon. Buckley said that after he refused, his name was forged on a report that made no mention of controversy over the heart surgeon's operative mortality rate.

The Air Force was cooperative with civilian authorities in the case of another physician. The New Mexico Board of Medical Examiners, noted for its careful background checks on doctors applying for licenses, wrote the hospitals where the physician had worked and was told by one commander that the man was "not retained" because of "substandard care and lack of communication" with patients.

Board administrator Michelle McGuiness said evidence at a hearing showed the physician had been "making advances" to female patients. The New Mexico board voted last year to deny the man a license, citing "unprofessional conduct."

STATES SHARE DATA ON CIVILIAN DOCTORS

The haphazard communication of background information when a physician moves from the military into civilian practice can be contrasted with procedures used when a physician moves from state to state.

Even civilian licensing officials readily admit that the ability of bad doctors to jump from hospital to hospital, or from state to state, is a longstanding problem in the profession. And U.S. Rep. G. V. Montgomery, D-Miss., a member of the House Armed Services, said recently that the military is better able to keep an eye on physicians because "we've got a record on them." In civilian society, a hospital may know a doctor is bad, yet "they give him a good record just to move him on."

In recent years, however, the communication of information about problem doctors in civilian practice has been improved through two developments.

One has been the adoption in a majority of states of laws seeking to force the reporting of potentially bad doctors to medical boards. Some laws require hospitals (and other health-care institutions) to notify their state board of all internal disciplinary actions against staff physicians, such as a denial of surgical privileges. Other laws require that insurance companies notify boards of malpractice judgments.

The second development is the nationwide sharing of records of disciplinary actions taken by different states against physicians. The Texas-based Federation of State Medical Boards, which serves as the clearinghouse for such information, last year alerted the 50 medical boards of 768 disciplinary actions—license revocations, suspensions and reprimands—taken by other states. "Only a couple don't report," said executive director Dr. Harold Jervey.

Gary R. Clark, executive secretary of Missouri's medical board, said he would like to see the federation also serve "perhaps as a central depository for information from the military." Like other medical board officials, Clark is uneasy that his information about doctors leaving the military is "somewhere between limited and non-existent."

On paper, military physicians are actually susceptible to a wider range of disciplinary procedures than their civilian counterparts. Punishment can range from a verbal reprimand to a court-martial and a prison term.

Pete Esker, a spokesman for Walter Reed Army Medical Center in Washington, D.C., the Army's centerpiece hospital, insists that the military has an advantage in the policing of physicians. His reasoning starts with the visible rank worn on the epaulets of every armed forces physician.

"The chain of command," he said, "acts as the board of medical examiners.

"Discipline here is actually better than in civilian hospitals, where about all they can do is take away your privileges," said Esker, "We've had physcians relieved on the spot. . . . The boss man can say you're through, and you're through."

AN ALCOHOLIC DOCTOR NEEDS HELP

Military regimen also can be used to force help on a physician who might be allowed to flounder in private practice.

Dr. Richard Schwartz, a pathologist now in civilian practice in Akron, Ohio, recalled being shocked when a new pathologist arrived at the Andrews Air Force Base hospital outside Washington, D.C. The newcomer, he said, clearly was an alcoholic and also had difficulty analyzing tissue correctly.

"He had bounced off several staffs," Schwartz said, adding that the man had volunteered for military service "to obtain some employment that would shelter him." The military had been "all too quick" to accept the physician because of staffing shortages, he said.

Schwartz said the physician first was ordered to dry out in a hospital ward. Then he was sent to an armed forces training program for pathologists.

His fellow doctors never learned whether the rehabilitation program would have worked. In what Schwartz called "a tragic ending," the man died before the training program was completed.

According to the legal adviser to the Navy surgeon general, most problems with physicians conclude less dramatically. "Most of the actions (taken) are known only to the doctor and his commanding officer," said Commander Mike Hannas.

Hannas said the threat of writing a less than satisfactory officer-effectiveness report is the most common disciplinary tactic. The reports, prepared at least once annually, weigh heavily in promotions.

Only once, according to available records, has a military physician received the ultimate punishment of a court-martial for poor care of a patient.

By comparison, 216 civilian physicians suffered the maximum penalty available to state medical boards—loss of their licenses to practice—in 1978 alone, according to an American Medical Association study. The AMA study says another 302 licenses were suspended, surrendered or put on probation, and that 268 civilian physicians were reprimanded or censured.

The court-martial stemmed from the actions of a physician at the Great Lakes Regional Naval Center in Waukegan, Ill., in 1979.

The physician, Lt. Muhammed A. Ansari, performed elective surgery on an Army sergeant to correct a fertility problem. Ansari allegedly cut a major blood vessel by accident, resulting in complications and the sergeant's death. Ansari was found guilty of manslaughter at his military trial this August.

The sentence was a fine of $2,000 and placement of a letter of reprimand in Ansari's permanent military folder.

The lieutenant is appealing the conviction. Navy lawyer Hannas said that if the verdict is upheld, the Navy will send the court-martial records to any medical board which licenses Ansari.

In fact, the Kansas State Board of Healing Arts already is aware of the case. Executive secretary Elizabeth Carlson said the board learned of Ansari when military officials requested proof of his licensure for their court-martial. "We are pursuing it," she said.

In civilian medicine, such cases of a physician's alleged malpractice often become known to the public through the court system. In military medicine, malpractice suits are far less common.

LAWSUITS BECOMING MORE FREQUENT

One of the strongest inducements used by recruiters to draw physicians into the military is freedom from worry about lawsuits. Active-duty servicemen are barred by law from filing malpractice suits. And although retirees and dependents can sue the government, the military physician himself is not liable.

A retiree or dependent first must file a claim under the Federal Tort Claims Act. The government has six months to settle or deny the claim. After that time, the claimant may sue if dissatisfied. If there is a trial, it is conducted by a federal judge without a jury—a rule approved by Congress to hold down judgments.

Monetary claims for alleged medical malpractice by military physicians are on the increase, according to Department of Defense figures recently compiled for The Atlanta Constitution.

Health-care complaints for the Army and Air Force (no statistics for the Navy were provided) totaled 488 in 1979 and 567 in 1980. The Army alone reported paying out approximately $23 million in undisputed malpractice claims for the period. In addition, the Army reports 48 lawsuits pending in 1981 as a result of disputed claims.

Enlisted men or women who want to file complaints against military physicians must turn to the inspector general of the service involved.

Inspector general, or "I.G." complaints, as they are known in the acronymic jargon of the armed forces, are more commonly filed by soldiers with job-related grievances. These complaints are checked by independent investigators.

Doctors are not frequent targets of this wrist-slapping type of action. The Army recorded only 62 medically related I.G. complaints last year and ruled only eight of those to have been substantiated.

According to Col. John Canby, there might have been another recent military court-martial of a physician if the circumstances of his Fort Knox incident had been different.

The physician accused of mishandling a nurse on a hospital elevator was not an enlisted military doctor. He was a civilian "contract" physician hired by the Army to fill a spot left open by service-wide shortages of medical specialists.

If the man had been regular Army, Canby said, "I'd have court-martialed him or something along that line. I wouldn't have tolerated that behavior. And we would have put it in the so-called credentials file.

"This is my hospital; for good or bad, I'm responsible," he said.

THE PATIENTS—THEY FACE AN IMPERSONAL, UNDERSTAFFED SYSTEM

(By Jim Stewart and Paul Lieberman)

COLUMBUS.—Army medicine has been an important part of Jess Wheeler's life ever since Japanese rifle fire almost ended it nearly 40 years ago on Luzon in the Philippines.

The bullet ripped through an elbow, destroyed a kidney and richocheted through Wheeler's stomach. He was in the hospital at Fort Devens, Mass., for nine months. When he was released, he decided to stay in the Army for another tour, and then another. "After that, I started weighing the benefits," said Wheeler, who just turned 66.

"I saw both my parents go through long bouts with bad illnesses. They didn't have any health insurance," he said. "My sisters and I dug deep to pay the bills. I didn't want the same thing to ever happen to me."

For Wheeler, the financial security he sought from health worries has paid off. He feels the Army has made good its promise to reward his retirement with free medical and hospital care. Twice, the military has seen him through major difficulties, once with a triple coronary-artery bypass operation the government largely paid for at a civilian hospital in Columbus.

"Oh, sure, things have changed," Wheeler said. "Now, I'm just another old colonel . . . and sometimes get treated like one. It bothers some of my friends to be treated that way, but that's the way it is now."

The "way it is now" is bothering a great many people among the 95,000 active-duty soldiers, their dependents, and military retirees who live in or near this west Georgia riverside town that hosts Fort Benning, home of the United States infantry.

Some retirees, like Donald Bowman of Columbus, buy their own health insurance now rather than accept the free care at Fort Benning's Martin Army Community Hospital. "My family flat won't go," said Bowman. Even some active-duty military personnel at Fort Benning—who receive first priority for treatment—seek out civilian care and hospitalization, according to area physicians.

In a sense, Martin Army Hospital and the diverse population it serves are a microcosm of the military health system that has long prided itself on the pledge to "take care of its own." Reflected there are the concerns about "second-class care" being voiced by some in the armed forces. Also to be seen are signs of a system being overwhelmed. Short by more than 1,700 physicians, the armed services are increasingly sending their dependents and retirees to the civilian sector for medical help—more than 1.1 million of them last year.

A system many soldiers have seen respond with dazzling speed in time of war moves with frustrating slowness to care for routine health problems, some critics claim. Frequently heard are complaints about long waiting periods, constantly changing physicians, understaffed and ill-equipped facilities and, always, a vague sense of distrust between patients and a health-care staff that works in a free-for-the-asking service system.

IT TAKES A LOT OF PATIENCE

"It can be maddening at times," said Mrs. Lee Morris of Columbus, wife of an Army retiree. "If you're in real need, you'll be taken care of. But you have to break through that outer shell of red tape and bureaucracy and explain the same problem over and over again."

"Pregnant ladies don't know who will deliver their babies," said Donald Bowman's wife, Cynthia. "You would never see the same person twice. That can be so unsettling."

Sometimes . . . you are made to feel like they're doing you a favor to take care of you," echoed Lisa Rushing, whose enlisted husband comes from a family of career soldiers. "It takes a lot of patience, a lot of getting used to. I'm glad I've never been real sick and had to face it. I don't know what I would do."

But says 73-year-old Col. Herman Goldman (retired), "Some people are always going to complain about understaffing, discourtesy and things like that. But I never heard one of them complain about the price."

The feeling of being less than first priority in a system that serves 9 million Americans worldwide is not entirely mistaken. As Pentagon officials will quickly admit, the primary mission of U.S. military medicine is taking care of soldiers—not their families and not retirees, who between them account for nearly 70 percent of the health-care population entitled to military medicine.

In actual order of priority, active-duty personnel and reservists in training come first, according to a Department of Defense schedule. Dependents of active-duty personnel come second, while retirees and their families are fourth in line behind ROTC students in training.

"Although many people who come into the service have felt that it was implied by aggressive recruiters that health care in military facilities could be, or might be, provided from the cradle to the grave, official policy has never accepted that," said Lt. Gen. Charles Pixley, who recently stepped down as surgeon general of the Army.

"I've never fought for that. That's a spin-off benefit," said Pixley. "We just want the privilege of taking care of them to the extent resources and facilities will permit. But that's not why we're here. Congress will have to pass new laws if that's our mission."

In Pixley's view, dependents and retirees play an important role in helping meet the needs of military preparedness by offering military physicians a wider range of ailments for treatment than those normally associated with young, healthy soldiers.

Not many active-duty soldiers need neurosurgery, but a neurosurgeon is critical on the battlefield," said Pixley. "During peacetime, these neurosurgeons and these other (specialists) have got to have something to do. By committing them to practice medicine on a different age population—the older retirees, for example—they can fine-tune many skills."

"We shouldn't be ashamed of that," Pixley said. "Every study shows that everything that we do in-house is cheaper for the taxpayers than any other option."

IT HAS A NEGATIVE IMPACT ON MORALE

When military facilities cannot accommodate all the eligible patients in an area, those with lower priority have to look outside the military for health care. In those cases, the military pays most of the bills through the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). But the recipients—unless they are active-duty personnel—also must pay part of the cost.

Army recruiters have recently been instructed not to overstate medical benefits to potential enlistees, according to Ted Wood, director of CHAMPUS, which is headquartered in Denver. "When an 18-year-old is recruited, he's told that he gets free medical care," Wood said. "The problem we have is that when he's a few years older and has a family, (we have to explain) that there are different rules for you family."

CHAMPUS was created in 1966 to handle the health needs of the burgeoning number of dependents brought to the Army by the Vietnam War. Under CHAMPUS, dependents and retirees pay 20 percent and 25 percent respectively of the cost for treatment by a participating civilian physician. Because the government's fee scale usually lags at least a year behind current medical charges, many physicians choose not to participate, according to Wood, who nonetheless has seen his program swell to a $1 billion budget for fiscal 1982 and projects "continual growth" over the next decade.

Recipients of military health care can expect more reliance on civilian medicine in the future and an armed forces system that "is no better than a lowest common denominator in the civilian sector," according to a 1979 study by the Association of the United States Army, which lobbies for increased service benefits and has recently offered its members group health insurance to supplement CHAMPUS.

"The inadequacy of the health-care system cuts two ways," says the AUSA study. "First, it has a negative impact on morale by imposing continuous uncertainty in the minds of soldiers about what they might expect in the way of care for themselves and their families. Second, its gross shortage of capability makes it largely incapable of responding to a sudden mobilization requirement."

"Taken in sum (these problems) constitute the prime current threat to the morale and well-being of the armed forces of the United States," the report concludes.

I TELL YOU, I WAS SCARED TO DEATH

From ground level, Martin Army Community Hospital rises like a latter-day blockhouse above the scrub oaks and clay hillocks that dominate the landscape here. Across the street are the commissary, the post exchange and smaller facilities where soldiers and their families can save money buying at discount prices. Like the hospital, these facilities are part of what Congress calls the "total compensation" due our servicemen and women.

Like most Army hospitals, Martin Army is designed for rapid expansion during war. Five operating rooms stand ready in addition to the three that are routinely used. In a crisis, bed space could be nearly tripled.

In the Army system of care, Martin Army is a "community" hospital, meaning that it can provide primary care and diagnostic service and perform some surgery for a wide variety of patients. Patients requiring more sophisticated surgery or diagnosis are shuttled from Martin Army on twice-weekly medical evacuation flights to three of the Army's eight training hospitals: Brooke Army Medical Center in San Antonio, Texas; Eisenhower Medical Center in Augusta; and Walter Reed Army Medical Center in Washington, D.C.

Martin Army works quite like any civilian hospital of a comparable size. On an average day, nearly 200 of its beds will be filled and more than 1,600 patients will come through for treatment, prescriptions or diagnosis. The hospital maintains a round-the-clock emergency-room and ambulance service, while non-emergency appointments normally require a two-week waiting period, according to an Army spokesman.

Sometimes the wait is longer. After experiencing heavy, unexpected hemorrhaging, Ann Beamesderfer, the wife of a retired Army officer, scheduled an appointed for a biopsy at Martin Army. "They told me to check back in two weeks then they told me to check back the next month," she said, "It was two months before I heard if they had found anything. I tell you, I was scared to death."

The Beamesderfers are part of Martin Army's family-practice plan, the most popular, by far, of the hospital's services. One of the chief complaints made by patients in the military system is that they rarely see the same physician. To provide continuity of care and a sense of patient-physician relationship, the services began assigning some families to a single physician they could call, make appointments with and consult just as in the civilian system.

The program was an instant success with patients. However, because of the shortage of family-practice physicians, only a small percentage of patients (15,000 out of 95,000 at Fort Benning) is able to participate. Others wishing to join place their names on a waiting list. Active-duty soldiers report waits of several months, while retirees can expect to wait 2½ years, according to a Fort Benning spokesman.

IT'S A PLAIN MANPOWER SITUATION

Martin Army's reputation among Columbus citizenry appears to take its color from the hospital's association with the military as much as from the actual health care provided there.

"I'll tell you, I was in the Army once," said Columbus police Officer Ken Wessner. "I know what it's like. Now, if we had a real bad (car) accident right near there, I might take the victims to Martin Army. But it would have to be real bad."

Local physicians are sympathetic to the hospital's needs but feel the military has brought on its own problems. "I used to help them out some a few years ago," said Dr. Joe Chastain, a Columbus pediatrician. Then, said Chastain, after he spent more than an hour assisting in a Caesarean section and initiating respiration in a new born, the Army paid him $15 for his time. "That kinda cured me," he said.

"I have seen instances where parents will deliberately withhold aspirin from their babies to bring the temperature up to 103 or above because that's the only way they can get the attention of Army doctors," said Chastain.

With little or no recurring patient population of their own, some Army physicians fall prey to showing "less than adequate" concern for those they treat and their loved ones, Chastain said, "If you bring your child in here for care, I have to be concerned that you leave here pleased as well, or my income is going to suffer," he said. "They don't have to worry about that."

Twice, Dr. W. L. Amos, a Columbus obstetrician who himself served in the Army, has admitted active-duty soldiers from Fort Benning to a civilian hospital for treatment. "They wouldn't have had it any other way," Amos said.

"It's a plain out-and-out manpower situation, from what we hear," said Dr. John Watson, president of the Muscogee County Medical Society. "We think they do a good practice, yet we think they don't have the expertise that, frankly, they should have in some areas."

Local physicians are also mindful of events surrounding one member of Martin Army's staff, Dr. Emil Romitan, an ear, nose and throat specialist who serves as a civilian contract physician for the Army.

Romitan had been asked to leave two Michigan hospitals after questions about his competency arose, according to court records on file in Macon, Ga. After moving to Georgia and subsequently encountering problems at a Macon hospital, Romitan filed suit in federal court in 1979 seeking an injunction to keep the hospital authorities from cutting off his hospital and surgical privileges.

U.S. District Judge Wilbur Owens curtly dismissed the suit: "Dr. Romitan in the opinion of every doctor whose deposition has been taken is not presently competent to practice as an ear, nose and throat physician and surgeon in the defendant hospital or any other hospital," Owens wrote.

Officials at Martin Army, where Romitan had since moved, learned of the court's actions and initially relieved Romitan from duty. Later, however, they decided to retain his services and placed him in a position with "less responsibility," according to Army spokesmen.

IT'S THE OLD "CRY WOLF" SYNDROME

Like many military hospitals, Martin Army is short of some military medical specialists. Its manpower and organizational charts, however, can be deceiving. Authorized 67 military doctors, the hospital actually has 84, including 20 residents undergoing training. Also on hand are 26 civilian contract physicians, 59 civilian nurses and 42 civilian technicians. The civilian physicians are needed to fill specialty positions for which the Army has been able to attract but very few physicians—anesthesiology and radiology, for example. Martin Army officials declined requests to discuss manpower requirements at the hospital.

Ted Schumacher served at Fort Benning as an Army attorney for three years. For much of the time, his duties involved investigating and processing claims made for alleged malpractice at Martin Army. After leaving the service, Schumacher went into private practice in Columbus. He has since represented more than a half-dozen clients who have sued Martin Army for malpractice, while only one client has sued a local civilian hospital.

"If you're oriented to civilian time, it can be frustrating because the Army doesn't think of time like we do," Schumacher said. "If you're a soldier on sick call, the reasoning goes, the clock still runs and you shouldn't mind waiting. Time is time, you get paid either way. So does the doctor."

"I guess it's the old 'Cry Wolf' syndrome," Schumacher said. "They (military doctors and nurses) get so used to seeing some people abuse the system, who show up to get a little free attention or with a problem that's not serious, that when a real bad one comes along they sometimes don't seem geared to handle it."

[From the Atlanta Constitution, Dec. 11, 1981]

SICK CALL A REMINDER THAT MILITARY MEDICINE IS NOT AS ADVERTISED

(By Paul Lieberman and Jim Stewart)

HINESVILLE, Ga.—By 8 a.m., an hour into Capt. Lynn Whittington's day as an Army doctor, nearly 50 names are logged in the sick book, and 15 young soldiers sit calmly on folding chairs in the waiting room of Fort Stewart's Troop Clinic One. One man leans back and moans. Another puts his elbows on the chair in front and rests his hands in his head. The others stare at the walls, boredom on their teen-age faces.

Sgt. Bruce Mullin, who mans the book, expects as many as 90 bodies at sick call in the clinic this morning, a Wednesday. "Monday, Wednesday, Friday, these are the days we have PT, physical training," he says. "A lot of people coming trying to get out of work." The book records the complaints: "cold," "flu," "back," "rash," "swollen knee," "glands," "ear."

The names are called one at a time, and the soldiers stand and walk slowly down a corridor to the small examining rooms where they will be checked by any of five physicians' assistants or by Whittington, the one doctor on duty.

"Folks come here for every ache and pain you would never think of seeing a regular

doctor for," Whittington says. Then he nods toward the waiting room.

"Don't get the impression most of these men are garbage," he says. He considers for a moment. "Most of them are. But you do see some good medicine," a few cases of real disease.

Whittington is a round-faced man of 26 who speaks in the thick drawl of his home state of Mississippi. He is not here—in the middle of the sprawling Army post known to troops as "Camp Swampy"—by choice. He would rather be training to be a pediatrician.

But Whittington asked the government to pay his way through college, and now he owes four years in return.

It was only this summer that Whittington joined the ranks of America's 11,200 military physicians serving in 160 hospitals and 310 clinics worldwide. Already, however, he senses that Army medicine is different from other medicine. And already he has decided that when his four years are up, he will leave for the freedom of civilian practice.

Whittington, then, will be a challenge to Col. Alcide LaNoue, the hospital commander, and to Col. Herb Segal, the chief of professional services. Part of their job is trying to convince the 30 physicians on the staff to stay on past their service obligations, to get men like Whittington to postpone—or forget—dreams of private practice.

Another part of their job—the main reason LaNoue and Segal were brought here from overseas 18 months ago—is to salvage the possibility of quality medical care at a facility where that once seemed impossible. Even the crop of Army doctors who must practice their profession here every day invariably give the post hospital an unofficial first name—"dilapidated." The "Dilapidated Fort Stewart Hospital," they call it.

Until a new $43 million facility is opened in about a year, Fort Stewart's physicians will continue to treat a patient population of 35,000—half active-duty servicemen, half dependents and retirees—in the sagging conglomeration of wooden World War II barracks-type buildings (built, in fact, by German POWs) that has passed itself off as a hospital for four decades.

It was in an operating room here that a nurse once fell through the floor, and where a physician noticed a bird flying above as he began surgery on a woman. It was here that physicians would try to avoid having their own families be treated, and where the medical staff finally organized and rebelled against a hospital commander two years ago.

WORST HOSPITAL IN THE ARMY

"I think the past history is more or less common knowledge," says Col. Segal, "I guess it has been said we were hand-picked to take over what was the worst hospital in the Army."

The talk about the old 143-bed hospital is not as painful as it once was, however, because of the modernistic concrete structure visible through the pines across the flat terrain of the base. The new hospital helps Segal make his case to Lynn Whittington and other young doctors that they have a future in military medicine.

"Probably about the 18-month mark here I will start pressuring Lynn, pressuring him about military residency programs," says Segal, who has joined Whittington in a Troop Clinic One examining room.

A physician himself, as are all hospital officials in the military, Segal is beginning to dangle benefits in front of the junior officer. At a time when the all-volunteer armed forces have shortages of 1,700 medical specialists, the game is to offer specialized training at the military's expense. If Whittington accepts, he will get away from troop sick calls, but he also will obligate himself to more time in the Army.

"I probably won't," Whittington says, his voice polite.

A third Army physician adds a different view of the situation. "Nobody is going to volunteer to do this as a career," says division surgeon Maj. Steve Herman, Whittington's immediate superior. "It's not really professionally rewarding. You don't have control over your own life. And there's that threat that you'll be sent somewhere and be killed instantly.

YOU HAVE TO BE . . . WACKO

"You have to be a little wacko to want to do this," Herman concludes.

Herman actually is not making a case against the military career, to the contrary, he is starting to explain why—despite the obvious sacrifices—he sees a mission "of abiding value" in the dual role of soldier-physician. He is talking about another side of military medicine than the one outlined in recruiting brochures.

A 1977 booklet, "Your Future in Army Medicine," tried to convince physicians that military service would be good preparation for conventional civilian medical practice, a sort of parallel practice. "Your patients come from the total military, dependent, and retired population in your area," the brochure says. "Your patients are an educated and medically sophisticated population, representing the same kind of diversified clinical cases you would expect to see in any busy metropolitan practice."

Whittington has reason to question that description.

Each 7-to-11 a.m. sick call is one reminder. The patients are neither well-educated nor representative of diversified clinical cases. Like most of the all-volunteer armed services, the 24th Division—a rapid-deployment force ready for transport to combat areas at any time—is largely made up of relatively uneducated, lower-class young men. Their medical complaints frustrate more than a few military physicians.

Dr. Tom Danello, who worked in Whittington's job before entering civilian practice in Savannah earlier this year, still is bitter over what he calls "more a cattle rush than medical duty" in which "many people are malingering."

COME IN PLAY-ACTING

Danello explains: "Guys who didn't want to go marching that day would say they 'fell out,' meaning they fainted. They'd come in play-acting with histrionics that were amazing, trying to look like a 70-year-old who had a stroke.

"In months in a civilian hospital emergency room, I've never had one person who said they 'fell out' and who looked like that. And now I'm seeing all ages. There you were talking about 18- to 22-year-old kids who should never be sick. But 30, 40 percent of them would come through sick call each month, knowing it would get them off duty for a few hours—and that it wouldn't cost them anything.

"They'd say anything," Danello says. "We used to put up a 'sick slip of the week.' One of them said, 'I can't see while I'm falling asleep.' The next one said his hair would fall out if he went swimming."

Danello says the frustration of seeing many questionable complaints has a bad effect on the military physician. "You come to distrust your patients," he says, "and the danger is that the sick people could be overlooked in the shuffle."

So sick call is one reminder that military medicine is not quite as advertised in the Army brochure. A second comes when Whittington is called to field duty to learn the procedures needed in the event of war.

This is the part of the job that most interests, and worries, division surgeon Steve Herman. He is a Brooklyn native who attended West Point, led a tank platoon in Vietnam and then decided, at 29, to go to medical school. Nine years later, Herman is a physician and crusty field officer at the same time. He says he is on "the cutting edge of military medicine."

Like many top military medical officials, Herman fears that not enough attention has been given since Vietnam to "medical preparedness," and he is determined to train Whittington and other young Army doctors. "I'm going to make him as sophisticated a manager of traumatized patients as there is in the world," Herman says, looking at the would-be pediatrician.

Dr. John H. Moxley III, who recently completed two years as undersecretary of defense for health affairs, argues that the armed services made a mistake by telling physicians that military medicine would mirror civilian practice.

"It's clearly a different career," Moxley says. "It has some very different pluses and some different minuses."

For Whittington, a plus is the schedule. If he is like most physicians who pass through the military, he likely will never again work such regular hours. Usually it's just morning sick call, then staffing an outpatient clinic until 5 p.m. On this particular evening, he also is scheduled to serve his periodic shift as MOD, "medical officer of the day," meaning he will handle the emergency room at night. But he then gets the next day off. "This is fat city," he says.

In addition to the general outpatient unit, there are several specialty clinics around the hospital complex. "No Walk In. Sick Call By Appointment Only," reads the sign on the door to the pediatric building. A dozen young women and their children are in the waiting room.

For Maj. Bill Parker, the chief of pediatrics, the work here also is a bit different than it would be in civilian practice. The average age of mothers here is a few years younger than in a broad civilian population, and many "do not come with effective parenting skills," Parker says. Because the care is free, the confused parents often are not hesitant to come in with minor problems that really don't need a doctor's attention.

"But while an illness may be trivial to me, it's not to the parent," says Parker, who himself grew up under Army medical care as the son of an artillery colonel. "And part of our job is to give support, moral support. For the men who went to Egypt (on maneuvers), it's knowing that their children will be cared for here."

Parker, who has been in the Army six years and earns $54,000, expects to re-enlist when his obligation expires in 18 months. "I'll probably go over to Europe or into a fellowship," he says.

PATIENT . . . NEVER SAW IT

An obstetrician-gynecologist who finished his Army service at Fort Stewart last year, and did not re-enlist, had one of the more unusual experiences in the history of the aged hospital. "You're talking about preparing a patient for surgery and there's a bird

flying around in the operating room," recalls Dr. Carl Dohn, who now practices in Brunswick. "The patient was asleep, thank goodness, and never saw it. And there was a hole in the floor through which you could see the ground."

Dohn arranged for his own wife to give birth in Jacksonville, Fla. Later, however, his wife's appendix burst, and she had to be operated on here. The surgery went fine, but Dohn says she decided to come home after she later went to the bathroom attached to her room and found "a roach sitting on her toothbrush."

Dohn was one of the physicians here when the unfortunate conditions combined with an unpopular commander to prompt an unusual action by the medical staff. Approximately a dozen of the Army physicians signed a document charging that the commander was rigid, refused to see patients himself, and cut corners to the detriment of care at the hospital.

That commander was transferred soon after. The new commander, LaNoue, does see patients, as does Segal, who takes a regular turn in evening emergency-room duty.

Perhaps because of the earlier discord, many of the recent additions to the staff of physicians have come from Army medical training programs rather than civilian programs.

Capt. Tom Dillard, a new internist, did his residency at Walter Reed Army Medical Center, the Army's showcase hospital. He is an easygoing man of 28, a North Carolinian who dabbles in writing country music. He already plans to undergo additional training in the Army, but he seems wary of making the military a career because he does not enjoy moving frequently from post to post, a frequently unavoidable part of military life.

Dillard arrives about 8 a.m., makes two rounds of the hospital each day, sees a series of patients in a small examining room, and usually is done by 5 p.m., although he is on call for emergencies every third day.

GET MISERABLE ONES OUT

Dillard is a positive talker who would be glad to see those who are miserable in the military "get out." Still, he is a little unhappy that he has to type his own reports ("finding a secretary who can take dictation can be hard"), and while he doesn't think the setting affects his medical practice, he looks forward to the new hospital.

"I do feel bad about people who come suddenly ill, if they're going to die," he says after making afternoon rounds. "I don't want their families to think they didn't get the most modern care."

By 6 p.m., almost all of the Fort Stewart physician staff is gone, and the hospital wards and emergency room are left to support personnel and Lynn Whittington, the medical officer of the day.

There are five patients in the waiting area of the emergency room as a soldier carrying a dirty child of about 2 leaves an examining room. "Had a bunch of ear infections, several colds, four or five colds," Whittington says, "and one real emergency, a fellow who had a tree fall on his head."

Whittington knows that all hospital emergency rooms are abused by some patients who really don't need them, who could just as easily wait for an appointment during regular office hours. Such overuse is only a little more evident in military facilities, where the care is free.

"It's part of the job, I don't mind really—until they get you up at 2 a.m.," says Whittington.

As he talks two more patients, soldiers' wives, apparently, enter the emergency room and sit down to wait.

REAL CRITERION FOR STAFFING IS BIG-WAR MEDICAL NEEDS

"What is the requirement? Well, the magic figure we always hang our hat on is the number that would be required of medical officers worldwide in the Army for the first few hours, first few battles of a so-called NATO-Warsaw Pact scenario. That seems reasonable, for in actuality, the sizing . . . during peacetime is somewhat based on that potentiality. Now that figure was 5,273—documented a dozen times. Challenged and studied and survived. That figure is still valid today—5,273.

"The specialties that we have the greatest difficulty (obtaining) are neurosurgery, ENT (ear, nose and throat), urology and orthopedics. These are the specialties that, on the marketplace in civilian life, make the most money. And therefore it is quite likely hard to retain these specialties. We are surviving, we are getting better, and I believe there is light down the road at the end of the tunnel.

"Our mortality and morbidity was spectacularly low in Vietnam. Why? Because in the great majority of the cases where the man was wounded, at the site of the wounding within 15 or 20 minutes we could have a helicopter pick him up and deliver him right into the hands of a surgeon. We can never assume that we will have that luxury again. We can never assume, for example, that this country will have air superiority and be able to do that again.

"Although many people who come into the service have felt that it was implied by aggressive recruiters that health care in military facilities could be, or might be, provided from cradle to grave, official policy has never accepted that. The magic figure of 5,273 physicians, for example, has no relation to the number of dependents and retirees who are eligible for care—absolutely none. It's based on the active-duty mission.

"The fact is (that) a number of older physicians did join who did not turn out well. There are others who have been outstanding. It's hard to make an across-the-board generalization. The fact is, though, that if you have one bad apple, it looks like the whole world is full of bad apples. We have tried to detect those. We are definitely tightening our belt. Our standards today are much more critical. We are extremely cautious on foreign medical graduates, for example. I'll admit that some of our post and station hospitals looked like a foreign legion for a while.

"Sick call is as old as armies, 5,000 years old. There will be a certain percentage of troops that will malinger to get out of something. That's also the job of the doctor. Some doctor has to bite the bullet, even though it's wasting his time, and say, 'Soldier, there's nothing wrong with you. Go back to duty.' Somebody has to do that.

"It is alleged occasionally that there is a conflict, that you can't be a good physician and a good soldier. That is a myth. There is no reason in the world why the goal of every military physician should not be to be an outstanding physician, an outstanding medical specialist, an outstanding soldier, airman or sailor. Why should they be one first? Yes, the military milieu has its traditions, customs and regulations. But when in Rome, do as the Romans do, or don't go to Rome."

MEDICAL CARE—U.S. CAN GIVE IN WARTIME INADEQUATE?

(Col. Chris. Bisgard heads the military medical preparedness unit at the Pentagon in Washington, D.C. Bisgard joined the Army in 1973, while in medical school. He studied aerospace medicine, spent a year in Vietnam ("where I had an opportunity to see how helpless wounded people are"), and later transferred to the Air Force. To Bisgard, civilian medicine is "totally focused on disease . . . the sick patient coming into your office." He prefers military medicine, whose goal he describes as "to keep people from getting sick in the first place." At his office in the Pentagon, which is dominated by a huge wall map of the world, Bisgard described his concern over the war readiness of America's military medical corps:)

"Somebody has got to take care of the people who put their butts on the line. In Vietnam, the care was very good. But starting in 1973 when the draft ended, everybody expected the military budget to go down. Military medicine became a peacetime pursuit—'Take care of those eligible beneficiaries.' Physicians were put in hospitals to deliver medical care. A whole generation grew up thinking that's all there was—peacetime military medicine.

"The conscious recognition that war is a possibility is hard to accept, not just for the military. In 1978, 79 maybe, there started to be a growing awareness in the military medical community that the Soviet threat was greater than we had appreciated, and that that had some medical implications. What we saw frightened us. . . .

"We have three active Marine divisions. Those are forces which could be committed to combat, if that is the national will. But the medical support, adequate medical support, doesn't exist. We don't have a hospital ship anymore. If they go, they go without medical support. Even in the Revolutionary War, our nation didn't do that. . . .

"If we look at a war in Western Europe—just bombs and bullets, NATO forces against Warsaw Pact forces—they have to have that surgery there. If they don't get it, they'll die. Right now, we could care for one casualty in 10 who would need it. I mean, if we took everything the Army owns and put it in Germany, we could care for one in 10.

"The Air Force and the Navy have less than the Army.

"The price tag for buying the supplies and equipment to provide the minimum of medical support is $2 billion. This shows you how long we have ignored this.

"We don't have the manpower any more than we have the equipment. The really crying need is in the reserve force. That's where we need the surgeons. They're not there. Coming out of Vietnam, who the hell wanted to be in the reserves?

"Today we don't have enough evacuation crews, nurses and medical technicians. (But) just having physicians and nurses isn't enough. They have to be trained to handle casualties. It's different, and you don't get that doing regular peacetime medical care.

"Five years ago, the attitude (toward physicians) was, 'If you don't shape up, we're going to send you on a field exercise with the troops.' The youngsters coming out of medical school today, it's a whole new ballgame. Today they are exposed to field exercise. They say, 'When do I go into the field?'—they really look forward to it. Military medicine is different, it's exciting.

"Who writes (their congressman) and says, 'We need piles of equipment stored in

Europe?' (They send) letters about the retirees who didn't get care.

"(How is) the national will created to avoid a slaughter on the beach? We have never fought a war where we couldn't provide medical care."

COMMEMORATION OF LITHUANIAN INDEPENDENCE DAY

Mr. TOWER. Mr. President, February 16 marked the 731st anniversary of the founding of the State of Lithuania. It is a date to commemorate the valor and determination of the Lithuanian people in their struggle to defy the Soviet occupation of their homeland. The United States has never recognized the illegal annexation of Lithuania by the Soviet Union and has continued to recognize the rights of the Lithuanian people in their struggle for freedom and self-determination.

Lithuania is a small country of 3.4 million people. Yet it is a nation which suffered devastating losses from both Nazis and Soviets. When the U.S.S.R. retook the country in 1944 from the Nazis, 80,000 Lithuanians fled to West Germany, while another 60,000 were found in East Germany and deported to Siberia. During 1945 and 1946 an additional 145,000 Lithuanians were deported. Still another massive deportation occurred when some 60,000 Lithuanians were deported in 1949.

But throughout history and in the face of intense persecution which continues today, Lithuania like Poland maintained the Catholic Church in the center of their national consciousness. With later Russian attempts to repress Lithuanian nationalism, the church there as in Poland came to be seen as the defender of the Lithuanian national heritage, under circumstances of extraordinary brutality to clergy and churchgoers.

Our awareness of Soviet repression in Eastern Europe is today riveted on the human tragedy unfolding in Poland. But it is important for us to also recognize the history the Lithuanian people have shared with the Polish people. Since the unrest in Poland, the Soviet KGB has been intensifying its harassment of the Lithuanian church. Soviet authorities have even gone so far as to choke off the flow of news from Poland and block travel across the Polish-Lithuanian border.

Mr. President, the solidarity we Americans have come to express over the last year with the people of Poland must today be extended to the courageous efforts and steadfastness of Lithuania's people as they intensify their struggle against Soviet repression.

WESTERN ALLIANCE

● Mr. EAST. Mr. President, we are all concerned about the sorry state of the NATO alliance. Americans fret over the growing pacifist movement in Europe and the seeming unwillingness of our Atlantic partners to carry their share of the mutual defense burden. Europeans, in turn, perceive a neo-isolationist trend in American politics and complain—with some justice—that this country has no coherent foreign policy.

These are large, complex, and difficult problems, but they are not insurmountable. An article in today's Wall Street Journal suggests plausible solutions. Mr. Gerald Frost, executive director of the Institute for Defense and Strategic Studies in London, declares that what is needed now is "the greater integration and harmonization of U.S. and European security interests."

Mr. Frost offers what is easily the most concise, penetrating, and useful analysis of this subject that I have ever read. I ask that the complete text of his article be printed in the RECORD.

The article follows:

[From the Wall Street Journal, Feb. 24, 1982]

A LAST CHANCE TO SAVE THE WESTERN ALLIANCE

(By Gerald Frost)

Even before recent events in Poland many Americans were evidently very disatisfied with the state of the Western Alliance and the behavior of their European allies, some of them even to the point of advocating the withdrawl of U.S. forces from NATO.

According to a commonly expressed view, we Europeans are freeloaders, unwilling to spend enough to defend ourselves. Nor can we be relied on to support the U.S. politically and diplomatically when, as in the cases of Poland and Afghanistan, America responds to Soviet aggression or expansionism with some degree of firmness.

Further, we are said to be politically ambivalent toward Soviet communism; or comments about events in South America are ill-informed as well as inappropriate coming from supposed allies; and, even more extraordinary, some of us are more frightened by the cruise and Pershing II missiles, which are not yet developed, than by the Soviet SS-20s, which are deployed and targeted at European cities and military bases.

This view is sadly justified in many respects, but it overlooks a number of salient features of the situation. As a result, it ignores opportunities for strengthening the alliance which exists even at this very late stage.

The criticisms tend to treat Europe as an homogeneous entity, uniformly effete and tardy in its response. As a result the critics overlook the fact that many in Europe recognize the dangers of their continent becoming Finlandized or, even more tragically, self-Finlandized. Accordingly, a significant number would have perferred a prompter, more robust, more unified response to events in Poland, including the cancellation of the gas pipeline and a grain embargo.

Moreover, opinion polls regularly demonstrate that the vast majority of people in Britain, France, Italy and West Germany is strongly opposed to the demands of the Unilateralist disarmament movement and harbors a deep distrust of the Soviet Union and its rulers.

The relatively bland statements and communiques from the Council of EEC Foreign Ministers on Poland and other aspects of East-West relations should not therefore be regarded as the most accurate guide to governmental or public opinion, or even taken very seriously, but merely regarded as the lowest common denominator. Indeed, it is evident that the need for European "unity" is now used by some Europeans as an excuse for total inertia, thus causing disunity in the alliance.

In conversations with European leaders the U.S. administration should make it plain that it expects them to give membership of the alliance—upon which Europeans still depend in large measure for the preservation of their national sovereignties, their individual freedoms and even their lives—higher priority than unity within the EEC, which merely provides a framework of economic rules and subsidies, and maybe a degree of political cohesion. Plainly the alliance cannot forever be conducted on the basis of American appeals to the allies for support, which result in tardy and inadequate responses, and it is not only the Americans who recognize this hard fact.

A major objective of U.S. foreign policy therefore should be the strengthening of the pro-Atlantic forces within Europe. Many recent U.S. decisions, for example President Carter's decision to cancel the development of the neutron weapon after West German Chancellor Schmidt and British Prime Minister Callaghan had won fierce domestic battles to deploy it, have not had this effect; numerous other examples could be easily cited.

It is also important to remember that what gave the alliance a rock-like stability in the post-war era was the massive nuclear superiority which America then enjoyed. That superiority is gone and, given Soviet superiority in conventional and theater nuclear warfare, NATO strategy, depending ultimately on America's willingness to use ICBMs, thereby putting Chicago and Milwaukee at risk in order to defend Bonn and Pairs, looks less credible now than it has at any time since the beginning of the Cold War.

As a result, measures which appear to go some way to integrate American and European defense interests strengthen the alliance. Conversely, measures and even statements which favor the decoupling of U.S. security from that of Europe are bad for the alliance and will surely lead to greater instability and collective neurosis in Europe, a more marked tendency to appease the Soviet leadership among European leaders, and a greater belligerence on the part of the members of the Soviet Politburo.

Although it appeared to stop the European peace movement in its tracks, President Reagan's recent peace initiative can be criticized on these grounds. The two weapons, cruise and Pershing II, which President Reagan offered to cancel in return for the Soviet withdrawal of the SS-20s, are both considered indispensable to NATO strategy, even if the Russians accepted the deal, because they are able to penetrate "hardened" Soviet targets. Additionally, cruise is necessary to provide "linkage" between the battlefield weapons, which on the NATO side are mostly unimpressive, and the American ICBMs. If the Reagan offer were to be accepted at the present talks in Geneva, the military balance in Europe would take an even more unfavorable tilt than the one existing at present.

What is needed then is the greater integration and harmonization of U.S. and European security interests. If Europeans

make the mistake of indulging in the dangerous fantasy of an independent foreign policy while still relying on NATO for security. America must warn them very forcibly of the consequences. Small powers which get caught in the cross-fire of big powers must ultimately choose which side they are on. It is not possible now—if it were ever possible—to flirt with both sides without grave risks. The American government should make it very clear that the consequences of waywardness are likely to be very great indeed.

Most Western European nations are in fact not as bad alliance partners as some Americans suggest: All need incentives to be more virtuous. Ultimately, faced with the stark choice of support for the alliance or "accommodation" with the Soviet bloc, all European powers will opt for the former.

The instinct for survival in Europe may be seriously atrophied but it is not yet dead. Now is the time for hard choices and for a common recognition that, in dealing with the Soviets, it will be necessary soon—somewhere—to make a united stand.●

THE 64TH ANNIVERSARY OF LITHUANIAN INDEPENDENCE

● Mr. METZENBAUM. Mr. President, on February 16, 1918, the people of Lithuania reasserted once again their ancient tradition of national independence. In so doing, the Lithuanians showed to the world the failure of German and Russian conquerors to subdue and absorb this proud and ancient people.

Independent Lithuania moved quickly to take its rightful place among the nations of the world.

Lithuania was a member of the League of Nations.

Lithuanian ambassadors took up residence in foreign capitals.

In 1920, the Soviet Union formally renounced Czarist claims to Lithuania and established full diplomatic relations with the reconstituted Lithuanian state.

Unfortunately, Mr. President, Soviet respect for the independence of smaller nations was then, just as it is now, a sometime thing. And in 1940, Stalin ruthlessly squelched the freedom of Lithuanian, Latvia and Estonia.

To this day, the United States, to its great credit, has never recognized the Soviet conquest of the Baltic States.

A Lithuanian Embassy still exists in Washington.

Lithuanian diplomats are still accredited to this country.

And to this day, our country stands firm in its belief that the question of the Baltic States is not and cannot be closed.

That position has had—and will continue to have—my strong support.

Whatever our point of view in this country might be, the fact remains that the Soviet Government is just as determined now as it ever was to crush dissent, to eradicate religion and to eliminate minority cultures.

The people of Lithuania are also determined—just as determined now as they were under the czars—to maintain their distinctive identity.

In the Soviet Union today, no religious believer—Christian, Jew, or Moslem—may be a teacher or a civil servant.

The children of religious families suffer severe discrimination in admission to schools and universities.

Yet in Lithuania today, after four decades of Soviet persecution, harassment and indoctrination, fully 75 percent of the people are practicing Roman Catholics. Once again, Russification is a resounding failure.

And, Mr. President, Lithuanian resistance to Soviet oppression goes beyond the staunch adherence of the Lithuanian people to their cultural and religious traditions.

The oldest of the Samidzat—the underground newspapers of the Soviet Union—is called Chronicles of the Catholic Church in Lithuania.

Balys Gajauskas, formerly editor of the Chronicles, is serving a 15-year sentence for the crime of speaking out for human rights.

Another brave Lithuanian, Viktoras Petkus, has been nominated for the Nobel Prize for his advocacy of cultural and religious freedom. Petkus, too, is in a Soviet prison, where he shared a cell with Anatoly Shcharansky, the Jewish dissident and prisoner of conscience.

We in the West know and honor the names of Gajauskas and Petkus. But there are many others in Lithuania and in other parts of that jailhouse of nations called the Soviet Empire whose daily acts of quite heroism are unknown to us. We owe it to all of them—and we owe it to ourselves as free men and women—to continue as a nation to speak up on behalf of the cause of human rights.

Mr. President, I salute the Lithuanian-American community and I commend them for keeping alive in America the hope that Lithuania will once again know freedom.●

"COLLABORATOR" HAD FAITH IN THE ARMY

● Mr. COHEN. Mr. President, I would like to share with my colleagues an article from this morning's Washington Post entitled "'Collaborator' Had Faith in the Army." It describes the case of the late Major Ronald Alley of Bar Harbor, Maine, who was dishonorably discharged after his release as a prisoner of war during the Korean war for allegedly collaborating with the Chinese.

I have been working with Major Alley's widow for several years in her quest to have a fair hearing on this matter before the Army Board for Correction of Military Records. The hearing, which is described in the article, took place earlier this month.

It would obviously be improper for me to make a judgment one way or the other on this matter, but I have strongly supported Mrs. Alley's right to seek a reclassification of her late husband's discharge. I am certain my colleagues will find it difficult to be unmoved by the human drama which the article describes.

The article follows:

'COLLABORATOR' HAD FAITH IN THE ARMY

(By Sara Rimer)

The Army was Ronald Alley's life, and even after they court-martialed him at Fort Meade for collaborating with the Chinese who held him prisoner during the Korean War and sentenced him to 10 years of hard labor and disgraced him with a dishonorable discharge, he still believed in the Army and thought it would someday do him justice.

He had, he declared again and again, committed no crime during his 33 months of captivity. He did 3 years and 9 months at Fort Leavenworth, Kan., and when he got out in 1959 and went back home and found work as a Fuller Brush man, he still had faith that the Army would see its mistake, restore his honor and welcome him back into the ranks.

Twice he applied for a hearing before the Army Board for Correction of Military Records, and twice they turned him down. His congressman offered to help him try to get a presidential pardon, but Alley declined that offer, saying that a pardon would be an admission of guilt, and he had committed no crime.

Alley was a tall, husky, opinionated carpenter's son with a high school education, the oldest of eight children raised in Bar Harbor, Maine. To the people of that picturesque resort island, which he left so hopefully at age 17 when he enlisted in the Army and came back to in disgrace at age 36 after Leavenworth. He had no hobbies, just the Army. He was 55 when he died of a heart attack in 1978. The day he died he had been on his way to see the editor of The Bar Harbor Times, who wanted to hear the story of what had happened with Alley and the Army.

Alley's German-born widow, whom he had met and married in 1947 while he was a captain assigned to the military government in occupied Germany, did as he had wished: She buried him with his war medals, in the uniform she had bought to replace the one the Army took away when they sent him to Leavenworth, beneath a granite tombstone engraved with the American flag. Right up until the end, former Major Ronald E. Alley still believed in the United States Army.

Erna Alley, who after her husband's court-martial supported their two small children by picking apples, working as an Avon lady and operating Erna's German Motel in Bar Harbor, has embraced the obsession. She seeks for her husband a posthumous honorable discharge, a posthumous promotion to the rank of colonel and a change in military records to indicate that he was found not guilty of all charges 27 years ago, when the court-martial was convened.

"The military was his life; the sun rose and set over the military," Mrs. Alley, 60, said. "He was a proud, proud officer. He would have been a general." She never told her son and daughter the truth about why their father was gone, and she remembers what he said to them later, when he had come home and they were old enough to understand.

"He told them, 'I want you to love your country. It is a great country. I love the Army. Some day justice will be done. Some day they will recognize that a terrible mistake was made, that I was a good officer, that I wanted the best for my country.'"

Mrs. Alley is joined in her efforts by her lawyer, Gerald Williamson, and by Don Snyder, a former editor of The Bar Harbor Times, whom Alley had been on his way to see when he had his heart attack. Synder, 31, is a writer whose interest has always been in "the people who dream and plan and believe in good things and suddenly one morning they wake up and find that not a single thing is the way they thought it was, and they struggle to resist disillusion and cynicism and go on."

These are the characters of Snyder's novels, and he says he has found one in real life in the person of the late Ronald Alley, the only Army officer in this century sent to prison for collaborating with the enemy. (Out of the Vietnam War, only one American POW—Marine Cpl. Robert R. Garwood—was tried for collaboration.) "He was never bitter or cynical," Snyder said. "He wouldn't hear a bad word about the Army. He never gave up." Snyder has spent three years researching a book on Alley, aided in part by a grant from the Fund for Investigative Journalism in Washington.

Last fall the military board that twice turned down her late husband's requests for a hearing finally granted Mrs. Alley a hearing. And two weeks ago she and her son and her lawyer and Don Snyder all traveled to Washington to testify before the five-man Army Board for Correction of Military Records, in an effort to convince them that Alley had been wrongly disgraced.

Three former Korean War POWs who spent close to three years in captivity and knew Alley from Camp Five—a bombed-out village in the mountains of North Korea, where more than 500 American men died—also spoke. So strongly do two of them feel that Alley was wrongly accused and convicted that they traveled here at their own expense from their homes on the West Coast.

One of them, retired Lt. Col. Charles Peckham of King City, Calif., said, "He was so proud of his country, of his Army. I never met another man in my whole damn life whom the Army meant more to. I'll tell you this: I didn't know Ronald Alley had gone to Leavenworth. I was so sure that when it got to the review board it would be thrown out. And when I read in the Salinas (Calif.) newspaper, after Ronnie Alley had died, that he had gone to Leavenworth, I cried, because there was no way, no way. It was ridiculous."

Another former POW, retired Lt. Col. Robert Wise of Tacoma, Wash., who testified for Alley at the court-martial in 1955, termed his trip to the District "a moral obligation." And he said, "If Ronald Alley was guilty, then I was guilty, too, and so was everyone else there."

The Uniform Code of Military Justice held then that telling the enemy anything more than name, rank, serial number and date of birth constituted collaboration. Alley, one of 14 Korean War ex-POWs court-martialed and convicted by the Army, was found guilty of charges that included leading pro-Communist peace parades and indoctrination sessions, writing a pro-Communist article for distribution to the POWs, expressing opinion that the U.S. Government was an imperialistic government waging an imperialistic war in Korea, and giving to the enemy such information as artillery secrets, the signaling code POWs used to alert each other to the approach of their captors, and the religious and political affiliations and home addresses of the POWs.

Alley's widow and Snyder do not claim that Alley did none of these things. But they say that all of the Korean War Army POWs held by the Chinese "collaborated" in some way in order to stay alive, and that Alley, an abrasive, blunt-spoken loner who was disliked by most of the other prisoners, was made a scapegoat for a war poorly fought. They call the court-martial, which lasted three months, a circus and contend that Army officials had already made up their minds to make an example of Ronald Alley. They also say that Alley was a victim of the times, when the military establishment was seeking to toughen its image and when the frenzy of witchhunting created by the late U.S. Senator Joseph McCarthy was at its peak, and the smallest things could make a man a Communist in the eyes of the suspicious.

Last week's hearing was held at the Pentagon, in an overheated, carpeted room with an American flag in one corner. As the former POWs spoke, one by one, in voices thick with emotion and remembering, the events of 30 years past, when Americans went to fight a difficult war in Korea, came back and were relived: The fighting in 50°-below-zero weather at Chosin Reservoir, where many American troops were captured by the Chinese and then marched by their captors throughout North Korea; the terrible conditions of the Chinese prison camps in the mountains, the brutal winters, the lack of food and medical treatment, the sleeping all crowded together on dirt floors in tiny rooms, the indoctrination sessions, the overwhelming numbers of men who died in those camps, the suspicion among the prisoners, the distrust, the reduction of men to animals.

The former POWs were Army men then, and they remain Army men today, and they had not expected to cry, but they did.

The five civilians who will rule sometime within the next month on Erna Alley's appeal listened impassively from their chairs behind a long wooden table; it was impossible to read their thoughts. But the two dozen people in the audience seemed visibly moved and, like the soldiers who testified, some of them cried. It wasn't just the story of Ronald Alley they were hearing, it was also the story of the other prisoners of war: of what they had survived and how they had survived and how it had changed them. The numbers themselves are staggering: There were 6,656 Army prisoners of war in Korea, and 2,662 of them died in captivity, according to the Army Center for Military History.

"You can't train a man to be a POW," said Peckham, who has been in and out of hospitals ever since his captivity. "No one has any idea what it's like, what it can do to you. You're in shock. Nobody just gave name, rank, serial number and date of birth.

"We were marched all over North Korea, going nowhere. We would start at darkness and walk until daylight. We walked 25 miles a night. Most of us were wounded. We got frozen hands, frozen feet. I got dysentery on the march. I was quite ill. . . . Camp Five was a nightmare. People died like flies. I went down to 70 pounds. I almost died." Peckham recalled that on one of those marches, Alley carried on his back another soldier who could not walk because of frostbite.

Wise, a gaunt, 62-year-old man with gray hair and sorrowful brown eyes, who wore his Purple Heart on the lapel of his suit, said he was punished by the Chinese after he demanded better conditions for his fellow prisoners at Camp Five. "They took me out and put me in a hole in the ground that was three feet deep. I was left in that hole in the middle of the winter with a board over it. I was left there for three days, in my own mess. You're at that point where your mind is going to break. You're helpless. There is no one to back you up. . . . I got pneumonia, beriberi and dysentery all at the same time. I came through it. Spring was coming. I was raised poor, and I knew what to do. I went out and picked weeds. I knew I needed bulk in my stomach. I boiled weeds in a can to feed myself, and I survived.

"There were over 1,200 men in camp that winter. Everybody was suspicious of everybody else. We went five months without baths, without shaves, without haircuts, without a change of clothes. You can imagine the animals we were. Tempers were high, everyone was looking for a scapegoat for the predicament we were in. There's got to be someone. You're so weak and befuddled you can't resist. There was one guy who said, 'I'll give them nothing.' They stood him on a hill in front of us. They made him stand at attention until he collapsed. They brought him back to the room, and he died that night."

After all that, Wise said, "We came back, we're bums, we're disloyal." And though in his voice the bitterness was still strong, 30 years later, he said, "I'm Army all the way through. My father was, I was, I still am. If I were called back today, and if I were physically able, I'd be damn willing to go."

Lt. Col. Walter Mayo, retired, a former POW who was a witness for the prosecution at Alley's court-martial, was questioned at last week's hearing by Williamson, Erna Alley's attorney. Mayo, 57, of McLean, said, "I never saw him or knew of him to do anything detrimental to his fellow prisoners." When Williamson asked Mayo if he thought Alley would be found guilty today, he answered, "In view of the sheer, overwhelming deprivation we underwent, he probably wouldn't be convicted."

Mayo hesitated from time to time before Williamson's detailed questions about what had happened during the Korean War. Williamson was sympathetic. "I know it's been a long time."

"It's been a helluva long time," Mayo said.

Yet his description of Camp Five was as vivid as if he had been there yesterday, not 30 years ago. "The conditions were similar to a miniature holocaust. We were given two bowls of grain a day—cracked corn in the morning, a bowl of millet at night. We had no meat for six or seven months. Occasionally we got soybeans. We had no soap for at least nine months. We got lice. . . ."

Of the three POWs who addressed the military board, it was Wise who came to know the intensely private Alley best during their long captivity. "He was very opinionated. He could be very abrasive. If you didn't get to know him, you couldn't help but dislike him. I got to know Ronald Alley quite well. I liked the man. There was no reason whatsoever to feel that there was anything disloyal about him. This man was a dyed-in-the-wool soldier.

"I was 35 at the time. I had been through the mill. When I heard he was brought up for a court-martial, I could not believe it. There were much worse cases of conduct

that were never brought before any board. The prosecutor made it plain to all of us that Alley must be found guilty for the good of the service. I have never in my career seen an injustice done in such a vicious manner."

Alley landed in Korea in August 1950 and was captured by the Chinese at Chosin Reservoir 24 days before Christmas. During his 33 months of captivity, he suffered from tuberculosis and dysentery. He lost 40 pounds. When the war ended, he was flown immediately to Tokyo for medical treatment. Doctors removed a part of his lung. He spent two years in hospitals recovering his health. Twice he was offered a full medical discharge; twice he refused. His widow recalled her husband telling the doctors, "I can give my country 20 or 30 more years."

In early 1955, after he was discharged from Valley Forge Military Hospital, Alley traveled to Washington to pick up his orders for a new assignment. But there was no new assignment. Instead the major was read a list of formal charges filed against him by the Army, and placed under house arrest. Mrs. Alley recalled how her husband comforted her: "He said, 'Honey, don't worry. I have done no wrong. If I am guilty, they all are guilty.'"

Ronald Alley's son Gary, a broad-shouldered 32-year-old papermaker from Lee, Maine, who was six when his father went to Leavenworth, also addressed the military board. "The other kids tormented me. They'd say, 'When are they going to let the jailbird out?' I was scared of a man I could hardly remember. Was my father a criminal? And if so, what horrible crime had he committed?"

Gary Alley said after the hearing that his father's spirit was broken by what the Army had done to him. "He was obsessed with it. He had no hobbies."

The day after the hearing, Mrs. Alley held a press conference in a spacious meeting room at the Holiday Inn in Arlington. The room was all but empty. Two reporters came, one of them from Maine. Gary Alley didn't care; for him the trip from Maine had been a milestone. "Mr. Peckham and Mr. Wise answered a lot of questions about my dad. I know he suffered a great deal. I know now that he was innocent. I was probably the proudest person in that courtroom yesterday."

The board is expected to make its recommendation within the month to the Secretary of the Army, who will make the final decision. Nearly three decades after the courtmartial, after the conviction, after Fort Leavenworth, Ronald Alley's widow still has faith, as her husband did all of his life, in the United States Army. "I feel that they will do the right thing," she said. "I have a feeling in my heart that my late husband will be found not guilty. They will give him justice."●

ADDRESS BY REPRESENTATIVE BONKER BEFORE BIENNIAL SUMMER FESTIVAL OF THE ESTONIAN LEAGUE

● Mr. HATFIELD. Mr. President, last July my good friend Representative DON BONKER of the State of Washington, spoke to the Biennial Summer Festival of the Estonian League of the West Coast in Seattle, Wash.

Mr. BONKER in his remarks noted:

The United States, as a beacon of hope and inspiration, has a special obligation to speak for the silenced, disappeared, the tortured, and the exiled, wherever they are. In so doing, we draw nearer to that day when human rights is more than a slogan or a dream to the Estonian people and their brothers and sisters around the world.

The struggle of the Estonian people is the struggle of people everywhere who want and cherish freedom.

I would like to recommend to the attention of my colleagues the entire text of his speech.

ADDRESS BY REPRESENTATIVE BONKER

It is a pleasure to be here today.

I value the opportunity to address such a distinguished—and may I add, distinctive—group, for you can rightfully claim the citizenship of two great countries.

This became readily apparent to me as my good friend Mart Kask sat in my office recently, discussing the biennial get-together of Estonian Americans.

Until that day, I had known Mart exclusively as an American citizen. He is highly regarded here in Seattle as a bright and extremely capable public official. He is a leader in the Seattle community with notable accomplishments. To use American slang, Mart definitely has "left his mark" in our state.

But as I talked to him the other day, I saw another Mart Kask. One fiercely loyal to another culture, knowledgeable of the history of another nation, devoted to the customs of another people.

Mart revealed to me how his family was forced to flee from Estonia before the Second World War, then returned during the German occupation, only to be forced to leave again in 1944 when Russia again forcibly occupied Estonia.

Mart's experiences parallel the personal account of Hilve Shuey, who was quoted in this morning's newspaper. And they must parallel the lives of hundreds of thousands of individuals who had similar experiences. Mart was younger than Hilve when he arrived in the United States, but he experienced the same unforgettable odyssey that brought him here.

And, most importantly, Mart has not forgotten his native land. Nor has he abandoned the rich historical ties that draw him, Hilve Shuey, and all of you here, plus thousands of others everywhere, together in a common bond.

AMERICA HAS NOT FORGOTTEN

Just as Estonian-Americans have not forgotten the rich historical ties that bind them to their homeland, neither has the United States Government forgotten the people of Estonia and their fundamental right to independence! The United States has consistently refused to recognize the forcible and unlawful incorporation of Estonia, as well as Lithuania and Latvia, into the Soviet Union. We continue to recognize and maintain diplomatic relations with representatives from the three last independent governments of the Baltic States. The Estonian, Latvian, and Lithuanian Charge d'Affairs in this country enjoy full diplomatic privileges, perquisites, and immunities.

Our government's Baltic Non-Recognition Policy is further manifested in a variety of ways. The Secretary of State issues National Day greetings through the Charge d'Affairs to the Baltic peoples. Representatives of the State Department attend official National Day functions. The actions of various U.S. agencies are coordinated with respect to such matters as the captions and place names on official U.S. maps, so that our government speaks with an unambiguous voice. We also try to stay in touch with the Baltic peoples by means of Voice of America and Radio Liberty broadcasts in their languages.

The Baltic Non-Recognition Policy is inherent in our foreign policy, and enjoys full bipartisan support in the Congress. It is a demonstration that we have not forgotten the people of the Baltic States and their inalienable right to independence. It is also a symbol of hope for the future.

CONGRESS AND THE SUBCOMMITTEE ON HUMAN RIGHTS AND INTERNATIONAL ORGANIZATIONS

Within our government, nowhere is the urgent appeal on behalf of the Baltic State nationals as great as it is in the Congress. I can recall poring over the CONGRESSIONAL RECORD in 1964 as a young staff assistant to a U.S. Senator, and seeing countless expressions of support for the three Baltic States, particularly on days of national significance.

At that time, I had little understanding of the situation. It was not until 15 years later, as Chairman of a Foreign Affairs Subcommittee in the House of Representatives, that I came to truly appreciate the depth of feeling and conviction involved and had the chance to become a more active participant in the issue.

Our subcommittee has jurisdiction over human rights matters, as well as policy questions concerning international organizations. In fact, the subcommittee that I chair is the only Congressional panel with jurisdiction over human rights issues.

As such, we are concerned about human rights everywhere. But we have paid particular attention to the ongoing violations that have occurred in the wake of the annexation of Estonia, Lithuania, and Latvia by the Soviet Union following World War II. Our subcommittee has conducted hearings on "Human Rights and the Baltic States," "Human Rights in Eastern Europe and the Soviet Union," as well as oversight hearings with the Commission for Security and Cooperation in Europe.

The Subcommittee has also worked on a number of individual cases. I was deeply honored to be selected to receive the Joint Baltic American National Committee's "Baltic Freedom Award" for my efforts on behalf of Jari Kukk, a courageous human rights activist from Estonia.

The Subcommittee has also prepared and considered a number of resolutions calling for self-determination for the Baltic States. One of these resolutions was unanimously enacted by the full Congress in November 1979. This resolution instructed the U.S. delegation to forcefully raise the issue of the illegal annexation of the Baltic States at the next session of the Helsinki Accords.

THE HELSINKI ACCORDS—A POWERFUL WEAPON

When the U.S.S.R. signed the Helsinki Final Act on August 1, 1975, which among other things pledged that nation to respect the sovereignty and frontiers of the signatory states, little did she know what a diplomatic weapon she gave to the West! Since self-determination and protection of human rights are nonexistent in the Baltic States and other East-bloc countries, the Helsinki Commission's monitoring activities have become an international forum for the articulation and denunciation of the Soviet Union's violations. Individual cases of Soviet brutality are raised at each session, where the West presents painstakingly compiled lists of persecuted dissidents, religious groups, refuseniks, and academics.

This is not a mere exercise. The efforts of the Helsinki Commission keeps the pressure on the Soviet Union to modify her actions, and ensures that she will pay a heavy price in terms of public exposure and international disapprobation for her violations. The activity and charges raised at the Commission are widely reported in the international press, and Congress holds hearings both before and after these sessions. In short, the Helsinki Accords have been used as a brush to irreparably tar the Soviet Union's international reputation on the issue of human rights.

In addition, despite the Kremlin's constant disregard and flagrant violation of Principles 7 and 8 in the Final Act, there has been an emerging impact on human rights movements within the U.S.S.R., the Baltic States, and the satellite countries. These movements take the Helsinki Accords seriously.

OUR HUMAN RIGHTS POLICY—BASING OUR DEEPEST PRINCIPLES IN LAW

The Helsinki Commission and specific Congressional initiatives have bolstered human rights activists and publicized Soviet abuses. But there is more that the United States government could—and should—do on behalf of Estonians and other persecuted peoples. Today, more than ever, the world needs the United States to champion the cause of human rights and to incorporate human rights into every dimension of our relations with other governments.

In the current debate on human rights, it is often forgotten that it was Congress, not any particular Administration, that layed the foundation for our Human Rights Policy. Jimmy Carter made an enormous contribution by speaking out on the subject, and gave hope to oppressed people everywhere by articulating the United States' concerns in a variety of forums around the glove. But it was Congress—before Jimmy Carter ever took office—that wrote the laws which made human rights an integral part of our foreign policy.

Among other things, Congress established the Bureau of Human Rights in the State Department, to be headed by an Assistant Secretary of State. We required the State Department to issue a human rights report on every country in the world. We placed restrictions on foreign assistance to countries which were guilty of gross violations of human rights, and instructed our representatives at the international lending institutions to vote against loans to countries with poor human rights records.

Congress also added a provision to the Foreign Assistance Act that unmistakably stated that the protection and advancement of international human rights is "the principal goal of U.S. foreign policy." This focus of U.S. foreign policy upon human rights was echoed, not initiated, by then-Secretary of State Vance in his 1977 Atlanta address.

Unfortunately, it appears today that these principles are being undermined. Human rights is no longer seen as a principal goal of our nation's foreign policy. Instead, human rights is seen as merely one of many variables which go into our foreign policy, and a variable to be quickly disregarded when it comes into conflict with other foreign policy priorities.

Today we are witnessing the slow and subtle undoing of the human rights policy that we have struggled to construct.

To cite but a few examples, the Administration has not named an Assistance Secretary to head up the Human Righs Bureau in the States Department. The U.S. delegate to the U.N. Commission on Human Rights backed away from inportant initiatives such as the special working group on Disappearances. Our government has resumed military and economic assistance to countries which are guilty of the grossest violations of human rights. We have begun voting in favor of loans in the international development banks to countries with poor human rights records. The Administration has requested "Most Favored Nation" status for Rumania. We have re-established grain sales and other trade with Soviet Union, without linking it to improvements in human rights.

Most importantly, the Administration has repeatedly stressed that human rights considerations are no longer the hallmark of U.S. foreign policy, and has publicized its willingness to improve relations with countries that are guilty of terrorizing their own citizens.

In effect, the Reagan Administration has made clear its intention to put human rights on the "back burner."

What has the Reagan Administration's alternative to a forceful human rights policy been? "Quiet diplomacy" and "rewarding our friends" by disregarding their human rights records, are phrases that are common from the White House these days. The Reagan Administration has shown a willingness to publicly condemn human rights violations in the Soviet Union while "quietly" urging our allies to abandon torture, assassination, and repression.

But human rights must not be a mere political expedient. It is not a value to be quickly discarded. Human rights cannot afford to become politicized.

Our friends and foes alike realize that a policy of "selective indignation" undermines our historic role of championing the cause of freedom and democracy. When the United States government closes its eyes to torture and murder in Guatemala or South Korea, the KGB has just a little bit more freedom to harass, imprison, and torture in Estonia, the Ukraine, or Czechoslovakia.

Dissidents and human rights advocates around the world were given hope and strength when the United States publicly committed itself to the cause of human rights everywhere. Their struggle is much too important to be discounted and dismissed by the Soviet Union as just more "Cold War rhetoric." Yet this is exactly what will happen if our President and our government focus on the abuses of the Soviet Union but ignore or cover up abuses by our allies.

If it is to have any integrity—and any power on behalf of the Estonians suffering under Soviet domination—a human rights policy must be applied consistently and fairly, wherever abuses occur.

POLAND—A CRACK IN THE SOVIET BLOC?

I would like to take a minute to discuss one of the most important and hopeful developments for people everywhere struggling to free themselves from Soviet repression—the ongoing events in Poland.

The valiant struggle of the Polish workers under Solidarity underscores the question—"How long can the Soviet Union impose its might and will upon freedom loving people in Eastern Europe." Soviet domination defies history, and runs against the irresistible surge of humankind towards ever-greater freedom. Russia is encountering that harsh reality today, in Afghanistan and in Poland.

The scene this past week in Poland could be called a revolution, a watershed, a new era. Whatever you call it, it was truly extraordinary.

In Warsaw, nearly 2,000 "card-carrying Communists" behaved much like delegates to an American political convention. As one newsweekly described it: "They held contentious caucuses. They lobbied in the corridors. They even played a dirty trick or two and—most extraordinary of all—they insisted on forging Poland's communist future by secret ballot."

Through it all, the Soviet Union could only sit by and watch the strange spectacle—with benign acceptance.

This was just the latest in a series of historic steps Poland has taken toward freedom, including the right to independent trade unions, the right to strike, a less restrained press, new rights for religion, and less ideology in education. And they seem impatient for more!

The freedoms which Solidarity and the Polish people have won are more than Yugoslavia attained under Tito, and more radical than Czechoslovakia achieved in 1968.

Two questions spring to mind from the events in Poland. First, is this only the beginning of a reform movement in Eastern Europe as a whole, a crack in the Soviet bloc, an unraveling of their complete dominance in the Soviet sphere? Secondly, How much will the Kremlin tolerate? Where will the line be drawn before force is used, as it has been in the past?

For the people of Estonia, the events in Poland must be viewed with cautious optimism. The desire for freedom in the Baltic States is as great and unrelenting as anywhere in the world. It may be only a matter of time.

CONCLUSION—A CHALLENGE TO ALL OF US

When Mart invited me to be today's speaker, he noted that the occasion was the "Biennial Summer Festival of the Estonian League of the West Coast." He told me that the League is an organization of Americans and Canadians of Estonian cultural and ethnic origin, and that every two years you come together to celebrate a summer festival of ethnic songs, theater, art, folk dancing, and other cultural activities.

But this Summer Festival is more than just a joyful celebration of your rich cultural heritage; it is also a passionate reaffirmation of commitment to your beloved homeland.

This morning's newspaper quoted August Raja, who described the importance of the festival as the historic tradition embodying the Estonian national identity. This point takes on extreme importance in view of Russia's persistent attempts to impose its ominous will upon the Estonian people through the cultural vehicle of "Russification."

Through efforts like this colorful cultural celebration, your unique culture and national integrity will be preserved.

I would like to close with a quote from an Estonian dissident, who spent 8 years in forced labor camps for photographing squalid housing conditions, and who has since been harassed for signing a petition calling for freedom in the Baltic States.

His name is Mart Niklus, and his challenge is not only to his fellow Estonians, but a terse reminder to all of us.

"We don't want to remain a forgotten nation," he said, "and we have an important claim on the West's attention * * *. We are what the West would be under Soviet rule."

The United States, as a beacon of hope and inspiration, has a special obligation to speak for the silenced, the disappeared, the tortured, and the exiled wherever they are. In so doing, we draw nearer to that day when "human rights" is more than a slogan or a dream to the Estonian people, and their brothers and sisters around the world.

The struggle of the Estonian people is the struggle of people everywhere who want and cherish freedom.

HONORING THE 70TH ANNIVERSARY OF HADASSAH

● Mr. SARBANES. Mr. President, today, on the 70th anniversary of its founding, we pay tribute to the remarkable organization know as Hadassah whose 370,000 members are active and concerned citizens and leaders in communities across our Nation. Throughout its history, Hadassah has both reflected and carried forward the great work of its founder, Henrietta Szold.

The daughter of a distinguished Baltimore rabbi, born in Baltimore on the eve of the Civil War, raised and educated there, Henrietta Szold was a person of high principles, great intelligence, and inexhaustible energy, with the rare and precious ability to translate principle into reality—"to dream things that never were, and say 'Why not'." For the first 50 years of her life, she was an active and respected member of the Baltimore community. In the last decades of the 19th century, when homeless refugees from czarist Russian oppression began to arrive in Baltimore, young Henrietta Szold established night classes to assist their adjustments to the new life in their adopted land. The public night schools of the city of Baltimore grew out of Henrietta Szold's classes, and served as a model for cities across the Nation; Mayor Fiorello La Guardia of New York told Miss Szold many years later, "If it had not been for the work you did years ago, I might not be here now, and I am deeply grateful." There could hardly be a finer tribute paid to the woman whose life's work had been to create avenues to education to make our Nation truly a land of opportunity.

Her night classes turned out to be the work of half a lifetime. Henrietta Szold was already 49 years old when she made her first trip to Palestine in 1909. She understood at once the enormity of the task to be accomplished there. Hadassah, founded in 1912, became the great work of the second part of her life.

The modest 52-bed hospital and the school of nursing which Henrietta Szold established in 1918 became the basis for the great Hadassah medical complex which every year provides care for 41,000 inpatients and half a million outpatients.

Beginning in 1933, when she was 73 years old, Henrietta Szold assumed a new responsibility: The rescue and rehabilitation of thousands of innocent young children fleeing Nazi oppression. It was she who welcomed them upon their arrival in Haifa, found homes for them, helped them to build new lives in a new land. It is little wonder that the New York Times should have written eloquently of her at the time of her death in 1945:

> The funeral procession wound its way from Mount Scopus, upon whose crest the Hadassah-Hebrew University Medical Center was built as the result of her visionary inspiration, to the adjoining Mount of Olives, in whose cemetery she has found her last resting place on a slope overlooking the old and new cities of Jerusalem she loved so well.
>
> This frail little Baltimore-born lady loved her native Maryland well, but she chose to live away from her family and cherished relatives so that she might make her home in Palestine and give herself to one cause, which she took up to the exclusion of all else—the healing of the minds, the spirits and the bodies of her shattered people, especially the younger generation.

For 70 years Hadassah has moved steadily along the path so brilliantly charted by Henrietta Szold. Hadassah has been inspired by the courage, the commitment, the generosity of spirit and the tradition of service which so distinguished the life of Henrietta Szold and caused her to be revered by all who knew her and respected around the world. Hadassah, true to the spirit of its remarkable founder, has "radiated the light of human kindness around the world." Its work in health care and social services helped to make possible against all odds the establishment of the independent State of Israel in 1948, and since that time to enable Israel to keept its commitment to take in the tired, the poor, the tempest-tossed, to forge national unity from the diversity of its people while assuring to its citizens the blessings of free self-government.

True to its traditions and the spirit of its founder, Hadassah last year presented its prestigious Henrietta Szold Award to Ida Nudel, the courageous prisoner of conscience in the Soviet Union condemned on a ludicrous charge of "malicious hooliganism" to 4 years of internal exile in Siberia. Her alleged crime was to have displayed from her window a banner reading "KGB, give me my visa." Her real offense, however, lay in her courageous efforts for 7 years prior to her arrest to emigrate to Israel and, in the spirit of Henrietta Szold, to offer help and comfort to those who suffered with herself. Truly the Guardian Angel of persecuted and oppressed Soviet Jewry, Ida Nudel adopted prisoners herself, and gave hope and courage to their families. In an earlier tragic time and place, Henrietta Szold, too, had been the Guardian Angel of her people.

When she founded Hadassah in 1912 Henrietta Szold had only modest material resources at her disposal. She brought to the new and unprecedented organization, however, great stores of vision, courage, and hope. She also inspired Hadassah with the premise which guided her own long and heroic life: great principles can and must be brought to bear on the reality of everyday living. That premise lies at the heart of Hadassah's magnificent achievements over the past 70 years, as it lies at the heart of Hadassah's commitment to the challenge of the future. In these troubled times, Hadassah's dedicated service in the spirit of Henrietta Szold enriches the lives of all of us.

RULES OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

● Mr. STAFFORD. Mr. President, I note that Senate Rule XXVI requires that standing committees of the Senate publish in the CONGRESSIONAL RECORD each year prior to March 1 their committee rules.

The rules of the Committee on Environment and Public Works, of which I am chairman, have not been changed since their publication last year. They remain quite similar to those under which the committee has operated productively and in general harmoniously for several years.

Mr. President, for myself and Senator RANDOLPH I ask that the current rules of the Committee on Environment and Public Works be included in the RECORD at an appropriate point.

The rules follow:

RULES OF PROCEDURE OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Rule 1. *Regular Meeting Days.*—The regular meeting day of the Committee shall be the first and third Thursday of each month at 10:00 A.M., except that if there be no business before the Committee, the regular meeting shall be omitted.

Rule 2. *Committee Meetings.*—Subject to section 133(a) of the Legislative Reorganization Act of 1946, as amended, Committee meetings for the conduct of business, for the purpose of holding hearings, or for any other purpose, shall be called by the Chairman, after consultation with the ranking Minority Member. Subcommittee meetings shall be called by the Chairman of the respective subcommittee, after consultation with the ranking Minority Member. Notice of a meeting and the agenda of business to be discussed by the Committee will be provided to all Members not less than twenty-four hours in advance of such meeting. Additions to the agenda after that time may be made with the concurrence of the ranking Minority Member. Such 24-hour notice may be waived in an emergency by the Chairman, with the concurrence of the ranking Minority Member.

Rule 3. *Open Committee Meetings and Legislative Mark-up Sessions.*—Meetings of the Committee, including hearings and legislative mark-ups, shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the Committee determines by

record vote of a majority of the members of the Committee present that the matters to be discussed or the testimony to be taken at such portion or portions—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(2) will relate solely to matters of committee staff personnel or internal staff management or procedure; or

(3) constitute any other grounds for closure under paragraph 7(b) of rule XXV of the Standing Rules of the Senate (as amended by Senate Resolution 9, 94th Congress).

Rule 4. *Presiding Officer.*—(a) The Chairman shall preside at all meetings and hearings of the Committee except that in his absence the ranking Majority Member who is present at the meeting shall preside;

(b) Subcommittee Chairmen shall preside at all meetings and hearings of their respective Subcommittees, except that in the absence of the Subcommittee Chairman, the ranking Majority Member of the Subcommittee who is present at the meeting shall preside;

(c) Notwithstanding the rule prescribed by subsections (a) and (b), any Member of the Committee may preside over the conduct of a hearing.

Rule 5. *Quorums.*—(a) Except as provided in subsections (b) and (d), five Members, two of whom shall be Members of the Minority party, shall constitute a quorum for the conduct of business, except for the purpose of reporting any measure or matter.

(b) Quorums for the conduct of business by the Subcommittees shall be a simple majority of the Membership of the Subcommittees with at least one Minority Member present.

(c) Once a quorum as prescribed in subsections (a) and (b) has been established for the conduct of business, the Committee may continue to conduct business.

(d) Notwithstanding the rule prescribed in subsection (a), one Member shall constitute a quorum for the purpose of conducting a hearing.

Rule 6. *Proxy Voting.*—(a) Proxy voting shall be allowed on all measures, amendments, resolutions, or any other issue before the Committee or any Subcommittees. Any Member who is unable to attend the meeting may submit his vote on any such issue, in writing or through personal instructions; however, proxies shall not be voted for the purpose of reporting any measure or matter except when the absent Committee Member has been informed of the matter on which he is being recorded and has affirmatively requested that he be so recorded. A proxy given in writing shall be valid until revoked, while a proxy given orally or by personal instructions is valid only on the day given.

(b) At the discretion of the Chairman, after consultation with the Ranking Minority Member, Members who are unable to be present and whose vote has not been cast by proxy may have their positons recorded on any vote on the same business day so long as the vote will not change the outcome.

Rule 7. *Public Announcement of Vote.*—Whenever the Committee by rollcall vote reports any measure or matter, or acts upon any measure or amendments thereto, the report of the Committee on such measure or mater shall include a tablulation of the votes cast in favor of and the votes cast in opposition to such measure or matter by each Member of the Committee.

Rule 8. *Announcement of Hearing.*—The Committee, or any Subcommittee thereof, shall make public announcement and provide notice to Members of the date, place, time and subject matter of any hearings to be conducted on any measure or matter, at least one week in advance of such hearing, unless the Committee Chairman, or Subcommittee Chairman, with the concurrence of the ranking Minority Member, determines that there is good cause to begin such hearing at an earlier date, in which event not less than twenty-four hours notice shall be given.

Rule 9. *Statements of Witnesses at Hearings.*—(a) Each witness who is scheduled to testify at any hearing of the Committee, or any Subcommittee thereof, shall file a written statement of his proposed testimony not later than noon of the last business day preceeding the day on which he is scheduled to appear. At the time of his appearance, he shall supply for the use of the Committee or Subcommittee, 25 copies of his prepared testimony or such greater number as may be requested in the letter of invitation. Except for witnesses from the Federal Government, this rule may be waived with regard to field hearings.

(b) The presiding officer at a hearing may have a witness confine his oral presentation to a summary of his statement.

Rule 10. *Regularly Established Subcommittees.*—The Committee shall have six regularly established Subcommittees as follows:

Subcommittee on Environmental Pollution
Subcommittee on Water Resources
Subcommittee on Transportation
Subcommittee on Regional and Community Development
Subcommittee on Toxic Substances and Environmental Oversight
Subcommittee on Nuclear Regulation

Rule 11. *Subcommittee Membership.*—Following consultation with the Majority Members and the Ranking Minority Member of the Committee, the Chairman shall announce selections for membership of the Subcommittee referred to in Rule 10.

Rule 12. *Environmental Impact Statements.*—No project or legislation proposed by the Administration shall be approved or other action taken on such project or legislation unless the Committee has received a final environmental impact statement relative to it, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1970, and the written comments of the Administrator of the Environmental Protection Agency, in accordance with section 309 of the Clean Air Act. This rule is not intended to broaden, narrow, or otherwise modify the class of projects or legislative proposals for which environmental impact statements are required under section 102(2)(C).

Rule 13. Whenever the Committee authorizes a project, under Public Law 89-298, Rivers and Harbors Act of 1965, Public Law 83-566, Watershed Protection and Flood Prevention Act, or Public Law 86-249, Public Buildings Act of 1959, as amended, the Chairman shall submit for printing in the Congressional Record, and the Committee shall publish periodically as a committee print, a report that describes the project and the reasons for its approval, together with any dissenting or individual views.

Rule 14. *Naming of Public Facilities.*—No building, structure or facility authorized by the Committee, shall be named for any living person, except former Presidents or former Vice Presidents of the United States, or former Members of Congress over 70 years of age.

Rule 15. *Committee Resolutions.*—(a) The Chairman, after consultation with the ranking Minority Member, is authorized to certify and pass on Committee resolutions for review of flood control and river and harbor reports and resolutions for studies of public building project, and forward the resolutions to the appropriate Federal agency.

(b) Proponents of Committee resolutions shall submit appropriate evidence showing need for review or reports on river and harbor and flood control projects.

Rule 16. *Broadcasting of Hearings.*—Public hearings of the Committee, or any Subcommittee thereof, may be televised or broadcast, or recorded for television or broadcast, upon notification in advance to the Chairman through the Chief Clerk. During public hearings, photographers and other reporters using mechanical recording or filming devices shall position and use their equipment in such fashion as will not interfere with the seating, vision, or hearing of Committee Members or Staff on the dais, nor with the orderly process of the hearing.

Rule 17. *Amendment of Rules.*—The rules may be added to, modified, amended or suspended by a majority of the Committee Membership.●

RULES OF THE COMMITTEE ON THE JUDICIARY

(By request of Mr. BAKER the following statement was ordered to be printed in the RECORD:)

Mr. THURMOND. Mr. President, in accordance with the requirement of Senate rule XXVI to publish the rules of each Senate committee in the RECORD not later than March 1 of each year, I submit the procedural rules of the Committee on the Judiciary and ask that they be printed.

The procedural rules are as follows:

RULES OF THE COMMITTEE ON THE JUDICIARY

I. MEETINGS OF THE COMMITTEE

1. Meetings may be called by the Chairman as he may deem necessary on three days notice or in the alternative with the consent of the Ranking Minority Member or pursuant to the provisions of Sec. 133(a) of the Legislative Reorganization Act of 1946, as amended.

2. Each witness who is to appear before the Committee or any Subcommittee shall file with the Committee, at least 48 hours in advance of the hearing, a written statement of his testimony in as many copies as the Chairman of the Committee or Subcommittee prescribes.

3. On the request of any member, a nomination or bill on the agenda of the Committee will be held over until the next meeting of the Committee or for one week, whichever occurs later.

II. QUORUMS

1. Nine members shall constitute a quorum of the Committee when reporting a bill or nomination; provided that proxies shall not be counted in making a quorum.

2. For the purpose of taking sworn testimony, a quorum of the Committee and each Subcommittee thereof, now or hereafter appointed, shall consist of one Senator.

III. PROXIES

When a record vote is taken in the Committee on any bill, resolution, amendment, or any other question, a quorum being present, a member who is unable to attend

the meeting may submit his vote by proxy, in writing or by telephone, or through personal instructions. A proxy must be specific with respect to the matters it addresses.

IV. BRINGING A MATTER TO A VOTE

The Chairman shall entertain a non-debatable motion to bring a matter before the Committee to a vote. If there is objection to bring the matter to a vote without further debate, a roll-call vote of the Committee shall be taken, and debate shall be terminated if the motion to bring the matter to a vote without further debate passes with ten votes in the affirmative, one of which must be cast by the Minority.

V. SUBCOMMITTEES

1. Any member of the Committee may sit with any Subcommittee during its hearings or any other meeting, but shall not have the authority to vote on any matter before the Subcommittee unless he is a member of such Subcommittee.

2. Subcommittees shall be considered de novo whenever there is a change in the Subcommittee chairmanship, and seniority on the particular Subcommittee shall not necessarily apply.

3. Except for matters retained at the full Committee, matters shall be referred to the appropriate Subcommittee or Subcommittees by the Chairman, except as agreed by a majority vote of the Committee or by the agreement of the Chairman and the Ranking Minority Member.

ANNIVERSARY OF ESTONIA'S INDEPENDENCE

● Mr. LEVIN. Mr. President, on February 24, 1918, the leaders of Estonia proclaimed their Nation's independence. On this, the 64th anniversary of that courageous act, we should remember the plight of the captive Estonian people, and of captive nations throughout the world.

The story of the Estonian struggle for independence is a fine example of man's incessant struggle for freedom.

In the years following the First World War, Estonia established itself as a democracy, was formally recognized by most of the sovereign nations of the world and was admitted to the League of Nations.

The Estonian constitution which became effective in 1920 was modeled after a number of European constitutions and took some of its basic principles from the constitutions of France, Switzerland, and the United States. A 100-member State assembly was established as the central governing body of the country.

Estonia's constitution emphasized the recognition and respect of human rights and the linguistic integrity of minorities was guaranteed.

The Estonian commitment to democratic ideals was very clearly expressed in their constitution, and the section of the document which preserved basic human freedoms survived a restructuring of the government 12 years after the original constitution.

The Soviets destroyed the independence of the nation and incorporated Estonia into the Soviet Union in 1940. Soviet martial rule repressed human rights and thousands of Estonians were arrested and sent to remote parts of the Soviet Union. Thousands more escaped to Sweden and Germany and some came to the United States where they could live without fear of repression. Any hope the Estonians held for freedom at the end of the Second World War was shattered when the Soviets returned in 1944. Again thousands of people were arrested and deported.

Estonia remains a captive nation—held captive in the merciless grip of Soviet repression. We must always remember the Baltic nations' courageous efforts when they proclaimed their independence and we should never forget the tragic destruction of their democratic, rights-preserving governments. The commemoration of Independence Day for Estonia is a poignant reminder that once it was an independent country and today it is a captive nation.●

SALE OF ARMS TO JORDAN

● Mr. HART. Mr. President, more than one-third of the Senate has gone on record expressing concern that the President did not consult with Members of Congress about proposals to sell sophisticated weapons to Jordan.

In a letter signed by 33 other Senators, we have called upon President Reagan to announce immediately and publicly that his administration will not proceed any further with such proposals without full congressional consultation.

The President's letter of February 16 to Prime Minister Begin leaves a number of questions unanswered. To state that Secretary Weinberger brought back no new Jordanian request for sophisticated arms is not to say that no such request or proposal is being developed. And to make no mention—either in his letter to Mr. Begin or in any public forum to date—about the need for prior congressional consultation on the matter risks a confrontation which could undermine our foreign policy before our citizens, our allies and friends, and our adversaries. Such unanswered questions only underscore the need for our expression of concern.

I welcome the President's statement that any decisions on future arms sales to Jordan or other Mideast nations will be made in the context of a firm commitment to Israel's security and the need to bring peace to the area. But this is not sufficient without a mention of the foreign policy context in which he proposes to do this; a mention of the need to build a public consensus to develop that foreign policy context; and a mention of Congress role in building that consensus.

Our decision on arms sale proposals should not be based on threats that other nations will turn elsewhere for arms. Our decisions should be based on the merits of the individual sale; on a need to alleviate, not exacerbate regional tensions; and on a foreign policy which is built on consensus, not undermined by confrontation with and within Congress. Discussions to build that consensus should begin in Washington—not in the Amman airport. To proceed otherwise serves neither U.S. interests nor Israeli interests nor Jordanian interests.

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

The letter follows:

U.S. SENATE,
Washington, D.C., February 24, 1982.

DEAR MR. PRESIDENT: We are concerned that Secretary Weinberger's proposal to sell sophisticated arms to Jordan sets the stage for an unnecessary and devisive confrontation with Congress that could undermine American foreign policy around the world. We urge you to act quickly to avoid such a confrontation by rejecting this proposal, at least until Congress and our allies have been thoroughly consulted.

The sale of F-16 fighters and Hawk mobile anti-aircraft missiles to Jordan could dramatically change the balance of power in the Middle East, undermine the security of our ally, Israel, and increase the overall instability of the region. Before any such sale is proposed there should be the widest range of Congressional consultation, public discussion, and communication with our allies. Absent such discussion it will be difficult to achieve the kind of consensus our nation needs on sensitive foreign policy matters. And we cannot be an effective world leader without such consensus at home, and among our allies.

We urge you to announce immediately and publicly that the proposal to sell arms to Jordan will not be developed further until after the Congressional consultation which such a proposal deserves. World security cannot afford an escalation of the arms race in the Middle East. And the United States cannot afford another unnecessary and divisive confrontation with Congress on a foreign policy issue. We hope you will take all steps necessary to avoid it.

Sincerely,

Gary Hart, John Heinz, Daniel Patrick Moynihan, Donald W. Riegle, Jr., Bob Packwood, Edward M. Kennedy, Paul E. Tsongas, Max Baucus, Alan Cranston, Lowell P. Weicker, Carl Levin, Alfonse D'Amato, Alan J. Dixon, Thomas Eagleton, William Proxmire, George J. Mitchell, Joseph R. Biden, Jr., Paul S. Sarbanes, Dennis DeConcini, Bill Bradley, Howard Metzenbaum, Nancy Landon Kassebaum, Jim Sasser, Robert C. Byrd, Walter D. Huddleston, Claiborne Pell, Spark Matsunaga, Quentin N. Burdick, John Danforth, Rudy Boschwitz, Lawton Chiles, Arlen Specter, Frank H. Murkowski, William V. Roth, Jr.●

MISSING CHILDREN—A PROGRESS REPORT

● Mrs. HAWKINS. Mr. President, last session I introduced the Missing Children Act, S. 1701, establishing a national clearinghouse for information

on missing children and the unidentified dead. My bill codifies current practices now voluntarily undertaken by the National Crime Information Center, NCIC, within the Federal Bureau of Investigation which operates a national missing persons file. It also amends present law by allowing parents, legal guardians, and next of kin to list their missing children on the NCIC system. The Justice Department has stated that the principal problem in locating missing persons through the NCIC computer is underutilization of the system by State and local officials; only a shocking 10 percent of all missing children are now entered. By allowing parents to submit their missing child's name and vital statistics into the computer when local officials fail to act, we can increase the usage and effectiveness of the clearinghouse.

The Missing Children Act also establishes for the first time, a national center for information concerning the unidentified dead. Two thousand unidentified dead bodies are found each year. So, the family and friends of 2,000 people each year must be added to the list of those living forever with false hope. The NCIC Advisory Policy Board has endorsed the creation of an unidentified dead body file. Furthermore, this summer, the Colorado State Bureau of Investigation expanded their unidentified dead persons file to include information from the entire Nation. That means we now have the technology, the experience, and the statistical information provided from a pilot project which can be used as a model for establishing a truly national clearinghouse on the unidentified dead.

Hearings on this issue were held by the Senate Labor and Human Resources Subcommittee on General Oversight and Investigations on October 6, 1981, and the House Judiciary Subcommittee on Civil and Constitutional Rights on November 18 and 30, 1981. At the hearings, the Federal Bureau of Investigation testified that they estimated the cost of the Missing Children Act to be $47,000 to implement and $285,000 in annual operation costs. If only 1 child were found out of the 1.8 million missing each year due to the expanded use of the NCIC computer, I believe that the cost would be justified. Of course we anticipate that the expanded use of the NCIC system will result in the identification and recovery of many, many children.

Mr. President, I am gratified by the tremendous support this legislation enjoys in the Senate. Sixty-seven of my Senate colleagues are cosponsors of S. 1701. Twice the full Senate has demonstrated its support for the Missing Children's Act by unanimously accepting it in amendment form. On November 12, a Missing Children's amendment was added to H.R. 4169, the State, Justice, Commerce Appropriations bill and on November 19, 1981, a Missing Children's amendment was added to the continuing resolution. Although the continuing resolution was vetoed by the President, H.R. 4169 is still pending before the Senate.

I attribute the widespread support for this legislation to the work of organizations and individuals throughout this Nation. I am most grateful for their ongoing interest and support. Recently, the Florida cabinet issued a resolution in support of the Missing Children Act. Mr. President, I submit for the RECORD this resolution and a copy of an informative "Congressional Research Service Issue Brief" on this subject. I do so confident that national support continues to grow as steady progress toward final enactment continues.

The material follows:

FLORIDA DEPARTMENT OF STATE,
Tallahassee, Fla., December 14, 1981.

Hon. PAULA HAWKINS,
U.S. Senator,
Washington, D.C.

DEAR PAULA: Enclosed is a resolution passed and signed by the members of the Florida Cabinet in support of Senate bill 1701 and House Resolution 3781, known as the "Missing Children Act."

As you know, this is a matter of intense concern to the citizens of Florida, and I want to personally encourage the speedy adoption of this most important and worthy legislation.

Thank you for your consideration. May I wish you the best of holiday seasons.

Sincerely,

GEORGE FIRESTONE,
Secretary of State.

RESOLUTION

Whereas the rate of runaway and missing children has increased steadily in the last 10 years, and

Whereas the State of Florida is keenly interested in participating in a program of information exchange to help those who are searching for missing children, and

Whereas Senate Bill 1701 has been introduced in the United States Senate and House Resolution 3781 has been introduced in the United States House of Representatives, and

Whereas Senate Bill 1701 and House Resolution 3871, known as the "Missing Children Act," proposes amendment to the United States Code to authorize the Attorney General to acquire and exchange information to assist federal, state, and local officials in the identification of deceased individuals who have not been identified and in the location of missing children;

Now therefore be it resolved, that the Governor and Cabinet of the State of Florida do hereby request the Congress of the United States to adopt the "Missing Children Act" so that the Attorney General of the United States will be authorized to acquire and exchange information on missing children among the states.

Be it therefore resolved, that copies of this Resolution be sent to each member of the Florida delegation to the United States Congress, to the Chairman of the House of Representatives Judiciary Committee, to the Speaker of the United States House of Representatives, to the President of the United States Senate and to the President of the United States.

In testimony whereof, the Governor and Cabinet of the State of Florida have hereunto subscribed their names and have caused the official seal of the said State of Florida to be hereunto affixed, in the City of Tallahassee, Florida, on this 8th day of December, A.D. 1981.

[From The Library of Congress, Congressional Research Service, Major Issues System]

MISSING CHILDREN AND DECEASED PERSONS: PROPOSALS TO ESTABLISH A NATIONAL INFORMATION CLEARINGHOUSE

(By Louise Giovane Becker)

ISSUE DEFINITION

Concern over missing children and deceased persons has prompted consideration of a federally mandated national information bank. Debate has centered on the need for such a national repository, effective management of such files and the appropriateness of Federal involvement, enhancement of existing information systems and services, and the rights and protection of missing persons and runaway children in a mobile society. This issue brief reviews existing and proposed systems as well as some of the implications of the proposals to develop a national information repository on missing and unidentified deceased persons.

BACKGROUND AND POLICY ANALYSIS

The problems and sometimes tragic consequences surrounding the plight of missing and runaway children have gained greater national attention in recent years. The increased number of runaways and parental kidnappings (see Issue Brief 77117, Parental Kidnapping) has exacerbated the problem. The experience of local law enforcement agencies with missing children cases is marked by complexity of the individual situation and the frustrations inherent in tracking a subject in a mobile society.

An existing resource, the Federal Bureau of Investigation's National Crime Information Center (NCIC) missing persons file, has been underutilized. Local law enforcement agencies have claimed that low use of the NCIC missing persons file stems from a lack of knowledge regarding the existence of such a file, limited resources and manpower to supervise entries and deletions, and the perception that cases of missing children tend to be limited to one jurisdiction and, therefore, rarely require national information network support.

The problems experienced in dealing with missing persons have stimulated consideration of a viable information exchange system directed at assisting parents and responsible officials of the criminal justice community. Proposals which have received attention range from measures which should establish a national data repository of missing children, including basic identifying characteristics, to others that call for the fingerprinting of all children. Most recently interest has focused on developing a national index with general information on the missing child.

FBI National Crime Information Center's missing persons file

Since 1975, the FBI has operated and managed a missing persons file as part of the National Crime Information Center, a nationwide criminal justice information data base. With support of the law enforcement community and the NCIC Advisory Policy Board as well as studies conducted by

the FBI legal staff, the FBI decided that a separate missing persons file would be created within the NCIC. Reflecting concerns regarding personal privacy, the FBI instituted the following entry criteria for including persons in the NCIC Missing Persons File:

A person of any age who is missing and under proven physical/mental disability or is senile, thereby subjecting himself or others to personal and immediate danger;

A person of any age who is missing and in the company of another person under circumstances indicating that his or her physical safety is in danger;

A person of any age who is missing under circumstances indicating the disappearance was not voluntary; or

A person who is missing or declared unemancipated as defined by the laws of his State of residence and does not meet any of the criteria noted above.

In testimony before the House Committee on the Judiciary (see below), Keir Boyd, Inspector-Deputy Assistant Director of the FBI, NCIC missing persons file, commented that since the inception of the file in 1975, an estimated 780,000 records have been entered, of which 592,000 were of juveniles. At this time, the NCIC has over 24,000 missing person entries with about 19,000 being juveniles. The missing person files generally contain the name of the missing person, sex, race, place of birth, date of birth, date of emancipation (for juvenile records), identification information (weight, height, color of hair, scars, etc.), identification numbers (social security, passport number, driver's license, etc.) and other miscellaneous data.

Unidentified deceased persons file

The number of unidentified deceased persons nationwide has been estimated to be over 1,000 annually. While this is a relatively small number, arguments have been made that a data clearinghouse would provide some assistance to those who are seeking information about a lost or missing person. Since 1970, there have been discussions among representatives of the criminal justice community on the possibility of establishing a centralized file or clearinghouse on unidentified deceased persons. The FBI National Crime Information Center All Participants Meeting in late 1970 included discussion of a proposal to create such a file in the NCIC. In view of certain perceived difficulties (such as a lack of uniform identification standards for physical characteristics description and too little experience with development of such files), further action was delayed. Later, the FBI NCIC staff concluded that the lack of significant and uniform identification standards would make it difficult to format and establish a reliable file. Stimulated by Representative Tom Railsback's interest in establishing an unidentified deceased persons file, the NCIC staff continued research into the feasibility of establishing such a file. A year later in 1980 the NCIC Advisory Policy Board, after some discussion, formed a Subcommittee to "identify standards for development of State programs which could serve as a base for a national program."

By mid-1981, the NCIC Advisory Policy Board reviewd a report by the Unidentified Dead File Subcommittee on the need for a national information clearinghouse for unidentified deceased persons. At the Board's June 1981 meeting, it was agreed that the Colorado State Bureau of Investigation's Unidentified Dead File be used as a pilot project. Information on the development of this pilot project has been distributed to criminal justice agencies.

The NCIC Advisory Policy Board and others in the criminal justice community generally acknowledge that the prototype lacks comprehensive uniform data standards; rather it is based on a broad spectrum of data elements which provides a utilitarian index. The prototype file index record may contain the following data elements: sex, race, height, weight, approximate age, hair and eye coloring, scars, and other information when available. The file, maintained by the Colorado State Bureau of Investigation, at the present time contains information on over 400 unidentified deceased persons.

Congressional interest and action

Congress has considered proposals to develop a national information clearinghouse to aid the criminal justice community to locate missing children and to assist in the identification of certain deceased persons. In the past, Congress considered legislation on developing a repository for data on unidentified deceased bodies.

In the 95th Congress, Representative Tom Railsback introduced H.R. 9598 (Oct. 17, 1977). This bill concerned the development of a national data repository on unidentified deceased persons. The concept has been referred to on occasion as the National Bureau of Unidentified Dead. Later in the 95th Congress, Representative Railsback and others sponsored H.R. 13552, a similar bill. Although the measures received no further action, it is believed that they served in part to stimulate the development of unidentified deceased person files in some States.

In the 97th Congress, bills have been introduced that provide for the establishment of a national clearinghouse for data on missing children and unidentified deceased persons. For example, two principal bills, S. 1701 and H.R. 3781, cited as the Missing Children Act, would amend title 28 of the U.S. Code to authorize the Attorney General to acquire and exchange information to assist Federal, State and local officials in the location of missing children and assist in the identification of certain deceased individuals. While the intent of these bills is similar, there are some differences. Specifically S. 1701 directs that information on unidentified deceased persons be entered in the repository within 15 days after the discovery of the body. S. 1701 departs from H.R. 3781 by allowing authorized officials, as well as parents, guardians, and the next of kin of missing unemancipated persons (defined by the laws of the State) to have information placed in a central repository that would aid in locating the individual. The House bill, H.R. 3781, would authorize only appropriate officials to make entries into the system and require that a record on the unidentified deceased person be created after 30 days of discovery. More recently, other bills (H.R. 5003, H.R. 5049, H.R. 5104) identical to the bills described above have been introduced.

Hearings have been held in both the Senate and the House on the problems of missing children and the creation of a national information clearinghouse for missing children and unidentified deceased persons. Witnesses at these hearings indicated a broad range of social as well as administrative concerns.

In the Senate, hearings have not been held on S. 1701, but on Oct. 6, 1981, the Senate Committee on Labor and Human Resources Subcommittee on Investigations and Oversight held a hearing on the subject of missing children. Subsequently the Senate on Nov. 21, 1981 adopted the language of S. 1701, Missing Children Act, as amendment (No. 609) to the Departments of Commerce, Justice, and State Appropriations, 1982, H.R. 4169. This measure is still under consideration in the Senate. Language identical to S. 1701 also was introduced and passed by the Senate in H.J. Res. 357, a continuing budget resolution (unprinted amendment No. 661). But the final version of H.J. Res. 357 enacted by the Congress and subsequently vetoed by the President did not contain the language to establish a national data repository on missing children. In the House Report 97-352 accompanying H.J. Res. 357, the conferees discussed the deletion of the Senate approved provision regarding acquiring and exchanging of information on missing children and certain deceased individuals. While the conferees noted the support of the objectives of the provision, they urged that enactment of this provision should be accomplished through the regular authorization process and that the appropriate committees consider the matter. In addition, the conferees recommended that in the interim the "Attorney General should expand, to the extent possible, the existing computerized information system capability of the Federal Bureau of Investigation."

Hearings were held (Nov. 18 and 30, 1981) on H.R. 3781, the Missing Children Act, by the House Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights. Testimony was heard from both advocates of the concept and from representatives of the Federal Bureau of Investigation. Since the FBI National Crime Information Center file on missing persons above may be considered as a basic resource in locating missing children, consideration was given to exploring the potential of its use. The FBI witness, in response to questions from Members of the Committee, expressed concern regarding a provision in S. 1701 which would allow parents and others to make entries into a missing person file. A major objection to that provision is that the public might perceive that the FBI has a jurisdictional responsibility in locating missing children. A closely aligned objection is that there would be an expectation by those who contacted the FBI directly to add information to the national repository and that the Bureau would lend its capability to aid in finding the missing person. A greater danger, in the opinion of the FBI witness, was that local law enforcement agencies would not be contacted by the parents and others directly. Since local jurisdictions are responsible for locating the child, circumventing of this law enforcement resource might be unfortunate.

National concerns and considerations

Proposals to develop a national information clearinghouse to aid in locating missing children and identification of certain deceased persons have stimulated a wide diversity of opinions. Questions have arisen over the appropriateness of Federal involvement in what has been primarily a State or local responsibility. On the one hand, advocates of the concept believe that a national mandate will provide a much needed focus. A Federal mandate, in their opinion, should stimulate public concern and may contribute to the development of uniform information collection and reporting practices which would enhance a national clearinghouse. They also believe that, from a practical view, a national mandate may serve to stimulate greater criminal justice participation. Therefore, enactment of this type of

legislation is viewed as providing a much needed focus with the potential to enhance existing activities and encourage better exchange of information.

On the other hand, those who oppose the concept of a Federal tracking system to locate runaways and lost children have expressed doubts about the success of present proposals. They point out that the lack of participation at the grass-root level has been a major hindrance in developing adequate data collection systems. Others seem opposed to further Federal involvement in what is a local law enforcement problem. Critics of the current bills express concern that the legislation may duplicate existing services and operations and, more importantly, would not necessarily contribute to solving the problem of locating missing children or others. Another objection has been to legislation which would allow parents and others to enter the missing child's identity into a national clearinghouse. In the opinion of some critics, the entry of information into a national system by the parents and others may mislead them to believe that Federal law enforcement assistance in locating the subjects would be forthcoming. Since the search and location of missing persons is generally the responsibility of local law enforcement (Federal jurisdictional responsibility being limited—e.g., if the missing person has been transported interstate), there may be misunderstanding of the possible assistance that can or will be rendered. The possible use of the FBI's National Crime Information Center's files and network as the proposed clearinghouse capability may serve to further complicate and mislead the public into thinking that the FBI has a responsibility in these matters in all cases.

Extensive expansion or enhancement of the NCIC missing persons file may not be technically feasible given the existing NCIC systems capability. Therefore proposals which call for extensive search capability on certain record elements may not be easily accomplished without further modification of the NCIC systems parameters.

The lack of uniform participation by the criminal justice community in the existing FBI NCIC missing persons file is viewed as another serious problem that may not be solved by the present proposals.

National experiences in dealing with the social problems associated with missing children have been limited. However, the experiences gained in conducting research and maintaining an information clearinghouse, such as mandated by the Child Abuse Prevention and Treatment Act (P.L. 93-247), may provide some parallels.

Several basic questions may require further examination—for example:

Is there a need for a federally mandated information clearinghouse or are existing system(s) adequate?

Are existing resources adequate to educate the public and the criminal justice community in dealing with the problem of missing persons? What type of support should all levels of Government render?

Should State and local law enforcement agencies, which currently are reluctant to make entries in a national missing person file, be encouraged to participate?

Are further safeguards needed to protect individual privacy?

What experiences gained by the National Center for Child Abuse (established by P.L. 93-247) can contribute to the debate over establishing a national information clearinghouse on missing children?

LEGISLATION

H.R. 3781 (Simon)/S. 1355 (Hawkins).

Directs the Attorney General to collect and preserve information which would assist in the identification of any deceased individual who has not been identified within 30 days of his or her death, and the location of any missing child who is under the age of 17, does not have a history of running away, and has been missing for at least 48 hours. H.R. 3781 introduced June 3, 1981; referred to Judiciary Committee. S. 1355 introduced June 11, 1981; referred to Senate Committee on Judiciary.

S. 1701 (Hawkins)/H.R. 5003 (Gaydos)/H.R. 5104 (Railsback).

Authorizes the Attorney General to collect and exchange information which would assist in the identification of unidentified deceased individuals, and the location of missing persons, including missing children. S. 1701 introduced Oct. 5, 1981; referred to Senate Committee on Judiciary. H.R. 5003 introduced Nov. 17, 1981; referred to House Committee on Judiciary. H.R. 5104 introduced Nov. 23, 1981; referred to House Committee on Judiciary.

REPORTS AND CONGRESSIONAL DOCUMENTS

U.S. Congress. House. Making further continuing appropriations for the Fiscal Year ending September 30, 1982, and for other purposes. Conferences report to accompany H.J. Res. 357.●

METRICS: LET'S GET ON WITH IT

● Mr. PELL. Mr. President, there are few subjects more cloaked in mythology and popular misconceptions than the centuries-old metric system. Despite its appeal to simplicity and logic, our heads remain buried in the sands of confusion and misinformation about metrics. We still lack a national commitment to full-scale conversion, despite our isolation as the only industrialized Nation in the world not officially committed to the metric standard of measurement.

While I was in Central America recently, I was pleased to find a simple and effective statement of the case for metric conversion in the Panama Star and Herald for February 13, 1982. I wish to share this fine editorial, entitled "Metric Uproar," with my colleagues, and I ask that the article be printed in the RECORD. The article follows:

METRIC UPROAR

It is hard to explain the violence inspired by some at the mere mention of the metric system. One might judge by their reactions that the metric system is the work of the Devil or the International Communist Conspiracy or both.

In fact, metric measurements are more logical and ultimately far easier to use than the good old English method to which we are accustomed. Maybe the most vocal opponents are afraid they just will not be able to learn a new way of measuring. They need not fear; despite wild accusations, there is no evidence of a plan to impose metric measurement on us all at once while English measurements are banned.

The change would be gradual.

Let us face facts. Not only would metric be convenient once we get the hang of it, it would make us on this side of the Atlantic more competitive. That is one of our goals, is it not making our goods attractive to potential importers? European manufacturers are geared to metric, and so are their customers. If we want some of those customers to be ours, we ought to make things to their specifications. Doing that would be much cheaper and easier if we do not have to make things by one measurement for domestic consumption and by a second measurement for export.●

LITHUANIAN INDEPENDENCE DAY

● Mr. LEVIN. Mr. President, the 16th of February marked the 64th anniversary of the Lithuanian Independence Day. It is on this day in 1918 that the people of Lithuania declared their independence and freedom. Their freedom was short lived, however; the Soviet Union invaded and forcibly annexed Lithuania only 22 years later.

As has been the case not only in the Baltic nations, but also in Eastern Europe and Afghanistan, the Soviets have refused to recognize the territorial integrity of a people and have absorbed an entire nation into their huge union.

In Lithuania the Soviets have tried to eradicate the people's national identity by suppressing their basic human freedoms. Their religion, art, culture, and even the language they once spoke, have been decimated. The dignity of the Lithuanian people has been assaulted.

In repressing the Baltic peoples, the Soviets have ignored internationally recognized human rights agreed to in the Universal Declaration of Human Rights and the Helsinki accords. Refusing to observe fundamental human freedoms has become a hallmark of Soviet influence throughout the world.

It is in the face of this repression, that the strong people of Lithuania must live with only the hope of freedom. Their freedom is not something that is preserved by the laws of the nation, their freedom is something that lives in their hearts and dreams. People of captive nations can only dream of someday breathing freely, perhaps on their own soil, perhaps in another land.

The oppressed peoples of the world have sought out the United States as a safe haven where they can be assured their basic human rights. Cultures, languages, and national identities thrive in this Nation of nations. The diverse cultures in the United States have combined to make a tapestry, with unique and individual threads woven into a fabric of a free nation.

Our Lithuanian citizens represent the heritage of the Lithuanian nation and our own nation as well. It was appropriate that on February 16 we recognized the efforts of the Lithuanian people to assert their independence

and their incessant desire to live in freedom. We should remember on this anniversary day, the plight of the oppressed Lithuanian people, the sisters and brothers, parents, grandparents of so many of our own citizens.●

DRUNK DRIVING: A DAILY DISASTER ON OUR NATION'S HIGHWAYS

● Mr. PELL. Mr. President, statistics alone can never convey the human suffering and senseless loss of life which happen every day on our Nation's highways as the result of the actions of drunk drivers. Statistics do convey, however, a sense of the magnitude of our Nation's No. 1 highway safety problem, particularly when the daily "body count" is vividly compared to the public shock and grief that always accompanies major air disasters.

The Providence Journal recently focused on this ongoing national tragedy in a guest column by Robert A. Hastings entitled "Thought: An Air Crash Every Day." This compelling article points up the need for national alcohol highway safety standards. I have introduced a bill, S. 671, which would encourage the States to impose minimum, mandatory sanctions against convicted drunk drivers. I believe these strong actions are absolutely necessary if we are serious about removing the drunk driver menace from our highways.

I would like to share Mr. Hastings column on the drunk driver problem, which appeared on February 13, 1982, with my colleagues and I ask that it be printed in the RECORD.

The column follows:

THOUGHT: AN AIR CRASH EVERY DAY

(By Robert Hastings)

What do you think would happen if the skies were so unsafe that there was a major air disaster every day?

The crash of the Air Florida Boeing 737 (in December) certainly riveted public attention and dominated the news. At least 78 persons were killed. What if another major airline crash occurred on the next day? And another the next day? And still another the day after?

The search for answers would be fanatical. Every flight would be grounded. The panic would be overwhelming.

At least 78 lives a day! There would be no stone unturned until a solution was found. And, if after a week or so, the average death rate was 104 a day, what would happen?

Nothing.

Because the rate is already 104 a day. Only the form of transportation is different.

Day in and day out, 160 persons are killed on our nation's roadways. Of them, alcohol plays a role in the deaths of 65 percent.

That's 104 deaths a day, laid at the feet of drivers who have been drinking.

Day in and day out.

One hundred and four.

What is the difference whether they have been killed together, or in a hundred separate tragedies? The body count doesn't change. The loss is no less. And in most cases, the victims were no more at fault.

Count: 104 a day.

Count: 728 a week.

Count: 3,224 a month.

Count: 37,960 a year.

Nearly 40,000 deaths a year, in which drinking while driving was a factor.

What do we in Massachusetts do to combat this slaughter? How often do we arrest a drunk driver, and what penalty do we exact?

When there is an accident, or a motorist happens to weave across the road in the view of a police officer, there may be a drunk-driving arrest. What is the major penalty? Suspension of the driver's license. And what is the penalty for driving after a suspension? Generally a fine.

What are the odds of getting caught? Consider:

1. In a two-hour roadblock recently, Revere (Mass.) police made six arrests for driving under the influence: drunk driving. That is one arrest each 20 minutes on a single road. Last year, in all of Revere, police made 347 drunk-driving arrests. That is one arrest each 1,515 minutes. The roadblock increased the drunk driver's chance of getting caught by something in the order of 7,500 percent. Obviously, the odds of not getting caught in normal circumstances are vast.

2. When a person is suspected of driving under the influence, he must flunk a breathalyzer test to be charged. That requires, on the average, having had five to seven drinks within one hour. The odds of arrest are thus further reduced.

3. A license suspension, particularly for the first time one is caught, is not a normal punishment. It is usually something less. Again—the odds for any real punishment go down.

4. Finally, after another arrest, the driver has his license suspended. But the same odds which apply to getting caught driving under the influence apply to being caught driving after license suspension. And if you are caught without a license, even a second time, what is the normal penalty? A fine.

In other words, we don't take drunk driving seriously. The major penalty for a "driving under" conviction is license suspension, and the major penalty for ignoring that, and continuing to drive, drunk or sober, is a fine. Even that is often beaten if the Registry can't prove that it properly notified the driver of license suspension.

Now that you have a feeling for the drunk driver's odds, have you any idea of your odds of successfully avoiding a crash with a car aimed straight at you, traveling 60 miles an hour?

Not much better than those of the victims in that 737.●

CONCLUSION OF MORNING BUSINESS

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

DEPARTMENT OF JUSTICE AUTHORIZATIONS, 1982

The Senate continued with the consideration of the 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.

Mr. MOYNIHAN. I thank the Chair.

Mr. President, I rise in opposition to the matter before the Senate, to speak as calmly as I can about an issue that could easily arouse the most turbulent passions and alarms.

I do not conceal my judgment that if this measure should pass the Senate and in some way pass the House of Representatives and become law, we shall have blotted the Constitution and a body which for two centuries has been zealous in protecting the basic constitutional division of powers between the executive, the legislative, and the judicial branches. We will have shamelessly invaded the province of the one in open, undisguised and altogether unseemly collaboration of the other.

It was Hamilton, who spoke of the judiciary as the least dangerous branch. It was his view in No. 78 of the Federalist Papers, which I cannot help but observe were published in a New York journal, in which he observed that it is by the very nature of the judiciary that it could only order as law those measures which the executive branch would enforce. And, in the main, would find itself, apart from the constitutional role which it has necessarily attained, enforcing the laws adopted in this body and in the other body and which fact deposes upon both the legislature and the executive a sacred duty to insure the viability and the integrity of that least dangerous branch. A duty which certainly extends to a self-denial of any efforts on our part to invade the provinces of the judiciary.

This is a temptation which has from time to time appeared in the executive branch. In a famous outburst which I cannot but think he may subsequently have regretted, although it was not always in his character to regret his impulses, Andrew Jackson remarked with respect to a ruling of the Supreme Court which John Marshall had written "John Marshall made the decision. Let him enforce it."

Nothing is more vividly recalled in our constitutional history than the impropriety, the illegality of that statement, because it is the duty of the Executive to carry out faithfully, to execute the laws of this Congress as enacted and the decisions of the Supreme Court declaring what the law is to be in issues where they are disputed and brought to the Court by litigants.

If there was one other such event in our history closer at hand but not less notable it was the attempt by Franklin Delano Roosevelt, whose revered memory we honor this year in this 100th anniversary of his birth, when he found a majority on the Supreme Court persistently opposing his legislation adopted at least in this body and in the other body and at his behest, the New Deal legislation as he called it. A majority finding that legislation

to be unconstitutional, he proceeded to propose that the Court be packed, that additional members be appointed, that it be such that he could appoint persons whose judgments he would have some presumably reliable advanced notice and knowledge of and thereby change the majority on the Court, through legislation in this body as proposed by him. This body rejected it. A Congress that was more than supportive of the President in his legislation, more deferential to him in many respects, given the state of economic crisis in the world at that time, nonetheless the U.S. Senate and the House of Representatives in their combined actions would not pass that bill because it invaded the judiciary, the equal third branch of the Government.

And indeed John Marshall's decision was enacted by the executive branch on the wise second thoughts of the leaders thereof.

It is for reasons of that restraint and that integrity that we are soon to observe the 200th anniversary of the American Constitution. The distinguished Presiding Officer will, it is my fond hope and expectation, be in this body when that anniversary occurs. It will begin, the sequence will occur indeed in just 5 years time when the Constitutional Convention shall have had its 200th anniversary and we mark our sequential move to the actual establishment of the Federal Government.

Mr. President, I think the ancient nature and the extraordinary durability of our constitutional institutions is something that Americans can become too little conscious of.

I spoke this morning to a resolution introduced by the distinguished minority leader and myself having to do with the recent actions in the United Nations, which seemed repellent to us and so opposed to the constitutional procedures as ordained under the Charter of the United Nations, that we were disposed to say that should they not go forward. The United States would withdraw from active participation in the General Assembly and withdraw its financial support for the institution.

Why? Because it was violating its own charter, something we have not done, and that is why ours has endured so.

I was once our Permanent Representative to the U.N., and in the course of a long afternoon's debate found my attention wandering from the subject at hand. Looking at the list of member countries that are listed on two large panels on either side of the podium from which persons speak at the U.N., there were then 147 members of the United Nations, and I asked myself, just to be candid, Mr. President, just to shake off the drowsiness that the afternoon and the oratory had induced, I started making up a little list, and I asked myself how many of those members of the U.N. both existed as nations in 1914 and had not had their form of government changed by force since 1914?

As our distinguished Presiding Officer (Mr. GOLDWATER), who has defended this Nation in peace and war for the better part of half a century, will not be surprised to learn, but which many Americans will be surprised to learn, the number, sir, was seven, seven nations in the world. If you were to include Switzerland, you would have eight that have not had their form of government changed since 1914.

The singular experience of the United States, to have lived under a constitutional government since the 18th century, is a remarkable testament both to the wisdom of the men who drew that Constitution and the character of the men and women who have defended it in these Chambers in the nearly two centuries since.

What we have defended as much as any other thing, because that would be what most needed defending, was the integrity and the independence of the judiciary, that which only we can insure and without which we cannot survive as a nation.

We will not prevail as a people. Our laws will fall into disrepute, our institutions into disrepair, and that which is unknown to the American people, but the common experience of mankind everywhere else, save in a half dozen blessed countries, could fall to be our condition as well.

It is no small thing that we deal with here. It is the most precious of things, the integrity of our processes. This legislation has been called court-stripping legislation. It takes a subject, which is of the moment schoolbusing, a judicial remedy adopted in situations of difficulty, duress, uncertainty in the face of one of the most profound constitutional problems our Nation has ever faced, that of equality of the races, and in the effort to carry out a judicial decision having to do with the constitutionality of certain arrangements in public schools, to wit that which was declared unconstitutional, when the Constitution said they could not be separate but equal, now distant in time but how recent in our experience anything like that could be, and the courts dealt with the reality that races were separated still, and in many instances the legacy of de jure, legal, deliberate practice, a practice found to be unconstitutional, a practice once found to be unconstitutional, given the wrong the courts sought to remedy, and it happens, Mr. President, that I have had some experience with the social science on which this particular remedy was based.

I know some of the social scientists who testified in some of the critical court cases in the district and circuit courts. I have had work of my own cited in a Supreme Court decision on the efficacy of such matters and, if I may say, that work of mine cited went to the point of the uncertainty of such measures, the uncertainty not of this particular measure but of what is known about the origin and nature of educational resources, A long study, if I may be precise, because the Senate would want to know, and that much of the legislation we deal with was based upon a report on educational opportunity, of which the principal assertion was that of Prof. James S. Coleman of the University of Chicago, perhaps the leading mathematical sociologist of our country, certainly one of them. The Civil Rights Act of 1964 required that there be a study conducted by the Department of Health, Education, and Welfare on the nature and distribution of unequal resources and the unequal opportunity in our school system.

It was the second largest social science project in history, and it came to rather strikingly unanticipated conclusions of a great variety of matters, specifically the assumed relationship between educational resources as such and educational achievement as such, such as it can be measured, which was nothing so strong as thought to be or rather the variations were very common in all these school systems that were encountered.

There was not as much difference between school systems and schools as was thought, and even where there was the relationship between input and output, to use the term that is common in such matters, was much weaker than anybody supposed. This was not the expected result of the work of Professor Coleman and his group, and all the more interesting as social science or any science when an unexpected result follows and a hypothesis is not confirmed, which suddenly raised to a high order of interest the question as to what does make for heightened educational achievement.

One of the elements that was found to be a corollate of higher achievement among minority groups was the degree to which they were in classrooms and in schools principally which were integrated, as we use that term.

One should not disguise that that effect, as the analysts will use that term, was a small one. It was not something massive, overwhelming, palpably of the largest consequence, but it was there.

It fell to a group of social scientists to study for a period of 1½ years at Harvard University, a seminar which I founded with Prof. Thomas F. Pettigrew, to reanalyze Coleman's data, and whilst methodological arguments emerged, as they will always do in new fields, even so the basic findings were

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confirmed and have since been confirmed, leaving the measure, such as in classroom and school system integration, one of the few seemingly viable options that public policy had with respect to achievement. But, in any event, there was the constitutional mandate which required the end to separation. And with its combination of a clear constitutional duty and a seeming educational opportunity, courts ordered schoolbusing. They did so in the best of faith and under the duty of constitutional obligation as they judged it to be and the experiment commenced.

There have been differing findings about the results of the experiment. Professor Coleman himself has had views which have disconcerted many when he found them not to have the results he would have hoped for in every case. But there can be no doubt whatever of their legality, nor was there any question raised in this body that the courts had a right to do this and if the courts did it, we obey.

I have been, Mr. President, one of the principal advocates in this Chamber during my brief experience here of the view that the Supreme Court is frequently wrong. I have written at some length about it in articles, such as one entitled "What Do You Do When the Supreme Court Is Wrong?"

As a measure of my own bona fides, Mr. President, I ask unanimous consent to have printed in the RECORD an article which I wrote for The Public Interest in the fall of 1979 entitled "What Do You Do When the Supreme Court Is Wrong?"

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

WHAT DO YOU DO WHEN THE SUPREME COURT IS WRONG?

(By DANIEL PATRICK MOYNIHAN)

An institution charged with the role which the Supreme Court has successfully filled for so many years is entitled to our respect and understanding. If one criticizes the Court (as people have always done in the past, and should continue to do in the future), it should be essentially for the purpose of trying to contribute to that respect and to that understanding. The debt which we all owe to the Court is far greater than any individual can repay. Criticism of decisions of the Court or opinions of its members should be offered as an effort to repay that debt, and with the thought that conscientious criticism may be an aid to the Court in carrying out its difficult and essential task.—ERWIN N. GRISWOLD, 1963.

In its Spring Term of 1979, the Supreme Court ruled in the case of *Gannett* v. *DePasquale* that the public does not have an independent constitutional right of access to a pretrial judicial proceeding. The case had been brought by the Gannett newspapers after one of their reporters was barred from a pretrial hearing in a murder case in upstate New York. Gannett argued that the guarantee of the Sixth Amendment to a "public trial" extended to the public at large, including, of course, the press. The Court held that this was not so. Mr. Justice Stewart's opinion for the majority of the Court declared: "The history upon which the petitioner and amici rely totally fails to demonstrate that the Framers of the Sixth Amendment intended to create a constitutional right in strangers to attend a pretrial proceeding. . . ."

Strangers? The press?

In a concurring opinion, Mr. Justice Rehnquist went further, and in such a manner as to highlight the fact that though, strictly speaking, *Gannett* v. *DePasquale* concerned pretrial proceedings, the decision is easily construed as applying to trials as well. The Court's recitation, he said, "of the need to preserve the defendant's right to a fair trial . . . should not be interpreted to mean that under the Sixth Amendment a trial court can close a pretrial hearing or trial only when there is a danger that prejudical publicity will harm the defendant. To the contrary, since the Court holds that the public does not have *any* Sixth Amendment right of access to such proceedings, it necessarily follows that if the parties agree on a closed proceeding, the trial court is not required by the Sixth Amendment to advance any reason whatsoever for declining to open a pretrial hearing or trial to the public."

The decision was the lead story of *The New York Times* the following day. It had, *The Times* reported, "aroused immediate strong criticism from both the press and the legal profession." The initiative of the Gannett newspapers in challenging the closing of a local court proceeding had been seen as a commendable effort to defend the rights both of the public and the press. The Edward Willis Scripps First Amendment Award for 1979 was presented to the Gannett Rochester Newspapers for pressing the suit and for their reporting and analysis of the issues involved. Allen Neuharth, Chairman of the Board of the Gannett newspapers and Chairman of the American Newspaper Publishers Association, called the ruling "another chilling demonstration that the majority of the Burger Court is determined to unmake the Constitution." The American Civil Liberties Union declared that the decision "erected an iron curtain between the criminal process and the inquiring press."

Editorial comment was no less severe. Much emphasis was placed on the asserted departure by the Court from historical, even ancient standards of justice. A forceful *Times* editorial began:

"For centuries the idea of open justice has been synonymous with justice itself. Before the Norman Conquest, before English judges spelled out the rudimentary rights of defendants, throughout the development of British and American jurisprudence, the tradition of open courts has been honored. Now a 5-4 Supreme Court majority has ordained an exception. . . ."

In a commentary, Tom Wicker, Associate Editor of *The Times*, deplored the ruling. It would surely lead to miscarriage of justice, he wrote. Not just the press, but the general public could be barred from courts, discarding a standard "rooted in American history." For the Court "now to say that that tradition has no constitutional validity * * * shakes public confidence in institutions and rights long thought to be a citizen's birthright."

The most telling comment came from the Court itself. In a dissenting opinion, Mr. Justice Blackmun stated that in their constitutional argument the Gannett newspapers were right, and the majority of the Court was wrong:

"The Sixth Amendment, in establishing the public's right of access to a criminal trial and a pretrial proceeding, also fixes the rights of the press in this regard. Petitioner, as a newspaper publisher, enjoys the same right of access * * * as does the general public. And what petitioner sees and hears in the courtroom it may, like any other citizen, publish or report consistent with the First Amendment."

In "rare circumstances," Justice Blackmun allowed, exclusion could be justified. But, he concluded, "Those circumstances did not exist in this case."

II

It is difficult to avoid the judgment that Justice Blackmun was right and the majority of the Supreme Court was wrong. If so, the question arises: What to do?

This is a question for which we have no clear answer and little theory. The Court is not supposed to be wrong. Even *The Federalist*, much given to emphasizing the frailty of human judgment, does not adequately treat this possibility. To be sure, the doctrine of judicial supremacy—of the Supreme Court's power to void acts of Congress by declaring them unconstitutional—is not explicit in the Constitution and was not generally assumed to be implicit until Chief Justice John Marshall established it in *Marbury v. Madison.* But Hamilton, who believed in it, and in *Federalist* paper Number 78 made a strong argument for it, had to deal with the charge that "the errors and usurpations of the Supreme Court of the United States will be uncontrollable and remediless." In Number 81, he suggests several reasons why this charge, upon examination, is "made up altogether of false reasoning upon misconceived fact," but all but one of his papers actually further arguments for the necessity and rationality of judicial supremacy. The sole check upon supremacy suggested by Hamilton, other than that of appeals to superior courts, is the power of Congress to impeach individual judges:

"This is alone a complete security. There never can be a danger that the judges, by a series of deliberate usurpations of the authority of the legislature, would hazard the united resentment of the body intrusted with it, while this body was possessed of the means of punishing their presumption, by degrading them from their stations."

No other corrective is suggested. Rather, the argument is made with particular force that the judiciary is inherently and uniquely possessed of the necessary wisdom and disinterest to weigh the actions of the legislature and the executive on constitutional scales. But if the Court were wrong, what—short of impeaching its members—would be the remedy? *The Federalist* does not say.

It happens, however, that we have a considerable practical experience of just this situation. For long periods of American history the Supreme Court has been wrong about one or another of the principal constitutional issues of the day. It has been wrong in the specific sense that there later came a time when the Court reversed itself, and either directly or implicitly stated that it *had* been wrong.[1] Nor has this been without

[1] Strictly speaking, the Court could have been right the first time and wrong the second. Walter Berns contends, properly, that the standard against which we measure a decision in order to say whether the Court was wrong must be the Constitution itself, not what the Court says about it. Still, experience is the life of constitutional law also, and I would hold that where the Court has reversed itself it has almost always done so to correct an observable error.

consequence. Charles Evans Hughes, in his 1928 volume, *The Supreme Court of the United States*, could refer to the Court's having suffered form a succession of "self-inflicted wounds."

Thus from the last decade of the nineteenth century into the fourth decade of the twentieth century the Supreme Court repeatedly declared that the due process clauses forbade labor legislation. Under the Fourteenth Amendment, it was held, for example, that the state of New York could not require that bakers work no more than 10 hours a day (*Lochner v. New York*, 1905). Under the Fifth Amendment, a District of Columbia Minimum Wage Act was held invalid (*Adkins v. Children's Hospital*, 1923).[2]

This was solemn nonsense, as Holmes pointed out in his acid comment in *Lochner* that "the 14th Amendment does not enact Mr. Herbert Spencer's *Social Statics*." [3] But the solemn nonsense persisted, thwarting for almost half a century the major social movement of the time. Then, as suddenly as it had begun, it stopped. Writing somewhat later, Mr. Justice Douglas declared in *Williamson* v. *Lee Optical Co.* (1955):

"The day is done when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought."

Or, as Mr. Justice Black put it in 1963 in *Ferguson* v. *Skrupa:*

"The doctrine that prevailed in *Lochner, Coppage, Adkins, Burns*, and like cases—that due process authorizes courts to hold laws unconstitutional when they believe that the legislature has acted unwisely—has long since been discarded."

Of these episodes in American history, the most notorious was the *Dred Scott* decision of 1857 which held the Missouri Compromise to be unconstitutional, a matter in which the Court was, again, plainly wrong. The most pernicious was *Plessy* v. *Ferguson* (1896), which held that the Fourteenth Amendment permitted separate but equal public facilities segregated by race, a doctrine that persisted until *Brown* v. *Board of Education* (1954).

Apart from the Dred Scott decision which was, in effect, overturned, by the Thirteenth Amendment, the essential fact in all these cases is, however, that the time came when the Court discovered its error and reversed itself.[4] This may appear much too optimistic, even pietistic a reading of American history, but there it is for those to refute who will. The question I would address is how these reversals have come about. It is process not now described in political or juridical science. As a beginning contribution I would offer a simple hierarchy of response which in one or another combination has commonly led the Court to change its position in those instances in which it has been wrong. In ascending order: Debate Litigate, Legislate.

(In theory the ultimate recourse of those who feel the Constitution has been misread is an amendment settling the issue. But this has never happened. It has never proved necessary. Apart from the evolving idea of Federalism that needed to correct Chisholm, the exceptional circumstances that followed Dred Scott, and the changed circumstances that caused a graduated income tax to appear more reasonable in 1913 than in 1787, sooner or later the Justices have rectified their mistakes. That is not the least ground for the loving fealty we owe the Court.)

As a "case history" I will first present in some detail the history of the issue of state aid to nonpublic schools. I will argue that the Supreme Court was wrong in its interpretation of the Establishment Clause in its decision *Everson* v. *Board of Education* (1947), but that after a generation the conditions are developing in which it may (will?) now reverse itself. That time is a considerable element in this process will be of small consolation to those now most distressed by the decision in *Gannett* v. *DePasquale*, but this also appears to be the general experience.

III

Some weeks before the lengthy *Gannett* decision was announced to the consternation of so many, the Supreme Court in 26 words announced its decision in *Byrne, Brendan T. et al. v. Public Funds for Public Schools:* "The judgment is affirmed. The Chief Justice, Mr. Justice White, and Mr. Justice Rehnquist would note probable jurisdiction and set the cases for oral argument." Thus yet another effort by a state government, in this case New Jersey, to provide a measure of assistance for nonpublic, mostly denominational schools was found to violate the Establishment Clause of the First Amendment, and hence to be unconstitutional.

This in itself was nothing noteworthy. Since 1947, when the Court in *Everson* ruled on a state school-aid statute (also of New Jersey) there have been altogether some 46 cases brought to the Court dealing with aspects of this subject. As the Circuit Court in the most recent New Jersey case stated in the opening sentence of the majority opinion, each of these presented "recurring and troublesome questions concerning the relationship between religion and government."

Withal, the 1979 action by the Supreme Court received some attention, for it involved tuition tax credits. New Jersey had enacted a state income tax to provide funds for public education. Included in the statute was a deduction for parents of children in nonpublic schools, it being reasoned that through tuition they contribute to the secular objective of education, and could receive some partial recompense. (For a parent earning $20,000, the total savings was to be $20.)

A more general, and national, measure, providing tuition tax credits at all levels of education—which is to say including college and university as well—had passed the House of Representatives in 1978. The post-secondary portion passed the Senate as well, while the elementary and secondary provisions failed by only 15 votes. This indicated considerable national support for such assistance, but in the New Jersey case the Circuit Court declared itself bound by a 1973 Supreme Court decision, *Committee for Public Education v. Nyquist*, which struck down a New York measure allowing a taxpayer with a dependent in a nonpublic elementary or secondary school to deduct an amount from his gross income, and thus pay less state income tax. The Supreme Court had held that this had the primary effect of advancing religion and that therefore—following the constitutional "tests" established in prior decisions from *Everson* through *Lemon v. Kurtzman* (1971)—the state law and the deduction it established necessarily failed.

But the notable aspect of the New Jersey event went altogether unremarked. In a separate opinion of the Circuit Court, Judge Joseph F. Weis declared that while clearly the Supreme Court decision in *Nyquist* governed the case, just as clearly the *Nyquist* decision was wrong. It had been a split decision (as almost all these decisions have been) and in Judge Weis's view "the dissenters have far the better of it in the *Nyquist* opinion. . . ."

Those dissenters—Chief Justice Burger and Justices White and Rehnquist—had written a trio of powerful opinions, observing *inter alia* that:

"While there is no straight line running through our decisions interpreting the Establishment and Free Exercise Clauses of the First Amendment, our cases do, it seems to me [the Chief Justice], lay down one solid, basic principle, that the Establishment Clause does not forbid governments, state or federal, to enact a program of general welfare under which benefits are distributed to private individuals, even though many of those individuals may elect to use those benefits in ways that 'aid' religious instruction or worship. . . . The essence of all these decisions . . . is that government aid to individuals generally stands on an entirely different footing from direct aid to religious institutions. . . . However sincere our collective protestations of the debt owed by the public generally to the parochial school system, the wholesome diversity they engender will not survive on expressions of good will."

Rather, as with the dog that Sherlock Holmes observed did not bark, the significant fact in the New Jersey tuition-deduction case is that the high court chose *not* to hear an appellate judge tell it that it was wrong.

Here close attention is required. There are two senses in which it may be argued that the Supreme Court has been wrong in this area. The first concerns the basic *Everson* decision itself, set forth by Justice Hugo Black, which announced a rule of law in the widest sense:

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[2] In *Erie R.R. Co. V. Tompkins* (1937) the Court reversed *Swift v. Tyson*, acknowledging that they were abandoning a doctrine widely applied ". . . throughout nearly a century. But the unconstitutionality of the course pursued has now been made clear and compels us to do so."

[3] Holmes' suggestion appears to be misleading. The Court was not trying to enact anyone's social theories but its own. In James Q. Wilson's phrase, the Court had an idea as to what a "good economy" would be, and it was against this standard that statutes were measured. A considerable body of labor legislation and business regulation was in fact upheld by the "Laissez-Faire Court." My point is simply that there was precious little constitutional warrant for any of this.

[4] To be sure, the Sixteenth Amendment, permitting a progressive federal income tax, had the effect of reversing the Supreme Court's five-to-four decision in *Pollock* v. *Farmers' Loan and Trust Company* (1895), which had struck down such a tax. But many commentators feel that in this instance the Court was accurately interpreting Article I, Section 9 of the Constitution, and that changing circumstances in fact called for a constitutional amendment. The contrary view, expressed by some members of Congress during debate on the Sixteenth Amendment, is that the Court was wrong but had recognized this and was already diluting the effect of the Pollock decision and that the proposed amendment was therefore superfluous.

The Eleventh Amendment, ratified in 1795, which denied the Supreme Court original jurisdiction in law suits brought by citizens against individual states, responded to the Court's decision in *Chisholm* v. *Georgia* (1793) that it had such jurisdiction. But this could reasonably be described as part of the completing of the Federal structure embodied in the Constitution itself.

"The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another."

The key elements of the rule, as Michael J. Malbin has written, are that Congress cannot give nondiscriminatory aid to religion and that neither can the states.

This is the basic ruling of the Court and it endures three decades later. It has not been challenged, albeit (in my view) wrong. Instead, the *Everson* doctrine has been the basis for numerous challenges to state efforts to channel modest amounts of aid into nonpublic education through one means or another, efforts which persist. (The actual holding in *Everson* itself was that New Jersey *could* provide bus transportation to parochial-school students.) The challenges have always been brought by persons opposed even to such small efforts and determined to maintain the *Everson* doctrine in as strict a form as possible.

This opposition has been organized (the list of plaintiffs in the recent New Jersey case begins: Public Funds for Public Schools of New Jersey, American Civil Liberties Union of New Jersey, Inc., Americans for Democratic Action . . .) and vigilant. As states have devised new forms of aid to accommodate each succeeding Court decision, the organizations have typically challenged the statute, leading in time to yet another decision by the Court. Thus there has followed from *Everson* a great number of interpretive, or exegetic rulings which not infrequently have been wrong, if you will, in their own right.

The result has been an intellectual shambles: one confused and convoluted decision requiring a yet more confused and convoluted explanation or modification. Professor Antonin Scalia of the University of Chicago Law School, former Assistant U.S. Attorney General, Office of Legal Counsel, and in that capacity the senior constitutional authority in the Executive Branch, testified before the Senate Finance Committee in 1978: "It is impossible, within the time allotted, to describe with any completeness the utter confusion of Supreme Court pronouncements in the church-state area." Professor Philip Kurland, also of the University of Chicago Law School, writes that "the Court is thoroughly unprincipled in the area," meaning, of course, that there is no coherent principle to be found in the ever-lengthening series of decisions.

Such incoherence has invited challenge from persons with no greater interest than intellectual rigor in the high court. Challenges to this secondary, exegetic body of decisions from Supreme Court Justices themselves have become increasingly frequent, even as challenges to the primary decisions have remained rare. The notable quality of the Weis opinion is that it challenges both.

Judge Weis' opinion treats first the exegetic decisions:

"An analysis of cases touching upon state assistance to nonpublic schools could proceed at length, but would merely illustrate the lack of a principled and logical thread. The reality is that the Supreme Court has marked out a series of boundaries and points of departure on an ad hoc basis. Thus, school books may be loaned to pupils, *Board of Education* v. *Allen* . . . (1968), but weather charts may not, *Wolman* v. *Walter* . . . (1977). Buses may be provided to allow for transportation of pupils to school, *Everson* v. *Board of Education . . . (1947), but not for field trips to courthouses or museums, Wolman v. Walter, supra.* Financial aid for the construction of building may be given to colleges, *Tilton* v. *Richardson* . . . (1971), but grants to provide needed maintenance to parochial schools in slum neighborhoods are forbidden, *Committee for Public Education* v. *Nyquist, supra.*"

The Weis opinion turns then to what is the fundamental constitutional issue:

"In many of the opinions in this area, I am struck by the frequent use of the metaphor that the first amendment was intended to erect 'a wall' between church and state." E.g. *Committee for Public Education* v. *Nyquist, Everson* v. *Board of Education.* Insofar as this concept expresses a guiding principle for constitutional adjudication, I find it unfortunate and historically inaccurate.

"My first reservation is semantical. So often a wall implies fear and hostility, as the infamous structure separating East and West Berlin so dramatically demonstrates. No such emotions should dominate the relationship between government and religion and the use of a metaphor that encourages such concepts is not desirable.

"A more fundamental objection, however, is grounded in the history of the Establishment Clause. Although an accurate description of the Framers' intent is beyond our grasp, it is dubious that the Madisonian-Jeffersonian concept of absolute separation was widely accepted by the draftsmen. . . .

"Commenting upon the checkered constitutional history of the Establishment Clause, one scholar has noted: '[I]t remains at best ironic and at worst perverse to appeal to the history of the Establishment Clause to strike at practices only remotely resembling establishment in any core sense of the concept.' (L. Tribe, *American Constitutional Law.)*

"Yet that is what has been done in using the 'wall' concept to justify a policy of judicial hostility towards state aid to nonpublic schools.

"Perhaps a more accurate appraisal of the purpose of the first amendment is that the state is to be neutral in its relationship with religion. And so if a particular legislative enactment, particularly in the field of taxation, provides clearly observable secular benefits, then religious institutions should not be barred solely because of their status. See *Walz v. Tax Commission.*

"Finally, constitutional adjudication requires that the courts read a particular clause with its historical context in mind, lest the fears and prejudices of an earlier age serve to distort the problems of today. As Justice Powell, who wrote the *Nyquist* opinion, noted some four years later:

"It is important to keep these issues in perspective. At this point in the 20th century we are quite far removed from the dangers that prompted the Framers to include the Establishment Clause in the Bill of Rights. See *Walz* v. *Tax Comm'n.* The risk of significant religious or denominational control over our democratic processes—or even of deep political division along religious lines—is remote, and when viewed against the positive contributions of sectarian schools, any such risk seems entirely tolerable in light of the continuing oversight of this Court. Our decisions have sought to establish principles that preserve the cherished safeguard of the Establishment Clause without resort to blind absolutism. *Wolman* v. *Walter.*

"These cases require a realistic approach, not an exaggerated response to nonexistent threats. Simple justice would require that the court honor the decision of the New Jersey legislature where the *quid pro quo* weighs heavily in favor of the state. But as the majority correctly concludes, the narrow legal issue in this case is whether *Nyquist* or *Walz* governs. Although it seems to me that the dissenters have far the better of it in the *Nyquist* opinions, I cannot in all intellectual honesty say that case differs from the one *sub judice.* I am bound to follow the holding of the majority of the Supreme Court and I therefore concur, albeit reluctantly. . . ."

". . . [J]udicial hostility towards state aid to nonpublic schools." It has now been stated from the federal bench.

Whence does this hostility derive? (Assuming, of course, that it exists, and this brief is clearly written from the partisan view that it does.) It does *not* derive from the Establishment Clause of the First Amendment. The Supreme Court is wrong. This is the heart of it. The matter must begin here.

The Establishment Clause is simplicity itself. It states that Congress may not set up a national church.

There are two ways to get at this meaning. The first is to acquire a moderate facility with the English language, and in particular with one word that has somewhat gone out of usage. The clause states: "Congress shall make no law respecting an establishment of religion. . . ." The term "establishment" referred to a state church, such as the Church of England, an altogether familiar concept at the time, and rather a familiar institution.

All 13 colonies had established churches or other official involvement with particular denominations at some point in their history. At the outbreak of the Revolution, the Church of England was officially established in five southern colonies (Virginia, Georgia, South Carolina, North Carolina, and Maryland); the Congregationalist Church enjoyed official status in Massachusetts, Connecticut, and New Hampshire; and the Anglican and Dutch Reformed Churches both had similar status in New York. This pattern remained in flux for some time. (Virginia, for example took steps toward disestablishment in 1776 and 1786 but did not eliminate the vestiges of the previous arrangement until 1802). When the First Amendment was ratified, three states gave preference to particular denominations, Anglican, Congregationalist, and Dutch Reformed; four states gave special status to the Protestant religion; three required adherence to Christianity among public officeholders; and three granted full religious freedom.

The term "establishment" has become somewhat unfamiliar in the intervening two centuries simply because there are no longer any established churches around. (In much the same fashion the provisions of Article III that "no Attainder of Treason shall work Corruption of Blood" would puzzle many persons simply because we don't do that much anymore.) But the meaning of the term "establishment" as used in the First Amendment is altogether accessible and quite unchanged. The first definition given in Webster's Second Edition is: "The establishing by law of a church or religion, etc." It is not too much to ask that persons who profess to care about the Constitution take the trouble to learn the language in which it is written.

Neither, if Mr. Justice Powell is to be believed, is it too much to ask that such per-

sons learn a little of American history. To be fair, this may be stated with perhaps more insistence today than three decades ago when the Everson doctrine came into being. For the longest while, the meaning of the First Amendment was clear to everyone concerned. Then a curious sequence took place. In the second half of the 19th century a movement arose to prohibit aid to Catholic schools. It was assumed that the Constitution would have to be amended to do this. But the "Blaine amendment," first proposed in 1876, was never adopted by Congress. (For what it may be worth, a clause in the amendment provided that "This article shall not be construed to prohibit the reading of the Bible in any school or institution. . . .") But somehow when the Court came to rule in 1947, it took the political attitudes of the late 19th century to be the constitutional purposes of the late 18th. In the Court's defense it may be said that in 1947, there wasn't much formal history to direct it otherwise.

This has now changed. In a predictable manner scholars have been drawn to the issue. In what may also have been predictable, it took them a good while to get the facts organized. In Beyond the Melting Pot (1963), Nathan Glazer and I may have helped reconstruct the early history of state aid to education. (In New York it went exclusively to church-related schools, as there were none other.) In The Garden and the Wilderness (1965), Mark DeWolfe Howe commenced a careful examination of the meaning of the First Amendment and the intentions of those who drafted and ratified it. Of the line of church-state decisions begun with Everson, he wrote:

"The Supreme Court, in my judgment, has gravely erred in its reading of two chapters of American history. An impulsive eagerness to find that the state and nation were subject to the same disabilities so far as religion was concerned, led the justices to make the historically quite misleading assumption that the same considerations which moved Jefferson and Madison to favor separation of church and state in Virginia led the nation to demand the religious clauses of the First Amendment. . . . Furthermore, it permitted the Court to fill the space from which it had removed the vivid complexities of the eighteenth century's political philosophy with a simple and false absolute—all aid to religion is unconstitutional."

Howe's analysis was followed, and powerfully reinforced, by Walter Berns in his splendid volume, *The First Amendment and the Future of American Democracy* (1976) and by Michael J. Malbin's extensive essay, *Religion and Politics: The Intentions of the Authors of the First Amendment* (1978). Although Berns and Malbin use different evidence, they reach similar conclusions, as summarized by Malbin:

"As the Court has espoused its doctrines, it has relied on an incredibly flawed reading of the intentions of the authors of the First Amendment. . . . Aid to religion was to be permitted as long as it furthered a purpose the federal government legitimately could pursue and as long as it did not discriminate in favor of some sects or against others."

The research continues, and we are gradually acquiring a solid understanding of the relationship between church and state that obtained in 1791, of the assumptions and intentions of the Founding Fathers, and of the practices that prevailed through much of the nineteenth century. Among the major works now in progress is a comprehensive history of the First Amendment by Professor Robert L. Cord of Northeastern University.

IV

In his dissent in the *Gannett* case, Justice Blackmun stated that the Sixth Amendment established "the public's right of access to a criminal trial and a pretrial proceeding" and that of the press also. Those who would persuade the majority of the Court of this view must begin by reconstructing the history of that Amendment and of the First Amendment. This is not as direct a matter as might be thought, but it is entirely doable. It has now been done with respect to the Establishment Clause.

The Bill of rights were adopted in something of a hurry: Debate on the Establishment Clause took up about one day in each chamber. The standard, if somewhat shaky record for the House of Representatives is the *Annals of Congress*, first published in 1834, taken from contemporary newspaper accounts and from the shorthand notes of a reporter, Thomas Lloyd. It is not complete, but is the only serviceable record of the proceedings of the First Congress. An essential fact is that the texts of successive versions of the clause, in each body, are available and these make the intention of the Congress conclusively clear. James Madison introduced two amendments in the House on June 7, 1789. The first of the amendments read:

"The Civil Rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, nor on any pretext infringed."

And the second:

"No state shall violate the equal rights of conscience or the freedom of the press, or the trial by jury in criminal cases."

Malbin notes that Madison's language prohibited both states and the federal government from infringing on the rights of conscience. "In contrast, the Establishment Clause was to apply only to the federal government."

How so? Because, as noted earlier, various of the states still had established churches. This is the lesson Perry Miller has taught: that if there was no very great love of religious tolerance in eighteenth-century America, given the profusion of religious denominations there was a very great need of it.

Alas, it was this very fragility of the Union which led ultimately to the substitution of the present language for Madison's explicit prohibition against "any national religion." Malbin reminds us that "federalism was the overriding issue throughout the Congress." It was still a lively issue as to whether the Constitution had created a new nation, or merely a federation of states. The Federalists, insisting that the latter was the case, carefully left the word "nation" out of the Constitution. But they were suspected (correctly!) of having a nation in mind and of being determined to forge one. Accordingly, in the debate in the First Congress the Anti-Federalists seized on the word "national" in Madison's draft, declaring that the gigantic conspiracy, the massive subterfuge was at last revealed. Feelings were intense. Elbridge Gerry recalled that at the Philadelphia convention of 1787 the two factions were designated Federalists and Anti-Federalists. They should, he said, have been called "rats" and "anti-rats," i.e., ratification and anti-ratification. The phrase "national religion" promptly disappeared. Otherwise the theme of the debate, which took place August 15, was set rather by the opening address of Peter Sylvester of New York who apprehended that the clause "might be thought to have a tendency to abolish religion altogether."

Senate debate was secret at this time. (The doors of the Senate chamber remained closed until 1795, and no record of the debates is available until 1802 when journalists were admitted to the Senate floor. The official transcript embodied in *The Congressional Record* did not begin until 1873.) But the Senate journal records the texts which were considered on September 3. The first substitute offered for the House language began: "Congress shall make no law establishing one religious sect or society in preference to others. . . ." The final language sent back to the House read: "Congress shall make no law establishing articles of faith or a mode of worship or prohibiting the free exercise of religion." A conference committee settled on the present language.[5]

A century and a half later, when the Supreme Court in *Everson* turned its attention to this subject the Justices did not accept the Establishment Clause at face value, as meaning what it said, nor yet did they inquire into this history. Rather, as much as we can judge, they inquired as to the views of Madison and Jefferson, and came up with the well known "wall of separation." This surely will not do. The question is not what Madison or Jefferson may have thought; the question is what the Congress did. It is perhaps not wholly irrelevant that Jefferson was not a member of the First Congress; he was Secretary of State at the time, and quite uninvolved. (He had spent most of the previous five years on diplomatic missions in Western Europe.) Madison was floor manager of a complex piece of legislation which required compromise. Compromise he did. What more evidence is needed than that his original draft in no way reflected his own, and for the time somewhat extreme views?

If it be the case, in Judge Weis' words, that "an accurate description of the Framers' intent is beyond our grasp," are we not then well advised simply to take the plain language for what it plainly says? No establishment of religion, period.

Does not the burden of proof rest with those who assert that it says more? The legislators of the early American Republic were entirely friendly to religion and religious purposes. The House passed the 10 amendments of the Bill of Rights on September 24, 1789. The next day the House passed a Joint Resolution calling upon President Washington to issue a Thanksgiving proclamation. The Senate passed the Bill of Rights on September 26, and on the 27th passed the Joint Resolution. It called for "a day of public Thanksgiving and prayer, to be observed, by acknowledging, with grateful hearts, the many and signal favors of Almighty God, especially by affording them an opportunity peaceably to establish a constitution of government. . . ." The first Congress wanted to encourage religion, but in no circumstances to establish a church so as to prefer one to the other. Chaplains were appointed to the armed forces. Both House and Senate

[5] Not at issue here is the "incorporation" doctrine, whereby the prohibitions imposed on Congress by the Bill of Rights have been expanded by the Supreme Court to cover the actions of States. The Supreme Court interprets the 14th Amendment to bind the States as well as Congress when they legislate "respecting an establishment of religion."

began—and still begin—each day with a prayer by a clergyman. The Northwest Ordinance of 1787, re-enacted by Congress in 1789, set aside federal lands in the territory for schools: "Religion, morality, and knowledge," the law read, "being necessary to good government and the happiness of mankind schools and the means of learning shall forever be encouraged." If they were to aid education, how could they do otherwise? Who, in 1789 in the United States, could imagine a school that did not teach some religious belief or other?

Madison and Jefferson, say the Justices, and there the matter rests. The inferior courts follow, as they must. Early on, the majority opinion in the recent New Jersey case invokes the declaration of former Chief Justice Warren that the First Amendment "underwrote the admonition of Thomas Jefferson that there should be a wall of separation between church and state." This well-known phrase of Jefferson's first occurs in a letter to the Danbury Baptists in 1802.[6] How could it be said to underwrite an amendment to the Constitution which had been written 11 years earlier? But this has not infrequently been the level of argument used against aid to nonpublic schools.

The constitutional facts are obvious enough. The state, at any level, is allowed to cooperate with religious groups in a nondiscriminatory manner in the furtherance of acceptably secular purposes. Further, this is precisely what now happens, with the single exception of elementary and secondary schools. Thus city, state, and federal funds, in the usual baffling mix, provide most of the support for the Jewish Hospital in Brooklyn. Federal foreign-aid funds provide much of the resources for the relief work in developing nations of Church World Services, a Protestant agency. The federal government provides money to improve the curriculum and the teaching methods of Marist College, a Catholic institution in Poughkeepsie. And so it goes.

The exception, to repeat, is that of elementary and secondary schools with religious affiliations. (*Not* colleges and universities with such affiliations.) Slowly, however, this anomaly is emerging. Slowly, the hierarchy of responses that arise when the Court is wrong is beginning to appear.

V

1. *Debate.* This is the first and in every way crucial response. When the Court is wrong there must be those who will say so. Often as not this will be a dissenting member of the Court itself. But to be effective the question must become a political issue of the day. In his grand study, *The Least Dangerous Branch*, Alexander M. Bickel described Lincoln's response to *Dred Scott:*

"The principle that the Court proclaimed was that slavery was not only legal in states which had it but was constitutionally guaranteed in unorganized territories as well. In the debates with Stephen A. Douglas in 1858, Lincoln said that he was against this decision, that he thought it wrong, that he feared its consequences, that he deemed it altogether deplorable. Douglas, on the other hand, without admitting that he necessarily thought the decision right, dwelt heavily on the argument that 'whoever resists the final decision of the highest judicial tribunal aims a deadly blow at our whole republican system of government.' 'I yield obedience,' Douglas said, 'to the decisions of that Court—to the final determination of the highest judicial tribunal known to our Constitution.' To this Lincoln countered by deriding the notion that a decision of the Supreme Court is a 'Thus saith the Lord.' The Court, he said, can be wrong. There is nothing sacred about the Court's decisions. Men may properly differ with them."

As the initial decisions regarding state and church involved Catholic schools, the first arguments in opposition to *Everson* and its progeny came, generally, from Catholics. This made for difficulties (as the press, perhaps, will now find), it being easy for others to dismiss or ignore arguments that are necessarily self-interested. It may be Catholics were deficient in the skills and the access needed to mount a debate of this sort; it may also be that an element of prejudice worked against them. Surely there are episodes in this generation-long history that raise this latter question. Consider the instances in which Mr. Justice Douglas supported his opinions in *Tilton v. Richardson* (1971) and *Lemon v. Kurtzman* (1971) with references to a book, *Roman Catholicism* by Loraine Boettner, published in Philadelphia in 1962. This volume has been characterized by Douglas Laycock of the University of Chicago Law School as an "elaborate hate tract." Mr. Boettner's views on Catholicism generally may be summarized in the following brief quote:

"Our American Freedoms are being threatened today by two totalitarian systems, communism and Roman Catholicism. And of the two in our country Romanism is growing faster than is communism and is the more dangerous since it covers its real nature with a cloak of religion."

That particular passage is not cited by Mr. Justice Douglas, but here is one he quotes in footnote 20 of his concurring opinion in *Lemon* v. *Kurtzman*:

"In the parochial schools Roman Catholic indoctrination is included in every subject. History, literature, geography, civics, and science are given a Roman Catholic slant. The whole education of the child is filled with propaganda. That, of course, is the very purpose of such schools, the very reason for going to all of the work and expense of maintaining a dual school system. Their purpose is not so much to educate, but to indoctrinate and train, *not to teach scripture truths and Americanism*, but to make loyal Roman Catholics. The children are regimented, and are told what to wear, what to do, and what to think." (Emphasis added.)

Ponder Mr. Boettner's charge that Catholic schools do not teach "scripture truths."

As it happens, a number of Catholic laymen and clergy pondered just that and at the time tried to draw attention to the peculiarity of such a tract being cited as a reference work in an opinion of a Supreme Court Justice. Had Douglas in some similar connection cited the Protocols of the Elders of Zion, or a Kommunication from the Grand Kleagle of the Ku Klux Klan, there would have been some notice taken. But there was no response whatever to these citations. There is a climate of presumption, and it must be worked against. (Thus, on April 3, 1979, reporting that the Supreme Court would hear a challenge to yet another state statute providing bits of aid to parochial schools, a New York law providing expenses for state-required testing, *The New York Times* noted that "The Federal Constitution specifically forbids aid to parochial schools. . . .") The dynamic of scholarship, which is both truth-seeking and competitive, at length responds to this kind of imbalance. Already the time is at hand when law clerks will have learned as law students that the *Everson* decision is disputed. In time there will be judges who learned it as students also. Just as importantly, Presidents may come to office committed to change. Roosevelt made no secret of his desire to appoint to the Court Justices who would not block New Deal legislation on the basis of a flawed reading of the Fourteenth Amendment. It would be unthinkable today for a Justice to be appointed who held the *Plessy* doctrine.

The same may come to be true of *Everson.* This is a constitutional check on the Court: Justices are appointed by the President. Already both major parties have endorsed aid to nonpublic schools. It is becoming a familiar position for Presidental candidates since Senator George S. McGovern endorsed tuition tax credits in his 1972 campaign. It remains for a President to come to office either committed to the proposition as a matter of justice, or able, as a matter of politics, to balance the claims of the nonpublic schools with the fears of the public schools that they will lose whatever the other system gains.

Opinion polls indicate that the great majority of American people believe that education pluralism is a principle deserving of active governmental support. And it is well to bear in mind Robert G. McCloskey's observation, in his magisterial study, *The American Supreme Court* (1960), that "the Supreme Court has seldom, if ever, flatly and for very long resisted a really unmistakable wave of public sentiment. It has worked with the premise that constitutional law, like politics itself, is a science of the possible."

Debate on the *Gannett* decision began immediately, and soon became almost formal. The Associated Press, for example, distributed to its news staff a prepared statement to be read aloud to a judge who has announced the closing of a courtroom. The statement, described by Louis D. Boccardi, executive editor and vice president of the Associated Press, as "concise and legalistic," objects to any closed proceedings, sets forth the reasons why, and asks for time for further argument before a decision is made. This would appear to be a model reaction, if the validity of the Debate, Litigate, Legislate model is assumed.

2. *Litigate.* The exemplar of litigation as a tactic for bringing the Court back to the Constitution is the prolonged but in the end triumphant effort of the National Association for the Advancement of Colored People to reverse the *Plessy* decision. This is more difficult with *Everson*, for the effect of that ruling is that things don't happen rather than do, and it is not easy to challenge a nonexistent regime. Still, experience argues that those who feel aggrieved need to take initiatives. A former United States Attorney, now teaching law, asks his class in constitutional law to explain why the United States government is *obligated* to provide financial aid to church- or synagogue-related schools. The answer, evidently, lies in the Free Exercise Clause of the First Amendment: an interesting thought, and worth a lawsuit. Harry J. Hogan, retired counsel to the House Subcommittee on Elementary, Secondary, and Vocational Education, has pointed to the potential inherent in the

[6] Although others—starting with Roger Williams in the seventeenth century—had employed this and similar constructions, a fairly systematic search of the literature indicates—and biographers of Jefferson concur—no prior appearance of this phrase in Jefferson's own writings and utterances.

growing practice of teaching "values" in public schools. "The fascinating possibility is that as soon as public schools and universities are required to teach values, then church-related schools and universities will be able to demand equal access to state and federal tax funds."

The risk of litigation is that it divides. In the end *no* schools may receive support for ethics courses. But, as no other process, it educates the courts.

3. *Legislate.* Legislation is the most direct and open way for the Congress and President to advise the Court of their reading of the Constitution, views which have equal standing under the Constitution, albeit they do not have equal effect. This issue arose directly in the Lincoln-Douglas debates. Lincoln said: "If I were in Congress and a vote should come up on a question whether slavery should be prohibited in a new territory, in spite of that *Dred Scott* decision, I would vote that it should." Douglas was scornful, saying, "if you elect him to the Senate he will introduce a bill to re-enact the law which the Court pronounced unconstitutional. . . . I never heard before of an appeal being taken from the Supreme Court. . . ." Lincoln replied that Douglas "would have the citizen conform his vote to that decision; the member of Congress, his; the President, his use of the veto power. He would make it a rule of political action for the people and all the departments of the government. I would not." Commenting on this exchange, Bickel allows that while deference to the Court is surely in order from the other branches, this cannot be absolute:

"The functions cannot and need not be rigidly compartmentalized. The Court often provokes consideration of the most intricate issues of principle by the other branches, engaging them in dialogues and 'responsive readings'; and there are times also when the conversation starts at the other end and is perhaps less polite. Our government consists of discrete institutions, but the effectiveness of the whole depends on their involvement with one another, on their intimacy, even if it often is the sweaty intimacy of creatures locked in combat."

That Congress can abuse its power, should cause no surprise. Indeed it has. Reacting to the Supreme Court decision in *Engel v. Vitale* (1962) which forbade school prayer, the Senate on April 5, 1979 and again on April 9 by margins of 47 to 37 and 51 to 40, respectively, voted to deny the Supreme Court appellate jurisdiction in such cases. This can be done under Article III, Section 2, at least with respect to cases in federal court. (It is contended that the power was intended as Congress restraint on the Court, corresponding to the President's power of appointment.) But in this case the power was surely misused. Publicly prescribed prayer, voluntary or not, is precisely what "an establishment of religion" is all about and that is what the First Amendment forbids. (In the course of the debate, one Senator rose "to speak as a Christian" about what he called the "secular humanism that abounds in our children's schools today." He did not like this and thought "we Christians" should do something about it. One is reminded, from time to time, that this is a Protestant country.)

For all this, legislation is unequaled as a means to influence the Court. Labor legislation was finally accepted by the Court only because state legislatures kept passing bills. Even the venerable Charles Evans Hughes at last was converted. Writing for the Court in *West Coast Hotel Co.* v. *Parrish* (1937) he derided the "freedom of contract" argument: "What is this freedom? The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law."

Similarly, the Congress through legislation has commenced the undoing of the *Everson* decision. First, in the Elementary and Secondary Education Act of 1965, provision was made for compensatory services in schools with high proportions of "deprived" children, of which denominational schools have a more than sufficient share. (In New York City, nuns initially had to teach the children to operate the television sets thus provided, as they themselves were forbidden to touch them. But even such silliness makes its impact.) Similarly, the Higher Education Act of 1965 provided federal funds for "strengthening developing institutions." These were understood to be, in the main, black colleges in the South. But federal administrators, in the manner of bureaucracies, found that denominational colleges in the North often met the criteria and they were given grants accordingly. Half the private colleges and universities in the nation have religious affiliations, and most seem to take part in the now considerably complex system of federal aid to higher education. Mild tensions persist. It was reported that at the First National Congress on Church-Related Colleges and Universities, held at Notre Dame in the summer of 1979, there were complaints of "federal officials who question whether theology should be taught in classrooms built with federally guaranteed loans." But this is the point. Federal officials are now merely nervous about support for activities which, if one were to read *Everson* and nothing more, it would be assumed are altogether forbidden. What is happening, of course, is that American practice is coming in line with that of the other English-speaking democracies where government support is provided to any bona fide educational activity, and the communal peace, on this score at least, is maintained.

Consider the Higher Education Facilities Act of 1963. In this law, Congress provided funds to build buildings on college campuses. In the course of events, Sacred Heart College (and several other church-affiliated campuses) in Connecticut received such funds. The familiar law suit followed. But the Court in *Tilton* v. *Richardson* (1971) held that this aid was constitutional on grounds that "There is substance to the contention that college students are less impressionable and less susceptible to religious indoctrination." Now there is, of course, no substance whatever to this. It can only be a matter of time, albeit this could be another generation, before five Justices agree that what is constitutional for 19-year-olds is constitutional for 18-year-olds, whereupon the legal issue will be behind us. The Weis dissent is surely a harbinger of this.

There will remain the issue of public policy. *Should* 18-year-olds receive assistance? That is a different question altogether. It has never been satisfactorily resolved, mostly because opponents have always succeeded in interposing the constitutional question. But it is not a constitutional question.

Legislation is not always to be advised. The press, for example, will want to be cautious indeed before deciding that it wishes Congress to make a law respecting its freedom. On the other hand, it may find it useful for Congress to make laws protecting the Sixth Amendment right of the public to be present at trials. To those who say the Court has decreed that no such right exists, there is Lincoln's retort that a Supreme Court decision is not a "Thus saith the Lord."

Has this analysis any predictive power? The *Gannett* case will provide a test. As with most cases in which the Supreme Court would seem to be wrong, debate began promptly and it may be forecast that a good deal of litigation will follow. In the manner of *Everson*, one decision will lead to another: clarifying, adjusting, half-apologizing. Legislation will be contemplated: most likely dealing with the public's right to access to the courts, rather than that of the press as such. In the end the Court either will reverse itself, or set forth rules for the closure of courts so narrow and restricted in their application that the controversy will go away. It may be hoped that it does not require a generation for this to come about.

Mr. MOYNIHAN. Mr. President, the Court, in fact, frequently has been wrong. Scholars have, as a matter of fact, compiled lists of the number of times the Court has been wrong, by which one should mean not that the Court has held something which you or I or the next fellow might think to be wrong, but, rather, in situations in which the Court has said it was wrong and changed its ruling.

I am very hesitant to put a number on it, but I do believe that Prof. James Q. Wilson has cited a study which found about 180 instances in which the Court has simply reversed itself and said, "Well, we said that. We were wrong. Now we say something else."

The most famous of them in recent times—the most dreadful was Dred Scott. In recent times and modern era, the Lochner decision, which held that the State of New York could not regulate the hours of bakers. Mr. Justice Holmes said, "the 14th amendment does not enact Mr. Herbert Spences' Social Statics," but the majority said otherwise. And 40 years later, without really being very formal about it, the Court began to say, "We no longer hold that." And, indeed, they no longer do. The wage-hour acts of 1935 passed this Congress without any difficulty and the Court never took seriously any challenge to it.

In "What Do You Do When the Supreme Court is Wrong?" I offered three propositions. I said the first response to a court's ruling which persons, for whatever reasons, feel to be wrong is to debate, to raise the question in public, raise it on the floor of the Chamber and say, "The Court is wrong. The Court should not have held that. That is not what the Constitution says. That is not what the law says."

I have said that it was possible to litigate and then, if that did not succeed, one could legislate, so that we would have to deal with the actual piece of legislation, but always giving the Court its final say.

I put it that one does not have to agree with the Supreme Court. Our only duty to the Supreme Court is to obey it. They are wrong on occasion and they reverse themselves on occasion.

No one could better state our responsibility and the treasure this Nation has in its integrity than was stated by Erwin N. Griswold, the distinguished former Solicitor General of the United States, who wrote in 1963:

An institution charged with the role which the Supreme Court has successfully filled for so many years is entitled to our respect and understanding. If one criticizes the Court (as people have always done in the past, and should continue to do in the future), it should be essentially for the purpose of trying to contribute to that respect and to that understanding. The debt which we all owe to the Court is far greater than any individual can repay. Criticism of decisions of the Court or opinions of its members should be offered as an effort to repay that debt, and with the thought that conscientious criticism may be an aid to the Court in carrying out its difficult and essential task.

Consider the nobility of that sentiment, the integrity, the truthfulness, the historical understanding that Erwin Griswold brought to that passage. And consider, Mr. President—and I speak with great hesitancy here, but with equal feeling—consider the squalor of the measure before us, which does not offer criticism of the Court, does not offer the Court further opportunity to decide, does not offer guidance of our judgment. We have a constitutional role. We are more than responsible. As Abraham Lincoln, no less a person than Abraham Lincoln, said, a Supreme Court decision is not a "Thus sayeth the Lord." He said that in his debate with Douglas with respect to the Dred Scott decision. And the Dred Scott decision, Mr. President, was wrong and it was subsequently clearly reversed. The U.S. Congress had something to do with that.

But consider the nobility with which Griswold speaks of a debt which we all owe the Court far greater than any individual can repay, but saying criticism of the Court can be an effort to repay. How fine a sentiment, how true a historical understanding, how noble a judgment and how it compares to the squalor of what we propose to do here.

I began these remarks saying we would block the Constitution if we proceed as we do, because we do not seek to change the view of the Court, we seek to diminish its constitutional power.

We seek to deny the power of the Court to hear measures of the utmost importance to us in this time, or more accurately, we seek to reopen a great constitutional debate which we had two decades ago.

Part of the genius, Mr. President, of the American system of government, has been that when one generation makes a decision about issues of social policy, the next generation does not seek to reverse that. There are some persons in this Chamber who obviously will seek to do so, but they will fail.

This bill will not pass the House of Representatives. To their honor, as to our dishonor, it may pass this Chamber, and if signed by the President of the United States, it will besmirch the integrity of the Presidency, and it will be struck down by the Court as unconstitutional.

Why bring this crisis to the American public? Why bring over such a small matter with the parochial concerns of re-election, popularity?

Why bring a crisis to the American public at a time when we need all the unity, all the defense of shared institutions we could ever attain, as we face a world in which the black knight of totalitarianism spreads with seeming inexorable intent?

We need to be together as Americans, Mr. President, loving, respecting, and defending our institutions as they are separate in the Constitution, or we must defend our Nation in a unity in a world which has little time for supreme courts or legislatures or the laws or precedents, no history, little compassion, and less understanding of the bases by which stable and institutional governments can be established among men.

Stability, continuity, and integrity are the greatest of the gifts. We have been given this by the men who formed this Constitution two centuries ago. We have been given this by the men who conceived the tripartite basis of American constitutional government.

I read you, with your indulgence, Mr. President, a passage from the 78th Federalist, written as we now know by Alexander Hamilton, who was an author of our Constitution.

If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.

This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community.

Mr. President, here we are two centuries back with him speaking of this to us.

This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community.

This is such an occasion, dangerous innovations in the Government, and serious oppressions of the minor party in the community.

Mr. President, Hamilton's warning could not be more apt and more appropriate. Here we are, a nation and a political tradition, beleaguered in the world.

Lord Bryce, whose statue is not 20 feet outside this Chamber, we will remember in his book "The American Commonwealth," asked:

Why the world over do persons find such great interest in the institutions of American Government? Why do they want to know what we are like?

Other governments were interesting and complex, too. "Why?" he said:

It is simple. It is because sooner or later it is in the institutions of the American Government that the world expects to find itself. That is the path that the world is on. America sails a summer sea.

This he wrote at the end of the 19th century. In his honor we have a bust of him right here in the Senate corridor on the first floor.

How different the 20th century than from his expectations. It has been an age of totalitarianism and the rise of all that is antithetical to our principles, our beliefs, and our hopes. If ever there was a time to put settled matters behind us, to preserve our institutions, to guard our institutions, now is the time. Those who would divide the one from the other, those who would weaken the rule of law, those who would besmirch the tradition of this body do this Republic no service. That they have no intention of such disservice, I do not question.

It is not in the nature of us always to be given to understand, then, what we do. This Senator from New York, no less than any other, has failed in his perceptions many times but I hope this institution will not fail. I hope we shall see that the Republic will stand indivisible in the aftermath of what we do and our institutions will perhaps be stronger for the opportunity this debate gives us to judge whether we would weaken them.

I am confident, Mr. President, that that judgment will not be made in this body; but should it be, I am more confident still that it will not prevail.

Mr. President, I conclude as I began. Should this measure be adopted, we shall have blotted the Constitution of the United States.

I thank the Chair for his courteous and indulgent attention at this late

hour. I find that my colleague and friend, the Senator from Vermont—a learned man in the law, a man who has earned the respect of this body in countless matters concerning the judiciary, an attorney, a prosecutor, a Senator, perhaps most importantly, Mr. President, a Vermonter, a man not given to trifling with the rights of Americans or the equal powers of the three branches of Government—is on the floor. I know I wish to hear him and I would not wish to deny any of the other Senators that opportunity.

Again, with thanks to the Chair, Mr. President, I yield to my distinguished friend from Vermont.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. I thank the Chair and I thank the distinguished Senator from New York for his very, very kind and very generous remarks. I must admit to a continued admiration for not only my colleague but my neighbor, from the neighboring State of New York.

He is a man who has spoken not only for the rights of individuals but also for the integrity of the United States as a country in his service here as well as in his very distinguished service as Ambassador to the United Nations.

Mr. President, I think when we discuss the integrity of the United States, we truly discuss it in this debate perhaps as much as any debate that I have been involved in since I have been in the Senate. Certainly, the integrity of the United States and the security of the United States come not just from our armed might, come not just from our economic might, albeit both are enormous, but also come from our own internal adherence to our traditions, to our Constitution, to our form of government.

We are presently the oldest existing democracy in the world. I think one of the main reasons we are and that we have the viability we do today, is the respect and responsibility that we have given to our form of government. Every school child knows that we are a government made up of three independent branches—three independent, separate but equal branches of government. I have the great honor of serving as one of the members of one of those separate but equal branches of government, the legislative. It has often been the responsibility of the legislative as well as the executive to preserve the integrity and the independence and the freedom of the third branch of government, the judiciary.

The distinguished Presiding Officer, my good friend from Arizona, has very well stated on this floor the point that we do not face here a question of busing alone and we shall not face in future times similar legislative attempts on questions of abortion, school prayer, or anything else alone. We face the question of the freedom of the courts themselves.

Mr. President, if we can remove the jurisdiction of the courts in the busing issue, and if you read this amendment carefully, it goes to all Federal courts, all levels, then why can we not, by the same fiat, remove any constitutional rights or any rights at all that anybody might have under environmental laws, under civil rights laws, under our criminal laws? Might we not decide that the courts should have no place to handle espionage cases against the United States? Might we not decide that we shall thwart whatever our history might be in, as I mentioned, environmental laws, or civil rights laws?

Might we not remove constitutional rights of any segment of our populace by simply removing the jurisdiction of the courts to hear civil rights matters? Might we not overturn any constitutional matter that we want simply by doing this?

Mr. HELMS. Mr. President, will the Senator yield on my time for a question?

Mr. LEAHY. Certainly, I yield to my good friend on his time.

Mr. HELMS. I thank the Senator. My friend from Vermont knows I respect him highly.

Mr. President, is the Senator suggesting that it is a novel thing for the Congress of the United States to limit the jurisdiction of the Federal courts?

Mr. LEAHY. The Senator from Vermont makes no such suggestion. In fact, the Constitution gives the Congress that right.

Mr. HELMS. As a matter of fact, the Congress has done precisely that in 57 instances, I say to the Senator.

Furthermore, the Chief Justice of the United States now sitting disclosed within the past few weeks that he is planning to ask Congress to limit the jurisdiction of the Federal courts.

My question to the Senator is, as he has stated, there is no doubt about the authority, if not the duty, of the Congress to limit the jurisdiction of the courts when the Congress, in its wisdom, sees the necessity of doing so. It has been done 57 times, according to Senator Ervin, and I respect Senator Ervin's ability as a researcher. So I think it is a little bit far afield to suggest that because we, today—some of us—see the courts as having gone beyond their responsibility, we, the Congress, ought not to step in and say enough is enough.

Eighty percent of the American people, by every poll that I have seen on the subject, black and white, all races, object to the forced busing of their schoolchildren. So I wonder what the logic is for saying that this is such a perilous thing for Congress to undertake.

Mr. LEAHY. Mr. President, if I may respond, the question is not, as I see it, solely one of busing. I am no great fan of busing. We bus most of our schoolchildren in Vermont, but we do that simply because we are a rural State and it is the only way to get them to school.

Mr. HELMS. But they are not forced on the bus.

Mr. LEAHY. I am no great fan of some of the busing schemes we have seem. I do suggest, however, that attacking basic constitutional provisions by removing the jurisdiction of the courts is an entirely different thing. To suggest that the Chief Justice's asking, through various housekeeping measures, for limits on the jurisdiction of the courts might in any way compare to what is going on the floor of the Senate today or what is planned on the floor of the Senate in future days are two entirely different things.

Of course, we limit jurisdiction. We limit it in diversity suits. We limit it by the question of amounts in controversy. But this is different. If the Senator will allow me, I will read four paragraphs from a recent New York Times editorial which pretty well sets out the difference. It reads:

"In one bill after another, Congressmen want to tell Federal courts to stay out of important, controversial cases. It's an easy way to tame an over-active judiciary, say voices on the right. But if they were true conservatives, they would recognize these court-stripping bills for what they really are: cheap attacks on the Constitution.

On the Senate floor now, the attack is on busing, via an appropriations rider that forbids busing even when it is the only remedy for purposeful school segregation. Later there will be a bill directing Federal courts to reopen old school cases and abandon milder desegregation remedies unless minorities can prove their cases all over again.

Then there's a bill to define abortion as murder and deny Federal courts and the Supreme Court the power to say the contrary. Another bill would forbid Federal court interference with "voluntary" public school prayer as defined by those who want to skirt Supreme Court rulings.

All these are offered as perfectly proper court-regulating measures. All are of dubious constitutionality. All are dangerous.

All are dangerous.

Mr. President, I served nearly a quarter of my life as a prosecutor. A number of cases came down from the U.S. Supreme Court on criminal matters, some of which I did not agree with. I did not take any Olympian, Pollyannic view of crime. I did not feel that if we simply closed our eyes and thought nice thoughts, crime would go away.

On at least two different occasions I have been intended for murder by people I had prosecuted. I have been shot at. I must admit that I feel very much like Winston Churchill in saying, "It is exhilarating to be shot at and missed." In this case, the bullet passed merely inches above my head. I can still feel the wood that splattered across me when the bullet hit the tree

near my head. I did not feel quite the exhilaration at the time.

I mention this not to tell old war stories but to say that I do have some rather tough attitudes about crime and criminals.

Nonetheless, at that time, when there was a move among some of the prosecutors throughout the Nation to take steps such as this to restrict the court's jurisdiction, I opposed that. I opposed it not in my capacity as an individual prosecutor but subsequently in my capacity as the vice president of the National District Attorneys Association. I opposed it, really, from basically strong conservative attitudes. If we could do it in a particular criminal case that I did not like, if we could do it in a particular case of a Supreme Court decision that I did not like, why could not somebody else do it in a particular Supreme Court case that I might happen to like but that they did not?

I think that what we have here is a case where Congress is really wiping out constitutional rights. How could Congress wipe out those constitutional rights? Not by a constitutional amendment, which is the way it should be done, but simply by removing jurisdiction of the courts to hear claims of constitutional rights by a number of our citizens throughout this country.

Mr. President, I also have a concern about the silence on these issues by the Attorney General of the United States.

I was present at the hearings on his nominaton. I voted for the confirmation of his nomination both in the committee and on the floor of the Senate.

I read again from the editorial in the New York Times, and it speaks of those who have argued against the steps that many want to take here. The editorial says:

> One of the few notable lawyers missing from this company is Attorney General William French Smith. The danger of these court-stripping bills is appreciated at every level of the Justice Department but the top one. He seems to fear the wrath of the new right more than the destruction of old rights.

I think it is unfortunate for this country that the Attorney General has chosen to remain silent on something that he has to know is wrong.

What I mean is not necessarily any denigration of his legal abilities; but I say that we might be better served if he were to study this issue, go back to the constitutional history, reread the Federalist Papers if need be, and then speak up for all Americans and say that this is not the way to change the Constitution, this is not the way to strip the rights of Americans, this is not something that the chief law enforcement officer of this country will stand for.

If he were to do that then I think much of the criticism we have heard of the Attorney General would be muted. Then the voice of our chief law enforcement officer could be heard speaking for all Americans.

Mr. President, pursuant to the agreement entered into earlier, I suggest the absence of a quorum.

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

Mr. LEAHY. Certainly.

Mr. HELMS. I thank the able Senator.

Mr. LEAHY. I also withhold the remainder of my time.

Mr. HELMS. Certainly.

The PRESIDING OFFICER (Mr. WARNER). The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, the January issue of the American Bar Association Journal contained an article which I found immensely interesting. It was written by the Honorable William French Smith, Attorney General of the United States. The point he makes in the article is entirely relevant to what this debate is all about.

The preponderance of the American people, in my view, share the view that many Federal judges have vastly exceeded their constitutional powers. The distinguished former Member of this body from my State, Senator Sam J. Ervin, Jr., often remarked that judicial tyranny is just as bad as if not worse than, any other kind of tyranny.

Attorney General Smith discusses this in the article to which I have just alluded. I suggest that judicial abuse, judicial legislating, has been most evident in the areas of forced busing, voluntary prayer, affirmative action, and, yes, abortion. Such abuses have created severe strains on our constitutional system and have resulted in grave injustices to many of our citizens.

I should be borne in mind that we would not be in session tonight had the Supreme Court not exceeded its constitutional function and moved into the area of what amounts to dictation to legislative bodies.

In the article in the American Bar Association Journal of this past January, Attorney General Smith put the case rather eloquently when he said:

> The greatest threat to judicial independence occurs when the courts flout the basis for their independence by exceeding their constitutionally limited role and the bounds of their expertise by engaging in policymaking committed to the elected branches or the States. When courts fail to exercise self-restraint and instead enter the political realms reserved to the elected branches, they subject themselves to the political pressure endemic to that arena and invite popular attack.

Clearly this is what has happened. Several times during this debate reference has been made to the school prayer decisions by the Supreme Court. Up until recent months various spokesmen for churches and for special interest groups contended that the Supreme Court never banned voluntary prayer from schools.

These people have stopped saying that because of recent court decisions which absolutely banned any kind of prayer any time, before class, after class, on school property. So all of these lectures that we heard that we were misrepresenting the facts when we said that the court had banned voluntary prayer have ceased because once again the Supreme Court overstepped the bounds of its authority.

Attorney General William French Smith, in the quotation from his article which I read just a moment ago, made precisely the point that I have been trying to make ever since the first day I walked on this Senate floor as a Senator. Many Federal judges seem to have lost sight of their role in the scheme of things. By so doing, they have put our great constitutional system in serious jeopardy.

It is not Congress that is doing it. It is the courts that have done it, because when judges go beyond their judicial role and become, in effect, unelected legislators they weaken, they weaken, not the Congress, they, the judges themselves, weaken the judicial branch and impede its proper function of interpreting the law in particular cases.

So that is what this debate tonight is all about, and I have grown weary of all of the constitutional declarations made on this floor that those who would interfere or protest what the courts have done are destroying the Constitution. I view all of these declarations with a degree of amusement because these declarations are not supported by the Constitution itself. They are not supported by the facts. They are not supported by history.

As I said a moment ago in my inquiry of the distinguished and able Senator from Vermont, at least 57 times, and there may have been more instances than that, but at least the 57 times Congress has limited the jurisdiction of the Federal courts.

And I would reiterate that the sitting Chief Justice himself, Mr. Burger, disclosed just a few weeks ago that it was going to be necessary for Congress to limit the jurisdiction of the courts in order for the courts to deal with the deluge of cases coming before them.

So today we have a judicial branch weakened by the excesses of some of its own judges, and one remedy for this problem, as Attorney General Smith has pointed out in his article, is constructive public criticism of judicial abuse.

Mr. President, so that Senators may have available to them the text of the article by Attorney General Smith, I ask unanimous consent that it be printed in the RECORD at this point.

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

URGING JUDICIAL RESTRAINT

(By William French Smith)

On September 27, 1787, the nation's first president, in one of his earliest official acts, offered the position of attorney general to Edmund Randolph. In his letter, George Washington wrote: "Impressed with a conviction that the due administration of justice is the firmest pillar of good government, I have considered the first arrangement of the judicial department as essential to the happiness of our country and to the stability of its political system."

Attorneys general of the United States since the first have shown a similar concern for the role and functioning of the federal courts. With that in mind, the time has come to recognize that, in many instances, the courts have been drawn by litigants before them into areas properly and constitutionally belonging to the other branches or to the states. Those intrusions have not fostered, in Washington's words, "the happiness of our country" or "the stability of its political system."

In the spirit of Washington's admonition to the first attorney general, the Department of Justice is undertaking a conscious effort to encourage judicial restraint. We have supported and will continue to support the selection and appointment of federal judges who recognize the limits of judicial power and the virtues of judicial restraint. We will review our litigation efforts across the board and bring our concern about judicial restraint to bear in deciding what cases to bring and what appeals to prosecute. The arguments lawyers from the Department of Justice make in court—whether as plaintiff, defendant, or amicus curiae—will consistently reflect an awareness of the vital importance of judicial restraint in our democratic system and an effort to secure its implementation.

At the outset I want to make clear that the announcement and implementation of this program should not be viewed as any sort of "attack" on the courts. As Chief Justice Taft recognized long ago: "Nothing tends more to render judges careful in their decisions and anxiously solicitous to do exact justice than the consciousness that every act of theirs is to be subject to the intelligent scrutiny of their fellow men, and to their candid criticism. . . . In the case of judges having a life tenure, indeed, their very independence makes the right freely to comment on their decisions of greater importance, because it is the only practical and available instrument in the hands of a free people to keep judges alive to the reasonable demands of those they serve." Taft, "Criticisms of the Federal Judiciary," 29 American Law Review 642-643 (1895), quoted in Mason, William Howard Taft: Chief Justice 92 (1965).

Chief Justice Stone reiterated these themes: "I have no patience with the complaint that criticism of judicial action involves any lack of respect for the courts. When the courts deal, as ours do, with great public questions, the only protection against unwise decisions, and even judicial usurpation, is careful scrutiny of their action and fearless comment upon it." Preface, *Supreme Court Review* (1961).

Twenty years ago in the President's Page of this *Journal*, John C. Satterfield, viewing judicial action that threatened to alter fundamentally the nature of our government, issued a plea for responsible criticism of the courts: "It is the inherent right and the highest duty of the bar to analyze, criticize, make recommendations, and work toward improvement in both the rulings and operation of courts, from the lowest to the highest level." 48 A.B.A.J. 595, 662 (1962). Neither judges nor—as Justice Jackson has told us—justices are infallible, and the many instances of overruled precedents or shifts in analyses indicate that careful criticism of court action has a vital role to play in development of the law.

Congress and the executive can be checked by the judiciary when they exceed their powers, but the judiciary is unique among the three branches in that it is the judge of its own power. As Justice Stone put it, "the only check upon our own exercise of power is our own sense of self-restraint." *United States* v. *Butler*, 297 U.S. 1, 79 (1936) (dissenting opinion). In these circumstances it is incumbent on the other branches to aid the courts in their exercise of self-restraint. This is precisely what the Department of Justice will be doing in the arguments its lawyers present in litigation. Our effort is one to persuade the courts, who, of course, retain the ultimate power of decision.

A conscious effort in our litigation to curb judicial activism should not be viewed as an effort to politicize the courts. The federal judiciary is an independent branch of government, purposefully and carefully insulated by the Framers from direct popular pressure. The reason the courts were insulated from popular pressure, however, was precisely because their function was not conceived to embrace policy making. Responsibility for policy making in a democratic republic must reside in those who are directly accountable to the electorate.

Not only are unelected jurists with life tenure less attuned to the popular will than regularly elected officials, but judicial policy making also is inevitably inadequate or imperfect policy making. The fact-finding resources of courts are limited and inordinately dependent on the facts presented to the courts by the interested parties before them. Legislatures, on the other hand, have expansive fact-finding capabilities that can reach far beyond the narrow special interests being urged by parties in a lawsuit. Legislatures also can devise comprehensive solutions beyond the remedial powers of courts.

The greatest threat to judicial independence occurs when the courts flout the basis for their independence by exceeding their constitutionally limited role and the bounds of their expertise by engaging in policy making committed to the elected branches or the states. When courts fail to exercise self-restraint and instead enter the political realms reserved to the elected branches, they subject themselves to the political pressure endemic to that arena and invite popular attack. Recently Judge Malcolm Wilkey of the United States Court of Appeals for the District of Columbia Circuit expressed a "sense of relief" on learning that the federal government would raise arguments designed to limit courts to their proper role rather then thrust them further into the domains of the elected branches. As Judge Wilkey put it: "When we judges act within our constitutional competence, we are supported; when we act outside that competence, then distrust, disrespect, and active dislike of the courts set in, impairing our ability to perform with the confidence of the people even unquestioned judicial tasks."

By urging courts to observe appropriate self-restraint and avoid intrusions into the domain of the other branches, we shall be taking significant steps to secure their independence.

Our concern is not with results in a particular case; it is with the institutional role of the courts in our federal system and the scheme of separation of powers. Our effort, therefore, will focus on the procedures and approaches that help define the judicial role. We shall, specifically, urge courts to observe strictly the requirements of justiciability, to avoid testing the constitutionality of laws by those devices which permit ready intrusion into the domain of the legislature, and to exercise restraint in the formulation of equitable decrees.

A focus on these areas, directly related to the role of the courts rather than the merits of any particular dispute, evinces a concern that does not depend on political exigencies. Throughout history and to this day both liberal and conservative interests have sought to enlist an activist judiciary in the achievement of goals not obtainable through normal political processes. In the era that has come to be epitomized by the decision in *Lochner* v. *New York*, 198 U.S. 45 (1905), for example, it was conservatives who urged judicial activism under the banner of due process to strike down popular enactments. Judges read their personal predilections into the flexible terms of the Constitution, at the expense of the policy choices of the elected representatives of the people.

The Court retreated from this activist stance with the announcement of such decisions as *Nebbia* v. *New York*, 291 U.S. 502 (1934) and *West Coast Hotel Company* v. *Parrish*, 300 U.S. 379 (1937), but the process of judicial policy making—under such guises as substantive due process or heightened equal protection analysis—has resurfaced in other contexts in recent years. Now different groups urge judges to substitute their own policy choices for those of federal and state legislatures, but the evils of judicial activism remain the same regardless of the political ends the activism seeks to serve.

The key areas in any focus on judicial restraint are rules about what cases should be decided by courts, how courts should review the constitutionality of enactments, and how they should exercise their power in ordering relief.

The first area, justiciability, is critical in distinguishing between the proper role of the courts and the legislature. The Framers did not give federal courts a roving commission to review acts of Congress. Proposals in fact were advanced which would have given the judiciary a general advisory role, through participation in a "Council of Revision," but these proposals were repeatedly rejected. Courts are limited by Article III to deciding live disputes presented to them by parties with a concrete and particularized interest in the outcome. Rules of standing limit judicial recourse to those suffering a particularized injury; those suffering only generalized harm should present their grievance to the legislature and seek redress through the political process. As courts ease requirements of standing, they assume the burdens of functioning as a legislature, a role specifically denied them by the Framers of the Constitution. As Justice Powell has admonished, "we should be ever mindful of the contradictions that would arise if a democracy were to permit general oversight of the elected branches of government by a nonrepresentative, and in large meas-

ure insulated, judicial branch." *United States* v. *Richardson*, 418 U.S. 166, 188 (1974) (concurring opinion). Strict adherence to standing requirements and the other aspects of justiciability guards against these contradictions.

A second means by which courts arrogate to themselves functions reserved to the legislative branch or the states is through "fundamental rights" and "suspect class" analyses, both of which invite broad judicial scrutiny of the essentially legislative task of classification. Federal courts must, of course determine the constitutionality of enactments when the issue is properly presented in litigation. In discharging that responsibility, however, courts also must, in the words of Justice Frankfurter, have "due regard to the fact that [they are] not exercising a primary judgment but [are] sitting in judgment upon those who also have taken the oath to observe the Constitution and who have the responsibility for carrying on government.'" *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 164 (1951) (concurring opinion). Courts cannot, under the guise of constitutional review, restrike balances struck by the legislative or substitute their own policy choices for those of elected officials.

Two devices which invite courts to do just that are "fundamental rights" and "suspect class" review. It is, of course, difficult to criticize "fundamental rights" in the abstract. All of us, for example, may heartily endorse a "right to privacy." That does not, however, mean that courts should discern such an abstraction in the Constitution, arbitrarily elevate it over other constitutional rights and powers by attaching the label "fundamental," and then resort to it as, in the words of one of Justice Black's dissents, "a loose, flexible, uncontrolled standard for holding laws unconstitutional." *Griswold* v. *Connecticut*, 381 U.S. 479, 521 (1965). The broad range of rights now alleged to be "fundamental" by litigants, with only the most tenuous connection to the Constitution, bears ample witness to the dangers of this doctrine.

Analysis based on "suspect classes" presents many of the same problems. Classifications based on race are suspect and do merit careful scrutiny, in light of the historic purpose of the 14th Amendment. Extension of heightened scrutiny to other "insular and discrete" groups, however, represents an unjustified intrusion into legislative affairs. As with fundamental rights, there is no discernible limit to the intrusion. As Justice Rehnquist has put it: "Our society, consisting of over 200 million individuals of multitudinous origins, customs, tongues, beliefs, and cultures is, to say the least, diverse. It would hardly take extraordinary ingenuity for a lawyer to find 'insular and discrete' minorities at every turn in the road." *Sugarman* v. *Dougall*, 413 U.S. 634, 657 (1973) (dissenting opinion). Both "fundamental rights" and "suspect classes" stand as invitations for a degree of judicial intrusion not invited by the Constitution, a means through which courts impose values that do not have their source in that document.

Another key area in which we will focus our efforts is the use of extraordinary equitable decrees. This is the all-too-familiar problem of judges taking over the running of state institutions, most notably prisons and schools. When confronting constitutional problems in the context of the administration of state institutions, courts must be particularly cognizant of their lack of expertise, and the fact that the *ad hoc* approach inevitable in litigation is often ill-suited to solving the complex and intractable problems of institutional reform. The Supreme Court has adverted to these concerns on many occasions. In *Milliken* v. *Bradley*, 418 U.S. 717, 744-745 (1974), Chief Justice Burger, writing for the Court, expressed concern over the scope of a remedial decree because it would make the court a de facto legislative authority and school superintendent. "This is a task which few, if any, judges are qualified to perform and one which would deprive the people of control of schools through their elected representatives." Just last term the Supreme Court criticized a lower court for relying on factors that "properly are weighed by the legislature and prison administration rather than a court." *Rhodes* v. *Chapman*, 101 S.Ct. 2392, 2400 (1981). Our efforts in this area, both as defendant and as plaintiff or or *amicus curiae*, will be to ensure that the lower courts heed these wise admonitions.

The exercise of sound judicial restraint is, of course, ultimately the responsibility of the judges themselves, but it is incumbent on the other branches of government to aid in the endeavor. We in the executive branch will be doing our part through our program of litigation. We shall not only urge judicial restraint when we are defending the federal government, but we also shall exercise self-restraint. We shall not advance arguments that promote judicial activism even when those arguments might help us in a particular case. The end of success in any specific case does not justify the means of encouraging judicial activism.

Congress also has a role to play. Too often Congress invites judicial activism by open-ended statutory provisions and by leaving important questions unresolved in statutory enactments. Congress must face up to its responsibilities and not leave significant policy decisions to be resolved in litigation. As John Locke wrote, the power of the legislative branch is "to make laws, and not to make legislators." Congress also should carfully consider the constitutionality of its enactments, for, as the Court noted last term in *Rostker* v. *Goldberg*, 101 S.Ct. 2646 (1981), careful consideration by Congress encourages heightened deference from the courts.

In focusing on particular results, we must always remain conscious of the limitations implicit within a system of ordered liberty. The Constitution did not grant courts the power to reach results merely because they deem them desirable. It granted that role to legislative action, and it confined even that legislative power within constitutional bounds.

Edwin Corwin tells the story of a young man who called on Justice Holmes after his retirement from the Court. The young man wanted to know what irreducible principle guided the great jurist in deciding constitutional cases. "Young man," said Holmes, "I discovered about 75 years ago that I wasn't God Almighty." It is time that we all realized that the Constitution envisions judges who interpret the law, not robed prophets who fashion it.

Mr. HELMS. I thank the Chair.

Mr. President, I have sat patiently and quietly day after day, week after week, while all of the constitutional declarations have been made on this floor as if they were coming down in a steady trickle from Mount Sinai.

I have been tempted on various occasions to ask my respected colleagues if they ever took a look at the case of *Ex Parte McCardle* (7 Wallace 506 (1869)).

Here was a case involving a newspaper editor who was put in jail on charges of publishing "incendiary and libelous articles." His name was McCardle. He was a newspaper editor in Mississippi.

McCardle brought this habeas corpus proceeding under an act of Congress of February 5, 1867, which authorized Federal courts to grant habeas corpus to anyone restrained "in violation of the Constitution" and which also authorized appeals to the Supreme Court.

After the circuit court denied McCardle's habeas petition, he appealed to the Supreme Court, which held that it had jurisdiction to hear the appeal. Then Congress passed an act denying the Court jurisdiction of appeals such as McCardle's. The Court therefore dismissed the appeal for want of jurisdiction, rejecting arguments that Congress could not use its authority over Court jurisdiction to affect cases adjudicating constitutional rights. It said:

> We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words.

I happen to agree that, to the best of my knowledge, Mr. McCardle under the first amendment, ought not to have been incarcerated, and I mention McCardle just to illustrate that it is certainly not novel for Congress to limit the jurisdiction of the Federal courts.

I mentioned a moment ago, Mr. President, the Supreme Court's unconscionable involvement in voluntary prayer in the schools. What purpose did the court serve by this unjustified involvement? None.

You will remember, Mr. President, that the ill-advised Supreme Court decisions were the result in large measure of a lawsuit brought by a woman known at that time as Madalyn Murray, and she is now married again and she is Madalyn Murray O'Hair, an atheist, self-proclaimed, and very loud about it.

Mr. President, I was in Dallas some time ago and just by chance I met a young man in a restaurant. He came over to me and identified himself as Bill Murray. I did not connect him with Madalyn Murray O'Hair until he himself explained that he is the son of Mrs. O'Hair.

Young Bill Murray and I had dinner together and I learned that he is traveling this country apologizing for what his mother did. Bill Murray is a dedicated Christian, but he was the pawn in that chess game, that lawsuit brought in the name of Madalyn Murray O'Hair on behalf of her son

Bill Murray, a lawsuit that Bill Murray says was orchestrated by known Communists. He recited to me instance after instance in which Communists came to his mother's home and helped guide her in the orchestration of that lawsuit.

He gave names. He is willing to give names now. In fact, he said:

I travel this country and I am sometimes interviewed by the news media. But when I try to tell them how this lawsuit that resulted in the banning of voluntary prayer in schools, when I try to tell the media how it was orchestrated by Communists, they shut off their cameras and close up their notebooks.

He said:

Senator, I cannot get that message through. I cannot get that message through.

And he asked "Why?" I could not answer him.

I myself have encouraged representatives of the various networks, some of our major newspapers, magazines, and other periodicals to contact Bill Murray and at least present that side of the story for whatever interest it may have to the American people. But insofar as I know, Mr. President, not one of them has been interested in conveying to the public Bill Murray's story.

Bill Murray is now married and he has a young daughter. He has a successful business. But he says:

I feel obliged to do what I can to make up for what my mother did back in the early 1960's. . . .

When he was 9 or 10 years old.

Mr. President, the Supreme Court need not have gotten involved in this matter of prohibiting voluntary school prayer. It need not have gotten involved in any of these matters that some of our brethren complained so vehemently about when some of us tried to develop a remedy for forced busing or for the banning of school prayer, and so on. But if I serve no other purpose tonight, I would hope that maybe I have contributed just a little bit to waving aside these continuous declarations that the Constitution of the United States is being destroyed because of proposals to limit the jurisdiction of the Federal courts.

It is not so, Mr. President. Congress not only has the authority to limit the jurisdiction of the courts which Congress created, but Congress has the duty to do so.

I have heard various constitutional scholars quoted on this floor. But I never hear Raoul Berger, Dr. Raoul Berger, of Harvard quoted. Dr. Berger is a distinguished authority on the Constitution. He certainly is no conservative, and he once strongly disagreed with any notion of limiting the jurisdiction of the Federal courts.

But 10 years after he wrote a book disavowing efforts to limit the jurisdiction of courts, he reversed himself 180 degrees and said, "I changed my mind." But we never hear Dr. Raoul Berger quoted. He was quoted almost constantly until he changed his mind. But you never hear his name mentioned now that he has taken a second look at this question and come to a conclusion opposite to his original conclusion.

Dr. Charles Rice of the Notre Dame Law School, an outstanding constitutional scholar, is another who comes to mind. You never hear his name mentioned in all of these constitutional declarations made on this floor.

You never here Sam Ervin's name mentioned except when I mention it. But I think we had better listen to both sides and make a reasonable judgment.

Mr. President, I yield the floor and I thank the Chair.

The PRESIDING OFFICER. The hour of 9 o'clock having arrived, the question is, Shall the decision of the Chair that amendment No. 1252 is germane stand as the judgment of the Senate? The yeas and nays have been ordered and the clerk will call the roll.

QUORUM CALL

Mr. WEICKER. 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 and the following Senators entered the Chamber and answered to their names:

[Quorum No. 11 Leg.]

Baker	Helms	Proxmire
Burdick	Johnston	Stafford
Garn	Leahy	Warner
Goldwater	Mathias	Weicker
Hatfield	Metzenbaum	

The PRESIDING OFFICER. The Chair is informed that a quorum is not present. The Chair directs the clerk to call the names of the absent Senators.

Mr. BAKER. Mr. President, I move that the Sergeant at Arms be instructed to compel the attendance of absent Senators 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 of the Senator from Tennessee. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Nevada (Mr. LAXALT), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Michigan (Mr. RIEGLE), and the Senator from Maryland (Mr. SARBANES) are necessarily absent.

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

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 83, nays 10, as follows:

[Rollcall Vote No. 24 Leg.]

YEAS—83

Abdnor	Eagleton	Mattingly
Andrews	Exon	Melcher
Armstrong	Ford	Metzenbaum
Baker	Garn	Mitchell
Baucus	Glenn	Moynihan
Bentsen	Gorton	Murkowski
Biden	Grassley	Nickles
Boren	Hart	Nunn
Bradley	Hatch	Packwood
Bumpers	Hatfield	Pell
Burdick	Hawkins	Percy
Byrd, Harry F., Jr.	Heflin	Pressler
	Heinz	Pryor
Byrd, Robert C.	Helms	Randolph
Cannon	Hollings	Roth
Chafee	Huddleston	Rudman
Chiles	Humphrey	Sasser
Cohen	Jackson	Schmitt
Cranston	Jepsen	Simpson
D'Amato	Johnston	Specter
Danforth	Kassebaum	Stafford
DeConcini	Kasten	Stennis
Denton	Kennedy	Stevens
Dixon	Leahy	Symms
Dodd	Levin	Tower
Dole	Lugar	Tsongas
Domenici	Mathias	Wallop
Durenberger	Matsunaga	Zorinsky

NAYS—10

Boschwitz	Long	Warner
East	McClure	Weicker
Goldwater	Proxmire	
Hayakawa	Quayle	

NOT VOTING—7

Cochran	Riegle	Williams
Inouye	Sarbanes	
Laxalt	Thurmond	

So the motion was agreed to.

Mr. JOHNSTON addressed the Chair.

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

The PRESIDING OFFICER. The question now occurs as follows: Shall the decision of the Chair that amendment No. 1252 be germane stand as the judgment of the Senate?

On this question the yeas and nays have been ordered, and the clerk will now call the roll.

The bill clerk called the roll.

Mr. STEVENS. I announce that the Senator from Nevada (Mr. LAXALT), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I further announce that, if present and voting, the Senator from South Carolina (Mr. THURMOND) would vote "yea."

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Michigan (Mr. RIEGLE), and the Senator from

Maryland (Mr. SARBANES) are necessarily absent.

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

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 66, nays 27, as follows:

[Rollcall Vote No. 25 Leg.]

YEAS—66

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

NAYS—27

Baucus	Eagleton	Metzenbaum
Boschwitz	Glenn	Mitchell
Bradley	Hart	Moynihan
Bumpers	Hatfield	Packwood
Chafee	Heinz	Pell
Cohen	Kennedy	Pressler
Cranston	Levin	Stafford
Dodd	Mathias	Tsongas
Durenberger	Matsunaga	Weicker

NOT VOTING—7

Cochran	Riegle	Williams
Inouye	Sarbanes	
Laxalt	Thurmond	

The PRESIDING OFFICER. The decision of the Chair stands as the judgment of the Senate.

AMENDMENT NO. 457

Mr. WEICKER. Mr. President, I ask that my amendment No. 457 be reported at this point.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Connecticut (Mr. WEICKER) proposes an amendment numbered 457.

The amendment is as follows:

At the end of the pending amendment add the following:

Notwithstanding any section of this bill, without regard to the provisions of sections 3617 of the Revised Statutes (31 U.S.C. 484), the Drug Enforcement Administration is authorized to set aside 30 per centum of the net amount realized from the forfeiture of seized assets and credit such amounts to the current appropriation account for the purpose, only, of an award of compensation to informers in respect to such forfeitures and such awards shall not exceed the level of compensation prescribed by section 1619 of title 19, United States Code.

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.

Mr. JOHNSTON. Mr. President, I move to lay that motion 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 question is on agreeing to the motion to lay on the table the amendment of the Senator from Connecticut. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Nevada (Mr. LAXALT), and the Senator from South Carolina (Mr. THURMOND), are necessarily absent.

I further announce that, if present and voting, the Senator from South Carolina (Mr. THURMOND), would vote "yea."

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Maryland (Mr. SARBANES), and the Senator from Michigan (Mr. RIEGLE), are necessarily absent.

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

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

The result was announced—yeas 62, nays 31, as follows:

[Rollcall Vote No. 26 Leg.]

YEAS—62

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

NAYS—31

Baucus	Cranston	Hatfield
Boschwitz	Dodd	Hawkins
Bradley	Durenberger	Heinz
Bumpers	Eagleton	Jackson
Chafee	Glenn	Kennedy
Chiles	Goldwater	Leahy
Cohen	Hart	Levin
Mathias	Moynihan	Tsongas
Matsunaga	Packwood	Weicker
Metzenbaum	Pell	
Mitchell	Stafford	

NOT VOTING—7

Cochran	Riegle	Williams
Inouye	Sarbanes	
Laxalt	Thurmond	

So the motion to lay on the table amendment No. 457 was agreed to.

Mr. METZENBAUM and Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that I may withdraw amendments numbered 1251, 1259, and 1260.

Mr. President, I would like to withdraw that request for the time being.

Mr. METZENBAUM. Mr. President, I think it is time that we put into proper perspective exactly what is taking place on the floor of the Senate, and that we also address ourselves—Mr. President, may we have order in the Chamber?

The PRESIDING OFFICER. The Senator from Ohio has requested order in the Chamber. The Senate will be in order.

Mr. METZENBAUM. Mr. President, it is appropriate that we recognize that while this body is considering that which on its face, apparently, is unconstitutional, while we are attempting to take away from the courts the jurisdiction to which they are entitled under the law, the entire Nation is waiting—Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Chair requests those Senators in the aisles and engaged in conversation to kindly return to their seats so that the Senator from Ohio can be heard.

Mr. METZENBAUM. Mr. President, at this point the unemployment figure in our country is 10 percent. In my State it is 12 percent. In some States the figure is greater.

The interest rate in this country is 16½ percent.

The inflation rate continues to cause people to hesitate to make purchases at their grocery stores, and senior citizens are being called upon to sacrifice their noon lunches because maybe they are not hungry enough to be chosen and there is not enough food to make it available to them.

Our Nation is confronted with problems throughout the world, whether it is in Poland or El Salvador, Afghanistan or the Middle East. The great U.S. Senate is sitting on the floor debating whether or not, at 10:15 at night, we ought to deny the courts of the United States the jurisdiction that has been given to them under the Constitution. What a wonderful commentary it is indeed that we spend our time on such momentous issues as the one which is before us this evening.

The Senate's most prominent, most well-respected conservative had made his voice heard and his views known. He has talked out about the fact that the Senate spends its time debating the so-called social issues while the country fails to concern itself about the more weighty problems.

I think it is with a great deal of commendation that all of us in this body ought to recognize the fact that BARRY GOLDWATER has not hesitated to let his voice be heard to criticize the fact that we have addressed ourselves and spent our time debating issues such as this and those of a similar less than momentous purpose.

What reason is it that we stand here this evening trying to move forward to get this legislation through to deny the courts the right to hear actions that have to do with transporting children from one public school to another? Will we really have accomplished that much? Or will the issue not return to the Supreme Court after some years of litigation and all of our actions will have been to naught?

The American Bar Association, certainly, which carries no water for the right, the left, the liberal, or the conservative, has said:

> If it is likely, as we by no means concede it is, that the meaning ascribed to a constitutional provision can be changed by the simple device of divesting jurisdiction from one set of courts and giving it to another, then indeed we have a Constitution written on sand and the integrity of our amending process is eroded.

Said the American Bar Association:

> It is central to our fundamental charter that ordinary legislation can be changed through ordinary legislation and the Constitution only through amendment. We should resoundly reject the counsel of those who tell us there is another way. Down that route lie barely hidden hazards to constitutional government.

We have nothing to be proud about in meeting here at this late hour, attempting to break the so-called filibuster. What means it all? What will be the great achievement if the filibuster is broken? I hope it will not be.

But what will we have achieved when we get all done? Why do we not spend our time in doing that which the Nation expects of us?

Sure, the issue of busing is important. I do not deny its importance. But should we be taking our time here to take away from the courts the right to deal with that issue over the past months and years which has been recognized by our Constitution? I do not think it does credit to us.

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

Mr. JOHNSTON. Mr. President, no intervening business has transpired, and the request for the quorum is dilatory.

The PRESIDING OFFICER. A quorum call, at this time, I am informed by the Parliamentarian, is not in order.

Mr. METZENBAUM. Mr. President, I appeal the decision of the Chair.

The PRESIDING OFFICER. May the Chair finish ruling?

There has been no intervening business——

Mr. METZENBAUM. I appeal the ruling of the Chair.

The PRESIDING OFFICER [continuing]. Since the establishment of a quorum by the last vote.

Mr. METZENBAUM. I appeal the ruling of the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. METZENBAUM. Mr. President, I had the floor.

Mr. JOHNSTON. Mr. President, I would like to recall amendments——

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. I recall amendments 1251, 1259, and 1260.

(The amendments were recalled.)

Mr. METZENBAUM. I still have not heard the Chair. What did the Chair say with respect to the appeal?

The PRESIDING OFFICER. The question is on the appeal of the ruling of the Chair. The question is, Shall the decision of the Chair stand as the decision of the Senate? As I understand, the Senator from Ohio wants to appeal the decision of the Chair.

Mr. METZENBAUM. That is correct.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

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

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

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum. There has been business now transacted.

Mr. JOHNSTON. Mr. President——

The PRESIDING OFFICER. The Senator from Louisiana is attempting to make a point of order. The Chair will entertain it.

Mr. JOHNSTON. Mr. President, did the Chair recognize me to recall amendments 1251, 1259, and 1260?

The PRESIDING OFFICER. Those amendments have been recalled.

Mr. METZENBAUM. Mr. President, the appeal to the decision of the Chair——

Mr. JOHNSTON. Mr. President, a parliamentary inquiry: Has the Senator from Ohio been recognized to appeal the decision of the Chair?

The PRESIDING OFFICER. He has been recognized for that purpose. He has requested the yeas and nays. There does not seem to be a sufficient second.

Mr. METZENBAUM. Mr. President, the Senator from Ohio also has suggested the absence of a quorum and I have been recognized for that purpose.

Mr. JOHNSTON. Mr. President, I make a point of order that the call for the quorum is dilatory.

The PRESIDING OFFICER. In order for a point of order to establish a quorum call as being dilatory, the Chair must observe a quorum. A quorum is not observed.

QUORUM CALL

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll and the following Senators entered the Chamber and answered to their names:

[Quorum No. 12 Leg.]

Armstrong	Jackson	Nickles
Baker	Johnston	Proxmire
Boschwitz	Kennedy	Quayle
Burdick	Leahy	Randolph
Cannon	Long	Riegle
Domenici	Mathias	Roth
Ford	Melcher	Simpson
Garn	Metzenbaum	Tower
Grassley	Murkowski	Warner

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of absent Senators.

Mr. BAKER. Mr. President.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, I move that the Sergeant at Arms be instructed to compel the attendance of absent Senators. I ask for the yeas and nays, Mr. President.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. STEVENS. I announce that the Senator from Nevada (Mr. LAXALT), and the Senator from South Carolina (Mr. THURMOND), are necessarily absent.

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Maryland (Mr. SARBANES), the Senator from Mississippi (Mr. STENNIS), and the Senator from Colorado (Mr. HART), are necessarily absent.

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

The result was announced—yeas 85, nays 7, as follows:

[Rollcall Vote No. 27 Leg.]

YEAS—85

Abdnor	Baker	Biden
Andrews	Baucus	Boren
Armstrong	Bentsen	Boschwitz

Bradley	Gorton	Mitchell
Bumpers	Grassley	Moynihan
Burdick	Hatch	Murkowski
Byrd,	Hatfield	Nickles
Harry F., Jr.	Hawkins	Nunn
Byrd, Robert C.	Heflin	Packwood
Cannon	Heinz	Pell
Chafee	Helms	Percy
Chiles	Hollings	Pressler
Cohen	Huddleston	Pryor
Cranston	Humphrey	Randolph
D'Amato	Jackson	Riegle
Danforth	Jepsen	Roth
DeConcini	Johnston	Rudman
Denton	Kassebaum	Sasser
Dixon	Kasten	Schmitt
Dodd	Kennedy	Simpson
Dole	Leahy	Specter
Domenici	Levin	Stafford
Durenberger	Long	Stevens
Eagleton	Lugar	Symms
East	Mathias	Tower
Exon	Matsunaga	Tsongas
Ford	Mattingly	Wallop
Garn	Melcher	Zorinsky
Glenn	Metzenbaum	

NAYS—7

Goldwater	Proxmire	Weicker
Hayakawa	Quayle	
McClure	Warner	

NOT VOTING—8

Cochran	Laxalt	Thurmond
Hart	Sarbanes	Williams
Inouye	Stennis	

So the motion was agreed to.

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

SEVERAL SENATORS addressed the Chair.

Mr. DANFORTH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, what is the pending question before the Senate?

The PRESIDING OFFICER. The pending question is the appeal lodged by the Senator from Ohio to the ruling of the Chair that the previous quorum call was not in order since no business has intervened.

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

SEVERAL SENATORS addressed the Chair.

Mr. DANFORTH. Mr. President, will the Senator withhold his request so I may make a parliamentary inquiry?

Mr. BAKER. Mr. President, I ask unanimous consent that I may yield to the Senator from Missouri for the purpose of making a parliamentary inquiry.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Tennessee?

Mr. METZENBAUM. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. METZENBAUM. Mr. President, is it not the fact——

The PRESIDING OFFICER. The majority leader has the floor.

Mr. METZENBAUM. Mr. President, is it not a fact that when there is an appeal from the decision of the Chair that issue has priority over all other matters?

Mr. BAKER. Mr. President, I move to table the appeal 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 of the Senator from Tennessee to lay on the table the appeal of the ruling of the Chair. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Nevada (Mr. LAXALT), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Colorado (Mr. HART), the Senator from Hawaii (Mr. INOUYE), the Senator from Maryland (Mr. SARBANES), and the Senator from Mississippi (Mr. STENNIS), are necessarily absent.

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

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

The result was announced—yeas 69, nays 23, as follows:

[Rollcall vote No. 28 Leg.]

YEAS—69

Abdnor	Garn	Murkowski
Andrews	Glenn	Nickles
Armstrong	Goldwater	Nunn
Baker	Gorton	Pell
Bentsen	Grassley	Percy
Biden	Hatch	Pressler
Boren	Hawkins	Proxmire
Burdick	Hayakawa	Pryor
Byrd,	Heflin	Quayle
Harry F., Jr.	Helms	Randolph
Byrd, Robert C.	Hollings	Roth
Cannon	Huddleston	Rudman
Chiles	Humphrey	Sasser
D'Amato	Jackson	Schmitt
Danforth	Jepsen	Simpson
DeConcini	Johnston	Specter
Denton	Kassebaum	Stevens
Dixon	Kasten	Symms
Dodd	Long	Tower
Dole	Lugar	Wallop
Domenici	Mattingly	Warner
Eagleton	McClure	Zorinsky
East	Melcher	
Ford	Moynihan	

NAYS—23

Baucus	Exon	Metzenbaum
Boschwitz	Hatfield	Mitchell
Bradley	Heinz	Packwood
Bumpers	Kennedy	Riegle
Chafee	Leahy	Stafford
Cohen	Levin	Tsongas
Cranston	Mathias	Weicker
Durenberger	Matsunaga	

NOT VOTING—8

Cochran	Laxalt	Thurmond
Hart	Sarbanes	Williams
Inouye	Stennis	

So the motion to lay on the table the appeal from the ruling of the Chair was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, I call up amendment No. 428.

The PRESIDING OFFICER. The amendment is not in order as not being germane.

Mr. BAKER. Mr. President, I call up amendment No. 429.

The PRESIDING OFFICER. The amendment is not in order. It is not germane.

Mr. BAKER. Mr. President, I call up amendment No. 430.

The PRESIDING OFFICER. The amendment is not in order. It is not germane.

Mr. BAKER. Mr. President, I call up amendment No. 431.

The PRESIDING OFFICER. The amendment is not in order because it is dilatory.

Mr. BAKER. Mr. President, I call up amendment No. 432.

The PRESIDING OFFICER. The amendment is not in order because it is not germane.

Mr. BAKER. I call up amendment No. 433, Mr. President.

The PRESIDING OFFICER. The amendment is not in order because it is dilatory.

Mr. BAKER. Mr. President, I call up amendment No. 434.

The PRESIDING OFFICER. The amendment is not in order because it is dilatory.

Mr. BAKER. Mr. President, I call up amendment No. 435.

The PRESIDING OFFICER. The amendment is not in order because it is dilatory.

Mr. BAKER. Mr. President, I call up amendment No. 436.

The PRESIDING OFFICER. The amendment is not in order because it is dilatory.

Mr. BAKER. Mr. President, I call up amendment No. 437.

The PRESIDING OFFICER. The amendment is not in order because it is dilatory.

Mr. BAKER. I call up amendment No. 438, Mr. President.

The PRESIDING OFFICER. The amendment is not in order because it is dilatory.

Mr. BAKER. Mr. President, I call up amendment No. 439.

The PRESIDING OFFICER. The amendment is not in order because it is dilatory.

Mr. BAKER. Mr. President, I call up amendment No. 440.

The PRESIDING OFFICER. The amendment is not in order because it is not germane.

Mr. BAKER. I call up amendment No. 441, Mr. President.

The PRESIDING OFFICER. The amendment is not in order because it is dilatory.

Mr. BAKER. Mr. President, I call up amendment No. 442.

The PRESIDING OFFICER. The amendment is not in order because it is dilatory.

Mr. BAKER. Mr. President, I call up amendment No. 443.

The PRESIDING OFFICER. The amendment is not in order because it is not germane.

Mr. BAKER. Mr. President, I call up amendment No. 444.

The PRESIDING OFFICER. The amendment is not in order because it is dilatory.

Mr. BAKER. Mr. President, I call up amendment No. 447.

The PRESIDING OFFICER. The amendment is not in order because it is dilatory.

Mr. BAKER. I call up amendment No. 450, Mr. President.

The PRESIDING OFFICER. The amendment is not in order because it is dilatory.

Mr. BAKER. Mr. President, I call up amendment No. 451.

The PRESIDING OFFICER. The amendment is not in order because it is dilatory.

Mr. BAKER. Mr. President, I call up amendment No. 452.

The PRESIDING OFFICER. The amendment is not in order because it is dilatory.

Mr. BAKER. Mr. President, I call up amendment No. 453.

Mr. WEICKER. Point of order, Mr. President.

The PRESIDING OFFICER. The amendment No. 453 is not in order because it is not germane.

Mr. BAKER addressed the Chair.

Mr. WEICKER. Point of order.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. WEICKER. Point of order.

Mr. METZENBAUM. Point of order.

SEVERAL SENATORS. Point of order.

Mr. METZENBAUM. Mr. President, a point of order has been made and Senators have asked for recognition.

The PRESIDING OFFICER. The Chair asks for order.

Mr. BAKER. Mr. President, I am perfectly pleased to permit a point of order to be made. Which is the last amendment that was called up?

The PRESIDING OFFICER. Amendment No. 453 and the Chair ruled it was not in order as it is not germane.

Mr. WEICKER. Point of order.

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

Mr. WEICKER. Mr. President, I appeal the ruling of the Chair.

Mr. BAKER. On what ruling is the appeal being made?

Mr. WEICKER. On the last ruling of the Chair, amendment No. 453.

The PRESIDING OFFICER. I ask the Senator from Connecticut to restate his point of order.

Mr. WEICKER. Parliamentary inquiry. If I am not mistaken, the Chair ruled amendment No. 453 as being not in order because it was dilatory.

The PRESIDING OFFICER. As not germane.

Mr. WEICKER. Or not germane.

The PRESIDING OFFICER. The Senator is correct.

Mr. WEICKER. I appeal that ruling of the Chair and I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. BAKER. Mr. President, I move to table the appeal 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 of the Senator from Tennessee (Mr. BAKER). The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Nevada (Mr. LAXALT), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Maryland (Mr. SARBANES), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

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

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 65, nays 28, as follows:

[Rollcall Vote No. 29 Leg.]

YEAS—65

Abdnor	Exon	Melcher
Andrews	Ford	Murkowski
Armstrong	Garn	Nickles
Baker	Goldwater	Nunn
Bentsen	Gorton	Percy
Biden	Grassley	Pressler
Boren	Hatch	Proxmire
Burdick	Hawkins	Pryor
Byrd, Harry F., Jr.	Hayakawa	Quayle
	Helms	Randolph
Byrd, Robert C.	Hollings	Roth
Cannon	Huddleston	Rudman
Chiles	Humphrey	Sasser
D'Amato	Jackson	Schmitt
Danforth	Jepsen	Simpson
DeConcini	Johnston	Stevens
Denton	Kassebaum	Symms
Dixon	Kasten	Tower
Dole	Long	Tsongas
Domenici	Lugar	Wallop
Eagleton	Mattingly	Warner
East	McClure	Zorinsky

NAYS—28

Baucus	Hart	Mitchell
Boschwitz	Hatfield	Moynihan
Bradley	Heflin	Packwood
Bumpers	Heinz	Pell
Chafee	Kennedy	Riegle
Cohen	Leahy	Specter
Cranston	Levin	Stafford
Dodd	Mathias	Weicker
Durenberger	Matsunaga	
Glenn	Metzenbaum	

NOT VOTING—7

Cochran	Sarbanes	Williams
Inouye	Stennis	
Laxalt	Thurmond	

So the motion to lay on the table the appeal of the ruling of the Chair was agreed to.

Mr. BAKER. Mr. President, I call up amendment No. 460.

The PRESIDING OFFICER. The amendment is not in order because it is not germane.

Mr. BAKER. Mr. President, I call up amendment No. 462.

The PRESIDING OFFICER. The amendment is not in order because it is not germane.

Mr. BAKER. Mr. President, I call up amendment No. 463.

The PRESIDING OFFICER. The amendment is not in order because it is not germane.

Mr. BAKER. Mr. President, I call up amendment No. 464.

The PRESIDING OFFICER. The amendment is not in order because it is not germane.

Mr. BAKER. Mr. President, I call up amendment No. 465.

The PRESIDING OFFICER. The amendment is not in order because it is not germane.

Mr. BAKER. Mr. President, I call up amendment No. 466.

The PRESIDING OFFICER. The amendment is not in order because it is not germane.

Mr. BAKER. Mr. President, I call up amendment No. 467.

The PRESIDING OFFICER. The amendment is not in order because it is not germane.

Mr. BAKER. Mr. President, I call up amendment No. 468.

The PRESIDING OFFICER. The amendment is not in order because it is not germane.

Mr. BAKER. Mr. President, I call up amendment No. 469.

The PRESIDING OFFICER. The amendment is not in order because it is not germane.

Mr. BAKER. Mr. President, I call up amendment No. 470.

The PRESIDING OFFICER. The amendment is not in order because it is not germane.

Mr. BAKER. Mr. President, I call up amendment No. 474.

The PRESIDING OFFICER. The amendment is not in order because it is not germane.

Mr. BAKER. Mr. President, I call up amendment No. 477.

The PRESIDING OFFICER. The amendment is not in order because it is not germane.

Mr. BAKER. Mr. President, I call up amendment No. 480.

The PRESIDING OFFICER. The amendment is not in order because it is not germane.

Mr. BAKER. Mr. President, I call up amendment No. 481.

The PRESIDING OFFICER. The amendment is not in order because it is not germane.

Mr. BAKER. Mr. President, I call up amendment No. 454.

The PRESIDING OFFICER. The amendment is not in order because it is not dilatory.

Mr. WEICKER. Point of order, Mr. President.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, I am not seeking recognition.

Mr. ROBERT C. BYRD. Mr. President, the Senator from Connecticut is seeking to make a point of order. He is entitled to recognition.

The PRESIDING OFFICER. The Senator from Connecticut is recognized. The Chair had the understanding that the Senator from Tennessee sought the floor. The Senator from Tennessee was not seeking the floor, so the Senator from Connecticut is recognized.

Mr. WEICKER. I make the point of order that I make an appeal from the ruling of the Chair on amendment No. 454. I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. BAKER. I move to lay the appeal on the table. I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Nevada (Mr. LAXALT), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Maryland (Mr. SARBANES), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

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

The PRESIDING OFFICER (Mr. RUDMAN). Are there other Senators in the Chamber wishing to vote?

The result was announced—yeas 67, nays 25, as follows:

[Rollcall Vote No. 30 Leg.]

YEAS—67

Abdnor	Ford	Murkowski
Andrews	Garn	Nickles
Armstrong	Gorton	Nunn
Baker	Grassley	Percy
Bentsen	Hatch	Pressler
Biden	Hawkins	Proxmire
Boren	Hayakawa	Pryor
Burdick	Heflin	Quayle
Byrd, Harry F., Jr.	Helms	Randolph
	Hollings	Roth
Byrd, Robert C.	Huddleston	Rudman
Cannon	Humphrey	Sasser
Chiles	Jackson	Schmitt
D'Amato	Jepsen	Simpson
Danforth	Johnston	Specter
DeConcini	Kassebaum	Stevens
Denton	Kasten	Symms
Dixon	Long	Tower
Dole	Lugar	Tsongas
Domenici	Mattingly	Wallop
Eagleton	McClure	Warner
East	Melcher	Zorinsky
Exon	Moynihan	

NAYS—25

Baucus	Glenn	Metzenbaum
Boschwitz	Hart	Mitchell
Bradley	Hatfield	Packwood
Bumpers	Heinz	Pell
Chafee	Kennedy	Riegle
Cohen	Leahy	Stafford
Cranston	Levin	Weicker
Dodd	Mathias	
Durenberger	Matsunaga	

NOT VOTING—8

Cochran	Laxalt	Thurmond
Goldwater	Sarbanes	Williams
Inouye	Stennis	

So the motion to table the motion to appeal the ruling of the Chair was agreed to.

Mr. BAKER. Mr. President, I call up amendment No. 455.

The PRESIDING OFFICER. The amendment is out of order.

Mr. WEICKER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. WEICKER. What is the amendment? I did not get the number.

The PRESIDING OFFICER. Amendment No. 455.

Mr. WEICKER. Amendment No. 455?

The PRESIDING OFFICER. The Senator is correct.

Mr. WEICKER. Mr. President, I make the point of order: I appeal the ruling of the Chair, and I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. BAKER. Mr. President, I move to table the appeal, 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.

Mr. BAKER. Mr. President, Senators should be on notice that the rollcall vote will be 15 minutes in length but no more than 15 minutes in length.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee to lay on the table the appeal of the ruling of the Chair.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Nevada (Mr. LAXALT), the Senator from Vermont (Mr. STAFFORD), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Maryland (Mr. SARBANES) and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

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

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

The result was announced—yeas 68, nays 23, as follows:

[Rollcall Vote No. 31 Leg.]

YEAS—68

Abdnor	Exon	Moynihan
Andrews	Ford	Murkowski
Armstrong	Garn	Nickles
Baker	Gorton	Nunn
Bentsen	Grassley	Percy
Biden	Hatch	Pressler
Boren	Hawkins	Proxmire
Burdick	Hayakawa	Pryor
Byrd, Harry F., Jr.	Heflin	Quayle
	Helms	Randolph
Byrd, Robert C.	Hollings	Roth
Cannon	Huddleston	Rudman
Chiles	Humphrey	Sasser
D'Amato	Jackson	Schmitt
Danforth	Jepsen	Simpson
DeConcini	Johnston	Specter
Denton	Kassebaum	Stevens
Dixon	Kasten	Symms
Dodd	Long	Tower
Dole	Lugar	Tsongas
Domenici	Mattingly	Wallop
Eagleton	McClure	Warner
East	Melcher	Zorinsky

NAYS—23

Baucus	Glenn	Matsunaga
Boschwitz	Hart	Metzenbaum
Bradley	Hatfield	Mitchell
Bumpers	Heinz	Packwood
Chafee	Kennedy	Pell
Cohen	Leahy	Riegle
Cranston	Levin	Weicker
Durenberger	Mathias	

NOT VOTING—9

Cochran	Laxalt	Stennis
Goldwater	Sarbanes	Thurmond
Inouye	Stafford	Williams

So the motion to lay on the table the appeal from the ruling of the Chair was agreed to.

(The following proceedings occurred after midnight:)

Mr. WEICKER addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. Mr. President, I move to table S. 951 and I ask for the yeas and nays.

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

The question is on the motion to table.

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

Mr. BAKER. Mr. President, did the Senator ask for the yeas and nays? Would the Chair restate his request?

The PRESIDING OFFICER. There has been another request for the yeas and nays. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Connecticut (Mr. WEICKER). The yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Kansas (Mrs. KASSEBAUM), the Senator from Nevada (Mr. LAXALT), the Senator from Vermont (Mr. STAFFORD), and the Senator from South Carolina (Mr. THURMOND), are necessarily absent.

I further announce that, if present and voting, the Senator from South Carolina (Mr. THURMOND), would vote "Nay".

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Maryland (Mr. SARBANES), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

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

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 30, nays 60, as follows:

[Rollcall Vote No. 32 Leg.]

YEAS—30

Baucus	Eagleton	Matsunaga
Boschwitz	Glenn	Metzenbaum
Bradley	Gorton	Mitchell
Bumpers	Hart	Moynihan
Chafee	Hatfield	Packwood
Cohen	Heinz	Pell
Cranston	Kennedy	Riegle
Dixon	Leahy	Specter
Dodd	Levin	Tsongas
Durenberger	Mathias	Weicker

NAYS—60

Abdnor	Burdick	Danforth
Andrews	Byrd,	DeConcini
Armstrong	Harry F., Jr.	Denton
Baker	Byrd, Robert C.	Dole
Bentsen	Cannon	Domenici
Biden	Chiles	East
Boren	D'Amato	Exon
Ford	Kasten	Randolph
Garn	Long	Roth
Grassley	Lugar	Rudman
Hatch	Mattingly	Sasser
Hawkins	McClure	Schmitt
Hayakawa	Melcher	Simpson
Heflin	Murkowski	Stevens
Helms	Nickles	Symms
Hollings	Nunn	Tower
Huddleston	Percy	Wallop
Humphrey	Pressler	Warner
Jackson	Proxmire	Zorinsky
Jepsen	Pryor	
Johnston	Quayle	

NOT VOTING—10

Cochran	Laxalt	Thurmond
Goldwater	Sarbanes	Williams
Inouye	Stafford	
Kassebaum	Stennis	

So the motion to lay on the table S. 951 was rejected.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, I call up amendment No. 456.

The PRESIDING OFFICER. The Chair rules that the amendment is not in order because it is dilatory.

Mr. WEICKER. Point of order, Mr. President.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. I appeal the ruling of the Chair and I ask for the yeas and nays.

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

The yeas and nays were order.

Mr. BAKER. Mr. President, I move to lay the appeal on the table 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 lay the appeal on the table. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Nevada (Mr. LAXALT), the Senator from Vermont (Mr. STAFFORD), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Maryland (Mr. SARBANES), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

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

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 65, nays 26, as follows:

[Rollcall Vote No. 33 Leg.]

YEAS—65

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

NAYS—26

Baucus	Glenn	Metzenbaum
Boschwitz	Hart	Mitchell
Bradley	Hatfield	Moynihan
Bumpers	Heinz	Packwood
Chafee	Kennedy	Pell
Cohen	Leahy	Riegle
Cranston	Levin	Tsongas
Dodd	Mathias	Weicker
Durenberger	Matsunaga	

NOT VOTING—9

Cochran	Laxalt	Stennis
Goldwater	Sarbanes	Thurmond
Inouye	Stafford	Williams

So the motion to lay on the table the appeal from the ruling of the Chair was agreed to.

Mr. BAKER. Mr. President, I call up amendment No. 459.

The PRESIDING OFFICER. The amendment is not in order because it is a dilatory amendment.

Mr. WEICKER. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. I appeal the ruling of the Chair, and I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. BAKER. Mr. President, I move to table the appeal, 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 of the Senator from Tennessee to lay on the table the appeal from the ruling of the Chair. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Nevada (Mr. LAXALT), the Senator from South Dakota (Mr. PRESSLER), the Senator from Vermont (Mr. STAFFORD), and the

Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Maryland (Mr. SARBANES), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

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

The PRESIDING OFFICER. Is there any other Senator in the Chamber wishing to vote?

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

[Rollcall Vote No. 34 Leg.]

YEAS—65

Abdnor	Exon	Melcher
Andrews	Ford	Moynihan
Armstrong	Garn	Murkowski
Baker	Gorton	Nickles
Bentsen	Grassley	Nunn
Biden	Hatch	Percy
Boren	Hawkins	Proxmire
Burdick	Hayakawa	Pryor
Byrd, Harry F., Jr.	Heflin	Quayle
Byrd, Robert C.	Helms	Randolph
Cannon	Hollings	Roth
Chiles	Huddleston	Rudman
D'Amato	Humphrey	Sasser
Danforth	Jackson	Schmitt
DeConcini	Jepsen	Simpson
Denton	Johnston	Specter
Dixon	Kassebaum	Stevens
Dole	Kasten	Symms
Domenici	Long	Tower
Eagleton	Lugar	Wallop
East	Mattingly	Warner
	McClure	Zorinsky

NAYS—25

Baucus	Glenn	Metzenbaum
Boschwitz	Hart	Mitchell
Bradley	Hatfield	Packwood
Bumpers	Heinz	Pell
Chafee	Kennedy	Riegle
Cohen	Leahy	Tsongas
Cranston	Levin	Weicker
Dodd	Mathias	
Durenberger	Matsunaga	

NOT VOTING—10

Cochran	Pressler	Thurmond
Goldwater	Sarbanes	Williams
Inouye	Stafford	
Laxalt	Stennis	

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

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. Mr. President, I call up amendment No. 461.

The PRESIDING OFFICER. The amendment is not in order because it is dilatory.

Mr. WEICKER. Mr. President, point of order.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. I appeal the ruling of the Chair and I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. Mr. President, I move to table the appeal from the ruling of the Chair.

The PRESIDING OFFICER. The question is on agreeing to the motion of the majority leader to lay on the table the appeal.

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

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

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Tennessee to lay on the table the appeal from the ruling of the Chair. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Nevada (Mr. LAXALT), the Senator from South Dakota (Mr. PRESSLER), the Senator from Vermont (Mr. STAFFORD), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Mississippi (Mr. COCHRAN) is absent due to illness.

Mr. CRANSTON. I announce that the Senator from Maryland (Mr. SARBANES), the Senator from Mississippi (Mr. STENNIS), and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

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

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

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

[Rollcall Vote No. 35 Leg.]

YEAS—65

Abdnor	Exon	Melcher
Andrews	Ford	Moynihan
Armstrong	Garn	Murkowski
Baker	Gorton	Nickles
Bentsen	Grassley	Nunn
Biden	Hatch	Percy
Boren	Hawkins	Proxmire
Burdick	Hayakawa	Pryor
Byrd, Harry F., Jr.	Heflin	Quayle
Byrd, Robert C.	Helms	Randolph
Cannon	Hollings	Roth
Chiles	Huddleston	Rudman
D'Amato	Humphrey	Sasser
Danforth	Jackson	Schmitt
DeConcini	Jepsen	Simpson
Denton	Johnston	Specter
Dixon	Kassebaum	Stevens
Dole	Kasten	Symms
Domenici	Long	Tower
Eagleton	Lugar	Wallop
East	Mattingly	Warner
	McClure	Zorinsky

NAYS—25

Baucus	Glenn	Metzenbaum
Boschwitz	Hart	Mitchell
Bradley	Hatfield	Packwood
Bumpers	Heinz	Pell
Chafee	Kennedy	Riegle
Cohen	Leahy	Tsongas
Cranston	Levin	Weicker
Dodd	Mathias	
Durenberger	Matsunaga	

NOT VOTING—10

Cochran	Pressler	Thurmond
Goldwater	Sarbanes	Williams
Inouye	Stafford	
Laxalt	Stennis	

So the motion was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, in just a moment I intend to call up another amendment. It is now 1:15 in the morning and we have completed, I believe, 21 votes today. I hope there will not be a request for the yeas and nays on any of the motions that may be made. I hope the yeas and nays will not be given and that we can dispense with the remainder of the amendments which are, I believe the Chair may rule, dilatory, from which there may be an appeal.

I have made no effort to try to circumvent or short-circuit the appeal process. I think the Senate has been very patient and fair in this respect. But I think that now when three of those amendments remain, it is time to get to the business at hand.

Mr. President, I call up amendment No. 471.

The PRESIDING OFFICER. The amendment is not in order because it is dilatory.

Mr. WEICKER. Point of order.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. Mr. President, I appeal the ruling of the Chair and ask for the yeas and nays.

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

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

The PRESIDING OFFICER. The majority leader is recognized.

Mr. WEICKER. I suggested the absence of quorum, Mr. President, before the majority leader was recognized. Let us wire it in up there. A point of order, Mr. President.

Mr. BAKER. The call for a quorum call is dilatory. The Chair is mandated by the precedents to observe the presence of a quorum and rule that way.

The PRESIDING OFFICER. The majority leader's point is well taken. The Chair is able to count a quorum in the Chamber at this time. Therefore, the call for a quorum at this time is dilatory.

The majority leader is recognized.

Mr. BAKER. Mr. President, I move to table the appeal.

Mr. WEICKER. I ask for the yeas and nays.

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

The question is on agreeing to the motion to lay on the table the appeal of the Senator from Connecticut.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, I call up amendment No. 473.

The PRESIDING OFFICER. The amendment is not in order because it is dilatory.

Mr. WEICKER. Point of order.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. I appeal the ruling of the Chair and I ask for the yeas and nays.

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

The majority leader is recognized.

Mr. BAKER. Mr. President, I move to table the appeal.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the appeal of the Senator from Connecticut.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, I call up amendment No. 475.

The PRESIDING OFFICER. The amendment is not in order because it is improperly drafted.

The Senator from Connecticut.

Mr. WEICKER. Mr. President, I appeal the ruling of the Chair and I ask for the yeas and nays.

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

The majority leader is recognized.

Mr. BAKER. Mr. President, I move to lay on the table the appeal.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the appeal of the Senator from Connecticut.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, I call up amendment No. 479.

The PRESIDING OFFICER. Amendment No. 479 is not in order because it is improperly drafted.

Mr. WEICKER. Mr. President, I appeal the ruling of the Chair and I ask for the yeas and nays.

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

Mr. BAKER. Mr. President, I move to table the appeal.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the appeal of the Senator from Connecticut.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. Mr. President, it is now 1:20 a.m.

Mr. President, I call up amendment No. 473.

Mr. METZENBAUM. Mr. President——

Mr. BAKER. Mr. President, may I inquire, has amendment No. 473 been dealt with?

The PRESIDING OFFICER. Amendment No. 473 has been dealt with.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I did not mean to rise until the Chair ruled, but the Chair made a ruling with respect to the fact that a quorum was present. I know there are some instances in which that has been accepted as a ruling in parliamentary procedure, and there are also rulings in which it has not been permitted, in which the Chair was not permitted to count the House. I just wish to take this means of making certain that we have not established a precedent that the Chair is going to determine whether or not a quorum is or is not present in the future by counting the number of Members seated in the Chamber.

I do not make it an issue at the time. I know that the Parliamentarian can cite decisions in which that has been permitted in some instances and in post cloture filibuster by amendment, but it is my understanding that there have also been instances in the rules where that has not been the appropriate procedure to follow.

I do not wish to appeal any decision, but I wish to raise the issue with the Parliamentarian so that we do not establish a precedent that we will all have to be living with.

The PRESIDING OFFICER. The Senator from Ohio is advised by the Chair that there is, in fact, precedent in postcloture proceedings. A precedent can be found at page 249 of the postcloture procedure. The Chair will not proceed to read that, but that is sufficient precedent under the rules of the Senate.

Mr. BAKER. Mr. President, the Senate has now had more than 20 votes on this measure today. It is now past 1:20 a.m.

ROUTINE MORNING BUSINESS

The following routine morning business was transacted today, in addition to that which is printed earlier in todays RECORD:

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. STEVENS:

S. 2138. A bill for the relief of Kathleen Holden; to the Committee on the Judicary.

By Mr. LEVIN (for himself, Mr. LUGAR and Mr. RIEGLE):

S. 2139. A bill to amend the Internal Revenue Code of 1954 to impose an additional excise tax on the sale of certain imported automobiles in the United States; to the Committee on Finance.

By Mr. COHEN (by request):

S. 2140. A bill to provide for the use and distribution of Seminole judgement funds in Dockets 73 and 151, and 73-A, before the Indian Claims Commission, and for other purposes; to the Select Committee on Indian Affairs.

By Mrs. KASSEBAUM (for herself and Mr. DOLE):

S.J. Res. 150. A joint resolution to authorize and request the President to designate May 20, 1982, as "Amelia Earhart Day"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEVIN (for himself, Mr LUGAR and Mr. RIEGLE):

S. 2139. A bill to amend the Internal Revenue Code of 1954 to impose an additional excise tax on the sale of certain imported automobiles in the United States; to the Committee on Finance.

EXCISE TAX ON IMPORTED AUTOMOBILES

● Mr. LEVIN. Mr. President, on behalf of myself, Senator LUGAR and Senator RIEGLE, I am today reintroducing legislation I initially offered during the 96th Congress. The problems which motivated this bill then remains pressing today. And the solution this bill offers still appears to be valuable and valid.

Reduced to its essential ingredients, what this bill does is call upon the Secretary of the Treasury to compute an equalization tax rate on cars imported into this country which would be needed to equalize the hidden tax placed on our auto exports by existing nontariff barriers. Once such an equalization tax rate is computed, the President has the option to either impose the equalization tax or to certify to the Congress that its imposition would either violate existing international agreements or would interfere with meaningful and current changes in the behavior of a foreign country relative to adopting more open trade policies. That Presidential waiver would be open to congressional veto and, through that process, we would both protect Executive flexibility and congressional interests.

In this period of increasing concern about trade barriers and increased interest in the concept of trade reciprocity, I offer this legislation as a simple way of allowing us to define our terms precisely and protect our industry fairly. In essence, this bill begins by recognizing that despite GATT, despite procurement conferences, despite official Government communiques—despite all these things, international trade is not free and it is not fair. Other nations impose a series of nontariff barriers which have the effect of both preventing our products from reaching their markets and significantly increasing the cost of those products that do manage to filter through the barriers. At the same time that other nations close their

shores to our products, we continue to operate under the banner of free trade and invite any and all comers to sell their wares to our citizens. The net result is that while domestic auto firms sold a grand total of 3,929 units in Japan in 1981, Japanese firms sold 1,911,525 units here in America. And while our auto exports account for only a miniscule percentage of sales in any foreign country, foreign sales account for over 31 percent of all cars purchased in America in 1981.

Mr. President, that kind of inequity is simply unacceptable. Free trade has to be fair trade; free trade has to be a two-way street. And under current conditions, American firms are roaring down a deadend street toward a brick wall.

Over the past few years, everyone seems to have recognized the inequity of this situation. Consequently, we have had trade missions go to Japan, we have Japanese trade missions come here; we have had discussions at the highest level, we have had working groups at every level; and we have made some progress. But that progress has been primarily symbolic. It consists too often of ringing but vague declarations of intent and desire whose fervor is never really matched by specific policy changes. The changes that we have seen in terms of opening up the Japanese market have been too little and come too late.

This bill, though, would reward the Japanese for any changes that they might make. It does impose a tax based on conditions as they existed at any frozen moment in time. Rather the amount of the tax alters with alterations in Japanese practices. As the bill makes clear, the tax I seek to impose on Japanese imports is equal to the financial impact of their nontariff barriers over the past 8 quarters. To the extent that Japan has improved and continues to improve its performance, the size of the tax levied against their imports will reflect that improvement. At the same time, by going back in time we also achieve the legitimate goal of capturing some of the losses we have been forced to suffer as a result of past practices.

Mr. President, this is an extremely straightforward bill based on an extremely simple concept of equity and justice. I view it as being totally consistent with other more general pieces of legislation attempting to implement the concept of reciprocity. As a more narrowly focused attempt to implement that concept, this bill addresses a very real area of economic concern to all Americans and gives us a way of helping our industry and our economy. In and of itself, this bill would not cure the problems of the auto industry—but it would be a first step. And it would be a desirable one.●

By Mr. COHEN (by request):

S. 2140. A bill to provide for the use and distribution of Seminole judgment funds in dockets 73 and 151, and 73-A, before the Indian Claims Commission, and for other purposes; to the Select Committee on Indian Affairs.

USE AND DISTRIBUTION OF CERTAIN INDIAN JUDGMENT FUNDS

● Mr. COHEN. Mr. President, I am today, at the request of the administration, introducing legislation to provide for the use and distribution of Seminole judgment funds in dockets 73 and 151 before the Indian Claims Commission. The bill which I introduce today is favored by the Seminole Tribe of Oklahoma but opposed by the Seminole Tribe and Miccosukee Tribe of Florida. This legislation does not provide for participation by Oklahoma Seminole Freedmen who also have expressed an interest in this legislation.

The Seminole Tribe of Oklahoma and the Seminole Freedmen are composed of descendants of persons who were removed in the early 1800's from the State of Florida to the then Indian territory in what is now the State of Oklahoma. The Florida Seminoles and the Miccosukee tribal members are descendants of persons who refused to move westward and were able to escape capture by U.S. Armed Forces.

The funds in question arise from a judgment of the Indian Claims Commission in the amount of $16 million for Florida lands taken in 1823. The principal issues in this matter involve a dispute between the Florida and Oklahoma entities as to the division of the award and the question of whether the Oklahoma Freedmen are entitled to share in the award at all.

In the last session of Congress, Senator HAWKINS introduced S. 1807 to provide for a distribution in the manner favored by the Florida Seminoles and the Miccosukee Tribe. It was her hope—a hope which I shared—that the introduction of that bill would stimulate discussions between the contending parties that might lead to an agreed settlement. Discussions did take place and at one point it appeared an agreement might be reached. However, it now appears the parties are at an impasse.

In introducing this bill I do not intend to express support for any one position. The issues involved are very complex and could possibly touch upon land claims of the Seminole and Miccosukee Tribes in Florida. The State of Florida and the two tribes have been engaged in extensive negotiations with respect to these land claims and it is my understanding that the parties are very close to an agreement. I certainly do not want this legislation to disrupt that process. In addition, I strongly encourage the Florida and the Oklahoma entities to continue their dialog. Without question, an agreement between the parties on the various issues would expedite passage of appropriate legislation.

Mr. President, I ask 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. 2140

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466), or any other law, or any regulation or plan promulgated pursuant thereto, the funds appropriated by the Act of June 1, 1976 (90 Stat. 597), in satisfaction of a judgment awarded to the Seminole Indians in dockets 73 and 151, and the funds appropriated March 10, 1978, in satisfaction of a judgment awarded to the Seminole Indians of Florida in docket 73-A, before the Indian Claims Commission, shall be used and distributed as provided in this Act.

SEC. 2. The funds in dockets 73 and 151, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be divided by the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") in terms of 75.404 percent to the Seminole by blood members of the Seminole Nation of Oklahoma and 24.596 percent to the Seminole Indians of Florida.

SEC. 3. After the division of the funds as provided above, the share of the Seminole by blood members of the Seminole Nation of Oklahoma shall be used and distributed as follows:

(1) The roll of the Seminole by blood members of the Seminole Nation shall be brought current to the date of the enactment of this Act using criteria specified in the tribal constitution and procedures adopted by the tribal governing body and approved by the Secretary. Sixty-four percent of the principal of the share shall be distributed in the form of per capita payments, in sums as equal as possible, to all Seminole tribal members by blood who were born on or prior to and living on the date of the enactment of this Act.

(2) Twenty percent of the principal of the share shall be invested by the Secretary for the benefit of Seminole tribal members by blood and the tribal governing body is authorized to use the interest and investment income accrued on an annual budgetary basis, subject to the approval of the Secretary, for elementary, secondary, and higher education services; community development; health services; tribal executive operations; land acquisition and development; social services; and other tribal and community social and economic programs. Such 20 percent portion of the principal shall not be available for per capita or divided payments.

(3) Sixteen percent of the principal of the share, plus all interest and investment imcome accrued on the Oklahoma share of the judgment funds, and any amounts remaining after the per capita payment provided above, shall be invested by the Secretary for the benefit of Seminole tribal members by blood. The tribal governing body is authorized to use the interest and investment income accrued, subject to the approval of the Secretary, for periodic dividend payments to Seminole tribal members by blood.

(4) In administering all programming elements of this section, the tribal governing

body shall maintain a Standing Judgment Fund Committee comprised of Seminole tribal members by blood and representative of the twelve Oklahoma Seminole by blood bands. Such committee shall number twelve and be authorized on at least an annual budgetary basis to make recommendations regarding the implementation of any programming elements.

SEC. 4. (a) The share of the Seminole Indians of Florida of the funds in Dockets 73 and 151, and all of the funds in Docket 73-A, including all interest and investment income accrued, less attorney fees and litigation expenses, shall be divided among the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida and the unaffiliated Seminoles of Florida on the basis of the respective numbers of such individuals enrolled under subsections (b) and (e) of this section.

(b) To effect the disposition of the Florida funds the Secretary shall assist the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida in developing rolls, based on tribal enrollment criteria, of all tribal members who were born on or prior to and living on the date of the enactment of this Act.

(c) Of the funds of the Seminole Tribe of Florida, no more than 80 percent shall be available for distribution in the form of per capita payments to those tribal members enrolled pursuant to subsection (b) of this section; and no less than 20 percent shall be available for tribal social and economic development programs authorized by the tribal governing body on an annual budgetary basis, subject to the approval of the Secretary: *Provided* That the tribal governing body may elect, subject to the approval of the Secretary, for the Secretary to hold and continue to invest the funds.

(d) Of the funds of the Miccosukee Tribe of Indians of Florida no more than 80 percent shall be available for distribution in the form of per capita payments to those tribal members enrolled pursuant to subsection (b) of this section; and no less than 20 percent shall be available for tribal social and economic development programs authorized by the tribal governing body on an annual budgetary basis, subject to the approval of the Secretary: *Provided*, That the tribal governing body may elect, subject to the approval of the Secretary, for the Secretary to hold and continue to invest the funds.

(e) In order to establish eligibility to participate in the distribution of the Florida funds, an individual unaffiliated Florida Seminole must have been born on or prior to and living on the date of the enactment of this Act and must be enrolled on, or must be descended from a lineal ancestor enrolled on, the Reconstructed Florida Seminole Census of 1914 certified by the Bureau of Indian Affairs on May 20, 1977, or any later Florida Seminole Agency censuses. The Secretary shall promulgate rules and regulations for the development of a roll of, and participation in the distribution by, unaffiliated Florida Seminales. The totality of their share shall be distributed on a per capita basis.

SEC. 5. The Oklahoma per capita shares, and any Florida per capita shares, of living competent adults shall be paid directly to them. Per capita shares of deceased individual beneficiaries shall be determined and distributed pursuant to regulations prescribed by the Secretary; and for Oklahoma Seminoles shall be determined pursuant to section 1 of the Act of August 12, 1953 (67 Stat. 558, 25 U.S.C. 375c), without regard to the monetary and land provisions contained therein. Per capita shares of legal incompetents and per capita shares of individuals under age eighteen shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines to be necessary to protect the interests of such individuals.

SEC. 6. None of the funds distributed per capita or made available for programming under this Act shall be subject to Federal or State income taxes or be considered income or resources in determining either eligibility for or the amount of assistance under the Social Security Act.●

By Mrs. KASSEBAUM (for herself and Mr. DOLE):

S.J. Res. 150. Joint resolution to authorize and request the President to designate May 20, 1982, as "Amelia Earhart Day"; to the Committee on the Judiciary.

AMELIA EARHART DAY

● Mrs. KASSEBAUM. Mr. President, May 20, 1982, will mark the 50th anniversary of Amelia Earhart's solo flight across the Atlantic Ocean. The joint resolution I am offering today will designate May 20 as "Amelia Earhart Day" in commemoration of this historic trans-Atlantic flight.

My home State of Kansas is proud to claim Amelia Earhart as one of its own. A companion to the joint resolution Senator DOLE and I are offering will be introduced in the House of Representatives by Representative JIM JEFFRIES, whose district includes Amelia's birthplace—Atchison, Kans.

Amelia Mary Earhart was born on July 24, 1898. She graduated from Chicago's Hyde Park High School in 1916 after having attended six different high schools in 4 years. During World War I she served as a nurses' aide at the Spadina Military Hospital in Toronto and subsequently enrolled at Columbia University as a premedical student. She moved to California to continue her education. While there she took flying lessons and by 1922 was setting altitude records in her own plane.

She drifted from school to job, back and forth during the next few years. She taught English and was a social worker in Boston. In April 1928, she was asked if she would be interested in "flying a plane across the Atlantic." Her only recompense would be the privilege of making the flight. Shortly after the successful conclusion of the flight Amelia said, "I'm a false heroine." She meant to redeem her self-respect by flying the Atlantic alone.

For the next 4 years Amelia wrote articles, appeared on the lecture circuit, and trained for her solo flight across the Atlantic. She continued to set speed and altitude records.

On May 19, 1932, she took off from Hasbrouck Heights, N.J., landing 3¾ hours later at St. John, New Brunswick. After an overnight stay she flew on to Harbour Grace, Newfoundland. Starting from here on the evening of May 20, she landed near Londonderry in the north of Ireland 13½ hours after takeoff. She added four new records to her list of achievements in making her trans-Atlantic flight. She became the first woman to fly the Atlantic solo and the first person to fly the ocean twice. She established a new speed record and a new distance record for women. These records were set in spite of the fact that she encountered storms and wing icing and her plane had begun to malfunction.

Amelia Earhart in explaining her desire to fly solo across the Atlantic said:

> Everyone has his own Atlantic to fly. Whatever you want very much to do, against the opposition of tradition, neighborhood opinion, and so-called common sense—that is an Atlantic.

She continued to set speed and distance records. In July 1937, she and her navigator were lost after having completed three-quarters of their flight around the world.

Amelia Earhart was a pioneer in the field of aviation. Exhibits of her medals, pictures, and books are in a hundred libraries, and there are major displays at Purdue University and the Smithsonian. Her daring flights touched the lives of millions of Americans and others the world over. It is appropriate that this brave woman be given special recognition. I hope that my colleaques will join me in honoring Amelia Earhart on the occasion of the 50th anniversary of her solo trans-Atlantic Flight.

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

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

S. J. RES. 150

Whereas Amelia Earhart was the first woman to fly across the Atlantic Ocean as a passenger;

Whereas Amelia Earhart set a number of altitude and speed records in various airplanes and autogiros, forerunners of the helicopter;

Whereas Amelia Earhart was widely hailed as an aviator and an inspiring example to all;

Whereas Amelia Earhart worked for the promotion of sound aeronautics and was a strong influence in breaking down resistance to aviation;

Whereas Amelia Earhart was the first woman in American history to be awarded the Distinguished Flying Cross;

Whereas Amelia Earhart was the first woman to fly solo across the Atlantic Ocean on May 20-21, 1932; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to designate May 20, 1982 as "Amelia Earhart Day", as a tribute to that most daring of the pioneer women aviators, and to call upon Federal, State, and local government agencies and the people of the United States to observe

such day with appropriate ceremonies and activities.●

ON THE CARIBBEAN BASIN INITIATIVE

Mrs. HAWKINS. Mr. President, today the President of the United States launched a bold, new foreign policy proposal, the Caribbean Basin Initiative. This initiative is crafted so that nations of the Western Hemisphere can join together to advance freedom and prosperity in the Caribbean Basin. I believe that this initiative will be regarded by historians as one of the landmark decisions of this administration, and I am proud to associate myself with its lofty goals.

Too often we have ignored or taken our neighbors to the south for granted, and today we reap the fruit of that neglect. We once allowed totalitarian Communists to gain control over Cuba. Now they strangle the economy of millions, and drain hope and freedom from their people. This island, once an ally of the United States, is a depot for Soviet arms, and its leaders are the agents of Soviet adventurism throughout the world. We dare not neglect our duty again now that new totalitarians threaten other Caribbean people in Grenada, Nicaragua, and elsewhere.

We ignore economic and social instability in the Caribbean at our peril and theirs. The rising cost of imported oil and declining prices of sugar, coffee, and bananas are causing economic decline throughout the region.

This decline creates an environment conducive to political violence and terrorism. This political instability threatens U.S. national security because it takes place in a stretegic region, and it threatens our own economic recovery with the specter of waves of illegal immigrants and political asylees draining our national resources. We cannot allow these dangers to persist. We need policies that address the problems in the Caribbean basin. I believe the initiative announced by the President provides such policies.

For 2 years, Florida has lived with the consequences of the economic deterioration in the Caribbean. A massive influx of Cubans and Haitian immigrants inundated our towns, villages, and cities. So far, the cost of this invasion—for that is what it was—amounts to over $1 billion. Shall we throw away more dollars by supporting refugees only after they reach our shores, when less will solve major problems before they get bigger?

This program, by promoting stability in neighboring countries, will also result in expanded markets for U.S. goods and jobs for U.S. workers. Just as the United States earned back its investment in the Marshall plan with increased security and beneficial trade, I believe we will capture similar rewards with President Reagan's Caribbean Basin Initiative.

Mr. President, Florida has much at risk, our own future is dependent on the future of this volatile area. We are linked to the Caribbean through common climate, tradition, culture, trade, and many other ties. Our fates are bound. Unless decisive, bold steps are taken now, the region will degenerate, dimming prospects for a properous Florida, too. So I am encouraged by the President's economic proposals for the Caribbean because they carry hope for the future. Hope that the tide of terrorism in the region can be stemmed. Hope that the economic conditions that cause massive immigation into this country can be greatly improved. And hope that new markets for U.S. goods and services can be created that will lead to more jobs for Americans and contribute to our prosperity.

A STRATEGY FOR BALANCING THE FEDERAL BUDGET

Mr. WARNER. Mr. President, the writer of the following letter, Mr. J. Harvie Wilkinson, Jr., has devoted his life to the support of the free enterprise system within the framework of fiscal responsibility. I urge my colleagues to consider the wisdom of his views.

RICHMOND, VA., *February 18, 1982.*

Hon. JOHN W. WARNER,
Washington, D.C.

DEAR JOHN: The attached appeals to me more than anything I have seen. It is likely to satisfy both the supply-sider and the orthodox. This makes great good sense to me after I have read it twice.

True, it is dependent upon three or four Congressional sessions staying hitched, but my own feeling is that the economic outlook is going to force the Congress to cut expenses. This is the most sensible way.

Best wishes. No reply required.

Ever sincerely,

J. HARVIE WILKINSON, Jr.

[From the Wall Street Journal, Feb. 18, 1982]

A STRATEGY FOR BALANCING THE FEDERAL BUDGET

(By Martin Feldstein)

The principle problem that clouds the economic future is the series of vast deficits projected in the administration's recent budget. Even if the targets are achieved, the deficits would average nearly $80 billion a year between 1983 and 1986.

But the deficit outlook is worse because the administration's revenue forecasts are likely to prove optimistic. These forecasts assume a rate of nominal GNP growth inconsistent with the Fed's plan for limiting the growth of the money stock. If tight money keeps nominal GNP growth below the administration's projection by one percent a year, personal tax revenue in 1984 will be $20 billion lower and the deficit will exceed $100 billion. Even this bleak figure assumes the administration can achieve all its requested spending cuts.

Sustained deficits of this magnitude are a serious burden for the economy and result in reduced investment, increased inflation or both. Since a deficit means increased government borrowing from the public, its effect is to raise the real rate of interest and thereby reduce private borrowing and investment. If the Fed tries to prevent this by purchasing some of the additional government debt, the resulting increase in the money supply would raise the rate of inflation.

While a consistent monetary policy can prevent such inflation, the result would be a substantial crowding out of private investment. Net private investment in the U.S. is now only about 6 percent of GNP. A $100 billion deficit in 1984 would imply that the government must borrow 2½ percent of GNP. Although the resulting higher real interest rates would induce an inflow of foreign capital, the impact of a $100 billion deficit on private capital formation is likely to be significant.

EXCESSIVE PESSIMISM

However, the large deficits are unlikely to cause the financial chaos and extremely high interest rates that some dour Wall Streeters predict. Much of that pessimism reflects a confusion between nominal market interest rates and inflation-adjusted real interest rates. The principal reason for high market interest rates is fear of inflation. If the Fed follows a policy of consistent monetary control, the inflation premium should fall even though there are large deficits. The direct effect of the deficit is to raise the real interest rate to a level that reduces private spending here and abroad by enough to finance the government borrowing. Since the inflation premium may fall at the same time that the real rate of interest is rising, there is no reason large deficits should produce higher market interest rates in the future.

How much higher would real interest rates have to be in 1984 if the government deficit then $100 billion instead of $50 billion? Economists don't know enough to give a precise estimate, but a reasonable answer is not much, probably not more than one or at most two percentage points. The rise in the interest rate is limited to the extent that funds are attracted from abroad by a higher U.S. real interest rate. The interest rate increase is also small if domestic borrowers believe the large deficits are only temporary. With some $450 billion of annual investment in the U.S. and more than that in the rest of the world, a temporary increase in government borrowing by $50 billion is likely to have only a negligible effect on the real rate of interest.

Another source of exaggerated pessimism is the concern that large deficits will abort the recovery. It is true that a larger deficit, by raising the real interest rate, will reduce spending for plant and equipment, new housing and consumer durables. But a larger deficit also means either more government spending or lower taxes and therefore more consumer spending, thus providing a direct addition to demand that can stimulate and sustain recovery.

The real problem is that substantial deficits could eliminate a significant portion of net capital formation. This effect, which could occur even if the rise in the real interest rate is small, is the important reason to reduce the projected deficits for the next few years and to bring the budget into balance within five or six years. I believe that such a policy can be designed without re-

scinding the business or personal tax reductions enacted in 1981.

The key to balancing the budget is to slow the growth of federal nondefense spending until these outlays equal the 13 percent share of GNP they did in 1970. Returning nondefense spending to 1970's 13 percent share of GNP over the next six years would only require a 12 percent decline in the real level of nondefense outlays, back to the real level that prevailed as recently as 1978. The combination of a 2 percent a year reduction in real nondefense outlays and a 3.5 percent real GNP growth would be sufficient to bring nondefense spending back to 13 percent of GNP in six years.

A 2 percent annual reduction in real nondefense outlays can be achieved most fairly and with the least disruption by making changes in the full range of government programs. Unfortunately the administration has refused to make any significant changes in the Social Security retirement, disability and Medicare programs that currently account for some 40 percent of nondefense spending. As a result, the administration has had to propose spending cuts unlikely to be enacted, further increasing the probable deficit in future years.

It is up to Congress to broaden the range of spending reductions, not to cut spending by more than the administration proposed but to distribute the spending cuts in a way that is fairer and more likely to achieve legislative approval. Changing the Social Security indexing rule to raise benefits only for price increases in excess of 2 percent would save nearly $20 billion in 1986.

Returning to an earlier standard of eligibility for disability benefits could save half or more of the current $18 billion outlay. And requiring Medicare patients to pay a modest share of their hospital charges in the same way that patients with private insurance do would not only reduce the $45 billion Medicare outlay but also help to control the inflation in hospital costs. All these changes could be done in a way that exempts the truly poor without significantly affecting the revenue savings.

What about defense spending? In dollars of constant purchasing power, the U.S. spent less on defense in 1980 than it did in 1960. As a fraction of GNP, defense spending halved from 10% of GNP in 1960 to less than 5% in 1980. I do not know what fraction of GNP should be spend on defense. That clearly depends on the efforts being made by our enemies and allies as well as on the technological possibilities for translating more spending into greater deterrence.

The administration originally proposed raising real defense spending at 7% a year, a rate that would raise the defense share of GNP by one percentage point in four years and would double real defense spending in a decade. The revised budget calls for nearly 9% real growth of defense outlays between 1981 and 1985. Without judging whether such an increase is warranted by military conditions, I will only note that returning to 7% real defense growth would reduce defense outlays by $20 billion in 1985.

Turning to the revenue side, the combination of natural gas decontrol and efficiency-improving tax changes could easily add $30 billion a year to revenue in 1984 and beyond, without revoking the personal and business tax cuts or tampering with the 1985 indexing rule.

Rapid decontrol of natural gas prices would conserve this important resource and add $15 billion to $20 billion a year to tax receipts. High on my list is limiting the exclusion of employer contribution for medical insurance premiums, a rule responsible for much of the inflation of health care costs and that now reduces income tax revenue by more than $15 billion and payroll tax revenue by additional billions. Other tax rules that not only reduce revenue but also distort economic incentives are the exclusion of unemployment benefits (with an estimated revenue loss of more than $5 billion) and of workmen's compensation benefits ($3 billion) and the deduction of consumer interest ($6 billion).

The personal tax cuts on 23% are essentially just enough to prevent bracket creep in 1981 through 1984 from raising the share of income paid in taxes. It would be good, however, to stretch out the 10% tax cut scheduled for July 1983 into 5% cuts in July 1984 and July 1985. That would achieve the same ultimate tax rates but would do so in a way that reduces the deficits in 1983 through 1985 while the spending reductions are being made. The extra revenues would be about $35 billion in fiscal 1984 and nearly $20 billion in fiscal 1985.

CONTRASTING RESULTS

How does it all add up? The 1982 deficit will be about 3 percent of GNP. The combination of the business and personal tax cuts and a 7 percent real annual increase in defense spending would raise this to about 6 percent of GNP in 1987. Reducing nondefense outlays from 18 percent of GNP in 1982 to 13 percent would lower the deficit to about 1 percent of GNP. The changes in tax rules can produce a budget that is predicted to be in balance and that has a good safety margin for keeping the deficit within 1 percent of GNP.

Two things about this strategy are obvious. First, it will take five or six years to achieve a balanced budget. Though stretching out the personal tax cut can reduce the extent of the budget deficits along the way, there is no way to reduce government outlays rapidly enough to balance the budget by 1984 or 1985. Second, the strategy for balancing the budget without raising taxes can only work if Congress is prepared to make a 10 percent to 12 percent reduction in real nondefense outlays over the next five or six years. If such spending cuts will not be made, there is no choice but to raise personal taxes. But if Congress is prepared to slow the growth of government spending in this way for the next half dozen years, the basic program of tax reductions, increased investment and lower inflation can succeed.

VIEWS OF AFL-CIO PRESIDENT LANE KIRKLAND ON FOREIGN POLICY

Mr. HATCH. Mr. President, in today's Washington Post the president of the AFL-CIO, Mr. Lane Kirkland, offers some poignant comments on this Nation's foreign policy. Mr. Kirkland decries the lack of action by the administration toward the military regime in Poland, as well as the originator of Polish oppression, the Soviet Union. He makes a valid point when he points the finger at business interests who are all too willing to look the other way in order to consummate the sale. All of us here in the Senate should note the advice given by a man of such stature.

The freedoms we enjoy as Americans are something to be cherished, to be held close to our bosom. The very foundation of our freedoms can be found in the free enterprise system, an economic system that celebrates the nobleness of the individual man while providing for the rights of collective man. It is our economic system that has propelled us to the forefront as a world power. It is this system which attracts people from all over the world, all seeking to make their fortune in America.

Communism is a scourge to the spirit of man. It disembowels him and lays him open to the ravages of an oppressive government. Mr. Kirkland has long been identified with the fight against communism. He is to be commended for his actions. At the same time I must chide Mr. Kirkland, for while he urges us all to take up the cause of economic warfare against the Eastern bloc as he accuses the business and banking community of being unwilling to endure sacrifice at inconvenience to restrain Soviet lawlessness, he, too, is guilty of viewing events from a somewhat parochial position. If business is to be accused of such improprieties as putting the dollar profits ahead of U.S. foreign policy interests, then labor must also answer for its actions. On many occasions I have watched Members of the Congress rise to speak out against U.S. policy which appears to fit Mr. Kirkland's objectives, and yet many of these men and women continue to receive the total support of the labor movement.

It seems inconsistent to me when Labor criticizes the business community for putting their domestic issues ahead of this Nation's foreign policy objectives when the labor movement is guilty of the same transgression. They give political support to those political leaders who support the domestic issues they are most concerned with, regardless of their views on foreign policy. Yes, Mr. Kirkland is right. We must place the interests of the Nation above our own domestic priorities. At the same time he should make sure that his own house is in order before he casts aspersions on the intentions of others. Mr. President, I ask unanimous consent that the article by Lane Kirkland in today's Post be printed in the RECORD.

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

[From the Washington Post, Feb. 24, 1982]

WHY NOT ECONOMIC WAR?

(By Lane Kirkland, president AFL-CIO)

The media are wrong to play up personality clashes in the Reagan team as the source of the administration's failure to project a coherent and credible foreign policy.

The problem does not lie in who reports to whom, or in the alleged idiosyncracies or turf-consciousness of the players, or in the president's preoccupation with other matters. It lies, rather, in the deep and enduring division within the Republican Party, a divi-

sion that long predates Ronald Reagan's arrival in Washington.

On the one side are the true believers—principled anti-communist ideologues, including some non-Republicans now labeled "neo-conservatives." On the other side are the commercial and banking interests, whose philosophy was asserted with stunning candor by Citibank's Thomas Theobold: "Who knows what political system works best? All we ask is: can they pay their bills?"

The true believers to their credit, know what political system works best, and they provide the administration with its tough anti-Soviet rhetoric. They had every reason to count the president in their camp.

But when push comes to shove, the priorities of business prevail, and the ideologues are shunted aside. They still write the speeches, though, which accounts for the widening gap between the president's words and his deeds.

Poland throws the problem into high relief.

Before an international audience of tens of millions, the president's speechwriters promised stronger sanctions against the Soviets if the repression in Poland were not alleviated. The repression intensified, but the bankers persuaded the president to cover Poland's debt without declaring default. Default, they warned, would disrupt the international banking system.

The Chamber of Commerce has now weighed in to protect the Siberian natural gas pipeline, which, according to Chamber President Richard Lesher, would give Western Europe "a degree of leverage over the Soviets rather than vice versa"—a fact the obtuse Russians have apparently overlooked in their eagerness to be ensnared in our web of détente. To cripple the pipeline and deny the Soviets hard currency earnings (with which to buy Western technology) would represent, in Lesher's shocked words, "a strategy of economic warfare."

Lesher would exempt European companies operating with U.S. licenses from the sanctions imposed by the president, lest we worsen "our already poor international reputation for commercial reliability." Pepsico Chairman Donald Kendall—who previously expressed admiration for Leonid Brezhnev's devotion to peace—agrees: "I certainly question whether the [U.S.] government should put its long arm into another sovereign country and force it to accept these sanctions."

The long arm of multinational corporations and banking institutions is another matter. The flow of Western credits to Poland, accompanied by demands for food price hikes and other austerity measures, was perfectly permissible. So was the flow of credits, grain and technology to the Soviet Union, alleviating its economic problems and permitting the diversion of its resources into military purposes. What is objectionable is government intervention to achieve such foreign policy goals as enforced adherence to human rights agreements.

Simply put, the business of America is business—not only at home but throughout the world—and what's good for the bankers is good for the Poles. Above all, we must safeguard our reputation for "commerical reliability"—even as Lech Walesa remains imprisoned, thousands of Solidarity members huddle in concentration camps, and the church itself is threatened. So speak the Theobolds, the Leshers and the Kendalls.

They practice a pseudo-pragmatism that perverts, even as it seems to draw upon, the American tradition. The business ethos, applied to foreign policy, favors cost-benefit analyses done on a case-by-case basis. This method obscures the large and interwoven issues that confront us.

It is plausible to argue that calling in the Polish debt would disrupt international banking (more likely, it would embarrass the bankers by forcing them to switch loans now listed as assets into the liabilities column). It is also plausible to argue that American farmers would be hurt more than the Soviets by a grain embargo (though this assumes, and thus ensures, that we are powerless to discourage other nations from rescuing the Soviets).

But there are questions that cannot be answered by bookkeepers. If our bankers and farmers have become hostages of the Soviet bloc—the reverse of what détente was supposed to accomplish—should we not move urgently to extricate ourselves from this situation, or should we continue down the road to increasing dependence? Can we extricate ourselves painlessly, or is there a price to be paid for a misbegotten policy? If we eschew "economic warfare," what kind of war do we want, and whom will we send to fight it? Or do we conclude that we have nothing worth fighting for, that between totalitarianism and democracy no fundamental values are at stake—that, as Theobold suggests, political systems, like capital, are fungible?

Without squarely facing these issues, which transcend business calculations, we will not persuade our allies of our capacity to lead. The message we are now sending to our allies, and to the Soviets, is that we are unwilling to endure sacrifice or inconvenience to restrain Soviet lawlessness. The Republican administration's foreign policy lacks cogency because the business interests it disproportionately represents constitute the soft underbelly of freedom.

UNANIMOUS-CONSENT REQUEST

Mr. BAKER. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 10:30 a.m. today.

Mr. WEICKER. I object.

The PRESIDING OFFICER. The objection is heard.

RECESS UNTIL 10:30 A.M. TODAY

Mr. BAKER. Mr. President, I now move that the Senate recess until the hour of 10:30 a.m. today.

Mr. WEICKER. I ask for the yeas and nays.

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

The question is on agreeing to the motion to recess.

The motion was agreed to and at 1:21 a.m., the Senate recessed until 10:30 a.m. today, February 25, 1982.