SENATE—*Thursday, February 25, 1982*

(Legislative day of Monday, February 22, 1982)

The Senate met at 10:30 a.m., on the expiration of the recess, and was called to order by the Honorable DON NICKLES, a Senator from the State of Oklahoma.

PRAYER

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

Father in heaven, when pressure becomes heavy between those who hold opposing views, we are less inclined to concentrate on issues and more inclined to think personally. Our reason tells us we are united in one purpose for the common welfare, but our emotions incline us to see those who oppose us as enemies. We thank Thee for Senate tradition which respects political adversaries and for Senate language which never fails to recognize each other as distinguished.

Grant, O God, that this tradition will always be taken seriously and this language will always be more than polite rhetoric. Keep us mindful that we debate a point not because we are stubborn and inflexible, but because we are strongly convinced that our position is the best for that objective to which we all are dedicated.

Help us to keep our cool in the realization that love is the "fulfilling of the law," that the two great commandments are comprehended in love for God and neighbor. Never allow us to feel that love is unbecoming the dignity and decorum of this powerful body. Gracious, loving Lord, help us to conduct all our business on this floor as well as in our offices and homes in love. In Jesus' name we pray. 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 assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., February 25, 1982.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DON NICKLES, a Senator from the State of Oklahoma, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

Mr. BAKER. I thank the Chair.

THE JOURNAL

Mr. BAKER. Mr. President, I ask unanimous consent that the Journal of the proceedings of the Senate to date be approved.

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

PRESIDENT REAGAN'S ADDRESS TO THE ORGANIZATION OF AMERICAN STATES

Mr. BAKER. Mr. President, yesterday, President Reagan proposed an expansive and bold initiative designed to foster economic stability and regional security throughout Central America and the Caribbean basin.

This is a comprehensive blueprint for survival in a region close to our Nation's borders and close to our Nation's interests. I commend the President for this essential component to U.S. foreign policy, and pledge my support for the program.

I ask unanimous consent, Mr. President, that the text of the President's address be printed in the RECORD.

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

REMARKS BY THE PRESIDENT TO THE ORGANIZATION OF AMERICAN STATES, HALL OF THE AMERICAS

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 times 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

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

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 significantly 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 more 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.

Second, 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 dicatorships 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 institutonalize 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 United States 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 United States.

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 area is not an end in itself, but a means to an end. It is a means toward building representative and responsive institutions, toward strengthening 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 Cental 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 that 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, Jose Marti, 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.

DEPARTMENT OF JUSTICE AUTHORIZATIONS, 1982

Mr. BAKER. Mr. President, in a moment I intend to yield 5 minutes of my time to the distinguished Senator from Minnesota, in the absence of a provision for morning business today; but before I do so, I point out that as soon as the leader time is concluded and absent other arrangements that may be made, the Senate will resume consideration of S. 951, the Department of Justice authorizations bill.

We are proceeding under the provisions of rule XXII dealing with the procedures of the Senate after the invocation of cloture.

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

Mr. BAKER. I yield.

Mr. JOHNSTON. The word I have received from the desk is that we can expect a late night, and I hope that is correct.

Mr. BAKER. I have not decided that yet. Let me finish. I will confer with the distinguished Senator from Louisiana and with the minority leader and with the distinguished Senator from Connecticut, and we will have something further to say in that respect.

I was about to say, Mr. President, that since the close of business on February 24, we have considered this matter now for 24 days, since it was first laid before the Senate and made the pending business.

The Senate has devoted 67 hours and 27 minutes to this measure. There have been 42 rollcall votes as of this moment on and pertaining to the Department of Justice authorizations bill. That, by the way, includes seven votes on cloture motions. Eighty-four amendments have been considered. Of that number, only 2 have been agreed to, 2 have been rejected, 5 have been tabled, 3 have been recalled, 24 withdrawn, 22 ruled out of order as being nongermane, 22 ruled out of order as being dilatory under the provisions of rule XXII, and 2 of the amendments were ruled improperly drafted, for a total of 84 amendments that we have dealt with.

Mr. President, it is my hope that we are coming down the homestretch in the consideration of this matter. I would like to finish this bill today, if it is possible to do so. It is my intention, when we resume consideration of this measure, to proceed to those amendments remaining on the list of amendments at the desk which are eligible at this point in the proceedings, which appear not to be subject to a point of order.

It is my hope that these amendments can be taken up and dealt with promptly, and that we can proceed to the consideration of the underlying first-degree amendment—that is to say, the Johnston amendment—as soon as possible.

That, in turn, would lead us to consideration of a number of sense-of-the-Senate resolutions which I believe are at the desk and are proposed to be offered at the end of the bill.

After that, Mr. President, there are no more amendments. I hope we can reach that point soon. But then we will still have a great number of hours remaining under the 100 hours provided under the cloture provisions of rule XXII.

Mr. President, all this is by way of preface for saying that in a few short moments we will resume consideration of this measure. I hope that we can proceed promptly. I think the issue has been debated not only at length but also well and thoroughly, and I hope we can arrange to set a time for the disposition of the pending first-degree amendment and the bill itself.

If that is not possible today—and I reiterate it should be possible, and I hope it will be possible—then I hope we can arrange an orderly schedule of the Senate for today and tomorrow and perhaps Saturday, in order to make sure that we dispose of this matter before we turn to the Williams case on Wednesday, the 3d day of March.

That is a long time, Mr. President, but there are many hours left. I hope every Senator knows—certainly the Senator from Connecticut must know, and the Senator from Louisiana must know—that I have no desire to press the Members beyond the limit of their endurance or their patience, but we simply have to finish this measure.

I inquire first of the Senator from Connecticut whether or not it might be possible to establish a time certain for the consideration of the Johnston amendment.

Mr. WEICKER. Mr. President, in response—and I will try to be brief—to the distinguished majority leader, I have stated all along that, in my opionion, the essence of this debate is the circumvention of the Constitution of the United States.

Last night, this body, in the tradition of the main issue, chose to circumvent the rules of the Senate.

To go ahead and not grant the right to a rollcall vote, to my way of thinking, might have been proper in terms of the ultimate objective and in terms of expediency but certainly did not conform to the traditions and procedures we have established for ourselves in this body.

I supported my Southern brethren several years back in their resistence to changes in rule XXII because I felt it was important to protect the rights of the minority. They were the minority. I am the minority right now. The rules call for 100 hours of debate, after cloture is invoked.

Now just as my friends on the issue would like to have a game played on the field without referees, that is, courts, obviously the leadership here on the floor of the Senate now takes rule XXII that we voted as a procedure and throws it out the window, and we are now playing under no rules.

I do not see where that encourages accommodation and compromise.

So, even though again I repeat I know I am in the minority on the issue and ultimately must lose, at least I will do so in an honorable way.

Mr. BAKER. Mr. President, it is not my purpose to join issue with the Senator from Connecticut. I cannot think of a single consideration that I could have extended the Senator from Connecticut last evening that I did not, even to the point of giving him a list of the amendments remaining with my notations on what position I would take and that I hoped the Chair would take in advance of the time we proceeded to that—I have never seen that done before—even to the point of telling the Senator from Connecticut exactly what I was going to do in each case before I did it, even to the point of advising him that I will ask the Senate to withhold the granting of the yeas and nays which under the rules was, of course, appropriate in the case of the last three amendments, all after 1 a.m. in the morning.

Mr. President, no rules have been circumvented, no honor has been besmirched, no failure of cooperation or consideration has been transgressed, and I intend to try to finish this bill.

The Senator from Connecticut is my friend. He will continue to be my friend, I trust, after this is over. Certainly I will be his friend as far as I am concerned.

But, Mr. President, my question was whether or not we could get a time certain on the Johnston amendment and I assume from his statement that the answer is no, and if the answer is no, then I have no alternative except to say we are going to finish this bill one way or the other. I am not going to violate any rule. I am not going to injure any precedent or traditon of the Senate.

I will continue to try to tell the Senator from Connecticut in each and every instance what I am going to do

in advance, but I have no apology for my urging of the Senate to act in the manner it has.

Mr. LONG addressed the Chair.

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

Mr. BAKER. Let me yield first to the senior Senator from Louisiana.

Mr. LONG. Mr. President, it was the intent of the Senate in passing the cloture rule to provide a way where debate could be brought to a close and where an issue could come to a vote. We provided 100 hours for consideration after cloture is invoked, and I believe the reason we have the 100 hours available to the Senate is basically to give each one of the 100 Senators 1 hour available to him to state his views. The distinguished majority leader, who was then the minority leader, insisted that we have the 100 hours.

It is all right with me for any Senator who opposes a bill to use his hour to further delay the Senate in voting on a bill which I favor. But I protest against him using my hour to further delay the Senate in doing its duty.

Now, here in the rules, and this is not something that was added at the time of the filibuster over the natural gas bill—this is something that has always been in the rule—it says, "No dilatory motion or dilatory amendment or amendment not germane shall be in order."

All the Senate has to do is to simply give life to that sentence and the filibuster is over. We will have voted on every amendment that any Senator cares to call up that has any potential of being added to the bill.

Now at that point, may I say to the leader, this matter could go on for another week by someone simply making points of order, making motions, appealing from the ruling of the Chair, and demanding the yeas and nays. If the Senate wanted to cooperate with that activity it could go on for a full 100 hours. I object to having my hour used that way, and I think most Senators would. If I were doing the filibustering, I might feel differently about the matter. In view of the fact I wish to vote for the bill, I object to having my hour used in that fashion. So it seems to me that at some point it is the burden of the leader to make the point that here is the rule, the amendments have been disposed of—in fact, if you still had 50,000 amendments sitting out there at some point the leader should make the point that any further amendments should be regarded as dilatory. When the Senate makes that decision, if that is what the rules intended, that is the end of the filibuster.

I am sympathetic to filibusters. I filibustered myself and reserve the right to do so again on a proper occasion. And I admire the Senator from Connecticut for the valiant fight he has made in a losing cause, but he has done nobly, may I say.

ORDER OF PROCEDURE

The ACTING PRESIDENT pro tempore. The majority leader should be aware of the fact that under the previous order the 10 minutes have expired.

Mr. BAKER. I wonder if the minority leader has any time available or if there be any disagreement to request to extend time so we can finish this colloquy?

Mr. ROBERT C. BYRD. Mr. President, later I shall yield to Senator Proxmire.

I yield such time as he may require to Senator Long.

Mr. BAKER. Mr. President, will the Senator yield to me for one other request in that respect?

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. I believe at the very outset I indicated to the Senator from Minnesota I would yield 5 minutes to him.

Mr. JOHNSTON. Mr. President, will the Senator also yield to me for a comment?

Mr. BAKER. I will be happy to. I wish to make sure we provide enough time to continue this. We can do it on the bill, but it will be more orderly to do it in this way.

If the Senator from Connecticut has no objection, and the minority leader has none, I ask unanimous consent that time allocated to me be extended by 7 minutes and that a similar amount of time be added to the time of the minority leader and that I may yield 5 minutes of that time at the conclusion of the time for the recognition of the minority leader to the distinguished Senator from Minnesota.

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

Mr. LONG. Just to conclude my portion of this discussion, it seems to me that it is the burden of the leadership on both sides of the aisle, whether the leader is for or against the bill, to provide leadership to the troops to get on with the business regardless of how the leader wishes to vote when the bill comes to a final disposition.

Therefore, I say to the Senator from Tennessee, and hopefully to the Senator from West Virginia as well, these two leaders have provided the leadership so that the Senate can at long last reach its decision. I hope that they will provide us the leadership to make it clear that once cloture is voted school is out. The bill is going to pass and those who are opposing it may as well adjust themselves to it. They may die rather slowly and painfully, but in any event they should recognize it is all over. The filibuster has failed when the cloture is voted. I hope that all of us in the Senate will understand that. Otherwise it is just a long, painful process to eventually find out that is how it is going to have to be anyway.

Mr. JOHNSTON. Mr. President, will the Senator yield to me?

Mr. BAKER. Mr. President, will the minority leader yield time since I have only 7 minutes, and I wish to yield 5 minutes to another Senator?

Mr. ROBERT C. BYRD. I yield to the distinguished Senator from Louisiana.

Mr. JOHNSTON. I thank the minority leader.

My friend from Connecticut has done a noble job in a losing cause. He and I are friends, were friends when we started, and will remain friends.

I do not say at all that he does not have a right to do everything that he has said he is going to do. What is it he said he was going to do? He started on September 16 and said he was going to filibuster. It is right there in the RECORD, Mr. President.

He put in 500 amendments, not one of which is substantive, not one of which he really tried to pass, not one of which has anything to do with the debate.

Now, the provision in rule XXII says that you may not allow any dilatory motion or appeal or anything else. We have sat here time after time after time and let the Senator from Connecticut do what he says he is going to do, and that is to tie this Senate up in knots.

Mr. President, there is precedent after precedent—and I refer the Chair and I refer the leadership to page 247—to the effect that appeals from the ruling of the Chair on a pusillanimous, substantively devoid question are dilatory appeals, and I have seen those appeals made, and seen the Senate tied up with a vote on that time after time, and I have not contravened the leader because the leader did not wish to raise that question.

I say that not in criticism of the leader; but to hear the leader castigated for bending the rules when, in fact he is not using the rules we have, when in fact we are not using those precedents which we already have, I think the leader has bent over backward in a double circle in order to accommodate the distinguished Senator from Connecticut.

Mr. President, I think it would be an abomination for us to have a banker's hours type of postcloture filibuster, go away for the weekend and have a good time—and I have got plans—and then come in with a banker's hours filibuster on Monday and Tuesday, and then set this aside and go to WILLIAMS, and maybe consider WILLIAMS for 2 or 3 weeks because, you know just what could happen? This matter could be lost legislatively by time.

Mr. LONG. War might break out. [Laughter.]

Mr. JOHNSTON. Anything can happen. We might have a stockmarket crash—and I do not say that with any laughter, I am beginning to worry about that.

The time to finish this bill is now and before the Williams matter. I applaud the majority leader and I will support him and I do not want to contravene him. I just want to stiffen up the backbone and resolve which he has so eloquently stated today to use the full force of these rules and precedents. Let us get this filibuster concluded, and we can all praise our distinguished friend from Connecticut for doing even more than the rules permitted him to do; and if anybody who is on his side of this question says that the Senator from Connecticut has not done more than could be expected of him, then they are wrong because he has gone above and beyond the call of duty and above and beyond the rules in tying this Senate up. The time to stop that is now.

Mr. WEICKER. Well, I would now, since I have had the opportunity to hear the comments——

The PRESIDING OFFICER. Who yields time?

Mr. WEICKER. I ask unanimous consent that I be permitted 3 minutes.

Mr. ROBERT C. BYRD. Mr. President, I yield the Senator 3 minutes.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. First of all, let me state that I appreciate the remarks of the distinguished Senator from Louisiana. Since he and the majority leader are on the same side of the issue, however, they lost a little bit of credibility.

Point No. 2, this only becomes a losing cause when this bill becomes law. At that point I have lost.

Unlike others of my colleagues who feel that all wisdom and all lawmaking capability resides in this Chamber, I understand the full constitutional process which requires this Chamber and the House and a Presidential signature and Supreme Court review, which eventually well might be lost if the attempt of the distinguished Senator from Louisiana and the Senator from Tennessee is successful.

I think it should be made clear that I did not set the times of the Senate last night. I was willing to stay here all evening, and for my good friend from Louisiana I have already indicated to the Senator from Tennessee that I think we should have a Friday session, I think we should have a Saturday session. If they are banker's hours they must be the hours of the distinguished Senator from Louisiana. They are not the hours I have suggested. We can stay here as long as he wishes to stay here.

The only point I make here is if I stay here I would like to be accorded treatment by virtue of the rules and customs of this body in order to accomplish the most successful presentation of my point of view.

If indeed we want to go ahead, the Senator from Louisiana wants to go ahead, and cut short the constitutional powers of other branches of Government that is bad enough. But to do it within this body sets a precedent that, believe me, I do not think you or your colleague from Louisiana will want to live with.

I repeat, I went outside the normal philosophy of my region to defend your right when you were a minority. Now at least the senior Senator from Louisiana is intellectually honest in terms of saying he would do the same thing. Well, all right. When that time comes I will stand up there, Senator, and raise my hand when you want the yeas and nays.

Beyond those comments I have little else to offer. I think the Senator from Tennessee should also say that last night I agreed automatically to the elimination of many amendments, 20, 30, 40, without any opposition whatsoever because I had been informed they were nongermane and there was no point in carrying forth that kind of debate.

I only debated those kinds of amendments where there was some reason for doubt. Under those circumstances, I would just suggest then that we get on to the debate. However, I want it truly understood that the manner in which we bring this debate to an end is a precedent for all of us that some day in the future others might not want to live with.

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

Mr. BAKER. I yield to the Senator from Idaho.

Mr. McCLURE. I thank the Senator for yielding.

I am certain that everyone was tired and sleepy last night, and I understand that the emotions may be a little bit strained after yesterday.

But, Mr. President, I cannot help but respond when my friend from Connecticut implies that somehow the leadership had transgressed the rules of the Senate.

Quite the contrary. Every rule was followed and, as a matter of fact, while the majority leader might have made a point of order that the rollcall on the germaneness issue was itself dilatory, it was a marginal call and he did not do so in deference to the Senator from Connecticut.

I would have thought the Senator from Connecticut's response to that would have been, "I had the courtesy extended to me," rather than saying that somehow the majority leader had violated the rules of the Senate.

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

Mr. McCLURE. If I have the time.

Mr. WEICKER. Just one question. If that was the case, why did the majority leader issue instructions for Senators not to raise their hands when the request for a rollcall was made? Why not say it publicly?

Mr. McCLURE. He did.

Mr. BAKER. The Senator from Connecticut should know that I told him while he was sitting in my seat, I said on the floor in public statements, that I hope they will not give the Senator from Connecticut his yeas and nays.

Nobody has taken advantage of the Senator from Connecticut. I have bent over backward to try to accommodate him in the matter of scheduling.

Mr. President, I wish to say that we are going to finish this bill, and we are going to do it today and tomorrow and Saturday, if necessary.

Mr. McCLURE. Mr. President, will the Senator yield further for one comment?

Mr. BAKER. Yes.

Mr. McCLURE. Even if the majority leader makes that request, as he did, openly on the floor, there are 99 people on the floor of this Senate, aside from the Senator from Tennessee, who can exercise their own judgment, and I think what the Senator from Connecticut saw last night was that the overwhelming sentiment in this body was that those motions ought not to be made and there ought not to be the time consumed by the Senate.

That is not the fault of the Senator from Tennessee. The Senator from Connecticut should look at himself to find the reason for that act.

Mr. WEICKER. Then I would like to make inquiry as to whether or not when the yeas and nays are asked for today they are going to be granted or are we going to have a concerted effort to close off debate?

Mr. BAKER. If the inquiry is addressed to me, I will decide that later.

Mr. DURENBERGER. Mr. President, this postcloture filibuster presents a difficult choice for all of us who have opposed the attempt to place restrictions on the ability of the Federal courts to use busing as a remedy in school desegregation cases. I believe—and strongly believe—that the Senate erred when it adopted this amendment. I was 1 of the 35 Senators who opposed cloture. But the postcloture filibuster we are now engaged in is different in principle.

The conventional filibuster protects the minority by requiring 60 votes to halt debate. A postcloture filibuster allows a tyranny of the minority by permitting 1 Senator—even for the right cause—to thwart the will of 99 others.

This filibuster may seem to take on an almost heroic flair when it is used to block a provision that could weaken civil rights guarantees. But the process works both ways. If we permit it to continue today, any one Senator can

rise next week or next month to block an essential civil rights bill, a vital appropriation, or any other legislative matter. The postcloture filibuster is a bad means to a good end, and it is a device that we will never be able to control once we permit it to exist.

I am extremely disappointed by the Senate's action on the busing issue. But I am far more frightened by the consequences of this postcloture filibuster. It threatens the very concept of democracy on which this institution functions, and it is time for the filibuster to end.

There will be other opportunities to raise the substance of the busing issue. What we are now debating is the integrity of this body as a working institution.

REPEAL OF SPECIAL CONGRESSIONAL TAX BREAKS

Mr. DURENBERGER. Mr. President, I am pleased to join with my distinguished colleague from Wisconsin, Senator PROXMIRE, in sponsoring S. 2012, a bill which would repeal the special congressional tax breaks enacted in the closing days of last year's session.

In what was probably the most unfortunate action of the first session of Congress, the Senate, on September 24, voted to repeal the $3,000 expense deduction for Members of Congress and, in essence, said that Senators were to be treated as businessmen living away from home with the corresponding privilege of deducting all Washington living expenses. When it was later discovered that the wording of the new measure gave the deduction only to Members who were unmarried or who had families living in their home States, the Senate—again by a two vote margin—made sure that all Members of Congress got the new tax deductions by amending a bill concerning, of all things, benefits for victims of black lung disease.

I said at the time these actions were taken that I thought the new tax deductions were ridiculous, and I continue to strongly oppose them. I hope that the very vocal indignation of the American people will give those of us who oppose these deductions the two or three additional votes we need to repeal them. Unless we repeal the new deductions, many Members of Congress will not pay a single cent in Federal income taxes this year, and that would be simply outrageous.

The idea behind the original proposal was to put Congressmen and Senators on an equal footing with people in private business. But there is a critical difference: Members of Congress are in Washington by their own choice. All of us made a choice to be in public service to our country. We did so for a variety of reasons, but mostly because of our sense of duty to our country and our belief that we could contribute to the shaping of public policy.

I simply do not believe that, at a time when we are telling the American people to do some more belt-tightening, we should loosen our own belts a notch or two. In fact, it would have made a lot more sense to have tightened some of those tax deductions for business people, rather than to have extended them to Members of Congress.

Frankly, I am concerned about the increasing image of the U.S. Senate as an elite club for millionaires. I am even more concerned by the economic realities that are denying people of ordinary means the opportunity to seek public office. We need more people in elective office who have to budget to raise a family, send their kids to college, or buy a home. In other words, we need elected representatives who are feeling some of the same financial pinches of their constituents, foremost of which should be the obligation to carry one's fair share of the tax burden.

For that reason, I encourage my colleagues to join us in assuring that once again Members of Congress are required to pay taxes and experience some of the same finanical demands suffered by the people who elected us. We have an obligation to lead by example. And if the sacrifice of leadership is too great, we have an option those in business do not have—we can retire from politics and return to private life.

DISARRAY IN U.S. MIDDLE EAST POLICY

Mr. ROBERT C. BYRD. Mr. President, on October 21, 1981, in a speech before this body, I announced my opposition to the administration's proposed sale of AWAC's to Saudi Arabia. I based by decision largely on the fact that the Senate was being called upon to acquiesce in a major arms sale to a highly volatile region of the world in the absence of a clearly defined or workable policy for the Middle East on the part of the administration.

At that time, the administration argued that the sale was important to achieving its goal of a "strategic consensus" among moderate Arabs and Israel to meet the threat in the region posed by the Soviet Union. The administration continues to pursue this elusive policy of "strategic consensus" as evidenced by Secretary of Defense Caspar Weinberger's recent trip to Saudi Arabia, Oman, and Jordan.

It has been 4 months since the sale was approved by the Senate. It is time to assess events in the region during this 4-month period. I will offer my assessment within the framework of the warnings I issued in my October 21, 1981 speech.

I warned the following:

Our policy in the Middle East was nothing more than a series of ad hoc and ill-conceived responses to events rooted primarily in the Arab-Israeli dispute and not the Soviet threat.

The administration made a serious mistake in using the assassination of President Sadat as a pretext for pushing the AWACS sale. It symbolically transferred the mantle of a U.S. client state from Egypt to Saudi Arabia, forcing the Saudis to demonstrate they were not a U.S. client.

The Soviet threat was of secondary concern to the players in the region who viewed the Arab-Israeli dispute as the primary threat to peace and stability in the Middle East.

With the sale, we were escalating the arms race in the region and we would be faced with annual litmus tests of our relationships with Israel and Saudi Arabia in particular.

In light of the assassination of President Sadat, the burden of continuing the peace process fell more heavily on Prime Minister Begin's shoulders. Therefore, the Prime Minister had to be given some maneuvering room to make decisions he had not been compelled to make in the past. The sale would not give him this maneuvering room.

We had all but abandoned the Camp David process, leaving the future of Egypt-Israeli peace talks uncertain at best.

Unfortunately, my warnings at the time were prophetic. My worst fears have been confirmed. Yet, I do not take much solace in the fact that events in the region have proven me correct.

Our policy remains one of a series of ad hoc responses to developments in the region. We still do not have a viable policy in the Middle East. This set of circumstances is complicated further by the fact that the administration still speaks with many voices on foreign policy. Who is formulating policy toward the Middle East? Is it Secretary of State Alexander Haig or is it Secretary of Defense Caspar Weinberger?

The Secretary of Defense still perceives the primary threat in the region to be the Soviet Union. Therefore, his response to this perceived threat is the pursuit of his elusive "strategic consensus." So how does the Secretary propose to implement his "strategic consensus"? He engages in what I characterize as F-16 diplomacy. Prominent news coverage was given to the Secretary's discussions with King Hussein on the question of the transfer of F-16's and mobile Hawk missile batteries to Jordan. Once again, we have the specter of another arms transfer involving weapons of significant sophistication to potential adversaries in the Middle East.

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The Secretary of State, on the other hand, while concerned with the Soviet threat to the region, does appear to be somewhat sensitive to Israel's security concerns.

Thus, we are greeted with the continuing public spectable of the Secretary of State and the Secretary of Defense competing for primacy in the formulation of U.S. foreign policy. As a consequence, we have contradictory statements coming from the administration regarding our policy in the Middle East. This not only jeopardizes our interests in that region and elsewhere, it also seriously calls into question our credibility as a reliable and consistent major power.

As to the issue of Saudi Arabia distancing itself from the United States to demonstrate it is not one of our client states, the record speaks for itself as well.

The December 24, 1981, edition of the Washington Post reported:

Saudi Arabia's Crown Prince Fahd . . . cancelled his January 19 visit to President Reagan, and, despite efforts to minimize the implications, U.S. officials said privately that the Saudis (did) not want to call too much attention to their relations with the United States at the present time.

The officials said the cancellation was a disappointment because it marked the second time in almost three years that Fahd, the effective head of the Saudi government, has indefinitely postponed a U.S. visit . . . .

On November 11, 1981, the Washington Post reported that the Saudi Foreign Minister criticized Oman for participating in the U.S. military exercise "Bright Star." Prince Saud al Faisal, addressing the opening meeting of the Gulf Corp. Council, complained that Omani-United States cooperation was contrary to the council's principle of nonalignment.

On December 2, the Washington Post reported the following:

The official Saudi view that the Gulf states must keep a certain distance from the U.S. seems unchanged even by the U.S. Senate's approval of the sale of AWAC's. There are problems posed by such a close Saudi-American military strategy in the absence of a settlement of the Palestinian issue.

That report was reinforced during Defense Secretary Weinberger's recent trip to Saudi Arabia. According to the February 13, 1982, New York Times, an aide to the Secretary told correspondents that Saudi Arabia was "pivotal in the administration's plan for building a strategic consensus of Arab nations to block Soviet expansion into the region."

The Defense Secretary outlined, to newsmen, what he hoped to achieve while in Saudi Arabia. This included the following:

To complete the details of the $8.5 billion sale of AWACS radar surveillance planes to Saudi Arabia.

To persuade Prince Fahd to come to Washington to meet with President Reagan.

To see whether the United States and Saudi Arabia could coordinate security assistance for the other nations around the Persian Gulf.

To ease the Saudis away from their obsession with Israel.

But as the New York Times reported:

All that came out of the marathon session, however, was a grudging Saudi agreement to form a 'joint committee for military projects' that would oversee existing programs such as deliveries of F-15 fighters and the AWACS planes.

To my astonishment, the Times reported the following concerning the Saudi perception of the AWACS sale:

As a Saudi general put it, "You are just arms salesmen and we pay cash."

. . . the Saudis have made it abundantly clear, and did so again this week, that United States forces are unwanted here.

The issue of the Soviet threat once again apparently fell on deaf ears. The same edition of the New York Times reported:

As for turning Saudi Arabia's attention to a Soviet threat and away from its almost single-minded obsession with Israel, nothing seems able to dissuade them.

The Defense Secretary should not have been surprised by this reaction. The Saudis' chief lobbyist in Washington, Mr. Frederick Dutton, was quoted in the November 28, 1981, National Journal as saying:

"We need to quit being so preoccupied with the Soviets." He and others have argued that from the Arab view, the threat to the Middle East peace comes not from the Soviet Union, but from Israel. Until the United States can force Israel to allow the establishment of a Palestinian state, these critics say, there can be no real progress in meeting the Soviet threat.

My warning that the administration was launching an ever-escalating round of sophisticated weapons transfers to a highly volatile region of the world went unheeded last October. Let us take a look at the record since that time.

Secretary Weinberger looks favorably upon providing F-16's and mobile Hawk missiles to Jordan. The administration has promised Israel additional foreign military sales credits to compensate for the Saudi AWACS sale. Egypt has requested additional arms sales from the United States.

In addition, less than a month after the administration's AWACS victory, the Washington Post reported the following:

Saudi Arabia, concerned that Israel will carry out one of its "famous military strikes" here sometime in the next two years, is seeking a closer defense alliance with the U.S. Saudi Arabia wants the U.S. military cooperation to close what amounts to a "window of vulnerability", the official said, but the principal obstacle continues to be the unresolved Palestinian issue.

The unidentified Saudi official stated further:

Obviously at some stage we will try to reach (military) parity with Israel either through our own means or through alliances.

How has the sale of AWACS to Saudi Arabia impacted upon the ability of Prime Minister Begin to deal flexibly with the Egyptians on the autonomy talks? The November 18, 1981 edition of the Wall Street Journal, answered this question by observing:

Fear is growing here (meaning Washington) that President Reagan is in some danger of losing his major achievement in the Middle East—a cease-fire in Lebanon between Israel and the PLO.

Israel has reached a state of paranoia we haven't seen in years, a State Department official says. In this mood, anything could provoke an Israeli reaction and military explosion.

. . . Israeli apprehension has been heightened by American attentiveness to Saudi Arabia and the possibility that Egypt may rejoin the Arab fold.

And what has happened to the Camp David process? As the February 16, 1982, New York Times reported:

. . . For months hardly any efforts were made toward keeping life in the Camp David negotiating process between Israel and Egypt; that period was followed by two quick trips by Mr. Haig to the area.

And what of Saudi Arabia's role in fostering the peace process as claimed by the administration? On November 25, 1981, the Arab summit broke up in disarray after it opened in sharp disagreement over the Saudi peace proposals which implied Arab recognition of Israel.

Did the Saudi eight-point peace plan recognize the right of Israel to exist as a sovereign and secure state in the Middle East? Even the Saudis have flip-flopped on this issue. The Saudi delegate to the United Nations said yes in early November. On November 16, 1981, the Saudi Government said their United Nations delegate had not been authorized to interpret its peace plan for the Middle East.

However, the clincher came on January 5, of this year when the New York Times reported that the Saudi Foreign Minister stated there was absolutely no truth to published reports that the Saudi Government was prepared to recognize Israel.

These are but a few examples of why I believe the administration's Middle East policy is based upon misperceptions and miscalculations. If the stakes in the region for the United States, Israel, and her Arab neighbors were not so high, I would feel vindicated that my warnings of October 21, 1981, should have been heeded. But the stakes are indeed too high. And people's lives are jeopardized if the United States continues to make the kinds of miscalculations that I believe this administration has made in the Middle East.

Israel is scheduled to complete a total withdrawal from the Sinai by the end of April in fulfillment of its obli-

gations under the Camp David process. They do so at a time when their confidence in the reliability of the United States has been shaken badly.

Prime Minister Begin is under increasing pressure from his own populace to launch an invasion of southern Lebanon to knock out the twin threats posed by the Syrian missiles in the Bekaa Valley and the PLO military buildup.

Unfortunately, because of the infighting between the Secretary of State and the Secretary of Defense over Middle East policy, which has resulted in contradictory signals coming out of Washington, Israeli confidence in the United States as an arbiter has been shattered. War clouds loom very heavily on the Middle East horizon.

On January 9, 1981, Secretary of State Alexander Haig appeared before the Senate Foreign Relations Committee for his confirmation hearing. During his hearings he emphasized the following:

Consistency, reliability, balance—these three attributes are essential, not because they guarantee a successful foreign policy—nothing can do that—but because their absence guarantees an unsuccessful one.

Mr. President, I would submit that this administration's foreign policy has been inconsistent, unreliable, and unbalanced. As a consequence, their own words are coming back to haunt them. The foreign policy of this Nation is in complete disarray and as such, according to Secretary Haig's own criteria, is not only unsuccessful, but also disastrous for U.S. interests.

The news media has noted the disarray in this administration's foreign policy, in particular the vying for primacy in policy formulation between the Secretary of Defense and the Secretary of State. Editorials in the February 17 New York Times and the February 18 Washington Post, and columns in the February 23 Washington Post by Philip Geyelin and Edwin Yoder, Jr., make the points forcefully. We have serious problems and they will get worse, unless the President gets his foreign policy house in order.

I ask unanimous consent that the editorials and columns be printed in the RECORD.

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

[From the Washington Post, Feb. 18, 1982]

NO MIDEAST POLICY

The vacuum that is this administration's Mideast policy is hurting the president and the country alike. Into that vacuum, almost, it seems, in alternate weeks, pop the secretary of state and the secretary of defense, each cultivating a private departmental interest without even a pretense of sharing a common one. It is terrific political theater to see two Cabinet officers vying with each other for bureaucratic supremacy virtually in full public view. But it is a damaging comment on President Reagan's disinclination to accept the responsibility of his office and govern. And it is also, from the point of view of the national interest, absurd.

The latest episode of the Haig-Weinberger follies centers on the visit by the secretary of defense to Jordan, where he at least raised the question of selling King Hussein top-of-the-line aircraft and missiles to keep him from shopping in Moscow. By the time Secretary Weinberger's purpose and the various remarks and asides of his party had filtered back to Washington, the Israelis were invoking their own nightmare of American abandonment, and President Reagan was forced to step in and calm things down.

There seems to be a real personality clash between Mr. Weinberger, who distinguishes between the Israeli "people" and the Israeli "government," and Menachem Begin, who makes no secret of his intense distrust of the secretary. This is unfortunate, but it is not crucial. What is crucial in this episode is that Mr. Weinberger was flying his own kite, seeking to strengthen American links with friendly Arab states, evidently without regard to previous American assurances to Israel or to Secretary Haig's own recent diplomatic visitations. How can it possibly help the secretary of state to nudge along the Palestinian autonomy talks if at that very moment the secretary of defense is pleading with an Arab leader who spurns those talks to accept the favor of hot new American arms? Whatever his intent, Mr. Weinberger's effect was quite likely to bolster the Israeli hard line in ways that can lead to no good. Whether he will be appreciated in Arab quarters for having made the old college try or dismissed for not being able to deliver we don't know. But either way, how can it possibly help the secretary of state?

There is a sense, of course, in which not having a Mideast policy—a coordinated plan to pursue both diplomatic goals and security goals—is in itself a policy. The security side—the arms-selling, pact-making side—obviously has the strength under such conditions. To engage in this arms and pact business means closing ranks as much as possible with Arab states, demonstrating to them that the United States is loosening its special commitment to Israel, and accepting as natural and even desirable the inevitable consequent collisions with the Israelis. But this is an extraordinarily dangerous and reckless course, even a dishonorable one. Fortunately, there is an alternative, a very difficult one. It entails seeing the region as a whole, pursuing security interests firmly but with due respect to the sensitivities of all states of the region and accepting the political centrality of the need for Israeli-Palestinian coexistence. Right now, Mr. Reagan is over-engaged on the security side and inattentive on the political side. He is asking for trouble, and he is getting it.

[From the New York Times, Feb. 13, 1982]

POLICY ON ARABS: SLIM PICKINGS FOR U.S. IN RIYADH

(By Richard Halloran)

AMMAN, JORDAN, Feb. 12.—Secretary of Defense Caspar W. Weinberger achieved scant results in his three-day visit to Saudi Arabia this week and thus reopened the question of whether the Reagan Administration's Arab policy has been built on wishful thinking.

On the flight to the Middle East, an aid to Mr. Weinberger told correspondents that Saudi Arabia was "pivotal" in the Administration's plans for building a strategic consensus of Arab nations to block Soviet expansion into the region.

Then Mr. Weinberger and his aides outlined a series of props that he hoped to put into place to help support that consensus:

He intended to finish up the details of the $8.5 billion sale of Awacs radar surveillance planes to Saudi Arabia.

He wanted to persuade Prince Fahd, the Deputy Prime Minister and Riyadh's leading politician, to come to Washington to meet with President Reagan.

He wanted to see whether the United States and Saudi Arabia could coordinate security assistance for the other nations around the Persian Gulf and perhaps elsewhere in the Arab world and possibly provide the technical and managerial help needed to start a regional arms industry.

He wanted, most of all, to ease the Saudis away from their obsession with Israel and point to an increasing threat from the Soviet Union, which has recently added several divisions to its forces north of Iran, increased its forces in Afghanistan and meddled ever more in politically volatile Iran.

During his three days in Saudi Arabia, Mr. Weinberger had extended talks with several Saudi leaders, including a nine-hour session with Prince Sultan, the Defense Minister, that lasted until about 4:45 A.M.

All that came out of the marathon session, however, was a grudging Saudi agreement to form a "joint committee for military projects" that would oversee existing programs such as deliveries of F-15 fighters and the Awacs planes.

The other points, according to American officials, came up in conversations but went nowhere. Even the Awacs program, on which the Administration spent so much political capital last year squeezing it through the Senate, seemed in jeopardy.

Mr. Weinberger, who is usually accessible to correspondents on trips like this, has refused to talk about the Awacs issue beyond a general comment at a brief news conference. But Saudi officials, while not discussing details, indicated rather clearly where the stumbling block was.

SEEN AS COMMERCIAL DEAL

In their eyes the sale is basically a commercial deal in which the United States sold the planes and Saudi Arabia bought them and therefore has the right to do with them as the Saudi government pleases. As a Saudi general put it, "You are just arms salesmen and we pay cash."

The problem, however, is that President Reagan told Congress that he would certify that Saudi Arabia had agreed to restrictions on the operation of the Awacs, such as not using them against Israel. Whether the Saudis consented to those restrictions in a way that can be verified remains unclear.

Beyond that, the thin achievements of Mr. Weinberger have again brought up the issue of United States interest in Saudi Arabia and the ground on which the Administration's policy rests.

First, and most obvious, is oil. But as Mr. Weinberger himself has pointed out, the United States relies far less on oil from that region than do Japan and many European nations. None of them have done much to secure access to those oil supplies.

U.S. FORCES ARE UNWANTED

Second, there is Saudi Arabia's strategic position. Any Soviet advance into the oilfields must either threaten Saudi Arabia directly or lead to an invasion. But the Saudi armed forces, according to American military officers, are incapable of more than token resistance. Nor would major contribu-

tions of forces from other Arab nations make such difference.

Confronted with that, the Saudis have made it abundantly clear, and did so again this week, that United States forces are unwanted there. Some Saudis have said that they fear United States Marines more than Soviet tanks when it comes to taking over the oilfields.

As for turning Saudi Arabia's attention to a Soviet threat and away from its almost single-minded obsession with Israel, nothing seems able to dissuade them. This is not, it appears for lack of trying.

Saudi leaders seem repelled by the proposal of strategic cooperation with the United States for several reasons. One, clearly, is the deep commitment of Americans to the preservation of Israel. Less clear but still evident is Saudi suspicion of foreigners and especially those from the West.

There also seemed to be a hint that the traditionalist, conservative leaders of Saudi Arabia, much as they profess to despise Communism and refuse to have diplomatic relations with Moscow, might be seeking to escape a Russian threat by keeping the United States at a distance.

For the Reagan Administration that is a lot to overcome. It may even be too much. The lesson from Mr. Weinberger's visit may be that this is another case of wishful thinking.

[From the Washington Post, Feb. 23, 1982]

... VS. THE UNITED STATES

(By Edwin M. Yoder, Jr.)

At a recent breakfast with reporters, Zbigniew Brzezinski, Jimmy Carter's national security adviser, was asked about the Haig-Weinberger duet in foreign policy.

Brzezinski: We are seeing, perhaps, the birth pangs of a policy. The question is whether it will be stillborn.

Voice: It's twins!

Brzezinski: Not Siamese, unfortunately. (Laughter)

The apparent discord over U.S. arms sale policy in the Middle East, which resulted last week in a major flap with Israel, seems funny in a warm and secure Washington hotel room. But it clearly doesn't amuse Menachem Begin, for whose country it could have dire consequences.

In 1976 the Ford administration committed the United States not to sell mobile anti-aircraft missiles to Arab states. Jordan's anti-aircraft batteries stand now on fixed sites known to Israeli intelligence, making the military balance in that respect predictable and stable.

Begin, accordingly, was as unamused as Queen Victoria to read that Defense Secretary Caspar Weinberger was talking with Jordan's King Hussein about selling mobile anti-aircraft missiles.

Hussein's grandfather, King Abdullah, was assassinated in 1948, probably for being gracious about the founding of Israel. Abdullah's grandson is a sour little monarch, unhappy with everyone's policies, whose regime the Israelis saved from Syrian assault 12 years ago. But no good deed goes unpunished, as the saying runs, and Hussein, by threatening to buy his arms from Russia, is putting the squeeze on the United States to sell him mobile anti-aircraft missiles—a sale that could destabilize his relationship with Israel.

Hussein's shopping list, and Weinberger's willingness to discuss it, ignited Begin's wrath and resulted in a nearly unanimous resolution by the Israeli parliament. The resolution doesn't tell Ronald Reagan how to balance the U.S. commitment to Israel's security against the clamor of Arab states for high-tech weaponry which they are likely to use against one another—or Israel. Unlike the underlying problem, the resolution is borrowed trouble. It was attributable to obscure musings aboard Weinberger's plane about a "redirection" of U.S. Middle Eastern policy.

The Israelis are also aware Weinberger successfully advocated Reagan's decision to sell AWACS aircraft to Saudi Arabia. This is another decision that threatens Israel's air supremacy, its lifeline. It is Weinberger's policy to pacify the "moderate" Arab regimes with the sale of advanced weaponry, although all of them (with the exception of Egypt) remain immoderately hostile to Israel's existence. Hence Caspar Weinberger would be a questionable emissary, even if the arms-sale policy were well considered.

Menachem Begin has other problems as well. He is under harsh pressure at home to unleash the Israeli army against PLO concentrations in southern Lebanon, now heavily resupplied by the Soviet Union in violation of understandings negotiated last summer by U.S. Ambassador Philip Habib. Were it not for Begin's scruples about notifying the United States beforehand, the Israeli strike would probably have occurred a month ago, and it remains a lively possibility.

Imagine, then, the effect of Weinberger's unguarded talk on an Israeli prime minister who is holding his generals on a frayed leash and contemplating the painful April 25 deadline for restoring the last segment of the occupied Sinai to Egypt.

Reagan presumably tolerates Weinberger's frequent personal improvisations in policy (not only about arms sales to the Arabs but his recent dissent over the Polish loan issue) because he's an old friend and confidant. But Weinberger's roving commission is a costly indulgence.

When the latest episode demanded some hasty firefighting by the president, we were told that it was the result of a misunderstanding fostered by "press reports" and "exaggerated commentary." Haig, in a smirking television interview, called the problem a "not-too-unusual firestorm in Washington press circles," perhaps the failure of a reporter to hear correctly "a caveated statement."

If there was some misinterpretation, which is possible, it is hardly the root of the problem. What actually needs to be "caveated," in Haig-speak, is Weinberger's preoccupation with the military side of foreign policy and his unwillingness to subdue personal differences with the secretary of state, even when Haig's view is official U.S. policy.

If the confusion is prolonged, the Reagan administration will find itself with a foreign policy problem that can't be handled by soothing letters to foreign leaders or blamed on bad reporting.

[From the Washington Post, Feb. 23, 1982]

HAIG VS. WEINBERGER . . .

(By Philip Geyelin)

Whenever gossip in this town turns to speculation on the possible departure of Secretary of State Al Haig, the candidate most frequently mentioned as his successor is Secretary of Defense Caspar Weinberger. It figures, given Weinberger's background and old-shoe palship with the president. But why bother, I say.

Leave the job vacant; you could save a lot of money in travel expenses and lose nothing. At least half of the time, Cap Weinberger acts and talks as if he thinks he holds both jobs right now.

Not funny? You're right. It is a deadly serious business when the two principal figures in the area of national security are fundamentally at odds on important aspects of strategy and policy. But it is usually manageable—and also traditional. Haig had that last part just right the other day when he conceded there are "clearly differences" between him and Weinberger, but added:

"What's new about that? Each department comes at these problems from their differing perspectives. That's inevitable. It has always been so."

What has not "always been so," however, is the extent to which inherently differing departmental perspectives have been allowed to crystallize into unresolved policy conflicts. What is not "inevitable" is that these conflicts be given public expression in a way that baffles (or needlessly provokes) allies and/or adversaries and confounds the forceful conduct of national security affairs.

In short, what's new about the all-too-clear differences in approach between Haig and Weinberger on the Polish crisis, for one example, or Central America, for another, is the permissiveness of top management. The inescapable implication is that Ronald Reagan believes this public armwrestling for influence and preeminence is either (a) of no consequence or (b) unmanageable.

A third possibility, of course, is that Reagan believes that, in a town that dotes on disorder and abhors harmony, a lot of the policy conflict is the work of—you guessed it—the press. That's about half true; it appears in the press. But it gets there courtesy of public as well as private statements by the principals themselves, or the calculated contributions of anonymous subordinates.

And it gets there, in part, out of the natural competitive instincts of bureaucrats with conflicting interests. At the Pentagon, the emphasis is on securing base rights, deploying nuclear weapons, striking up military alliances—and never mind the sensitivities of the host nations, or governments, or the local or regional political repercussions, which are precisely the things the State Department does have to worry about.

The responsibilities and interests of the military and the diplomats, what's more, are inextricably interwined. The neutron bomb is a weapon; its deployment in Europe is a political issue. Trade sanctions are an economic and diplomatic tool; but as they may involve technology of military value, they concern defense planners.

The question is whether these overlaps ought to be sorted out in private or argued out in public. The impulse to the latter course is accentuated in a number of current cases by an exceptionally heavy concentration of hard-nosed anti-communist zealots in key civilian slots in Defense, reflecting Weinberger's own hard line.

The resulting competition with State's more cautious careerists has the effect of inciting brisker competition—and more open conflict.

Personalities add further incitement. Denials to the contrary, Haig and Weinberger are, well, not exactly collegial. Haig's preoccupation with "turf" is legendary. It is heightened by Weinberger's long, almost alter-ego connection with the president. He feels free to hold forth on foreign policy at a length and with a specificity that few old-timers can recall any predecessor having done because he is confident he knows his

boss's mind. For his part, Haig cannot be so sure.

But Haig is supposed to be The Man for foreign policy. And so we see them both racing around the world, sometimes simultaneously. That was the case a week or so ago when Weinberger was trying to strike up tighter ties with Saudi Arabia while Haig was working up a new defense arrangement with Morocco.

Meantime the catalogue of identifiable conflict grows: Weinberger's harder line on Poland; Haig's tougher stance on Central America; the distinctively different emphasis in the approach of the two men to the Middle East—issues on which you would want a settled policy.

Maybe it is, in this instance, unmanageable, even with the installation of a new National Security Council arrangement that at least bears some resemblance to arrangements that have worked before. But you cannot come away from talks with concerned foreigners with the belief that the damage done to orderly and effective American foreign policy is of no consequence.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER (Mr. D'AMATO). The Senator from Louisiana.

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

DEPARTMENT OF JUSTICE AUTHORIZATIONS, 1982

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

The 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.

The PRESIDING OFFICER. The Senator from Louisiana.

AMENDMENT NO. 458

Mr. JOHNSTON. Mr. President, I call up amendment No. 458 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana (Mr. JOHNSTON) proposes amendment numbered 458.

The amendment is as follows:

At the end of the pending amendment add the following:

Notwithstanding any section of this bill, and notwithstanding the second of the paragraphs relating to salaries and expenses of the Federal Bureau of Investigation in the Department of Justice Appropriation Act, 1973 (86 Stat. 1115), sums authorized to be appropriated by this Act for such salaries and expenses may be used for the purposes described in such paragraph until, but not later than the end of the fiscal year ending September 30, 1983.

Mr. JOHNSTON. Mr. President, I move to lay that amendment on the table.

The PRESIDING OFFICER. The question is on the motion.

Mr. WEICKER addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. STEVENS. Mr. President, I move that the Sergeant at Arms be——

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

The PRESIDING OFFICER. The question is on the motion to lay on the table amendment No. 458.

Mr. JOHNSTON. Mr. President, I move to lay the amendment on the table.

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

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

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

Mr. JOHNSTON. I withdraw the request.

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

The PRESIDING OFFICER. Will the Senator withhold that for a moment?

Mr. McCLURE. I will.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to Public Law 86-42, appoints the following Senators to the Canada-United States Interparliamentary Group: The Senator from Idaho (Mr. McCLURE), the Senator from North Dakota (Mr. ANDREWS), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Georgia (Mr. MATTINGLY), and the Senator from Delaware (Mr. BIDEN).

DEPARTMENT OF JUSTICE AUTHORIZATIONS, 1982

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

QUORUM CALL

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

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. 13 Leg.]

Byrd, Robert C.	Johnston	Stevens
D'Amato	Long	Weicker
Dixon	McClure	

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. STEVENS. 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.

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 Alaska. The yeas and nays were ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from North Carolina (Mr. EAST), the Senator from Kansas (Mrs. KASSEBAUM), the Senator from South Carolina (Mr. THURMOND), and the Senator from Texas (Mr. TOWER) 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 Nebraska (Mr. EXON), the Senator from Hawaii (Mr. INOUYE), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

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

The result was announced—yeas 83, nays 8, as follows:

[Rollcall Vote No. 36 Leg.]

YEAS—83

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

NAYS—8

Denton	Hayakawa	Warner
Garn	Proxmire	Weicker
Goldwater	Quayle	

NOT VOTING—9

Baker	Exon	Thurmond
Cochran	Inouye	Tower
East	Kassebaum	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. STEVENS. Mr. President, there will soon be some votes again today, and I announce that the leadership position is that we will not recognize requests for the yeas and nays on votes that we consider to be dilatory in the postcloture process. I ask Members of the Senate to deny requests for the yeas and nays from now on.

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

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

Mr. WEICKER. I wonder if the Chair will please withhold.

Mr. STEVENS. Mr. President, I ask unanimous consent that we clarify this request for the Senator from Connecticut.

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

Mr. WEICKER. I wish to make the point to my distinguished colleague that the motion that has been put before the Senate was made by the Senator from Louisiana, not the Senator from Connecticut. Therefore, I am asking for the yeas and nays not on my motion but on his motion.

Mr. STEVENS. It is still the position of the leadership that we do not want the yeas and nays. We want to finish this bill. We ask for the cooperation of the Senate.

Has the motion to table been made?

The PRESIDING OFFICER. The motion to table has been made.

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

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

The yeas and nays were not ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion (putting the question).

The Chair declares that the issue is in doubt and asks for a division. Senators in favor of the motion will rise and stand until counted. Those opposed will rise and stand until counted.

On a division, the motion was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair on the division of the vote has not announced the count.

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

Mr. JOHNSTON. Mr. President, the Chair has not announced the count.

The PRESIDING OFFICER. The Chair will not announce the vote.

The motion to table is agreed to.

The clerk will call the roll.

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

[Quorum No. 14 Leg.]

Abdnor	Gorton	Murkowski
Andrews	Hart	Pressler
Armstrong	Hawkins	Pryor
Baucus	Jackson	Sarbanes
Burdick	Johnston	Stafford
Cranston	Long	Symms
D'Amato	Matsunaga	Warner
Dole	Mattingly	Weicker
East	McClure	
Garn	Metzenbaum	

The PRESIDING OFFICER. A quorum is not present.

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

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Alaska to instruct the Sergeant at Arms to request the attendance of absent Senators.

Mr. STEVENS. 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 Alaska to instruct the Sergeant at Arms to request the attendance of absent Senators. 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 Tennessee (Mr. BAKER), the Senator from Pennsylvania (Mr. HEINZ), 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 New Jersey (Mr. WILLIAMS) are necessarily absent.

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

The result was announced—yeas 85, nays 9, as follows:

[Rollcall Vote No. 37 Leg.]

YEAS—85

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

NAYS—9

Biden	Goldwater	Quayle
Boren	Hayakawa	Warner
East	Proxmire	Weicker

NOT VOTING—6

Baker	Heinz	Thurmond
Cochran	Inouye	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. STEVENS addressed the Chair.

The PRESIDING OFFICER. The acting majority leader.

Mr. STEVENS. Mr. President, I call up amendment No. 452.

The PRESIDING OFFICER. The amendment is not in order. It is dilatory.

AMENDMENT NO. 445

Mr. STEVENS. Mr. President, I call up amendment No. 445.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS) proposes an amendment numbered 445.

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 section 3617 of the Revised Statutes (31 U.S.C. 484), the Drug Enforcement Administration is authorized to—

set aside 25 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;

the amounts credited under this section shall be made available for obligation until September 30, 1984.

Mr. STEVENS. Mr. President, I move to table that amendment.

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

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

The PRESIDING OFFICER. The statement of the Senator from Connecticut is not recognized. The Senator from Alaska made a motion to lay the amendment on the table.

Mr. WEICKER addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll and the following Senators entered the Chamber and answered to their names:

[Quorum No. 15 Leg.]

Boren	Heinz	Quayle
Byrd, Robert C.	Humphrey	Rudman
Chiles	Johnston	Schmitt
Danforth	Kasten	Specter
Dodd	Mattingly	Stevens
Garn	McClure	Weicker
Gorton	Melcher	
Hawkins	Pryor	

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

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

[Quorum No. 15 Leg.]

Abdnor	Dole	Mathias
Baker	Domenici	Nickles
Baucus	Durenberger	Proxmire
Bentsen	East	Pryor
Biden	Glenn	Randolph
Boschwitz	Grassley	Roth
Bradley	Hatch	Simpson
Bumpers	Hayakawa	Stennis
Burdick	Heflin	Symms
Cohen	Hollings	Tsongas
D'Amato	Humphrey	Warner
DeConcini	Jackson	Zorinsky
Dixon	Long	

The PRESIDING OFFICER. A quorum is present.

The question is on agreeing to the motion of the Senator from Alaska to table the amendment of the Senator from Alaska (putting the question).

The PRESIDING OFFICER. The Chair is in doubt. The Chair calls for a division.

Senators in favor of the motion will rise and stand until counted. (After a pause.) Those opposed will rise and stand until counted.

On a division, the motion was agreed to.

Mr. STEVENS. Mr. President, for the information of the Members of the Senate, what we are trying to do is to establish the quorum that the Senator from Connecticut has the right to demand prior to action on our motions to table these amendments through the process of the normal quorum call. We do point out to the Members of the Senate that if we are forced to have the Sergeant at Arms instructed to compel the attendance of absent Senators, we require the attendance of 100 Senators; whereas, if Senators will respond to the quorum call on either two or three bells, it takes only 51 to do that, and there will be less disturbance of the Members of the Senate if they will respond to the quorum call.

We urge Senators to respond to the quorum call when it is made on two bells, but we will let it go to three if necessary. This process will be speeded up.

I also point out to the Members of the Senate that this is an alternative to keeping 51 Members of the Senate on the floor. If and when the Senate really makes up its mind to terminate this postcloture procedure, 51 Members of the Senate must be present on the floor for a substantial period of time. We could actually end this postcloture procedure in a matter of 3 to 4 hours, in my opinion, if 51 Members of the Senate would stay here on the floor so that the Chair could recognize the continued existence of a quorum, without the process of establishing a quorum prior to acting upon each motion to table.

We will continue to oppose the request for the yeas and nays on any motion other than a motion to instruct the Sergeant at Arms to compel the attendance of absent Senators, if that is necessary, in order to satisfy the constitutional requirement of the quorum call.

AMENDMENT NO. 446

Mr. STEVENS. Mr. President, I now call up amendment No. 446.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS) proposes an amendment numbered 446.

Mr. STEVENS. Mr. President, I move to table that amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

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

[Quorum No. 16 Leg.]

Boren	Gorton	Symms
Boschwitz	Hawkins	Warner
Danforth	Johnston	Weicker
Dixon	Quayle	Zorinsky
East	Roth	
Glenn	Stevens	

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

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

[Quorum No. 16 Leg.]

Abdnor	Exon	Mattingly
Baker	Ford	McClure
Baucus	Garn	Melcher
Bentsen	Goldwater	Metzenbaum
Biden	Grassley	Mitchell
Bradley	Hart	Moynihan
Bumpers	Hatch	Murkowski
Burdick	Hayakawa	Nickles
Byrd, Harry F., Jr.	Heflin	Nunn
	Heinz	Pell
Byrd, Robert C.	Helms	Percy
Cannon	Hollings	Proxmire
Chafee	Huddleston	Pryor
Chiles	Humphrey	Randolph
Cohen	Jackson	Riegle
Cranston	Kassebaum	Rudman
D'Amato	Kasten	Sarbanes
DeConcini	Kennedy	Sasser
Denton	Leahy	Schmitt
Dodd	Levin	Simpson
Dole	Long	Specter
Domenici	Lugar	Stennis
Durenberger	Mathias	Tsongas
Eagleton	Matsunaga	Wallop

The PRESIDING OFFICER. A quorum is present.

The issue is the motion of the Senator from Alaska to table amendment No. 446.

The motion of the Senator from Alaska to lay on the table amendment No. 446 was agreed to.

Mr. STEVENS and Mr. WEICKER addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

AMENDMENT NO. 449

Mr. STEVENS. Mr. President, I call up amendment No. 449.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS) proposes an amendment numbered No. 449.

Mr. STEVENS. Mr. President, my understanding is that the distinguished Senator from Connecticut wishes to speak on a matter now for a period of 20 or 25 minutes, and he is entitled to his time. It is the leadership decision to withhold a motion to table this amendment until the Senator from Connecticut has had a chance to speak on it.

We have disposed of four or five amendments this morning, and in fairness to the Senator from Connecticut he should have some time to speak.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. Mr. President, I thank my distinguished colleague from Alaska.

The PRESIDING OFFICER. May we have order in the Senate?

Mr. WEICKER. I want to thank my distinguished colleague from Alaska for allowing me to get into the substance of the matter before the U.S. Senate.

Before I do that, how much time does the Senator from Connecticut have left?

The PRESIDING OFFICER. The Senator from Connecticut has 1 hour and 43 minutes remaining.

Mr. WEICKER. I would ask the Parliamentarian to recalculate that. When I last checked at the well last evening it was considerably over 2 hours, and I have not gone ahead and had the opportunity to go ahead and make any remarks except in the nature of motions.

The PRESIDING OFFICER. The Parliamentarian will recalculate those figures.

Mr. WEICKER. Is the Parliamentarian aware of the fact, Mr. President, that I have 2 hours in addition to my 1 hour?

The PRESIDING OFFICER. The Parliamentarian is aware of that fact.

Mr. WEICKER. I would now like to review what it is that has occurred, what we have before us here on the Senate floor.

First of all, let me say this to my colleagues: This has not been one of the

easier tasks that it has been my fortune to be a part of during my 12 years in the Senate.

Since its inception on June 16, 1981, this matter has been clouded over by political, philosophical, and emotional argument. The fact is that nothing has changed. This legislation still poses the most dangerous constitutional threat ever posed during my lifetime. It threatens to demolish the concepts of checks and balances and three separate but equal branches of Government and politicize the judicial branch of Government, giving the legislative branch a veto power over the executive branch of Government.

First, let me say that with all the pressing matters before the Nation I consider it a travesty that we are engaging in this unconstitutional exercise for what seem to me to be solely political purposes.

We may pose the rhetorical question, is this of any particular assistance to me in the State of Connecticut, insofar as the State of Connecticut supporting the concept of busing? The answer is no. I do not think the consensus in the State of Connecticut is any different from the public opinion samplings that seem to show that many people are against this particular remedy. So there is no particular advantage to be had in taking this position.

But this cannot always be a game of politics on the Senate floor. And certainly the one matter that transcends politics has to be the Constitution and its preservation and, if need be, its defense in terms of the type of attack that is represented by S. 951.

I would be perfectly willing to accept a policy change by means of legislation. So it is not a matter that my philosophy, whatever that might be, is on the losing side in this country at this time.

The best way to illustrate the point that I am making is that President Reagan should be on the floor right here arguing with me in order to preserve the powers of his office. He can change the policies in the administration of the Justice Department insofar as busing is concerned. He can do that without the Congress of the United States. We might all disagree and we could take up some time during morning business to express our disagreement. But to stand idly by while the powers of the executive branch of Government are seriously eroded is, to me, unconscionable.

He has every right to tell his Attorney General not to seek busing orders. He has every right—although I would be highly critical of such a posture—not to get into the matter of discrimination within any particular school system in this country. These are all his prerogatives.

But the powers of his office do not belong to him. They belong to the people of the United States of America as enuniciated in the Constitution of the United States.

I said this matter commenced on June 16, 1981; actually, it commenced earlier than that. The first time this amendment was before this body was during the lameduck session of the last Congress. The body had passed an amendment very similar to the Helms amendment, not the Johnston amendment, but the Helms amendment. And before that legislation got off the floor, President Carter sent back a letter to then chairman of the Appropriations Subcommittee on State-Justice-Commerce, Senator FRITZ HOLLINGS. I would like to read from that letter now. In case anybody thinks this is some off-the-wall idea of mine in the sense of constitutional interpretation, let us see what the man who had been defeated by Ronald Reagan said in that letter.

DEAR MR. CHAIRMAN: I have decided that I will veto H.R. 7584, the State-Justice-Commerce Appropriations Act of 1980. A provision in this Act, the Helms-Collins amendment, would impose an unprecedented prohibition on the ability of the President of the United States and the Attorney General to use the Federal courts to ensure that our Constitution and laws are faithfully executed.

Throughout my Administration, I have been committed to the enhancement and strong enforcement of our civil rights laws. Such laws are the backbone of our commitment to equal justice. I cannot allow a law to be enacted which so impairs the government's ability to enforce our Constitution and civil rights acts.

I have often stated my belief that busing should only be used as a last resort in school desegregation cases. But busing is not the real issue here. The real issue is whether it is proper for the Congress to prevent the President from carrying out his constitutional responsibility to enforce the Constitution and laws of the United States.

The precedent that would be established if this legislation became law is dangerous. It would effectively allow the Congress to tell a President that there are certain constitutional remedies that he cannot ask the courts to apply. If a President can be barred from going to the courts on this issue, a future Congress could by the same reasoning prevent a President from asking the courts to rule on the constitutionality of other matters upon which the President and the Congress disagree.

For any President to accept this precedent would permit a serious encroachment on the powers of this office. I have a responsibility to my successors—

And I might parenthetically interject here, since he had already been chosen, Ronald Reagan—

and to the American people not to permit that encroachment to take place. I intend to discharge that responsibility to the best of my ability.

The purpose of this letter is to ensure that there is no doubt about my opposition to the objectionable provision in the State-Justice-Commerce Appropriations Act. My opposition also applies to the inclusion of such a provision in the Continuing Resolution.

I would of course prefer to avoid a veto of the Resolution. I recognize the difficulties such a veto could impose on critically important operations of the government and on the Congressional schedule. But I would be shirking my constitutional responsibilities if I allowed this unprecedented and unwarranted encroachment on Executive authority and responsibility to prevail.

Sincerely,

JIMMY CARTER.

I say to my colleagues, regardless of what the political implications are to me in the State of Connecticut, I would shirk my responsibilities unless I fought this measure tooth and nail for the very reasons stated in the Carter letter. Now we have the additional reason that what was attempted in regard to the executive branch of Government now also would be done to the judicial branch of Government. And that probably should strike the greatest fear in the hearts of those on this floor and among the American populace as a whole.

Today the issue is discrimination in our schools, busing and minorities. But, if you allow this precedent to be established, then tomorrow it might be businessmen who are politically unpopular, and therefore cannot have their rights protected by the courts. The next year it might be the retarded and the disabled who might be unpopular and cannot have their rights protected by the courts, and so on down the line. There is no end to the mischief that is being created on the floor of the U.S. Senate.

And, yes, even my friends in the media, many of whom have been critical, either in editorial cartoons or in editorial writings, of my position on this matter, should be concerned. For who is to say that they might not be unpopular and therefore have the U.S. Senate tell the courts how their rights under the first amendment can be enforced and what remedies are available to the press and what remedies are not.

It gets increasingly difficult, in a day and age which demands instant knowledge and instant satisfaction, instant results and instant recognition, to value the long-term results, the long-term consequences of our actions. But this has to be recognized.

The policies of the Nation and the laws of the Nation outside the Constitution can change and no great damage ever will be done to the United States of America. But whether the constitutional process is run by conservatives or liberals, whether it is run by Democrats or Republicans, one thing can never change, and that is the Constitution of the United States.

It is the bedrock; it is the touchstone. It remains immutable, unchanging, regardless of the tempers of any time.

You have seen right here on the Senate floor today in miniature what

happens when the rules of the game are tampered with.

I can assure my colleagues that in the course of the debates which will take place this year, they will not hear me filibustering any issues outside the Constitution of the United States. I can accept the results on nonconstitutional issues with grace, if not with enthusiasm. But what has been done in relation to this legislation will be repeated on the voluntary school prayer issue and possibly on the abortion issue. Wherever anybody tries to take that document and the statement of ideals and principles which have made this Nation great and twist them to a philosophical or a partisan purpose, they should be fought, with every power and every rule at our command.

That is why we are a U.S. Senate, incidentally. We are meant to survive the winds of change, the partisanship, the philosophy, the temper, and the emotion. Otherwise, why not have all of us elected every 2 years and swing with whatever tides happen to run in America at that time?

God knows I, like the rest of my colleagues, am tired of this exercise, but there are an awful lot of people throughout our history who died for this document, never mind got tired for it, never mind had to give up a speaking engagement for it or miss a fund raiser, or whatever. That is what drives me like nothing else can on this floor. If the game gets a little tough, and it has in the last 24 to 48 hours, that is what you have to deal with. Sometimes a smile and a thank you just does not work, especially when the other person has all the votes.

Certainly, for my part, I mean no offense to any individual on this floor personally.

So, first let me clearly reiterate my position in terms of the basic issue. It is both the basic issue and the only issue. Busing insofar as it relates to this piece of legislation is totally ancillary, it is secondary, it is tertiary. You could just as well substitute another class of our citizens and another cause and another violation of the law, and the issue would remain. You cannot have the legislative branch of Government state in this way what the rights of Americans are under the Constitution unless you want to change the Constitution, and that is a very precise and tedious procedure. That is why it is not being used.

Those who advocate this policy and this philosophy cannot get two-thirds of the Congress and cannot get three-quarters of the States because by the time they do they will be out of office. That is, pure and simple, the matter of reality before us. This maneuver has to be done and done quickly or it will never be done.

And that is precisely the reason why I am here. I will be on the short end of the vote in the Senate Chamber, but I will not lose this issue. It may be lost here but it will be taken up by men of courage, whether they be in the House of Representatives or in the courts of this land, including the Supreme Court.

Yes; I am sorry that the courts are legislating in the sense of providing a remedy for a known ill of this Nation. I would have preferred that we had done it right here. But we did not. So there was really only one alternative: Either to go ahead and let our rights under the Constitution disappear into nothingness, or to have someone stand up in some part of the constitutional process and insist that the Constitution be observed.

That the courts did. That they did in Brown against Board of Education.

Those outside this body may look on and say, "God, I wish they would express themselves with the same fervor when confronted with the opportunities to remedy the discrimination that was taking place." We did not. The courts did. And now, ashamed of our own lack of courage, maybe we want to create once again the original, inferior status of so many of our citizens of this Nation.

Has anybody heard during the course of the debate on the Senate floor a U.S. Senator stand up and say what it is the U.S. Senate is going to do in the absence of the court being able to remedy the wrong? Has anybody heard that? All that has been said here is that the courts cannot act. Not one person has stood up and said, "The courts cannot act on the constitutional level, but we will." And the reason why you have not heard it is that, again, anything we say along the lines of remedying the wrong is going to be politically unpopular. That is why you have not heard it.

If you do not like busing, if you do not want the courts to act, fine, but what are the alternatives? Let us take one, for example: To build school systems with steel and mortar, educational programs, and teachers and personnel? That costs money. Has anybody stood up and said, "This is what we will do to create superior education for all Americans, it will cost money, but we will tax for it because it is worth it"? No, because taxing is unpopular. Far better to levy the tax on the Constitution—it cannot speak for itself. But, oh, the price to be paid will be far greater than anything in paper or silver.

It takes courage to live up to this document. I am not talking about the Senate; I am talking about all of us as Americans. The words have not changed in the Constitution; they are the same as always. I will tell you what has changed—no question about it. We have become far more affluent—many, many more of us, every year.

Again, the question has to be asked, why? I think the answer is clear: Because of the words and principles enunciated in that document. If that were not the case, the United States would still consist of only 20 Virginia planters and nobody else would have education or a job or housing or food or anything.

Equality—that is key. As each one attains it, fewer are willing to sacrifice to see that person behind him also attains it.

Mr. President, I do not know what else it is that I can say that makes this point come home. When I started this debate in June, I realized it was almost like giving a lesson in constitutional law to my constituency, if not, in some small part, to the country. So, every time I would walk down the street, people would say, "Why do you like busing?"

I would say, "Busing is not the issue. The issue is the Constitution, separation of powers, separate but equal, the independence of the courts, the independence of the executive branch of Government."

But, boy, it sure does not come through that way. I can live with that. And I have lived with it. But I cannot complain anymore, for whatever critics I have had editorially, I know that nothing I have ever done in the Senate of the United States has been more fairly reported. Time and time again, it has been fairly reported.

So if there is any confusion there, maybe the fault is mine and the rhetoric that I have chosen, or maybe it is that people really do not want to listen. Maybe it is that they find this an excuse to permit the darker side of their emotions to show through once again, when I thought all of that had been laid to rest over 20 years ago.

The issue is clearcut, Mr. President. The issue is the Constitution and the protection and enhancement of the rights of every American citizen.

Does anybody honestly think that, in the final analysis, it was the Senate of the United States that gave to you your rights? If you are retarded or disabled, do you honestly think it was the Senate that was the first to act? If you are elderly, do you think it was the Senate or the House that was the first to act? If you are a laboring man or a union man, do you think it was the Senate or the House that was the first to act?

It never was. It was always the courts that had to stand up and say what needed to be done. And it will always be those courts. Except now, if this passes, they won't be there any longer. It will all be wrapped up into one branch of Government—right here.

That is what is at issue, Mr. President. The American public is going to get one swing at the pitch, rather than

three. Maybe that makes it a lot neater and makes it a lot more convenient for those of us who are in the Senate and running for office. But the strikeout victim is the American public.

Mr. President, I shall have further to say on this as the debate proceeds but every hour to my friends in the media, every hour is important. Every day is important, every week is important. Because on June 16, 1981, it was reported that this legislation was imminent of passage within 48 hours. So, for at least a few more months, the rights whereof I speak are still in place. And, just as importantly, I want to send a message that for everything that comes up in terms of religion and the nonestablishment thereof and the laws of this land as they relate to a woman's privacy in abortion—all that is trying to be altered in a legislative sense rather than through the constitutional process—is going to take just as long as this did.

I would prefer, Mr. President, the constitutional route for all these matters. Then we could attend to the business of the United States rather than the business of the Constitution. I shall support those measures. I think it is bad business, throwing every hot potato into the Constitution. But anybody who wants to go down that road should be permitted to do so. Let us attend to the real social issues—unemployment, housing, job opportunity, student loans, the opportunity for an education, transportation, the international scene. These are the social issues, as I understand "social," not a climb up some philosophical Mt. Everest by a few who hold the whole Nation hostage to their own philosophy and their long-sought-after ambitions.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, the current efforts to undercut the independence of the Federal judiciary test our commitment to the most fundamental American values and our oath to uphold the Constitution.

Just as the American people have responded to help save a strong Voting Rights Act, I believe they will respond to preserve a strong independent Federal judiciary. Yet that effort will come in spite of the Reagan administration. Attorney General Smith fuels passions and plays on fears with his attacks on our Federal judges. The Attorney General knows better; he knows that on the Federal bench there are hundreds of dedicated men and women, of all political persuasions who have no personal desire or great ambition to intrude upon Government agencies or local institutions. But they are loyal to their oath of office. When constitutional rights have been violated, those men and women do what needs to be done to provide a meaningful remedy.

We have a large platter of court restriction bills before us, dealing with a variety of highly charged and controversial matters. A disturbing common theme runs through all of these issues. In each area, assaults are underway to deny access to the courts, or to restrict the power of the courts to provide meaningful relief if they find that basic rights have been violated.

The lesson of American history is clear. Social equity and the preservation of personal liberty require courts that are free to dispense justice under law. The proud claim of equal justice will become an empty claim, and the great guarantees of the Bill of Rights will become a shameful charade on the day that citizens can no longer look to the courts fully to protect their rights. Yet that is what will happen under many of the proposals now before us.

The American people recognize that, ultimately, the courts must remain able to protect the constitutional rights of everyone, or they cannot be relied upon to protect the rights of anyone.

Supporters of such extreme proposals sometimes cite the power of Congress under section 5 of the 14th amendment to carry out its purposes by "appropriate legislation." They claim that Congress is simply codifying the preferred remedies to be used to enforce the Constitution. The flaw in that reasoning is obvious. The 14th amendment speaks of Congress power to enforce—and not to deny—constitutional rights.

Clearly, Congress has no power under the 14th amendment to deny a meaningful remedy in the name of "selecting the best one." As Archibald Cox, distinguished constitutional scholar and former Solicitor General, has emphasized, a constitutional right is only as good as the available remedy. Yet this bill expressly seeks to cripple the power of the Federal courts to remedy deliberate constitutional violations. That is the heart of the issue.

This attempt raises profound issues which reach beyond the specific subject matter of the Johnston-Helms amendment itself. It would seriously erode the historic and crucial independence of the Federal judiciary as the basic bulwark of the Constitution. It would be a first step toward drastically altering our constitutional form of government and the way that the three branches of the Federal Government relate to one another. The attempt to restrict the jurisdiction of the Federal courts to resolve certain types of cases is a fundamental assault on the integrity of the judicial process and the concept of judicial independence. It would subvert two centuries of constitutional history. It would open a backdoor method of amending the Constitution, despite the wise intent of the Founders that amendments to the Nation's basic charter must reflect the most careful consideration and result from a clear national consensus.

A separate serious problem with the bill is the so-called "reopener" provision. We should not be reopening issues of constitutional rights which the courts have adjudicated and to which many communities have made adjustments. Yet the "reopener" in this bill would reopen long healed wounds in hundreds of communities, particularly in the South. Many of those communities have been working and living peacefully under court-ordered plans that may slightly exceed these limits.

In many communities where court desegregation orders have included student transportation, the initial controversy has subsided, and the plan has been working, with widespread acceptance for a number of years. Dedicated educators, parents, and children have made it work. New pupil assignments, attendance zones, school building plans—all aspects of the school system and related aspects of the community life have developed under the plan.

The Johnston amendment would upset all this. It would place intense political pressures on some community elements to challenge the existing plans and reopen old and bitter controversy. Divisive passions and animosities would be stirred up again at a time when the need for interracial understanding and tolerance is greater than ever.

Instead of its avowed purpose of promoting reason and order in local education, the Johnston amendment will foment disorder and community conflict. The costs to this Nation in educational disruption and community upheaval would be immense.

The portion of the bill offered by Senator HELMS would restrict civil rights litigation by the Department of Justice.

Our sworn duty is to preserve and protect the Constitution. Yet the courts have indicated that a complete denial of all channels for the Government to end school segregation raises the most serious constitutional question. In recent years, the Congress passed an amendment which prohibits HEW from requiring school districts to utilize transportation in order to end school segregation. The courts upheld that law against constitutional challenge. However, the courts explicitly relied upon the fact that another avenue was open for the Government to end school segregation in districts receiving Federal aid. The Department of HEW could still refer cases under

title VI of the Civil Rights Act of 1964 to the Department of Justice.

If the Helms-Johnston amendment was adopted in its present form, the Federal Government would be completely prevented from seeking to end segregation in systems receiving Federal aid. That would raise the most fundamental constitutional questions about such aid and would probably result in its being terminated under private court suit.

Far more important is the second result of this amendment. The Federal Government would be stopped from its efforts to enforce the Constitution of the United States. I believe that effort is unwise and would be unconstitutional. In fact, it would present the President with a stark choice. If he is to remain faithful to his oath of office to "preserve, protect and defend the Constitution," and faithfully to "execute the laws of the United States," he would be obliged to veto the measure.

A third difficulty is that it is often unclear at the inception of a case what precise remedy, if any, will ultimately be imposed. Therefore, neither the Justice Department nor the Federal court would know in advance which cases would fall under the section 607 prohibition.

Given this process, the Department would be presented with an unresolvable dilemma of abstaining from, or withdrawing from, cases to end constitutional violations even before the remedy phase. The Department would have to have made that decision before it could possibly have known whether the case fell within the intended scope of the Helms amendments.

As I have indicated, there are many serious problems with this legislation and many fundamental issues which should not be tagged on as riders to this authorization bill. I hope that my colleagues will reject this measure.

Beyond this particular bill, we will undoubtedly face similar efforts to encroach upon the enforcement of civil rights.

As we enter the 1980's all Americans who believe in the full enjoyment of constitutional rights face a dual challenge. We must press on with our unfinished agenda, through litigation and legislation, to achieve the goals we have set. But in addition, we will now have to devote resources, time, and energy to preserve the gains we have made. Efforts are underway to turn back the clock, both in the courts and in the Congress. We must be realistic and resolute.

We will stay the course. We will not be content only with resistance against retreat. We will fight to keep the hard-won progress we have made—and we will also chart new advances.

I believe that the American people want us to keep the rudder true. I believe Congress will keep the faith with the Constitution and the millions of Americans who look to us for hope and for help.

UNANIMOUS-CONSENT AGREEMENT

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

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

Mr. BAKER. Mr. President, I am about to make an announcement and a request that I had not thought possible to make only a few hours ago.

I announce first that I believe we have reached an agreement between the principals involved that would provide for time for final passage of S. 951 on next Tuesday. I will make that request shortly.

Before I do that, Mr. President, I think that in view of the extraordinary length of time we have spent on this measure and the great devotion and dedication on both sides, I should say just a word about the diligence of the Senator from Louisiana and the Senator from North Carolina and especially the Senator from Connecticut, who has worked so tirelessly to extend his point of view.

I have been involved in this debate for some months now. I have supported generally the position asserted by the Senator from Louisiana and the Senator from North Carolina. I have supported their amendment, I have supported cloture, and I have moved in the direction of accomplishment of the purposes they seek, but I do not believe I ever have had an adversary who has been as tough and as effective as the Senator from Connecticut.

He has handled himself extraordinarily well. He has availed himself of every reasonable and available opportunity to exert his influence on the form of this legislation. He has literally gone the last mile to try to prevail.

The battle is not over. We do not know what the final result will be. However, I am not concerned with that at this point. All I want to do is to express my profound appreciation to all parties for their willingness to agree now that we will have conclusion and final passage of the Senate bill—that is S. 951—according to the agreement I am about to propound.

Mr. President, with that preliminary statement, I ask unanimous consent that at 2:45 p.m., S. 951, the Department of Justice authorizations bill, be set aside.

I further ask unanimous consent that at 9:30 a.m. on Tuesday, March 2, 1982, the Senate resume consideration of S. 951; that at that time there be 2 hours of debate, equally divided, on the Johnston amendment No. 1252; that upon the disposition thereof, the Senate proceed without debate, motion, point of order, or appeal to the disposition of the Heflin amendment No. 1235.

I further ask unanimous consent that these two amendments be the only amendments in order.

Finally, Mr. President, I ask unanimous consent that upon the disposition thereof, without intervening debate, motion, point of order, or appeal, the third reading occur, to be followed immediately by final passage of S. 951, as amended; that paragraph 4 of rule XII be waived.

Mr JOHNSTON. Mr. President, reserving the right to object—and I shall not object—is it necessary to withdraw the pending amendments—that is, amendments 1250 and 449?

The PRESIDING OFFICER. Those amendments should be withdrawn.

Mr. JOHNSTON. Immediately upon the adoption, then, of the unanimous-consent request, I will so move.

Mr. ROBERT C. BYRD. I reserve the right to object.

Mr. WEICKER. Mr. President, first of all, I should like once again to take my hat off to my opponents—Senators HELMS, JOHNSTON, and others—who have participated in this matter and who seem to be coming out on the wrong end. They have not always done so. I have not always done so. But it has been a good fight, and they are good opponents.

My good friend from Tennessee knows, being a sportsman, as I am, that every now and then the referee gets the puck in his teeth; there are times a loose punch catches the referee in the boxing ring; and every now and then the baseball hits the umpire behind home plate in the Adam's apple.

Nevertheless, the fact is that in the course of this fight, my eye was on the ball, on the issue that confronted the Senate; and if one of those occurrences happened and I was responsible for it, I want him to know that it was totally inadvertent and unintentional. He is a great friend, a fine majority leader. The next time, I hope he will doff his referee's robe and come over and join me on my side, because then I know I will win. Aside from whatever logic I have, whatever reason he has, he has one great advantage—he has the votes, and that is what is important.

Mr. BAKER. Mr. President, I thank the distinguished Senator from Connecticut. There are few Senators who are more dedicated to their principles and philosophy than the Senator from Connecticut, and for that reason I am doubly grateful for his remarks and appreciative of his friendship and the opportunity to serve with him in the Senate.

Mr. President, I understand the minority leader has reserved his right to object; and unless some other Senator wishes to inquire on the substance of

the agreement, in order to protect that reservation, I am prepared to suggest the absence of a quorum.

Mr. JOHNSTON. Mr. President, before the distinguished majority leader suggests the absence of a quorum, I should like to congratulate, thank, and commend the majority leader for his handling of this whole measure. I was in serious doubt that we would get to where we are and certainly in such good grace and good humor so soon.

It could not have been done but for walking an extraordinarily difficult and tenuous and narrow line between firmness and conciliation. The majority leader walked that line, as it turns out, precisely correctly. Last night I wanted him to be more firm, to make more precedents, to use more rules; but in his wisdom, he said, "No, let's do it this way." He did not put it this way, but in effect it allows for the conciliation that makes today's agreement possible.

That is a mark of a great leader, and I commend and thank the leader for the role he has played in this matter.

I especially commend all of our allies that Senator HELMS and I have had in this matter, including the staff who have worked so hard particularly on the parliamentary side of the matter, that part that is sort of below the level of observation but where most of the work is done.

Mr. BAKER. Mr. President, I wish to take this opportunity to express my profound appreciation to the Senator from Louisiana for his remarks.

I am entitled to no credit. I rather am grateful for the opportunity to try to serve the Senate and to do the best we can to permit the Senate to act as it wishes to express its will. But I would be remiss if I did not point out that just as the Senator from Connecticut has been absolutely determined in his point of view, so has the Senator from Louisiana, and I have seldom known anyone who has been more diligent and more determined than the Senator from Louisiana in carrying his point.

I could not even begin to count from memory the number of times that he has consulted with me on matters of scheduling and urged particular points of view and procedures. He has been diligent in the extreme and I owe him a debt of gratitude for that. He has performed admirably, nobly indeed, and I wish to express my appreciation for it.

Mr. HELMS. Mr. President, I still have my membership in good standing in this mutual admiration society. But we should not conclude these remarks without my saying to my friend, LOWELL WEICKER, that I have been on the other side of this coin many times, and I know how frustrating it is particularly when you need help and it sometimes is not there. But I have admired the way Senator WEICKER has kept his good humor.

I will say to him that a week or so ago I walked off the floor, and one of the representatives of the media stopped me and said, "You and WEICKER act like you like each other." And I said, "We not only act that way, as far as I am concerned I like LOWELL WEICKER." I said, "We do not always agree but he is a good man and a good friend."

I thank the majority leader also for his patience. I know he feels like he has been buffeted around from time to time with inconsistences, but as always he has been highly cooperative. He has been entirely fair, and I do compliment him.

And as for BENNETT JOHNSTON, no one could have a better colleague with whom to work on an issue of this sort. I thank him.

Mr. JOHNSTON. Mr. President, if the Senator will yield, I thank him for those remarks. I endorse and associate myself with the remarks of both the majority leader and the Senator from North Carolina in praising the diligence and high spirited sportsmanship and determination of the Senator from Connecticut. He is a very, very tough fighter and I think he really, in my judgment, carried it above and beyond the call of anything expected and more than I thought he could get in terms of time and determination and he is entitled to a great deal of admiration and credit for fighting so valiantly in a lost cause. My admiration for him, indeed my affection for him, is greater since the fight than it was before.

Mr. BAKER. Mr. President, I promise to terminate this—as the Senator from North Carolina said—mutual admiration society colloquy in a moment but not before I have an opportunity to reiterate what I have said so many times from this place and that is there is no Senator in my memory who conducts himself more nearly in the traditions of the Senate and with greater effectiveness than the Senator from North Carolina. He is a pro.

Mr. HELMS. I thank the Senator.

Mr. BAKER. He and I agree most often but we sometimes disagree, but there is never a difference in the personal relationships that exist between us in those different situations. I cannot recall a single time when I have asked the Senator from North Carolina to accommodate a purpose of the Senate that I thought needed to be dealt with when he has not cooperated fully. He is my friend, he is my neighbor, and he is a remarkable Senator.

Mr. HELMS. I thank the Senator very much.

The PRESIDING OFFICER. Is there objection to the request?

Mr. BAKER. Mr. President, prior to the Chair's action I wish to make certain minor revisions in the request. Let me restate it in full so the record will be complete.

Mr. President, I ask unanimous consent that within 5 minutes after the granting of this request, S. 951, the Department of Justice authorizations bill, be set aside.

I further ask unanimous consent that at 9:30 a.m. on Tuesday, March 2, 1982, the Senate resume consideration of S. 951 and at that time there be not to exceed 2 hours of debate equally divided on the Johnston amendment 1252, and upon the disposition thereof the Senate proceed without debate, motion, point of order, or appeal to the disposition of the Heflin amendment 1235.

I further ask unanimous consent that these two amendments be the only amendments in order.

And finally I ask unanimous consent that upon the disposition thereof, without intervening debate, motion, point of order, or appeal, third reading occur to be followed immediately without further debate, motion, point of order, or appeal by final passage of S. 951, as amended, and that no time be allowed for debate of any motion to reconsider and that paragraph 4 of rule XII be waived.

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

Mr. BAKER. I thank the Chair, and I thank all Senators.

I yield the floor, Mr. President.

Mr. JOHNSTON. Mr. President, I now move and ask unanimous consent that amendment 1250 and amendment 449, both now pending, be withdrawn.

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

The text of the agreement follows:

Ordered, That at 9:30 a.m. on Tuesday, March 2, 1982, the Senate resume consideration of S. 951, a bill to authorize appropriations for the purpose of carrying out the activities of the Department of Justice for fiscal year 1982, and for other purposes, and at that time there be not to exceed 2 hours of debate, to be equally divided and controlled, on the Johnston amendment No. 1252, and that upon the disposition thereof, the Senate proceed without debate, motion, point of order, or appeal, to the disposition of the Heflin amendment No. 1235.

Ordered further, That these two amendments be the only amendments in order.

Ordered further, That upon the disposition thereof, without intervening debate, motion, point of order, or appeal, third reading occur, to be followed immediately without intervening debate, motion, or point of order by final passage of S. 951, as amended, and that no debate be permitted on a motion to reconsider.

Mr. BAKER. Mr. President, I am prepared to leave this bill and I hope that in a few moments we may have a unanimous-consent order cleared to provide for the beginning of consideration on the so-called agent identities bill later this afternoon. I may say, however, that it would be just the be-

ginning of consideration. I do not anticipate votes on that measure today.

It is not my intention to ask the Senate to be in session tomorrow.

The Senate will reconvene on Monday and if the agreement is agreed to, which I have referred to, any votes that are ordered on the agent identities bill prior to Tuesday at 2 p.m. will be postponed until after that time. I am not making that request at this moment but rather stating the nature of the request that is now in the clearance process and which I intend to make assuming it is cleared a little later.

Mr. President, I believe the time has come under the order granted now to lay aside S. 951. Is that correct?

The PRESIDING OFFICER. The majority leader is correct.

Mr. BAKER. Then, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The majority leader is recognized.

UNANIMOUS-CONSENT AGREEMENT

Mr. BAKER. Mr. President, I have a unanimous-consent request in respect to the business of the Senate this afternoon, on Monday, and on Tuesday. I believe this has been cleared on both sides, and I am prepared now to put the request.

Mr. President, I ask unanimous consent that at 4 p.m. today, the Senate proceed to consideration of S. 391, the agent identities bill.

I further ask unanimous consent that no call for regular order serve to take that measure off the floor: provided that the unfinished business, Senate Resolution 20, not become the pending business until the final disposition of Senate Resolution 204, the Williams resolution; provided, further, that any rollcall votes ordered on this measure on Monday, March 1, will not occur until Tuesday, March 2, beginning at 2 p.m. and to occur back to back, with the first vote to be 15 minutes and any subsequent votes to be 10 minutes each.

Mr. President, before the Chair puts the request, I also announce that if this agreement is entered into, there will be no more record votes today.

Mr. LONG. Mr. President, reserving the right to object, I should like to look at the agreement a second.

When the Senator makes reference to back-to-back votes, what measure is he referring to?

Mr. BAKER. Mr. President, the request would be that any votes that are ordered on Monday to the agent identities bill would not occur until Tuesday, beginning at 2 o'clock, and that those votes on the agent identities bill would be back to back, with the first vote to be 15 minutes and subsequent votes to be 10 minutes each.

Mr. LONG. I have no objection.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, does the majority leader also state, by virtue of the request presented, that there shall be no other business up on Monday, no business other than the agent identities bill?

Mr. BAKER. Yes.

Mr. President, I think that will be the effect, absent another agreement, in view of the provision against the call for the regular order. But I will include that in the request, that no other business be in order in the course of the business on Monday except by unanimous consent.

Mr. LONG. Mr. President, reserving the right to object, I need to attend a meeting that is presently taking place. Can the Senator tell me why he uses the hour of 4 o'clock?

Mr. BAKER. Yes, Mr. President, because one of the majority participants in the debate will not be ready until 4 o'clock. It is my intention, frankly, to have a quorum call or put the Senate in recess for 20 minutes.

Mr. LONG. I thank the majority leader.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, will the majority leader also assure that there will be no votes on anything on Monday, including conference reports which could be brought up without unanimous consent?

Mr. BAKER. Mr. President, I have no objection to that. I will modify the request so that there will be no votes on Monday, and those votes which are ordered either on the agent identities bill or any other matter which is privileged to come before the Senate, notwithstanding the provision of this order, will be stacked to occur in sequence beginning at 2 o'clock on Tuesday as described.

Mr. ROBERT C. BYRD. Mr. President, I thank the majority leader. I have no objection.

Mr. MATHIAS. Mr. President, reserving the right to object, I inquire of the majority leader whether or not the practical effect of this is that the television question will go over until the Williams question is disposed of.

Mr. BAKER. Yes, that is the intent.

Mr. MATHIAS. So all those who wish to participate and prepare themselves to participate will be governed by that knowledge.

Mr. BAKER. Yes, that is correct.

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

Mr. BAKER. Mr. President, it is 20 minutes before 4 p.m. Under the order just entered the Senate will proceed to the consideration of the agent identities bill at 4 p.m. No other business will be transacted.

I think the better part of discretion will be to ask the Senate to go into recess.

RECESS UNTIL 4 P.M.

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate stand in recess until the hour of 4 p.m. today.

There being no objection, the Senate, at 3:41 p.m., recessed until 4 p.m., whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. DENTON).

INTELLIGENCE IDENTITIES PROTECTION ACT OF 1981

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. 391, the Intelligence Identities Protection Act of 1981, which the clerk will report.

The assistant legislative clerk read as follows:

A bill [S. 391] to amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain United States intelligence officers, agents, informants, and sources and to direct the President to establish procedures to protect the secrecy of these intelligence relationships.

The Senate proceeded to consider the bill (S. 391), which had been reported from the Committee on the Judiciary with amendments, as follows:

On page 3, strike line 7, through and including "information," on line 13, and insert the following:

"(c) Whoever, in the course of an effort to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States by the fact of such identification and exposure, discloses to any individual not authorized to receive classified information, any information that identifies an individual as a covert agent,

On page 5, line 15, after "agency,", insert the following: "other than the Peace Corps,".

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intelligence Identities Protection Act of 1981".

SEC. 2. (a) The National Security Act of 1947 is amended by adding at the end thereof the following new title:

"TITLE VI—PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION

"PROTECTION OF IDENTITIES OF CERTAIN UNITED STATES UNDERCOVER INTELLIGENCE OFFICERS, AGENTS, INFORMANTS, AND SOURCES

"SEC. 601. (a) Whoever, having or having had authorized access to classified information that identifies a covert agent, intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information,

knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined not more than $50,000 or imprisoned not more than ten years, or both.

"(b) Whoever, as a result of having authorized access to classified information, learns the identity of a covert agent and intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined not more than $25,000 or imprisoned not more than five years, or both.

"(c) Whoever, in the course of an effort to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States by the fact of such identification and exposure, discloses to any individual not authorized to receive classified information, any information that identifies an individual as a covert agent, knowing that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than $15,000 or imprisoned not more than three years, or both.

"DEFENSES AND EXCEPTIONS

"SEC. 602. (a) It is a defense to a prosecution under section 601 that before the commission of the offense with which defendant is charged, the United States had publicly acknowledged or revealed the intelligence relationship to the United States of the individual the disclosure of whose intelligence relationship to the United States is the basis for the prosecution.

"(b)(1) Subject to paragraph (2), no person other than a person committing an offense under section 601 shall be subject to prosecution under such section by virtue of section 2 or 4 of title 18, United States Code, or shall be subject to prosecution for conspiracy to commit an offense under such section.

"(2) Paragraph (1) shall not apply in the case of a person who acted in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States.

"(c) It shall not be an offense under section 601 to transmit information described in such section directly to the Select Committee on Intelligence of the Senate or to the Permanent Select Committee on Intelligence of the House of Representatives.

"(d) It shall not be an offense under section 601 for an individual to disclose information that solely identifies himself as a covert agent.

"PROCEDURES FOR ESTABLISHING COVER FOR INTELLIGENCE OFFICERS AND EMPLOYEES

"SEC. 603. (a) The President shall establish procedures to ensure that any individual who is an officer or employee of an intelligence agency, or a member of the Armed Forces assigned to duty with an intelligence agency, whose identity as such an officer, employee, or member is classified information and which the United States takes affirmative measures to conceal is afforded all appropriate assistance to ensure that the identity of such individual as such an officer, employee, or member is effectively concealed. Such procedures shall provide that any department or agency, other than the Peace Corps, designated by the President for the purposes of this section shall provide such assistance as may be determined by the President to be necessary in order to establish and effectively maintain the secrecy of the identity of such individual as such an officer, employee, or member.

"(b) Procedures established by the President pursuant to subsection (a) shall be exempt from any requirement for publication or disclosure.

"EXTRATERRITORIAL JURISDICTION

"SEC. 604. There is jurisdiction over an offense under section 601 committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act).

"PROVIDING INFORMATION TO CONGRESS

"SEC. 605. Nothing in this title may be construed as authority to withhold information from the Congress or from a committee of either House of Congress.

"DEFINITIONS

"SEC. 606. For the purposes of this title:

"(1) The term 'classified information' means information or material designated and clearly marked or clearly represented, pursuant to the provisions of a statute or Executive order (or a regulation or order issued pursuant to a statute or Executive order), as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.

"(2) The term 'authorized', when used with respect to access to classified information, means having authority, right, or permission pursuant to the provisions of a statute, Executive order, directive of the head of any department or agency engaged in foreign intelligence or counterintelligence activities, order of any United States court, or provisions of any rule of the House of Representatives or resolution of the Senate which assigns responsibility within the respective House of Congress for the oversight of intelligence activities.

"(3) The Term 'disclose' means to communicate, provide, impart, transmit, transfer, convey, publish, or otherwise make available.

"(4) The term 'covert agent' means—

"(A) an officer or employee of an intelligence agency or a member of the Armed Forces assigned to duty with an intelligence agency—

"(i) whose identity as such an officer, employee, or member is classified information, and

"(ii) who is serving outside the United States or has within the last five years served outside the United States; or

"(B) a United States citizen whose intelligence relationship to the United States is classified information, and—

"(i) who resides and acts outside the United States as an agent of, or informant or source of operational assistance to, an intelligence agency, or

"(ii) who is at the time of the disclosure acting as an agent of, or informant to, the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation; or

"(C) an individual, other than a United States citizen, whose past or present intelligence relationship to the United States is classified information and who is a present or former agent of, or a present or former informant or source of operational assistance to, an intelligence agency.

"(5) The term 'intelligence agency' means the Central Intelligence Agency, a foreign intelligence component of the Department of Defense, or the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation.

"(6) The term 'informant' means any individual who furnishes information to an intelligence agency in the course of a confidential relationship protecting the identity of such individual from public disclosure.

"(7) The terms 'officer' and 'employee' have the meanings given such terms by sections 2104 and 2105, respectively, of title 5, United States Code.

"(8) The term 'Armed Forces' means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

"(9) The term 'United States', when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

"(10) The term 'pattern of activities' requires a series of acts with a common purpose or objective.".

(b) The table of contents at the beginning of such Act is amended by adding at the end thereof the following:

"TITLE VI—PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION

Sec. 601. Protection of identities of certain United States undercover intelligence officers, agents, informants, and sources.
Sec. 602. Defenses and exceptions.
Sec. 603. Procedures for establishing cover for intelligence officers and employees.
Sec. 604. Extraterritorial jurisdiction.
Sec. 605. Providing information to Congress.
Sec. 606. Definitions.".

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DENTON. Mr. President, I rise in support of S. 391. On February 3, 1981, our distinguished colleague Senator JOHN H. CHAFEE of Rhode Island introduced the Intelligence Identities Protection Act of 1981. This bill, which currently has 46 cosponsors, was reported from the Committee on the Judiciary on October 6, 1981.

S. 391 is a bill to amend the National Security Act of 1947, to prohibit the unauthorized disclosure of information identifying certain U.S. intelligence officers, agents, informants, and sources, and to direct the President to establish procedures to protect the secrecy of these intelligence relationships.

Events transpiring in the world have been increasingly demonstrative of the need for maintaining a strong and effective intelligence apparatus. It fol-

lows, therefore, that unauthorized disclosures of information identifying individuals engaged in, or assisting in, our country's foreign intelligence activities, undermine the intelligence community's human source collection capabilities as well as endanger the lives of our intelligence officer in the field.

The disclosure of the identity of a covert agent is an immoral, nationally, and personally harmful act that cannot be tolerated. Prohibition of this activity as defined by the bill would in no way inhibit an individual from speaking out against Government programs that are wasteful. It would not impede the whistleblower who seeks to enhance his Government's ability to perform more efficiently by bringing to the attention of those in responsible positions deficiencies, such as fraud or waste, in the agency in which the whistleblower serves. The reprehensible activities which this bill is designed to criminalize have repeatedly exposed honorable public servants to personal peril and vastly reduced their effectiveness in pursuing their endeavors with significant detriment to national security. The insensitivity and moral degeneracy on the part of those who seek to undermine the effectiveness of our intelligence capability are so inimical to our American democratic system that it seems evident that what we are about to do today should not be necessary. This bill is indeed overdue for passage.

While in a free society we must welcome public debate concerning the role of the intelligence community as well as that of other components of our Government, the irresponsible and indiscriminate disclosure of names and cover identities of covert agents serves no salutory purpose whatsoever. As elected public officials, we have the duty, consistent with our oaths of office, to uphold the Constitution and to support the men and women of the U.S. intelligence service who perform important duties on behalf of their country, often at great personal risk and sacrifice.

Extensive hearings before the House and Senate Intelligence Committees and the Subcommittee on Security and Terrorism have documented the pernicious effects which have resulted from these disclosures or identities. An underlying, basic issue is our ability to continue to recruit and retain human sources of intelligence whose information is crucial to our Nation's survival in an increasingly dangerous world.

It seems mind-boggling to me that no existing law clearly and specifically makes the unauthorized disclosure of clandestine intelligence agents' identities a criminal offense. Therefore, as matters now stand, the impunity with which unauthorized disclosures of intelligence identities can be made implies a governmental position of neutrality in the matter. It suggests that the U.S. intelligence officers are "fair game" for those members of their own society who take issue with the existence of a CIA or find other perverse motives for making these unauthorized disclosures.

Through the lengthy hearings that have occurred over the past several sessions of the Congress, we have heard a substantial amount of testimony regarding the possible constitutional problems engendered by provisions of this bill. As we all appreciate, in this area of identities protection, we have steered a course carefully charted between two enormous interests: On the one side, we have the protection of a constitutional right of free speech and, on the other side, the vital need to protect the effectiveness of U.S. intelligence gathering around the world. During all of the hearings and debates, great care has been taken to construct a provision that would reach the activity to be proscribed, that is, "naming names," in such a way as to do no violence to the first amendment to the Constitution. I believe we, and those who labored previously on this measure, have been successful.

On June 29, 1981, the Supreme Court of the United States in a 7-to-2 decision sustained the authority of the President, acting through the Secretary of State, to revoke a passport of a U.S. citizen on the grounds that the holder of the passport is engaged in activities abroad that are causing serious damage to the national security of foreign policy of the United States.

This decision, Haig, Secretary of State against Agee, has a major relationship to this bill in that the Court's review of this matter established the serious nature of the activity of naming names to identify and expose covert agents. Furthermore, the Court's decision suggests that the issues involved here are, from a constitutional standpoint, relatively clear cut. This decision established that S. 391 will withstand a first amendment challenge in the courts. Even Justice Brennan stated in his dissent that:

> It may be that respondent's first amendment right to speak is outweighted by the Government's interest in national security.

Mr. President, I view this as a bipartisan issue. I believe immediate action must be taken to curtail these activities which have been so determental to our intelligence-gathering capabilities and, ultimately, to our national security. If any legitimate criticism is to be leveled at this bill it would, in my view, relate to insufficient criminal sanctions for what I consider to be a most egregious offense that borders on treason.

Frankly, I am grateful for the spirit of cooperation that has enabled this important bill to be brought to the floor but I am concerned that it has taken so long to do so. I look forward to the prompt consideration of this measure on the floor today and its early enactment in a form that most adequately addresses this serious gap in the Federal Criminal Code.

Finally, I want to commend my colleague from Rhode Island, Senator CHAFEE, for his initiative and unceasing efforts on this vital measure. I also want to thank staff members Rob Simmons, Will Lucius, and Sam Francis for their valuable contributions on S. 391. These gentlemen, along with many others, have put in many long hours on this legislation and I feel they deserve our strong commendation.

There has been a strong bipartisan tone in the discussions on this matter in committee. In the spirit of that bipartisanship I have worked with the minority floor manager of this bill and have come to respect him greatly.

I am now pleased to yield to the Senator from Delaware.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. I thank the Senator.

I, too, would like to begin by complimenting the Senator from Rhode Island, Senator CHAFEE, who serves with me on the Intelligence Committee, has had for some time a preeminent interest in doing something about protecting, the safety of agents of the U.S. Government. These agents, acting on behalf of our Government, and in the interests of the people of the United States of America, are subject to the outrageous public exposure by individuals, some of whom are former members of those agencies, who have deliberately put them at risk.

It was beyond any question in my mind that those people who are deliberately engaging in this practice are fully aware of the fact that such exposure can and has resulted in the loss of life and the breach of security and, consequently, affected the interests of the United States of America.

I, too, believe as does the Senator from Rhode Island and the Senator from Alabama, indeed I think we are all in agreement that it is high time we finally got this thing to the floor. It is high time we get a vote.

We had a number of debates. I see the distinguished Senator from Arizona, chairman of the Committee on Intelligence, here. He is fully aware of the subject, fully cognizant of it. He, in his capacity on that committee, has heard all the arguments and debates on this. We have had it through his committee and the Judiciary Committee. In the 10 years I have been in the U.S. Senate, there have not been many issues that have been as thoroughly, fully debated as this one. So I think it is high time we got on with the issue of deciding what are the only really

one or two controversial aspects of the bill. We are 99 or 90 percent in agreement as to what form this protection of our agents should take.

I should like to suggest, and I think it is appropriate—it is common practice that we should move, probably, the committee amendments. This is the Judiciary Committee the Senator from Alabama and I are representing today. I ask unanimous consent that we consider and agree to en bloc the amendments as adopted in the committee on this bill.

The PRESIDING OFFICER. Is there objection?

Mr. DENTON. Mr. President, I reserve the right to object.

Mr. BIDEN. Mr. President, I amend that to say and that the bill as thus amended be considered as original text.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from Delaware as amended?

Is it the request of the Senator to have the amendments be agreed to en bloc?

Mr. BIDEN. That is correct.

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

The committee amendments were agreed to en bloc.

Mr. BIDEN. I thank the Chair for the help.

Mr. President, let me, if I may, at least from my perspective, outline in just a few minutes the essential elements of the bill as I see it so our colleagues, as they go forward with their efforts and their homework tonight and tomorrow and on the weekend, reading the RECORD of what the debate is about, will have a starting point at least.

The whole purpose of this bill is to penalize the disclosure of names by three classes of persons, but it really is only the third class of person we have a debate about as to how we should do it. The first is in section 601 (a) and (b) and they deal with present and former Government employees who have had access to the names of agents or who, because they had access to classified information, are able to determine the names of the agents. In subsection (d), that deals with individuals outside the Government who disclose the names of agents even though they never had access to classified information.

There are two formulations of section (c) that really are the cause of some debate here, in the Senate, and that we shall be debating at the beginning of next week, the so-called reason-to-believe version, which reads as follows:

Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, etc.

We are talking about the third class of person now, not the person who has had access to classified information. These are persons outside the Government who disclose the names, the standard we want to judge them by. The first standard we are going to argue about is the one I just read.

Another version is the version adopted by the Judiciary Committee. It is the intent version. It is a response to some of the arguments raised by some of the constitutional scholars and press groups who contend that the reason to believe version is unconstitutional and/or unnecessarily broad. The intent version reads as follows:

Whoever, in the course of an effort to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the U.S. by the fact of such identification and exposure,

And so on.

That is what we are going to be arguing about. That is what it is all about. That is what it comes down to—whether or not we have the operative language that would make it a crime and subject those persons to a criminal penalty who reveal the names of agents, who have not had access to the names of these agents through classified information in the past, fall outside of Government but, nonetheless, by whatever means, gain access to it: a reporter who finds out that John Doe is a CIA agent and he publishes John Doe's name; or somebody who deliberately goes on a witch hunt to find out the names of those people, gathers them up and publishes them for purposes of exposure. They are the folks we are after.

So what we are going to be arguing about—not so much today because we are not going to spend a lot more time here today—is how do we get to those folks, how do we treat them, and by what standard of law do we apply to them?

On the fairness position argued by the Senator from Rhode Island, the Senator from Alabama and others, a case can be made that the civil liberties of Americans are better protected by the reason to believe standard. So our colleagues are going to hear a lot of confusing, well-intended jargon on both sides. We are going to have the Senator from Rhode Island arguing, if we really want to protect civil liberties, we should adopt reason to believe. We are going to have the Senator from Delaware say, no, it is better to have an intent standard.

I do not have any doubt in my mind at the beginning of this debate that the Senator from Rhode Island means what he says, that he truly believes the best way not only to protect our national interest but also not to violate the civil liberties of our American citizens under the first amendment is to adopt the reason to believe. I happen to disagree with that. So we are about to get into a debate that I believe is borne out by a genuine belief on both our sides that we can get the job done with our language and protect civil liberties.

Mr. President, I think it is useful for us to really understand just how narrow the difference is, because it gets kind of complicated. We are going to get into fairly esoteric arguments and it is a little bit hard to follow. I suspect that we shall both or all of us on the floor may very well—at various times in the debate, our decibel rates may rise and we may also be making appeals as to the same basic set of arguments and our colleagues are going to argue, how can they both be saying the same thing?

Mr. President, there is much more to talk about in this bill. There is a section on whether it is constitutional to penalize nonemployees. We are going to be talking about what happens without the intent language, what happens with the intent language. We are going to be arguing about what the Agency thinks will get the job done, we are going to be arguing about how badly all these things are needed. Rather than get into those things now and rather than make a more lengthy floor statement, I want to reiterate where the bone of contention is going to come.

The argument we are going to be focusing on in this bill is whether or not the language which says "with the intent to impair or impede" should be stricken and we should have language that says "with reason to believe." It is going to come down to that. That is the big issue. I am anxious to get it settled. I am anxious to have a resolution, because we need a bill. These folks need protection and I am confident that whatever version we come out with we can get passed in the U.S. Congress, we can get the President to sign, and we can get on with the business of putting it in shape. So without getting into the details of my argument as to why I think we should stick with the committee version, let me yield to my colleagues who also have opening statements and, maybe, a different perspective on this question.

Mr. DENTON. Mr. President, first I would pose a rhetorical question to the Senator from Delaware. I wonder why the Senator is so firm on the intent standard regarding the application of legislation to protect the lives of our intelligence agents and yet does not come down on that same standard on the issue of voting rights.

Mr. BIDEN. I said it was going to be an interesting debate. I will be happy, since it was a rhetorical question, to speak to that question in some detail as we get down the line here.

Mr. DENTON. I yield to the Senator from Arizona.

Mr. GOLDWATER. Mr. President, I thank my friend. The Intelligence Identities Protection Act (S. 391) before us today will help protect our intelligence personnel on difficult and dangerous assignments in foreign countries. It also will help stop our intelligence sources from turning away from us because they are afraid we cannot be trusted to protect them. It might help us get information that is vital to the security of our country.

Last November, the "Covert Action Information Bulletin" published the names of 69 alleged CIA officers serving in 45 countries abroad in a section titled "Naming Names." In addition, the "Bulletin" reprinted the names of 272 alleged covert agents which had been identified in the 12 previous editions of the magazine.

One week later, the pro-Sandinist paper, Nuevo Diario, identified the names of 13 alleged CIA officers assigned to the U.S. Embassy in Managua, Nicaragua. Several of those named have already received death threats, been roughed up in their homes at night, and the families of a number of these American officials have been evacuated for their personal safety. U.S. officials in Managua have linked the publication of these names with the visit of Philip Agee to Nicaragua last month.

There has already been one murder. Richard Welch was murdered in Greece after being named. In 1980, two attempts were made in Jamaica to assassinate American personnel. They were set up as targets for assassination by other Americans through the unauthorized disclosure of names. There are two ways this is being done. One is the naming of names at press conferences, and the other is listing names in books and publications. These unauthorized disclosures have been extensive and many have been made by former CIA employees. The tragedy is that we do not have any laws to stop it.

It is bad enough that our overseas employees are exposed to violence, but to allow someone here at home to do it by putting ID tags on them so that they may become targets makes no sense at all.

So far, some 1,200 names have been made public in magazines or newspapers. Another 700 appeared in a book. A bimonthly bulletin exposes CIA, FBI, and military intelligence personnel and assignments. A worldwide network called CIA watch is operated for the purpose of destroying the CIA.

Every time I read about something like this, it bothers me, I cannot help but wonder why we let it continue and why someone does not do something about it. That seems to me as morally wrong as anything I can think of and something I can accept no longer.

We are in a rut on this subject, and I am afraid it will become our grave if we do not stop talking and do something. We must tell the world that we will not tolerate such disclosures any longer and show that we care for the CIA and plan to do something about it.

Thus, the immediate goal for this Nation—and for this Congress—should be the rebuilding and revitalization of the intelligence community which will benefit all our citizens.

We should have had this bill before us sooner, but now that it is before us, we must act promptly. This bill was reported from the Senate Intelligence Committee by a vote of 13 to 1 in 1980, after 9 days of hearings and over 650 pages of testimony. It picked up 47 cosponsors in 1981. It passed the House by a vote of 354 to 56 last year, and has had the support of both the Reagan and Carter administrations.

The purpose of this bill is to protect the lives of American citizens working abroad in the intelligence operations of this country from other American citizens who deliberately wish to set them up for exposure to violence by the unauthorized disclosure of names.

The bill also places a price on the activities of those who use this means to impair and impede duly authorized American intelligence activities around the world.

The biggest obstacle to this bill in the past were claims that it would interfere with free speech and freedom of the press. That has been worked out, and those claims are phony. The Supreme Court would not hesitate to say so if Congress were to go too far.

If someone wants to criticize foreign policy, that is their business. If they want to write about the lousy conduct of some of our citizens, that is OK, too. But they do not have to name names, because that places the lives of human beings in danger. That is not OK. It is not acceptable in the American society.

There have been at least six bills on both sides of the Capitol to deal with this, but all of them have been bogged down in discussions over how best to arrange words. The problem has been how to protect first amendment rights while allowing for prosecution of those who abuse those rights. I hope we have not become so helpless that we cannot recognize a serious situation and solve it just because we cannot agree on words. I believe that first amendment rights were considered and that the bill will protect those rights while allowing for prosecution of those who name names solely for the purpose of harming the Government's foreign intelligence activities. There is another amendment in the Constitution that is important, too. That is the 14th amendment, which guarantees the right of equal protection to all citizens. I believe this bill will protect those rights and the first amendment at the same time.

This bill will outlaw unauthorized disclosure of names in three ways. First, it covers those who have access to classified information which identifies names. Second, it applies to those who have access to classified information but not names, and who learn of names because of that access. Third, it hits those who make a business of naming names in a deliberate and systematic way even though they claim not to have access to classified information.

Some have said that this bill will not do much more than help patch the image of the CIA. I believe that there is a lot more at stake than that. It has nothing to do with whether you like the CIA or do not like the CIA. Saving lives is what this bill will do. This is so serious that if we do not pass this bill the KGB people are the only ones who will get a laugh out of it. Everyone else will think we are crazy and start looking at us as accessories to negligent homicide. It would mean that we would prefer to protect those who would harm us instead of those who work for us.

A high-ranking CIA official testified before the Senate Intelligence Committee in these words:

> Our intelligence sources and methods are part of the national treasure. Once disclosed, our sources can be denied to us and our methods thwarted by relatively simple actions by foreign authorities. The law currently lacks teeth in seeing to it that these sources and methods are adequately protected from unauthorized disclosure.

Mr. President, those words certainly make sense. There is no good reason why our intelligence employees or agents who operate under protective cover on official Government business should be placed in needless danger by permitting their identities to be revealed deliberately.

Mr. President, I might comment that we are the only country in the world that allows this to go on. The penalty for doing this in any other country would undoubtedly be death or life imprisonment. But we allow it to go on out of an office on DuPont Circle, and I am fed up with it.

These disclosures of identities have no redeeming social value and were clearly not intended to be within the freedom of speech or of the press incorporated in the first amendment to our Constitution.

Nearly all major foreign intelligence services with which the United States has liaison relationships have undertaken reviews of their relations with the Agency. Some immediate results of continuing disclosure have included reduction of contact, reluctance to engage joint operations, and reduced exchange of information.

That in itself is a very serious thing to have happened to our country when we cannot exchange classified intelligence information with other countries and slowly lose them as sources because they are afraid for the lives of their own people and they do not like the possible disclosure of top secret information of their own.

There is an urgent need for effective legislation both to discourage these unauthorized disclosures and to criminalize them when they occur. The credibility of our country in its relationships with foreign liaison services and agent sources is at stake. The personal safety and well-being of patriotic Americans serving their country in the far reaches of the globe are at stake. The professional effectiveness and morale of this country's intelligence officers is at stake. In sum, the Nation's national security is at stake.

U.S. intelligence officers overseas must establish what are, in effect, contratual relationships with foreign nationals occupying key posts and who are willing to provide information to the U.S. Government. Since many of our most valuable intelligence sources live in societies were anything less than total allegiance to the state could subject an individual to loss of life or liberty, they rightfully demand an absolute assurance that the cooperative relationship they are about to enter into will remain private. You can imagine the effect it must have on a source who one day discovers that his contact has been openly identified as a CIA officer. The impact in this regard is twofold. First, there is a substantial adverse impact on the CIA's ability to collect intelligence; second, some of our foreign sources, who, notwithstanding the disclosures, must remain in place, may be subject to severe punishment or worse.

As matters now stand, the intentional exposure of covert intelligence personnel without punishment implies a governmental position of neutrality in the matter. It suggests that U.S. intelligence officers are fair game for those members of their own society who take issue with the existence of CIA or find other motives for making these unauthorized disclosures.

I have outlined several reasons why legislation is necessary to solve this problem of unauthorized disclosures of identity. I believe that timely action in this regard is very important to national security. It hinges not only on the protection of our intelligence officers and contacts but on the diminished quality of intelligence we can expect to receive unless we take action now.

It seems to me that we sometimes forget that the intelligence agencies are on our side and sometimes need our help. It makes no sense for us always to be looking for faults.

This is an emergency situation that needs legislation to deal with it now. We cannot avoid this issue just because we may get some bad press. We must pass the Chafee-Jackson amendment, and we must pass this bill. We must have the courage to do what is right. This bill is good for our fellow Americans who serve us on difficult and dangerous missions abroad. And it will do us a lot of good, too.

Mr. President, the most important function of the legislative branch is to legislate when it is needed. We need it now. Let us go ahead with Senator CHAFEE and Senator JACKSON's amendment.

I wish to take this opportunity to thank the Senator from Rhode Island for his constant courage in pushing forward on this matter. It is long, long overdue, and it will do more in my humble opinion to once again create a giant and effective force of intelligence in this country than anything I can think of, a force which was diminished by the so-called Church committee which almost deprived us of intelligence during the years it was in existence.

Mr. President, I yield the floor.

Mr. DENTON. Mr. President, I was delinquent in not yielding to my admired friend from Arizona more elaborately.

He ran for the Presidency in 1964, and the respect held for him in the hearts of the people of my State was such that he not only won that State in that election but he got the first five Republican Congressmen from Alabama since Reconstruction elected on his coattails.

I have had personal opportunity to admire him for decades, and then to serve with him on the Armed Services Committee and to be invited by him to participate in hearings on the Select Committee on Intelligence, and I cannot think of a man in the United States to whom we owe more for protecting this Nation's security interests.

I strongly recommend that we pay close attention to what he just had to offer us.

I will yield to the distinguished Senator from Rhode Island who has been a central figure in bringing this measure to the floor.

Mr. CHAFEE. Mr. President, I thank the distinguished Senator from Alabama for that kind introduction and I thank the senior Senator from Arizona for his very kind comments. It is a pleasure to work with Chairman GOLDWATER on the Intelligence Committee where we have been together now for some 6 years. Also, by happy coincidence, the floor leader for the minority on this issue, representing the Judiciary Committee, also serves on the Intelligence Committee. So he is very, very familiar with the issues that we are struggling with here today. He lends great insight to the problems that we face.

Mr. President, briefly let me review the matter.

We have members who serve on the Senate Intelligence Committee who travel around the world and spend a good deal of time with American intelligence agents both at home and abroad. They are fully aware that the most nagging problem facing our agents—one which elicits the greatest concern from those who lead the Intelligence Agency—is the fact that names of alleged agents are published freely by American citizens. As the distinguished floor leader for the minority on this issue pointed out, we have tried in this legislation, whether it is the committee's bill or whether it is in the amendment that Senator JACKSON and I have proposed, to prohibit the publication of these agent's names from three sources of publication, or potential sources of publication.

The first category of person naming names is the person who had authorized access to information that identifies a covert agent. This person may work for an intelligence agency. The second category deals with those who had access to some secret information but they themselves did not have specific access to the name of a covert agent.

Finally, you come to the most difficult group of persons naming names. This category includes those who did not serve or are not currently serving in an intelligence agency, and who do not have access to classified information. Nonetheless they proceed to identify names of alleged agents through determined efforts on their part to ferret out the names of what might be agents, and then they proceed to publish these names.

That is the cause of the problem, and that presents the difficulty we have here this afternoon as we debate this legislation. Can you punish someone who himself has never had access to classified information, who never, perhaps, served in an intelligence agency, but who, using unclassified documents, a whole series of them, carefully searches through them and ferrets out and produces names alleged to be intelligence agents, and publishes them?

The Senate Judiciary Committee came forward with language to take care of this problem with what I will refer to as the committee language.

This language states:

> Whoever, in the course of an effort to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States . . .

Somebody goes out, he spends an incredible amount of time, he goes through a whole series of unclassified documents, and then with the intent to expose the name of an agent in

order to impair the activities of the United States, goes ahead and publishes these names.

On the other hand, in the amendment that I will call up, the language is somewhat different. The language in my amendment says, "Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede." As the distinguished Senator from Delaware mentioned, it seems we might be arguing and nitpicking over words here. One talks about the "intent" to impair the intelligence activities of the United States, and the other talks about "reason to believe" that the disclosure of these names would impair the intelligence activities of the United States.

First, let me say this: We have been working on this entire subject now for over 2 years. I will say, how delighted I am that we have this legislation on the floor now. In one way or another it seems apparent that legislation is going to pass dealing with this problem. That in itself is a mammoth step forward. Indeed, in the Judiciary Committee, the committee language passed unanimously, and the amendment that I presented barely failed by a vote of 8 to 9. But if it had passed I suspect that that language would have also been approved by the committee.

In other words, one way or another there is unanimity, I believe, in this body that we will pass legislation to curb the disclosure of the names of alleged agents working for our intelligence agencies.

As I mentioned earlier, we have found this to be the principal sore spot with those who serve this country abroad. How is it possible, they say, that fellow Americans can disclose names of alleged agents who are serving at their personal peril around different trouble spots of the world? Why do we permit this to happen?

When this legislation is passed, and the House has passed language similar to that in my amendment, and if my amendment prevails, which I hope it will, then we will not have to go to conference on this subsection. If my amendment fails, then we will go to conference, but one way or another language is going to come out. An act is going to be passed by this body, that will wrestle in a determined manner with this problem.

Let me briefly give a bit of history, if I might, but before proceeding to that, let me call up my amendment.

(By request of Mr. DENTON the following statement was ordered to be printed in the RECORD:)

● Mr. THURMOND. Mr. President, this bill represents the culmination of a great deal of work during at least two Congresses. Legislation of this nature has been examined in one form or another by both the Intelligence Committee and the Judiciary Committee since early 1980. Hearings have been held, there has been lengthy debate, and each and every section has been closely and carefully scrutinized. I do not believe that there is much disagreement in the Senate as to whether or not legislation of this type is needed, and I think that it is time for the Senate to say with a loud and clear voice that we do not condone the type of action prohibited by this bill.

This measure aims at protecting the identities of those individuals whose anonymity serves the interest of the country. Moreover, this legislation would insure an appropriate balance between individual rights and the absolute necessity for secrecy in intelligence collection vital to the security of the Nation.

The prohibitions contained in S. 391 are directed at punishing those individuals who intentionally and without authorization disclose information identifying intelligence officers and agents of the United States. This bill is not intended to apply to members of the press or others engaged in legitimate activities protected by the first amendment. It is intended, however, to stop those people who are in the business of "naming names" of our covert agents.

We must keep in mind the special needs of the brave and unsung employees of the intelligence agencies of this country. We must remember, too, that uninformed policymakers cannot properly serve the people, and without the information these employees provide, the American people will suffer.●

● Mr. GRASSLEY. Mr. President, earlier this year, as a member of the Senate Judiciary Committee, I voted in favor of S. 391, as originally introduced. I intend to reaffirm my strong support for the bill here today and I hope that we can restore the bill to its original form.

In this bill, as in other bills that the Judiciary Committee has studied in this and the prior session, we have been asked to balance first amendment rights against the Government's ability to "suppress" information necessary to protect the men and women of the intelligence community, whose secret work is vital to the Nation's security.

Some have opposed this legislation. The opposition states that the bill undermines first amendment rights. But, overwhelmingly, it has been viewed and it should be viewed as an attempt to bolster or protect our covert intelligence and counterintelligence agents.

I have been convinced beyond a reasonable doubt that this legislation is needed to prohibit the systematic exposure of agents' identities under circumstances that pose a clear threat to intelligence activities vital to the Nation's defense. I am also convinced that this bill goes to great lengths to distinguish between the ghoulish business of furnishing the enemies of the United States with information that invites and facilitates violence against its agents and mere reporting. I am satisfied with the terms of this bill and the protection that it affords. I encourage all of my colleagues to support this bill and its goals.●

AMENDMENT NO. 1256

(Purpose: To describe criminal liability for the disclosure of certain information identifying an individual as a covert agent)

Mr. CHAFEE. Mr. President, I call up my amendment numbered 1256.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Rhode Island (Mr. CHAFEE) for himself, Mr. JACKSON, Mr. ABDNOR, Mr. COCHRAN, Mr. D'AMATO, Mr. DENTON, Mr. DOMENICI, Mr. EAST, Mr. GARN, Mr. GRASSLEY, Mr. GOLDWATER, Mr. HAYAKAWA, Mr. HATCH, Mrs. HAWKINS, Mr. HELMS, Mr. HUMPHREY, Mr. LAXALT, Mr. LUGAR, Mr. MATTINGLY, Mr. NICKLES, Mr. SCHMITT, Mr. SIMPSON, Mr. SYMMS, Mr. THURMOND, Mr. TOWER, Mr. WALLOP, and Mr. WARNER) proposes an amendment numbered 1256:

On page 3, beginning with line 13, strike out all through "agent," on line 19 and insert in lieu thereof the following:

"(c) Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information,".

Mr. CHAFEE. Mr. President, the guts of this debate here this afternoon and Monday and Tuesday morning presumably will revolve around the amendment I have submitted.

As I previously indicated, the rest of the language of this legislation appears to be noncontroversial and that is a tremendous step forward because such certainly was not true some 2 years ago when we first presented this language.

On this amendment, in which I am joined as a principal cosponsor by Senator JACKSON of Washington, and by some 25 other Senators, I now review a bit of history, if I might, on the background of the amendment.

The language which I am presenting along with Senator JACKSON is the language which was originally proposed and referred to the Senate Committee on the Judiciary. It emerged from the Subcommittee on Security and Terrorism headed by the distinguished Senator from Alabama, and then was considered in the full committee. There this language was rejected by a very close vote of 9 to 8.

In my judgment, the committee language, which was adopted—and let me

call it the committee amendment—substantially weakens the language which was originally in the bill which was adopted by the House, and which is in my amendment.

Therefore, I am presenting this amendment, which passed in the House of Representatives last fall by a vote of 354 to 56. It is the language which the Senate Intelligence Committee originally adopted in 1980 by a vote of 13 to 1.

Now, President Reagan has stated that our language—and by our language I mean the Chafee-Jackson language—is "far more likely to result in an effective law that could lead to successful prosecution," than the committee language.

Mr. President, the key difference between the committee and the Chafee-Jackson language relates to the standard of proof that would be used in a prosecution. The committee language requires that there be an effort to identify and expose agents with the intent to impair or impede the intelligence activities of the United States.

Our language requires that there be a pattern of activities intended to identify and expose agents, with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States. In other words, the difference is the committee language depends on the subjective intent of the person engaged in naming names whereas our language uses an objective standard of proof.

(Mr. HAYAKAWA assumed the chair.)

Mr. CHAFEE. I will explain this further as we go along. But, at this point, let me say that it places the intent of the defendant under our language where it should be in a criminal act—on the intention to perform the harmful act. The committee language focuses on the subjective intent of the defendant to do harm.

The reasons for these differences rises out of the debate we had on this issue last year. I would like to summarize some of the background of the debate.

In January of 1980, over 2 years ago, Senator JACKSON and I joined Senator MOYNIHAN in introducing the Intelligence Reform Act of 1980 (S. 2216). That bill contained a section designed to protect agent identities which depended on a subjective standard of intent—in other words, when we originally introduced this bill, we also had this subjective standard of intent. What did the person intend to do inside their breast?

Now, when we had the hearings before the Senate Intelligence Committee in June of 1980, a number of witnesses expressed concern with this language. For example, Mr. Floyd Abrams testified that he did not support the intent standard for the following reasons:

> I don't think that their intent—
>
> Meaning the accused—
>
> ought to bear on your decision. They—
>
> The accused—
>
> do bad things maybe for bad reasons but the question I would urge on you at least is whatever the intent is, whether you ought to start down the road of deciding what can be said or written by people who don't happen to work for the Government, whether you like or approve of their intent or not. I don't think that factor ought to be that they don't like the CIA. They may not have a constitutional right to publish certain information but they have absolute right to like or dislike what they choose.

And Mr. Morton Halperin, of the ACLU, said about the same thing. He said:

> I think that a citizen has the right to impair or impede the functions of a government agency whether it is the Federal Trade Commission or the CIA. The fact that your intent is to impair or impede those agencies does not make your activity a crime if it is otherwise legal.

Now, because of these concerns about intent, the staffs of the Senate Intelligence Committee and the Justice Department began working on an alternative standard of proof which would remove the problems of the specific intent standard. Eventually, we came up with language which utilized what they call an objective standard of intent. The Carter administration's Justice Department endorsed this language.

In a letter to Chairman Bayh, who was then the chairman of the Senate Intelligence Committee, the Deputy Attorney General of the United States, Mr. Renfrew, wrote as follows about this objective standard:

> This formulation substantially alleviates the Constitutional and practical concerns expressed by the Justice Department with regard to earlier versions of this bill that included a requirement that prohibited disclosures be made with a specific "intent to impair or impede" U.S. intelligence activities.
>
> Because of the significance of this matter, however, it has been our view from the beginning that such legislation as is enacted must be fair, effective and enforceable. Our position has been and remains that the absence of an intent element in this legislation will accomplish this goal.

Let me just briefly summarize what we are talking about here. Under the committee language, it is said that you have to have an intent to impair the intelligence activities of the United States before you are guilty. We say that is not the right standard. Somebody might be impairing intelligence activities but not with the intent to do so. Somebody might be disclosing names of alleged CIA agents and saying:

> I'm not doing it to impair the intelligence activities of the United States, I am doing it to improve intelligence activities. These agents are misbehaving all over the world. They shouldn't be monkeying around in foreign countries. We ought to be collecting intelligence with satellites or whatever it might be. I'm not out to spoil or impair the intelligence activities of the United States, I'm out to improve them.

Now, that is what we call the subjective standard of intent. How do we get into that person's breast and determine whether he is out to improve or he is out to impair the intelligence activities of the country?

The problem is why we do not use that standard. Instead, we look at the pattern of activities of a person: If time after time after time he exposes the names of agents and he has a reason to believe that it impairs intelligence activities, he is culpable. Any reasonable person would know that by naming names you are going to impair the foreign intelligence activities of the United States.

Now, there is the crux of the problem between this different language. It is not that we are dancing on the head of a pin here. There are substantial differences.

Mr. President, the Department of Justice under President Carter and the Department of Justice under President Reagan both believe that the better standard is the one in our amendment. This language protects the individual and, furthermore, it enhances the chances of obtaining a prosecution at the same time.

Now, I note that the language of this amendment is the only language that has been endorsed by both the Carter and the Reagan administration Justice Departments. The issues which this legislation involves have been heard in detail. Our wording in this amendment has been carefully worked out and refined to its current state.

Let me address for a moment the committee language.

The reason we are here this afternoon, of course, is to strengthen the intelligence capabilities of the United States by prohibiting the unauthorized disclosure of information identifying certain intelligence offices of our country. This bill places criminal penalties on those enemies of our intelligence community engaged in this pernicious activity called naming names.

There is no dispute that those who are for the committee language and those who are for the amendment both object to the activity of the naming of names. The difficulty comes in whether the committee language will accomplish the purpose of placing criminal penalties on this activity because the committee language depends on specific intent language. That is the standard in the committee bill. It offers serious prosecutorial problems in the case of an individual that claims that his intent is to inform the public or even to improve U.S. intelligence.

Let me refer to the testimony of Mr. Richard Willard, who is the Attorney

General's counsel for intelligence policy, on October 6, 1981. Mr. Willard said:

The problem is that Senator Biden's approach would invite evasion of the bill because people like Mr. Wolf and others would say, "Well, my intent was to help intelligence activities by disclosing unsavory activities," and that would give them a defense that they would seek to use. That is why we felt the objective reason-to-believe standard which Senator Chafee introduced to be better.

In the Judiciary Committee markup of the original bill on October 6, 1981, Senator BIDEN stated that:

All the folks we all agree we want to get can be captured, figuratively and literally, under the language I am about to introduce.

However, it is my concern that this is not the case. Many individuals who indulge in "naming names" have suggested that their purpose, their "intent," is not to impair or impede U.S. intelligence activities. Their purpose, they say, is to improve these activities. For these individuals, the subjective intent standard provides a loophole big enough to drive a truck through.

For example, in testimony before the House Permanent Select Committee on Intelligence on January 31, 1981, William Schaap of the Covert Action Information Bulletin, had this to say:

Our publication . . . is devoted to exposing what we view as the abuses of the Western intelligence agency, primarily though not exclusively the CIA, and to expose the people responsible for those abuses. We believe that the best thing for the security and well-being of the United States would be to limit severely, if not abolish, the CIA.

Our intent both in exposing the abuses of the intelligence agencies and in exposing the people responsible for those abuses is to increase the moral force of this Nation not to lessen it. That the CIA would assume our intent is simply to impair or impede their foreign intelligence also seems likely. Patriotism is to some extent in the eyes of the holder.

The implication of this testimony is that Mr. Schaap does not believe his intention is to "impair or impede" U.S. intelligence activities. His activity is patriotic.

It would seem, then, that he could mount an effective defense under the committee language, based on his "intent," and that he would escape prosecution because there is no criminal liability for his "pattern of activities."

Mr. President, it has been suggested that the objective standard of criminal liability under subsection 601(c) departs from previous statutes, punishment for disclosure in the national security field. Some say, "We have never heard of such a thing. Every criminal statute has intent. You have to have intent on the part of the accused. What do you do coming up with language which talks about 'reason to believe?' "

But the facts are that the standard we have adopted is consistent with existing espionage statutes and, if anything, offers greater protection for first amendment rights.

All the existing espionage laws which can apply to those without authorized access to classified information require that an individual be engaged in an activity with one of two things: Either there be an "intent," which is true in some statutes, or that there be a "reason to believe," as we have here, and sometimes both.

For example, 18 U.S.C., section 793(e), punishes unauthorized disclosure of national defense information which the person has "reason to believe could be used to the injury of the United States or to the advantage of any foreign nation." There is an example of the "reason to believe."

Similarly, 42 U.S.C., section 2274(b) punishes disclosure of restricted atomic energy data "with reason to believe such data will be utilized to injure the United States or to secure an advantage to any foreign nation."

There are other examples.

Therefore, the standard which we have adopted in this amendment is consistent with past legislation where Congress has punished disclosure without requiring proof of specific intent, but, rather, proof that the reasonably foreseeable result would cause injury to the United States or advantage to a foreign power.

Of course, the question may be asked whether the objective standard—the "reason to believe" standard—will be sustained by the courts. Clearly, we do not want to write something into this very important statute—which both sides are anxious to get passed—that will not be sustained by our courts.

In the opinion of the Carter administration and in the opinion of the Reagan administration Justice Department, this standard, the Chafee-Jackson standard, will survive first amendment and other challenges in the courts.

Past examples of where the "reason to believe" standard has been upheld would be:

Gorin against the United States, 1944, where the "reason to believe" was characterized as sufficient scienter in a criminal statute by the Supreme Court;

Schmeller against the United States, sixth circuit, 1944, where "reason to believe" was upheld with no requirement to prove specific intent;

U.S. against Achtenberg, eighth circuit, 1972, where the "reason to believe" standard was deemed sufficiently precise for the criminal statute to withstand an attack for vagueness and overbreadth;

U.S. against Bishop, ninth circuit, 1979, where the "reason to believe" standard was held to be sufficiently precise to withstand a vagueness attack;

U.S. against Progressive, Inc., Wisconsin District Court, 1979, where the "reason to believe" standard withstood an attack for vagueness and overbreadth.

In comparison to many existing statutes the language which we have placed in this amendment includes language which narrows the scope of criminal liability and therefore affords greater protection for first amendment rights. There must be proof that the disclosure was made with reason to believe that it "would impair and impede the foreign intelligence activities of the United States."

This standard is more carefully tailored to the specific harm the statute seeks to prevent than the more generalized standard of injury to the United States or advantage to a foreign power.

As Judge Learned Hand observed,

there may be many cases where information may be advantageous to another power and yet not injurious to the U.S.

Judge Hand said that in United States against Heine, 151 F.2d 813, 815(1945).

The language of our amendment focuses solely on injury to the United States. In other words, it does not talk about its being advantageous to a foreign power. It even restricts it further than that—it involves not just broad injury to the United States, but specific injury to the U.S. foreign intelligence activities.

So, unlike statutes that merely require reason to believe that information could be used to the injury of the United States, the Government must prove that the reasonably foreseeable result of this disclosure would be to impair or impede particular U.S. Government functions that are exceptionally important to the conduct of U.S. foreign and military defense and that depend upon secrecy for their success.

An even greater safeguard is the requirement that the disclosure must occur "in the course of a pattern of activities intended to identify and expose covert agents." The term "pattern of activities" is defined in section 606(10) of this statute, the bill that we are discussing today. The pattern of activities require a series of acts with a common purpose and objective. It is not one disclosure, it is a pattern of activities to impair or impede U.S. foreign intelligence activities.

Thus, there must be proof not only with regard to a particular disclosure, but also with respect to the pattern of activities in which the disclosure occurs. The evidence must show that such activities were undertaken both to identify and to expose covert agents. A person must, in other words, be engaged in the enterprise of ferreting out the identities of individuals in-

volved in covert intelligence activities and exposing their intelligence relationship to the United States. This standard is more rigorous than the current statutes punishing disclosure of other types of national defense information.

The "pattern of activities" requirement is designed to narrow the scope of criminal liability without imposing undue burdens on the prosecution of offenses under section 601(c). It was developed in consultation with the Department of Justice, which strongly endorses the language as preferable to the "subjective intent" requirement in the committee standard.

The alternative of requiring specific intent to impair or impede intelligence activities which the committee language requires would place unnecessary obstacles in the way of enforcement of section 601(c), in my judgment. That is, the specific intent requirement puts unnecessary obstacles in the way of enforcement of this act. It would compel the Government to gather and present evidence as to the particular motives of the defendant, above and beyond his or her conduct and the reasonably foreseeable results of that conduct. Second, where a defendant does not openly proclaim an intent to interfere with U.S. intelligence activities, the Government may have to rebut arguments that disclosures were intended to inform the American people about activities the defendent considered wrong or improper.

Mr. President, I should like to dicuss the implications of the so-called Agee case, Haig against Agee, which was decided by the Supreme Court last summer. That case's conclusions reinforce the point that my language in subsection 601(c) adopts standards that are directly relevant to the central constitutional concern of showing the reasonable likelihood of serious harm.

In its opinion upholding the authority of the Secretary of State to revoke the passport of Phillip Agee on the ground that his activities constituted a serious danger to national security, the Supreme Court rejected Agee's first amendment claim as follows:

Assuming arguendo that First Amendment protections reach beyond our national boundaries, Agee's First Amendment claim has no foundation. The revocation of Agee's passport rests in part on the content of his speech: Specifically, his repeated disclosures of intelligence operations and names of intelligence personnel. Long ago, however, this Court recognized that "No one would question but that a Government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops." *Near* v. *Minnesota*, 283 U.S. 697, 716 (1931), citing Chafee, Freedom of Speech 10 (1920). Agee's disclosures, among other things, have the declared purpose of obstructing intelligence operations and the recruiting of intelligence personnel. They are clearly not protected by the Constitution. The mere fact that Agee is also engaged in criticism of the Government does not render his conduct beyond the reach of the law. (Emphasis added).

The Supreme Court clearly decided in Agee that disclosures of intelligence operations and names of intelligence personnel which obstruct intelligence operations are not protected by the first amendment. You cannot do it and say you are protected by the first amendment. The Court emphasized that there is no first amendment protection for disclosures which have the effect of obstructing intelligence activities; it did not limit this holding to disclosures which additionally have such an openly declared purpose.

Thus, the Court's ruling does not support the contention that a subjective "bad purpose" intent standard is needed to make the identities bill constitutional. The provisions of the Chafee-Jackson language, which are narrowly crafted to apply to the types of disclosures the Supreme Court described in Agee, are consistent with the first amendment.

Mr. President, the question has been raised as to what the administration's position is with regard to identities legislation. The reason for this confusion arises because of the CIA's role in assisting the House Permanent Select Committee on Intelligence with its identities bill (H.R. 4) earlier this year.

On June 24, 1981, the House sent CIA Director Casey a draft formulation for subsection 601(c) and asked for his comments. In responding to the House, Director Casey indicated that his general counsel believed the House draft to be "deficient in certain respects," and he, therefore, provided alternative language. This alternative was characterized as being "acceptable under certain conditions," and the Casey letter went on to say:

We would be prepared to support this alternative, which I understand is already familiar to Members and staff of your Committee, if its adoption would ensure House Floor consideration of the Identities Bill directly following the reporting of H.R. 4 from your Committee.

In other words, we would support it if it comes out and goes to the floor, if this is the way to do it.

That is the clincher.

Mr. Casey went on as follows: "I must emphasize, however, that the administration's preference for S. 391"—which is the language that Senator JACKSON and I are submitting here—"the Senate version of the identities bill, remains unchanged."

In other words, the administration prefers the language of this amendment.

The memorandum which Director Casey included with his letter had this to say:

This memorandum does not address differences between H.R. 4 and S. 391, and nothing contained herein should be construed as altering the administration's position of preference for the Senate version of the identities bill.

That is the language that was originally introduced that was included in the language that came from the subcommittee.

Mr. President, there can be no question that the Chafee-Jackson language for subsection 601(c) is the language preferred by both the Carter and Reagan administrations. In support of this statement, I ask unanimous consent that the following be printed in the RECORD: Deputy Attorney General Renfrew's letter dated July 29, 1980; CIA Director Stansfield Turner's letter dated July 30, 1980; CIA Director Casey's letter of April 29, 1981; Attorney General Smith's letter of July 20, 1981; President Reagan's letter of September 14, 1981; CIA Director Casey's letter of September 30, 1981; President Reagan's statement of December 4, 1981; and President Reagan's letter of February 3, 1982.

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

OFFICE OF THE
DEPUTY ATTORNEY GENERAL,
Washington, D.C., July 29, 1980.

Hon. BIRCH BAYH,
Chairman, Committee on Intelligence, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN BAYH: I am writing to reiterate the position of the Department of Justice concerning whether and in what form Section 501(c) of the Intelligence Identities Protection Act now before the Committee should include an element relating to the state of mind of persons, other than present or former government employees, who identify clandestine intelligence personnel or agents. It is my understanding the provision to be considered by the Committee now consists of essentially the following language:

(c) Whoever, in the course of a pattern of activities intended to identify and expose covert agents, discloses any information that identifies an individual engaged or assisting in the foreign intelligence activities of the United States, knowing that the information disclosed so identifies the individual and that the United States has taken affirmative measures to conceal the individual's classified intelligence relationship to the United States'. . . .

This formulation substantially alleviates the constitutional and practical concerns expressed by the Justice Department with regard to earlier versions of this bill that included a requirement that prohibited disclosures be made with a specific "intent to impair or impede" U.S. intelligence activities.

Because of the significance of this matter, however, it has been our view from the beginning that such legislation as is enacted must be fair, effective and enforceable. Our position has been and remains that the absence of an intent element in this legislation will accomplish this goal.

Sincerely,

CHARLES B. RENFREW,
Deputy Attorney General.

THE DIRECTOR OF
CENTRAL INTELLIGENCE,
Washington, D.C., July 30, 1980.

Hon. JOHN H. CHAFEE,
U.S. Senate,
Washington, D.C.

DEAR JOHN: My heartfelt thanks go out to you and your staff designee, Ken deGraffenreid, for your unflinching efforts at crafting an effective legislative remedy to the problem of the unauthorized disclosures of the identities of our intelligence officers and agents.

The Bill, which you so ably steered through the Senate Intelligence Committee, strikes the appropriate balance between the need for immediate legislative relief and legitimate First Amendment concerns. The Senate Bill, as reported, provides the Government with an effective tool to prosecute both present and former Intelligence Community employees as well as those misguided individuals outside the Intelligence Community who take it upon themselves to destroy the foreign intelligence apparatus of our nation.

I am certain I can count on your continuing help in the time remaining in the 96th Congress to insure that the Senate Bill is cleared for floor action in the near future. It is of critical importance that every effort be made to have this legislation enacted this year.

Yours sincerely,

STANSFIELD TURNER.

THE DIRECTOR,
CENTRAL INTELLIGENCE AGENCY,
Washington, D.C., April 29, 1981.

Hon. EDWARD P. BOLAND,
Chairman, Permanent Select Committee on Intelligence, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During the course of the recent hearings on the proposed "Intelligence Identities Protection Act" before the Subcommittee on Legislation, the following requests were made of me:

Representative Ashbrook asked, as a drafting service, that we provide him with language for a "false identification" provision that would meet constitutional muster;

Representative Fowler asked for the Agency's official views on the Senate version of subsection 501(c) and the so-called "Kennedy Compromise" suggested in the closing days of the 96th Congress.

As to Representative Ashbrook's request, one such version is presently found in subsection 800(d) of H.R. 133, the "Intelligence Officer Identity Protection Act of 1981," introduced by Representative Charles E. Bennett (D., Fla.). Mr. Bennett's formulation contains a harm standard, that is, prejudice to the safety or well-being of any officer, employee, or citizen of the U.S. or adverse impact on the foreign affairs functions of the United States. The Bennett formulation provides a readily available solution. The formulation that appears in H.R. 133 is as follows:

"Whoever falsely asserts, publishes, or otherwise claims that any individual is an officer or employee of a department or agency of the United States engaged in foreign intelligence or counterintelligence activities, where such assertion, publication, or claim prejudices the safety or well-being of any officer, employee, or citizen of the United States or adversely affects the foreign affairs functions of the United States, shall be imprisoned for not more than five years or fined not more than $50,000, or both."

In the course of the testimony by Richard K. Willard, the Attorney General's Counsel for Intelligence Policy stated that, in his opinion, a "false identification" provision containing a "life endangerment" element would be both enforceable and constitutional. I would stress, however, that such a physical harm standard would not be suitable for the sections of the Bill which cover correct identifications of intelligence personnel. The physical safety of our people is, of course, a matter of grave concern, but the Identities legislation is designed to deal primarily with the damage to our intelligence capabilities which is caused by unauthorized disclosures of identities, whether or not a particular officer or source is physically jeopardized in each individual case.

As to the first question posed by Mr. Fowler, i.e., the Agency's views on the Senate's version of subsection 501(c), we start from the basic premise that H.R. 4 and S. 391 are essentially similar. Both are carefully and narrowly crafted Bills which could effectively remedy the problems posed by the unauthorized disclosures of intelligence identities, and withstand challenge on constitutional grounds. Thus, the CIA would support enactment of either H.R. 4 or S. 391. As you know, the Bills do differ with respect to the standard of proof that would apply to individuals who have not had authorized access to classified information, and which would criminalize their disclosures of identities even if these disclosures cannot be shown to have come from classified sources. This has been the most controversial part of Identities legislation, and it is also the key provision from the standpoint of the legislation's potential effectiveness in deterring unauthorized disclosures. We have concluded that the objective standard of proof contained in S. 391 (i.e., "reason to believe that such activities would impair or impede. . .") is preferable to the subjective standard set forth in H.R. 4 (i.e., "with the intent to impair or impede. . ."). This preference is based upon a number of factors, including prospects for successful prosecutions under the differing formulations. We have discussed this matter at great length with the Department of Justice, and we believe that our preference for S. 391 is in accord with the Department's views.

Mr. Fowler's second question goes to the issue of the so-called "Kennedy Compromise," printed in the 30 September 1980 Congressional Record and set forth herein below:

"Whoever, in the course of a pattern of activities undertaken for the purpose of uncovering the identities of covert agents and exposing such identities (1) in order to impair or impede the effectiveness of covert agents or the activities in which they are engaged by the fact of such uncovering and exposure, or (2) with reckless disregard for the safety of covert agents discloses any information that identifies an individual not authorized to receive classified information, knowing that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than $15,000 or imprisoned not more than three years, or both."

This formulation appears to raise the same kinds of problems of proof of intent which the Department of Justice believes are present in the current formulation of the subsection 501(c) offense in H.R. 4, since the Government would have to show that the disclosure was made "in order to" impair or impede the effectiveness of covert agents or their activities. A defendant could assert that his activities and his disclosures were done "in order to" to accomplish some other purpose. Inclusion of the alternative "reckless disregard" standard in any 501(c) type provision would be of doubtful value. It is difficult to understand what is meant by "reckless disregard" in the context of the Identities Bill, since Congress, by enacting Identities legislation is in effect making a finding that unauthorized disclosures of identities do in fact threaten the personal safety of intelligence personnel. A reckless disregard standard would apparently mean that the Government would have to make an additional showing of physical endangerment in each particular case. This, from a deterrent perspective, would appear to be inadvisable.

Additionally, the Committee may wish to consider one technical amendment to H.R. 4, not mentioned in the course of the recent Identities hearings, but nonetheless dictated by enactment in the 96th Congress of S. 1790, the "Privacy Protection Act of 1980," legislation signed into law by President Carter on 14 October 1980 and designed to modify the Supreme Court's decision in *Zurcher* v. *Stanford Daily.* The enactment of this legislation has a bearing on our efforts to secure passage of Identities legislation. The Identities legislation should include a provision amending subsections 101(a)(1) and 101(b)(1) of the Privacy Protection Act so as to include the proposed new title of the National Security Act of 1947 among the "receipt, possession, or communication" of national security information offenses with regard to which searches and seizures may be conducted under the exceptions provided in those subsections.

Should you have any questions concerning the views expressed in this letter, please do not hesitate to contact my Legislative Counsel directly. We look forward to working with the Committee to ensure prompt enactment of Identities legislation.

Sincerely,

WILLIAM J. CASEY.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., July 20, 1981.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: It is my understanding that the Committee on the Judiciary is presently considering S. 391, the proposed Intelligence Identities Protection Act, which was introduced by Senator Chafee on behalf of himself and a number of distinguished Members of the Senate. My representative testified in favor of this bill earlier this year in hearings before the Subcommittee on Security and Terrorism. I would like to take this opportunity to assure you of my strong personal support for this legislation.

The recent decision of the Supreme Court in *Haig* v. *Agee* emphasized that "(m)easures to protect the secrecy of our Government's foreign intelligence operations plainly serve compelling national security interests." The Court rejected Agee's First Amendment claim with the following analysis:

"The revocation of Agee's passport rests in part on the content of his speech: specifically, his repeated disclosures of intelligence operations and names of intelligence personnel. Long ago, however, this Court recognized that "No one would question but that a government might prevent actual obstruc-

tion to its recruiting service or the publication of the sailing dates of transports or the number and location of troops." *Near* v. *Minnesota*, 283 U.S. 697, 716 (1931), citing Chafee, Freedom of Speech 10 (1920). Agee's disclosures, among other things, have the declared purpose of obstructing intelligence operations and the recruiting of intelligence personnel. They are clearly not protected by the Constitution. The mere fact that Agee is also engaged in criticism of the Government does not render his conduct beyond the reach of the law."

I believe this Supreme Court decision should resolve any lingering doubt that may exist concerning the constitutionality of the proposed legislation.

Speedy enactment of legislation to protect covert agents' identities deserves the highest priority, and I strongly recommend that S. 391 be favorably reported out of the Committee.

Sincerely,

WILLIAM FRENCH SMITH,
Attorney General.

THE WHITE HOUSE,
Washington, September 14, 1981.

Hon. STROM THURMOND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR THURMOND: It is my understanding that the Senate Judiciary Committee will consider S. 391, The Intelligence Identities Protection Act of 1981, on Tuesday, September 15.

Passage of legislation to provide criminal sanctions against those who make it their business to identify and expose our intelligence officers is a key element of my program to rebuild and strengthen US intelligence capabilities. Nothing has been more damaging to our intelligence effort than the pernicious, unauthorized disclosures of the names of those officers whom we send on dangerous and difficult assignments abroad.

Attorney General Smith advises that the Senate version of this legislation, S. 391, is legally sound, both from a prosecution perspective and in the protection it provides for constitutional rights of innocent Americans. Any change to the Senate version would have the effect of altering this carefully-crafted balance.

I cannot overemphasize the importance of this legislation. I hope I can have your support in reporting out S. 391 without amendment.

Sincerely,

RONALD REAGAN.

CENTRAL INTELLIGENCE AGENCY,
Washington, D.C., September 30, 1981.

EDITOR,
The New York Times,
New York, N.Y.

DEAR SIR: Your editorial of September 28, 1981, "A Dumb Defense of Intelligence," incorrectly represents the position I have taken on legislation to protect the identities of covert agents. I have consistently supported and advocated the Senate language in S. 391 and H.R. 4, as amended and passed by the House on September 23, as more certain to be effective in ending the pernicious unauthorized disclosures which are jeopardizing our nation's intelligence efforts and threatening those engaged or assisting in difficult and dangerous assignments abroad.

Opponents of this crucial legislation, in an effort to delay and obstruct final enactment, are quick to allege its constitutional infirmity. However, the legislation in its current form has had the bipartisan support of the Carter and now the Reagan White House and Justice Departments. We are confident that the legislation will pass constitutional muster. There is no doubt that disclosures of agent identities constitute a clear danger to this nation's first line of defense, its intelligence apparatus. Recently, the U.S. Supreme Court in *Haig* v. *Agee* stated that such "conduct . . . presents a serious danger to American officials abroad and serious danger to the national security" and that these disclosures " . . . clearly are not protected by the Constitution."

We can no longer afford delay. Every day means more unauthorized disclosures, more operations compromised, more lives endangered, more loss of confidence in our ability to keep secrets on the part of foreign intelligence services willing to cooperate with us. The Senate should delay no longer.

Sincerely,

WILLIAM J. CASEY,
Director of Central Intelligence.

STATEMENT BY THE PRESIDENT

I am pleased today to sign into law H.R. 3454, the Intelligence Authorization Act for Fiscal Year 1982. This act represents a significant first step toward achieving revitalization of our Nation's intelligence community. The President of the United States must have timely, accurate, and insightful foreign intelligence in order to make sound national defense and foreign policy decisions. This act helps to assure that we will have the necessary intelligence information to make these difficult decisions.

The Congress has with this act authorized appropriations sufficient to assure that we continue to have the world's best and most professional intelligence service. The Congress has also provided new administrative authorities to the heads of the Nation's three major intelligence agencies to assure that they can perform their missions more effectively. I hope that the spirit of cooperation between the Legislative and Executive Branches which resulted in this act will continue as we move to rebuild our Nation's intelligence capabilities.

I would also note my hope that I will soon be able to sign the Intelligence Identities Protection Act, which has passed the House and is awaiting floor action in the Senate. I strongly support enactment of this measure, preferably in the form in which it was passed by the House of Representatives; we must act now to protect our intelligence personnel, who serve our Nation under what are often difficult and dangerous circumstances.

THE WHITE HOUSE,
Washington, February 3, 1982.

Hon. HOWARD H. BAKER,
Majority Leader, U.S. Senate,
Washington, D.C.

DEAR SENATOR BAKER: Legislation to make criminal the unauthorized disclosure of the names of our intelligence officers remains the cornerstone for the improvement of our intelligence capabilities, a goal that I know we share. Nothing has been more damaging to this effort than the pernicious disclosures of the names of officers whom we send abroad on dangerous and difficult assignments. Unfortunately, these disclosures continue with impunity, endangering lives, seriously impairing the effectiveness of our clandestine operations, and adversely affecting morale within our intelligence agencies.

Last September the House of Representatives overwhelmingly passed the Administration-supported version of the Intelligence Identities Protection Act. The Senate is soon to take up consideration of this legislation, and you will have before you two versions. While I believe that both versions are fully protective of constitutional guarantees, Attorney General Smith and I firmly believe that the original version, first introduced by Senator Chafee and others, is far more likely to result in an effective law that could lead to successful prosecution.

I strongly urge you and each of your colleagues to support the carefully-crafted Chafee-Jackson amendment to S. 391. I cannot overemphasize the importance of this legislation.

Sincerely,

RONALD REAGAN.

Mr. CHAFEE. Mr. President, for those who argue that the administration does not care whether it gets the Chafee-Jackson language or the committee language, I should like to read the President's letter to Senator BAKER and Senator ROBERT C. BYRD this month.

DEAR SENATOR BAKER: Legislation to make criminal the unauthorized disclosure of the names of our intelligence officers remains the cornerstone for the improvement of our intelligence capabilities, a goal that I know we share. Nothing has been more damaging to this effort than the pernicious disclosures of the names of officers whom we send abroad on dangerous and difficult assignments. Unfortunately, these disclosures continue with impunity, endangering lives, seriously impairing the effectiveness of our clandestine operations, and adversely affecting morale within our intelligence agencies.

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I strongly urge you and each of your colleagues to support the carefully-crafted Chafee-Jackson amendment to S. 391. I cannot overemphasize the importance of this legislation.

Sincerely,

RONALD REAGAN.

It seems to me that this letter makes the administration's support for our amendment perfectly clear.

Finally, it has been argued by proponents of a subjective intent standard that, in order to be constitutional under Supreme Court precedents, a law punishing disclosure must require proof of an intent to do harm. For example, on May 8, 1981, a witness before the Subcommittee on Security and Terrorism of the Senate Committee on the Judiciary stated that:

> Professor Scalia * * * expressed the clear view that the absence of a bad purpose would make the statute unconstitutional.

This assertion is not, however, supported by careful analysis of the applicable cases and constitutional principles.

In fact, Prof. Antonin Scalia of the University of Chicago Law School has testified with respect to the reason to believe standard in section 601(c):

If the character of the information were defined narrowly enough, if the individual against whom the law is directed were defined narrowly enough, I think such a provision might well be sustained. "1981 House Intelligence Committee Hearings."

Given the extremely limited type of information covered and the narrow class of individuals engaged in a pattern of activities intended to identify and expose covert agents, there is little risk of unconstitutionality in S. 391 as originally introduced.

The central constitutional question presented by any prohibition against disclosure is: What danger does the disclosure create? It may be that if a person intends to produce harm, his intention may itself increase the risk that the harm will occur. But the Supreme Court has held that all the circumstances of the case must be taken into account before the actual danger can be assessed for first amendment purposes. Disclosure may be innocuous in fact—it may have no reasonable likelihood of creating a danger the Government is entitled to prevent—even though the intentions of the person are of a different character. Our amendment adopts standards that are directly relevant to the central constitutional concern of showing the reasonable likelihood of serious harm.

In summary, the Chafee-Jackson amendment contains language which is consistent with existing statutes punishing disclosure of national security information; it narrows the scope of criminal liability without imposing undue obstacles to effective enforcement; it meets the constitutional requirements of the first amendment; and it will provide for the effective prosecution of those who spend their time naming names.

Mr. President, over the past 5 years, more than 2,000 names of alleged CIA officers have been identified and published by a small group of individuals whose stated intention is to expose U.S. intelligence operations. I think it is time we legislated an end to this vendetta against the American intelligence community.

We send fellow Americans abroad on dangerous missions; missions which are directed and ordered by our Government. We owe it to them to do our utmost to protect their lives as they go about our business. S. 391, with our amendment, will provide this protection, and I urge my colleagues to support the Chafee-Jackson amendment and final passage of this bill.

Mr. President, there is no debate or argument on this floor that somebody is more for the first amendment than anyone else. There is no argument on this floor as to whether one group is more for successful prosecution, more for stemming the publication of the names of these agents than another. There is none of that. The argument here solely is how we can best craft this language to accomplish the goals we all seek. It is my view, the view of two administrations, the view of the Attorney General of the United States, and the view of the President, that the language of this amendment best accomplishes that goal, best permits us to move forward with the successful prosecution of these despicable persons who publish the names of agents of the United States.

Mr. BIDEN. Mr. President, the hour is getting late. We are going to have a chance, as I said, on Monday to get into great detail on this, but I should like to take 5 minutes now to make some initial rebuttal to the points raised by the Senator from Rhode Island. I am going to pick only a few of the things he has said today.

The first comment the Senator made in the early part of his statement was as to how we get into the breast of the person making the statement. The phrase is, "How do we get into the breast of the person making the statements?"

I suggest that we get into the breast of the person making the statements, or disclosing the name, the same way we get into the breast of a defendant accused of robbery or murder or rape or larceny or anything else. We get into the breast by looking at all the circumstances surrounding what that person did.

I should also like to point out that the way the judges usually tell the juries to get into the breast of a person accused of crime is by instructing the juries on what intent means. They say the following, which is from section 14.03, "Specific intent," Devitt and Blackmar, vol. I, Federal Jury Practice and Instructions, third edition 1977.

Remember, we have a defendant, and the prosecution says, "This guy killed Cock Robin." Then the judge says, "You have to find that he specifically meant to kill Cock Robin." He had to have intent to kill Cock Robin. It could not have been an accident. What I mean by intent is this: "Specific intent," as the term implies, means more than the general intent to commit the act. To establish specific intent, the Government must prove that the defendant knowingly did an act which the law forbids (knowingly failed to do an act which the law requires), purposely intending to violate the law.

This is the important part: "Such intent may be determined from all the facts and circumstances surrounding the case.

"An act or failure to act is knowingly done if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason."

The Senator goes on and makes a very compelling argument. I should note for the record that he is a very worthy adversary on this matter. It sounded good to me. As a matter of fact, he had me believing it for a second.

The Senator says we have these guys who are publishing these bulletins saying, "Well, I intended to help America when I disclosed the name of Joe Doakes, who is an agent of the CIA, so don't find me guilty because, although I intended something, I did not intend to hurt. I intended to help."

I submit that under the reason to believe standard, he can say the same thing. He can stand before the jury and say: "Ladies and gentlemen, I had reason to believe this would help America when I disclosed the name of Joe Doakes."

I had reason to believe that because I know from great experience in the area that we are not trusted around the world because of the CIA. They do not like us because of the CIA, and the real reason, the way to help America is to uncover CIA agents. So I have reason to believe that this would help, not impede.

So if he would be able to stand before a jury and say with any degree of credibility, "Ladies and gentlemen of the jury, I did not intend to hurt," he could also stand before the jury and say, "Ladies and gentlemen of the jury, I did not have reason to believe this would hurt; I had reason to believe it would help."

So, if it applies to intent, it is kind of a specious argument to say it also applies to reason to believe, but the kicker is that in either case the jury is going to sit back and say, "Now, wait a minute, what did he do here? Did he intend to do this? Let us look at all the facts and circumstances. Did this guy mean—sure, he intended to publish because he published—but did intend to hurt?"

We make distinctions. For example, we have all read in the newspaper and if my colleagues will read the RECORD they will read all the exposures about Wilson and Terpil, former CIA agents. What are they doing? They are fooling around with Qadhafi in Libya and they are selling arms, and they are doing all these things.

Were it not for the innovative and anxious press intending to help America, not impede it, we would have not found out very much about that. It was not the CIA that came to us and told us these guys were out fooling around. It was the press, an inquiring press. I want the press going out there intending to expose those people. They publish the name of the CIA agent. They did it with the intent to help America. In this case they did.

According to the jury instruction, that is up to a jury to believe. Does it help America for a press person to expose the name of an agent who may be a mole in the CIA, who may be selling arms to an enemy?

That is a question for the jury to decide just like it is if Mr. Schaap stood before the jury and said, "Well, when I published all these names in this bulletin I intended to help."

The jury makes that decision just like they would in "reason to believe."

They say, "Biden, you are making a pretty convincing argument here. Why do you not just accept 'reason to believe' then?"

The problem with "reason to believe" is it has what we call in the law a chilling effect on that reporter who wants to go out there and expose something that is harming the United States, wants to find the mole in the CIA, if there is one, wants to find out whether that jerk Terpil is in fact selling weapons to Qadhafi and aiding terrorism, wants to expose the fact that there may be a CIA agent involved in international drug trafficking.

Now, he knows under the intent standard that he can stand before a jury and say: "Hey, I was not intending to hurt; I was intending to help the CIA, and let me tell you the facts; the facts are this guy was dealing in drugs. The facts are this guy is a KGB agent, not a CIA agent. The facts are that this guy is selling arms to terrorists. Jury, what do you think? Do you think I am meaning to help or hurt?"

We do not even get to that in the "reason to believe" standard because we establish a "pattern of activities" easily. We do not have to have them publish 50 names on 50 different days or 3 names, or 20 names, but only 1. All we have to do is establish this one reporter went around and spoke to 10 people and said, "What about Mark here? What about it? What do you know about him?"

And you go and go to you, "What do you know about him?"

And go to you and say, "What do you know about him?

And go to the Senator from California and say, "What do you know about him?"

I am establishing a pattern of activity. The activity is that I am running around and I am going to end up exposing Joe Doe. I am going to publish Joe Doe's name.

Under the law the prosecution will be able to walk into court and say: "Wait, the pattern of activity. Did you not go around and speak to 25 people to find this out and discover this guy's name?"

"Oh, yes, I did that."

All right. There we have the pattern of activity.

"When you went to the CIA and said what do you know about Joe Doakes, did not the pressman for the CIA fellow look at you and say, 'Wait a minute. I have to tell you right now you are on slippery turf. You may very well be jeopardizing the security of the United States of America. I want to warn you of that right this minute.'"

Now, OK. The reporter says,

"Now there is a 'reason to believe' standard in the law. The CIA just told me I better not go any further because I am going to hurt the United States of America if I go any further."

Now, does that mean that I have already crossed the threshold of the "reason to believe"? Does that mean if I get dragged into court even though I am out to help, not hurt, and even though I am exposing a jerk like Terpil or Wilson, even though I am uncovering a KGB agent in the CIA—have I met the second standard already?

Let us face it. Whether you are talking to a CIA man or whether you are talking to someone in the Defense Department or whether you are talking to a press secretary for a U.S. Senator, they are not going to encourage you to investigate anything. So what do we all instinctively do? We are going to say, "You better be careful." And now when this guy has the story or that woman has her story they go to their editor and they sit down with the editor and say:

"You know, I have a story that is going to blow this place wide open. I found out we have some CIA agents who are selling arms to Libyans and they are hurting us, they are lying to the Government."

And the editor is going to say, "Now, wait a minute, are you all ready to go to jail?"

No; I do not want to do that.

OK. Let me ask you: How do you know it is true?

"Well, I tell you here it is true," and you lay it out.

They say, "Now, are you sure you are not missing something?" What happens if you publish this and this is really a double cover for something else that is behind all of this and Wilson and Terpil are really triple agents, not double agents?

They say, "What did they tell you out at the agency?" "They told me I am on thin ice. They told me I better not go any further."

Wait a minute, gee, does that mean we have reason to believe that? Should not I have done this?

That is not a spot to put the press in. That is not what we are about. That is not where we are.

So the reason to believe ends up being an incredibly subjective standard rather than the objective standard that the Senator is genuinely trying to accomplish.

He really means, and I believe every word he says, he really and truly means that this is the best way to protect not only America, the CIA agent, but also our civil liberties and a free press.

I respectfully argue and suggest that is not the case. And when you get down to the point again that he made so eloquently, the Senator from Rhode Island said this guy, Schaap—and I want to note for the RECORD not former Gov. Milton Schaap—Schaap says in testimony, "I do not intend to hurt. I intend to help."

And the Senator from Rhode Island says, "Well, he is going to be able to say to a jury," and implies they will probably believe him and he probably will get away with it. Again let me emphasize that if he can stand before the jury and say, "I did not intend to hurt, I intended to help," he can also stand before the jury and say, "I had no reason to believe that I was hurting; I had every reason to believe I was helping, and it is a bit of a red herring to argue whether or not this is going to make it easier or harder before a jury because they are going to look behind, they are going to look at the totality of the acts.

But what in fact is at stake is whether or not some reporter will believe that they will have a chance to make the arguments as to what they intended to do.

In the espionage statute—and we will go into this in great detail Monday, because I am sure the Senator will be back to it—the court usually takes two portions of the statute to come up with the conclusion that there was intent. The point I really want to make here is I spent 2 years doing a study for the Intelligence Committee on the espionage laws of this country and in fact with the help of Mr. Gitenstein, who was then on the Intelligence Committee and now on the Judiciary Committee staff, we went back and looked at every damage assessment report for the previous 10 years on leaks in espionage activities to write a tough espionage statute. You know what we found out? We found out there is hardly any successful leak prosecutions under the Espionage Act, hardly any.

I would respectfully suggest to you that one of the reasons why it is difficult, from the testimony we had, is, they said, "Hey, the prosecution is constantly coming and saying 'We cannot make a case with the "reason-to-believe" portion of the statute. That gets in our way, does not help us.'"

I hope we are going to hear from, on Monday, my colleague from Pennsylvania, a former prosecutor, on the other side of the aisle, who, I think, will make the case fairly eloquently that it would be harder to get a conviction under the "reason-to-believe" standard than under the "intent" standard.

I will also argue in some detail on Monday the constitutionality of the standard of "reason-to-believe."

I would just like to note for the record and put in the RECORD a list of over 100 law professors, the most outspoken one of whom is Prof. Philip Kurland of the University of Chicago. They all say that the "reason-to-believe" language is unconstitutional as it is applied in the proposed statute.

One other point I would like to make—there are many more to make, but just one other point at this juncture—the Senator from Rhode Island, as he always is, is completely candid, and let me be completely candid. The argument is not whether or not this administration wants the Biden language or the Chafee language more. It wants the Chafee language more, there is not any question about it. This administration says, "We want the Chafee language," but they also said in testimony before our committee, they have always said repeatedly, that the Biden language can get the job done.

What we are about here is getting the job done of putting these folks in jail who are, in fact, attempting to impede or impair the foreign intelligence activities of the United States of America.

I suggest to you that in our public and private conversations the administration feels fairly strongly about it. But they also feel fairly strongly about the Senator from Rhode Island, and I would, too, if I were a Republican President. He is one of the most competent people they have, and if he came to me and said, "This is important to me, but I think this is right—not that it is important to me personally—but this is the way to go, and both of them will get the job done, but the Chafee language will do the job," I would sure say, "The Chafee one is the one I want."

I admit that this administration does not think—it has consistently not thought—that the Chafee language could be unconstitutional. So looking at it from the President's side of the ledger he says, "Both can get the job done. One is constitutional, one is introduced by BIDEN, not a very strong supporter of mine, and the other one is introduced by the Senator from Rhode Island. Which one am I going to go with? Of course, I am going to go with the Chafee one."

But that is not really the issue. The issue is, on my side of the argument, "Look, it simply comes down to this: Why take a chance on its being unconstitutional? Why take a chance on it being harder to get a prosecution because the statute is struck down and go with the Chafee language when we both admit they both get the job done?"

The Chafee side of the argument, I would suspect, comes down in the final analysis to, "Look, even though they can both get the job done, they are both constitutional, why fool around with the Biden language because I think ours can get the job done better and faster?"

I mean, we are really arguing on the margins here, and I am constrained to wind up now because there is a very strong supporter of this position of the committee's who wants to speak now. Again I will have much more to say, but I would like very much to submit for the RECORD, and I ask unanimous consent, a list of all those law professors who concurred with the position I just took, and a letter from Professor Kurland be printed in the RECORD, along with a letter from Laurence H. Tribe, professor of law at Harvard University to Senator KENNEDY in September of 1980.

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

PROFESSOR KURLAND ON S. 2216

Perhaps the sharpest and most succinct scholarly criticism of S. 2216 came from Philip B. Kurland, Professor of Law at the University of Chicago and one of the nations leading constitutional scholars:

Hon. EDWARD KENNEDY,
Chairman,
Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR KENNEDY: In response to your request, I can frame my opinion on the constitutionality of Sec. 501(c) very precisely. I have little doubt that it is unconstitutional. I cannot see how a law that inhibits the publication, without malicious intent, of information that is in the public domain and previously published can be valid. Although I recognize the inconstancy and inconsistency in Supreme Court decisions. I should be very much surprised if that Court, not to speak of the lower federal courts, were to legitimize what is, for me, the clearest violation of the First Amendment attempted by Congress in this era.

With all good wishes,

Sincerely yours,

PHILIP B. KURLAND.

SEPTEMBER 25, 1980.

We believe that Sections 601(c) of S. 391 and 501(c) of H.R. 4, which would punish the disclosure of the identity of covert CIA and FBI agents derived solely from unclassified information, violate the First Amendment and urge that they be deleted.

Charles Abernathy, Professor of Law, Georgetown University Law School.

Bruce Ackerman, Professor of Law, Yale University Law School.

Barbara Aldave, Professor of Law, University of Texas Law School.

George Alexander, Professor of Law, University of Santa Clara Law School.

Judith Areen, Professor of Law, Georgetown University Law School.

Peter L. Arenella, Professor of Law, Rutgers University School of Law.

Richard Arens, Professor of Law, University of Bridgeport School of Law.

Charles E. Ares, Professor of Law, University of Arizona College of Law.

Robert Aronson, Professor of Law, University of Washington School of Law.

Frank Askin, Professor of Law, Rutgers University School of Law.

Barbara Babcock, Professor of Law, Stanford University.

Fletcher Baldwin, Professor of Law, University of Florida College of Law.

Elizabeth Bartholet, Professor of Law, Harvard University Law School.

Patrick Baude, Professor of Law, Indiana University School Law School.

Paul Bender, Professor of Law, University of Pennsylvania Law School.

Carolyn Bratt, Professor of Law, University of Kentucky College of Law.

Ralph S. Brown, Jr., Professor of Law, Yale University Law School.

Burton Caine, Professor of Law, Temple University School of Law.

Oscar Chase, Professor of Law, New York University School of Law.

Paul Chevigny, Professor of Law, New York University School of Law.

Michael Churgin, Professor of Law, University of Texas Law School.

Richard A. Chused, Professor of Law, Georgetown University Law School.

Robert Emmet Clark, Professor of Law Emeritus, University of Arizona College of Law.

Sherman Cohn, Professor of Law, Georgetown University Law School.

Tom A. Collins, Professor of Law, College of William and Mary, Marshall-Wythe Law School.

Vern Countryman, Professor of Law, Harvard University Law School.

Alan M. Dershowitz, Professor of Law, Harvard University Law School.

Norman Dorsen, Professor of Law, New York University School of Law.

Steven B. Duke, Professor of Law, Yale University Law School.

Thomas I. Emerson, Professor of Law Emeritus, Yale University Law School.

Nancy S. Erickson, Professor of Law, Ohio State University College of Law.

David B. Filvaroff, Professor of Law, University of Texas Law School.

Caleb Foote, Professor of Law, University of California Law School.

Jack Getman, Professor of Law, Yale University Law School.

Steve Gillers, Professor of Law, New York University School of Law.

David Goldberger, Professor of Law, Ohio State University College of Law.

Peter Goldberger, Professor of Law, Villanova University School of Law.

Louise Graham, Professor of Law, University of Kentucky Law School.

Arthur S. Greenbaum, Professor of Law, Ohio State University College of Law.

Linda S. Greene, Professor of Law, Temple University School of Law.

Trina Grillo, Professor of Law, Hastings College of Law.

Daniel Halperin, Professor of Law, Georgetown University Law School.

Charles Halpern, Professor of Law, Georgetown University Law School.

Joel Handler, Professor of Law, Georgetown University Law School.

Michael C. Harper, Professor of Law, Boston University Law School.

Lawrence Herman, Professor of Law, Ohio State University College of Law.

Morton J. Horwitz, Professor of Law, Harvard University Law School.

John M. Hyson, Professor of Law, Villanova University School of Law.

Stanley Ingber, Professor of Law, University of Florida College of Law.

Louis A. Jacobs, Professor of Law, Ohio State University College of Law.

Peter Jaszi, Professor of Law, American University, Washington College of Law.

Arthur Kinoy, Professor of Law, Rutgers University School of Law.
Lewis Kornhauser, Professor of Law, New York University School of Law.
John R. Kramer, Professor of Law, Georgetown University Law School.
Stanley K. Laughlin, Professor of Law, Ohio State University College of Law.
Howard Lesnick, Professor of Law, University of Pennsylvania Law School.
John Leubsdorf, Professor of Law, Boston University Law School.
Allan Levine, Adjunct Professor of Law, Cardozo School of Law.
Sanford Levinson, Professor of Law, University of Texas Law School.
John Levy, Professor of Law, College of William and Mary, Marshall-Wythe Law School.
Lance Liebman, Professor of Law, Harvard University Law School.
Jeffrey A. Meldman, Professor of Law, Massachusetts Institute of Technology.
Louis Menand, Professor of Law, Massachusetts Institute of Technology.
Roy Mersky, Professor of Law, University of Texas Law School.
Elliot Millstein, Professor of Law, American University, Washington College of Law.
Arvil Morris, Professor of Law, University of Washington School of Law.
Jack Murphy, Professor of Law, Georgetown University Law School.
Winston P. Nagan, Professor of Law, University of Florida College of Law.
Barry Nakell, Professor of Law, University of North Carolina Law School.
James C. Oldham, Professor of Law, Georgetown University Law School.
Joseph A. Page, Professor of Law, Georgetown University Law School.
Richard D. Parker, Professor of Law, Harvard University Law School.
Daniel Partan, Professor of Law, Boston University Law School.
Cornelius Peck, Professor of Law, University of Washington School of Law.
Willard H. Pedrick, Professor of Law, arizona State University College of Law.
Leroy Pernell, Professor of Law, Ohio State University College of Law.
Michael Perry, Professor of Law, Ohio State University College of Law.
Daniel H. Pollitt, Professor of Law, University of North Carolina Law School.
Andrew Popper, Professor of Law, American University, Washington College of Law.
Scot Powe, Professor of Law, University of Texas Law School.
John Quigley, Professor of Law.
Robert Sedler, Professor of Law, Wayne State University Law School.
Louis Michael Seidman, Professor of Law, Georgetown University Law School.
Ed Sherman, Professor of Law, University of Texas Law School.
Andrew Silverman, Professor of Law, University of Arizona College of Law.
James Simon, Professor of Law, New York Law School.
Aviam Soifer, Professor of Law, Boston University Law School.
Philip Sorensen, Professor of Law, Ohio State University College of Law.
Girardeau A. Spann, Professor of Law, Georgetown University Law School.
Roy Spence, Professor of Law, University of Arizona College of Law.
Geoffrey Stone, Professor of Law, University of Chicago Law School.
Telford Taylor, Professor of Law, Columbia University Law School.
Charles Thompson, Professor of Law, Ohio State University College of Law.
Gregory M. Travalio, Professor of Law, Ohio State University College of Law.
James Treece, Professor of Law, University of Texas Law School.
Lawrence Tribe, Professor of Law, Harvard University Law School.
Richard C. Turkington, Professor of Law, Villanova University School of Law.
Mark Tushnet, Professor of Law, University of Wisconsin School of Law.
Frank Upham, Professor of Law, Ohio State University College of Law.
Pete Wales, Professor of Law, Georgetown University Law School.
Burton Wechsler, Professor of Law, American University, Washington College of Law.
Wendy Williams, Professor of Law, Georgetown University Law School.
Bernard Wolfman, Professor of Law, Harvard University Law School.
Diane Zimmerman, Professor of Law, New York University School of Law.

HARVARD UNIVERSITY LAW SCHOOL,
Cambridge, Mass., September 8, 1980.

Hon. EDWARD M. KENNEDY,
Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR KENNEDY: Thank you for inviting me to offer my views on § 501(c) of the Intelligence Identities Protection Act of 1980, S.2216.[1] I believe that this provision, if made law, would violate the First Amendment.

There is no doubt, of course, that "the Executive [may] . . . promulgat[e] and enforc[e] . . . executive regulations[ ] to protect the confidentiality necessary to carry out its responsibilities in the fields of international relations and national defense." *New York Times Co.* v. *United States*, 403 U.S. 713, 729-30 (1971) (Stewart, J., joined by White, J., concurring). Nor is there any doubt that "Congress [may] . . . enact . . . criminal laws to protect government property and preserve government secrets." Id. at 730. But the First Amendment severely circumscribes the Government's power to achieve such ends by punishing journalists and other private citizens for repeating or publishing truthful information either (1) lawfully derived or deduced from information that has already found its way into "the public domain," *Cox Broadcasting Co.* v. *Cohn*, 420 U.S. 469, 495 (1975), or (2) innocently received as a "leak" from someone with access to classified, or otherwise confidential, government materials. *Landmark Communications, Inc.* v. *Virginia*, 435 U.S. 829, 837-46 (1978).

The need for secrecy in the foreign intelligence sphere is among the most pressing of governmental interests. Cf. id. at 849 n. (Stewart, J., concurring in judgment). But this cannot obscure either the priority given by the First Amendment to "public scrutiny and discussion of governmental affairs" id. at 839 (majority opinion); *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 269-70 (1964), or the correlative principle that no governmental restriction on "uninhibited, robust, and wide-open" political debate, id. at 270, is constitutionally acceptable unless—

(a) the restriction is designed to achieve a compelling governmental objective, and is narrowly drawn to achieve neither more nor less; and

(b) the restriction's enforcement in a given case is shown to be truly essential to achieve that compelling governmental interest.

See First National Bank v. *Bellotti*, 435 U.S. 765, 787 (1978); *In re Primus*, 436 U.S. 412 (1978); *Buckley* v. *Valeo*, 424 U.S. 1, 25 (1976) (per Curiam).[2] Section 501(c) quite clearly fails to meet these tests.

The provision's proscriptions—which apply even when the information illegally "disclosed" was lawfully obtained, and even when the only result of its suppression would be to stifle criticism or exposure of alleged governmental ineptitude or wrongdoing—are not limited to cases in which a judge or jury finds that "disclosure" of the information in question has harmed, or is likely to harm, the safety or security of any individual or the success of any specific lawful governmental undertaking. Cf. *Bridges* v. *California*, 314 U.S. 252, 263 (1941); *Pennekamp* v. *Florida*, 328 U.S. 331, 347 (1946); *Craig* v. *Harney*, 331 U.S. 367, 376 (1947); *Wood* v. *Georgia*, 370 U.S. 375 (1962). The provision at issue would impermissibly penalize unauthorized disclosures without requiring any such showing of actual or probable harm.

It is no answer that the disclosures for which § 501(c) prescribes punishment without requiring such a showing of injury are limited to disclosures made "in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States." Indeed, the vague "pattern of activities" requirement demonstrates that the proposed law would be anything but closely fitted with the restriction's ostensible purposes. For disclosures of the identities of our covert agents and operatives abroad, however, harmful or threatening would not be forbidden under § 501(c) unless made "in the course of a [specified] pattern of activities," while revelations that do not imperil any individuals or operations would be punished under § 501(c) whenever made by persons tainted by their association with the forbidden "pattern of activities"—activities that, standing alone, might otherwise be wholly lawful and, in fact, themselves entitled to First Amendment protection. Thus it is also no answer that punishment is limited to disclosures made "in the course of [such] a pattern of activities" with knowledge "that the United States is taking affirmative measures to conceal [an] individual's classified intelligence relationship

[1] The provision reads as follows:

"(c) Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information, knowing that the information so disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than $15,000 or imprisoned not more than three years or both."

[2] Thus, for example, despite the undisputed importance of preserving the confidentiality of a state's judicial disciplinary proceedings, Landmark Communication, Inc., supra, 435 U.S. at 834-36, not even the state's "interest in protecting the reputation of its judges, nor its interest in maintaining the institutional integrity of its courts is sufficient to justify . . . punishment of [unauthorized disclosure]," id. at 841, when such disclosure is made by "third parties" and consists of "truthful information regarding [the] confidential [judicial] proceedings." Id. at 837. The Supreme Court so held "even on the assumption that criminal sanctions do in fact enhance the guarantee of confidentiality," id. at 841, and even when the information at issue had been "withheld by law from the public domain." Id. at 840.

to the United States." Even under such circumstances—and assuming that any matter so vaguely defined can be "known"—§ 501(c) would not require the Government to prove any causal link between the culpable disclosure and a harm that would justify punishing it.

This mismatch between the Government's chosen means and its professed ends not only dooms § 501(c) on its face but also underscores doubts, independently generated by the provision's history, about its true aims, and, indeed, about those of § 501 as a whole. Cf. *First National Bank* v. *Bellotti*, 435 U.S. 765, 793 (1978). Needless to say, protecting the image and reputation of governmental officials and agencies, or the smooth operation of governmental programs immunized from public examination and critique, is insufficient justification "for repressing speech that would otherwise be free." *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 272-73 (1964). Thus, for example, the provision's restrictions on disclosure cannot be justified by the Government's wish to preserve the CIA's "plausible deniability," or to avoid "political outcry" over American covert operations in foreign countries, or otherwise to preserve, among other things, access "to appropriate targets" of recruitment abroad. New York Times, September 6, 1980, at 22, col. 1 (quoting testimony of Frank C. Carlucci, Deputy Director, CIA, before Senate Judiciary Committee on September 5, 1980). Such justifications bespeak purely political purposes beyond the Government's power to accomplish by stifling protected speech. Moreover, such congressional action, frankly targetting for special restrictions on First Amendment activities a readily identifiable group of private citizens—in this case, apparently a group of journalists associated with the Covert Action Information Bulletin—bears a distressing resemblance to past legislation whose purpose to punish dissenters or penalize partisans of defeated enemy causes was evident from the legislation's face or history—and which was hence invalidated by the Supreme Court as a forbidden ex post facto law or bill of attainder.[3]

For the reasons I have sought to articulate above, I believe that § 501(c) would violate the First Amendment if enacted. Accordingly, I recommend that at least this provision of § 501 be deleted from S. 2216.

Sincerely,

LAURENCE H. TRIBE.

Mr. BIDEN. Let me say that really when my colleagues read this RECORD, when their staffs look this over, I hope they will focus on which side of the issue we are going to err on. We are not erring on whether or not these folks are going to get away. That is not the issue. The issue is whether or not the language the committee has adopted, which is believed by the consitutional experts to be more clearly consitutional than the other, is the best way to go, and to err on the side of its being constitutional and not have that question in the way or is it better to err on the side of maybe not being constitutional but allegedly protect the civil liberties of more of the people involved, those publishing, by the "reason-to-believe" standard.

I should note to you that none of the people we are worrying about protecting agrees with the Senator from Rhode Island. None of the newspaper people, none of the people who are the ones who would be in the third category, the good folks, the good guys, the white-hat folks whom the Senator from Rhode Island says he believes he can protect better by the "reason-to-believe" standard happen to agree with him.

So in the final analysis I am saying why not err on the side of sticking with standard language which we know in 99$^{99}/_{100}$ percent gets the job done, and gets the job done with the fewest constitutional problems.

Let me finish by saying that there is more to be said, which I will say later.

I yield the floor.

Mr. QUAYLE. Mr. President, today we take up S. 391, the Intelligence Identities Protection Act, a bill which would make criminal the disclosure of the identities of covert intelligence officers and agents. Different penalties and elements of proof are required depending on whether the defendant is a present or former employee of the Government and depending on whether or not he had authorized access to classified information.

There is a crying need for this legislation which is long overdue. We should all be aware of the tragedies which have occurred in the recent past as the result of published allegations that a certain individual was a covert intelligence officer or agent. While I am certain that there are many examples, I will mention only two: the abominable assassination in 1975 of Richard Welch after being identified as a CIA officer by Philip Agee in Counterspy magazine, and the attempted assassination of a U.S. Embassy employee just 48 hours following a published allegation by Louis Wolf in the Covert Action Information Bulletin that the employee worked for the CIA.

Mr. President, the destructive effect of such disclosures must be stopped. I believe, and the public recognizes, that there is a compelling need for the legislation we are debating here today.

The controversy and disagreement about S. 391 really swells around one section of the bill—section 601(c) which addresses itself to that class of persons who identify a covert agent but who have not had access to classified information. It is this section in which the balance is most precarious between the undeniable need to protect our intelligence agents and the equally compelling need to protect first amendment rights.

Mr. President, I believe that section 601(c) as reported by the Senate Judiciary Committee maintains this crucial balance. That section reads:

(c) Whoever, in the course of an effort to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States by the fact of such identification and exposure, discloses to any individual not authorized to receive classified information, any information that identifies an individual as a covert agent, knowing that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than $15,000 or imprisoned not more than three years, or both.

This language, the so-called intent language, is narrowly drawn to define and punish specific conduct. The intent language is intended to reach the activities of the Covert Action Information Bulletin and similar groups, and it does reach them. I am confident that section 601(c) as drafted by the Judiciary Committee will allow successful prosecution of those who are engaged in the destructive activity of naming names.

This legislation is not intended to chill legitimate debate on intelligence issues or to censor stories such as those we read daily in the New York Times or Washington Post. The Judiciary Committee language does not do that. In my view, it is constitutional and effectively carries out the objective of the legislation which is to deter individuals who name names with the intent to harm the United States and our intelligence agencies.

In order to successfully prosecute such individuals, S. 391 as passed by the Judiciary Committee would require the Government to prove each of the following elements beyond a reasonable doubt:

That the disclosure was intentional; That the covert relationship of the agent to the United States was properly classified information and that the defendant knew it was classified; That the defendant knew that the Government was taking affirmative measures to conceal the agent's relationship to the United States; and

That the disclosure was made as part of an overall effort to identify and expose covert agents for the purpose of impairing or impeding the foreign intelligence activities of the United States through the mere fact of such identification and exposure.

This is a narrowly drawn statute—as all statutes which touch upon rights protected by the first amendment should be—and I believe that its constitutionality will be sustained by the courts.

I am much less certain, however, that a bill which incorporates the original language of section 601(c) could pass constitutional muster. That language, which adopts a reason-to-believe standard rather than the intent

[3] *See United States* v. *Brown*, 381 U.S. 437, 453, 455-56 (1965) (invalidating law prohibiting members or supporters of Communist Party from holding union office); *United States* v. *Lovett*, 328 U.S. 303, 315 (1946) (invalidating law barring those named as subversives in HUAC investigations from federal employment); Ex parte Garland, 71 U.S. (4 Wall.) 333 (1867) (invalidating law forbidding supporters of Confederate cause to practice law in federal courts); *Cummings* v. *Missouri*, 71 U.S. (4 wall.) 277, 323 (1867) (invalidating law banning such persons from practice of any profession).

standard drafted by the Judiciary Committee, is overly broad and could indeed abridge the exercise of first amendment rights by legitimate journalists. Certainly the journalists believe that it would.

Every major national press group in the country opposes replacing the intent standard with the reason-to-believe standard. Their concerns have been continually expressed to me in letters and meetings over the past several months. I would like to quote from a letter signed by the representatives of the Society of Professional Journalists, the American Newspaper Publishers Association, the National Newpapers Association, the Association of American Publishers, the Reporters Committee for Freedom of the Press and the National Association of Broadcasters. One section of their letter reads:

> The "reason to believe" language would, on its face, apply to a reporter who seeks to inform Congress and the public about corrupt, illegal, improper or questionable intelligence activities under circumstances where the identities of present or former covert agents are necessary to the story. One major news article which might not have been published under this formulation could be the recent revelations about Frank J. Terpil. The "reason to believe" language places editors and reporters in the position of having to risk a criminal violation or prosecution in order to publish news reports which they honestly believe to be in the public interest. In this sense, we are persuaded that the Judiciary Committee version of the bill, with its "specific intent" standard, presents far less serious pre-publication problems for the press.

My opposition to a "reason-to-believe" standard, however, has evolved from additional concerns that go beyond the constitutional questions raised by the journalistic and legal community.

First of all, intent is the appropriate element for a criminal statute. "Reason-to-believe" implies a negligence standard and this is not a negligence statute.

Second, the objective "reason-to-believe" standard: "What would a reasonable man believe would be the results of his actions," raises serious prosecutorial questions. For example, it would force the Government to make public at the trial more classified information than it would want to and certainly more than is required in a prosecution under the "intent" standard.

Under a reason-to-believe standard it suddenly becomes relevant to the defendant's case what effect the disclosure had or would have on certain intelligence activities. In other words, the objective "reasonable man" standard necessarily forces the Government to reveal what the agent, whose cover was blown, was doing in the country to which he had been assigned. Such information would not have to be released under the "intent" standard because it would be irrelevant. A "reason-to-believe" standard could, thus, chill not only legitimate journalism, but also the very prosecutions which this legislation is designed to bring about.

The White House, the Justice Department and the CIA have all stated that either an "intent" standard or a "reason-to-believe" standard would be acceptable to them. They profess to believe that both are constitutional and enforceable. Though they have expressed their preference for the "reason-to-believe" standard, their top priority seems to be the immediate passage of a bill which would end the destructive and sinister enterprise of naming names.

I believe that S. 391 as reported by the Senate Judiciary Committee will accomplish that end, and will do so in an effective, efficient, and constitutional manner, and I urge my colleagues to support it.

Mr. President, I want to pay particular reference and compliments to my distinguished freshman colleague, Senator DENTON, who has been very active in this and other matters. He has made an immense contribution to the committee on which we serve together, and he will continue to make an immense contribution to this Senate.

I also want to pay my respects to the distinguished Senator from Rhode Island who continues to be one of the most respected Members of the Senate.

But I must say to these two distinguished gentlemen that I disagree with them on this issue. But I do hope that we pursue this debate Monday and Tuesday in the spirit that the Senator from Rhode Island discussed in concluding his remarks.

This issue is not an issue over who supports civil rights and who supports the first amendment. We all do. The issue is not over who supports prosecuting those who violate a very strict code of conduct, or over who wants to have agent identity legislation passed, because we all do.

The question comes down to what statutory language is the preferable language to achieve both of those goals.

There has been a lot of discussion these last few weeks on televising the proceedings of the U.S. Senate. I happen to be a supporter of that. But those who argue on the other side keep pointing out the difference between this body and the other body. They talk about the U.S. Senate as a deliberative body, and they applaud how the U.S. Senate takes its time on very important issues. I hope that Members of this distinguished body do take their time on this very important issue and that we think it through. I hope that we do not jump to an emotional conclusion, simply choosing whichever emotion happens to trigger us the most, whether it is the first amendment rights or the need to protect our Nation's security.

I hope that we think through this process very clearly and very deliberately. I hope that we resolve this issue in the way the legislation was reported from the Judiciary Committee. This is the proper resolution to the issue.

Basically, Mr. President, the reason-to-believe language is not preferable to the intent language for two simple reasons. First, I think there is a legitimate constitutional question on the reason-to-believe language. As the distinguished Senator from Delaware pointed out, 100 constitutional lawyers and professors in this country have voiced their concerns about the problems of constitutionality.

If we really want to have a constitutional bill, why not go with the intent language that we know is going to be constitutional and not take a chance that the courts are going to throw the whole bill out? That is why it is perplexing to me to hear the administration say that they prefer the Chafee and Denton language to the Biden language, because there is no doubt that the courts would find intent to be constitutional.

Second, Mr. President, when you are dealing with a criminal statute, intent is the proper standard of conduct. Reason to believe is a negligence standard in civil cases. A criminal statute such as this should have the minimal legal ingredients of what criminal acts do constitute, and that is intent.

Mr. President, again, I commend my colleagues. I hope that we proceed along the lines of this debate in the next few days, a line of facts, a line of reasoning, and not one of simple reaction to motions without a thorough study.

The debate may be intense at times. That is what our debate is all about. If we take our time, I am certain that the Senate will come down to the language, and I am hopeful it will come down to the language, as reported by the Senate Judiciary Committee. The members of that committee put in a lot of hours. They are the ones that put in a lot of work. A majority of that committee has concluded that the intent language is preferable. I am hopeful that a majority of this body will agree with them.

I yield the floor.

Mr. DENTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. DENTON. Mr. President, I thank my distinguished freshman colleague from Indiana and return his sentiments of respect. I admire the equanimity with which both he and the Senator from Delaware have addressed the issue. I totally concur that

we should do so with great deliberation.

It is my fear that the complexity of the wording and of some of the thought patterns applied to the rationale are going to defy the comprehensions of many of our colleagues who, when they come in here to vote, do not have much time to deliberate. I hope there is some attendance to the speakers to the debate which is taking place so that our collective judgments will be relatively enlightened.

I believe the Senator from Delaware, the minority manager, made reference to the President's preference for the Chafee language on the basis of his being of the same party, but I may have missed the implication.

Mr. BIDEN. If I may, I think he prefers the Chafee language because he prefers it, but it is also an added incentive that it is not the language of the Senator from Delaware.

Mr. DENTON. The point I would like to make is that the Carter administration Justice Department also preferred the Chafee language.

Mr. CHAFEE. Mr. President, the distinguished Senator from Delaware always has kernels for thought and cogitation. I have been pondering the comment he made that the President was for the Chafee-Jackson language because I was Republican. All weekend I am going to be pondering why the Carter administration was also for this language. Did they look at me as a potential convert? I cannot fathom in any way why they too would be supportive of my language. Admiral Turner was a Democratic appointee, as head of the CIA. Attorney General Renfrew was a Democratic appointee of the Justice Department. I am still waiting to discover the answer. So I am looking forward to the debate on Monday and hope I find out what particular appeal I might have had to the Carter administration 2 years ago.

Mr. DENTON. Mr. President, I would like to go on record in fully supporting the amendment to section 601(c) offered by my friend and distinguished colleague from Rhode Island. I truly regard it as the best and most appropriate standard by which to criminalize this statute for naming names resulting from a study of unclassified sources.

I must acknowledge before this body, and before anyone covering this session, that I am not a lawyer, but I am supposed to be good at logic. In fact, I did not have to take a course once because I answered a question posed at the beginning of a college course in logic that the man posed for over 50 years of teaching. I do think that I understand enough of the law to apply logic to this situation.

It seems to me that we have an interesting inversion here, in that we have Democrats and nominal liberals propounding an approach which will be intrusive, one which will involve a subjective standard, one which the distinguished Senator from Delaware proposes. I believe the use of the "intent" standard will open a Pandora's box in this particular case, which defeats the objective of avoiding witch hunts.

We have the reason-to-believe standard in which the defendant's political belief, past conduct, critical remarks about the Government, and so forth, are all irrelevant. We have a finding by the committee, the very committee to which the Senator from Indiana referred, that:

> The disclosure of such relationships to unauthorized persons is detrimental to the successful and efficient conduct of foreign intelligence, counterintelligence, and counterterrorism activities to the United States,

Which tends to support the reason-to-believe standard as a method of proof.

But if you go into intent, you get a chilling effect on expression, because you then have to start talking about the man's of woman's past speech or activities, which would be directly relevant to proving intent.

Clearly, the specific intent standard creates a far greater potential for intrusive investigations into individual political beliefs. I do not want to be a witch hunter, but I think that, in this particular area, you open that Pandora's box. The witch hunt would be undertaken frequently as the only means of establishing intent, and perhaps more tragically than that witch hunting is that the effort to establish intent would all too frequently be unsuccessful. In spite of the fact that the accused might be guilty, it would be unsuccessful.

So if we let this erroneous committee amendment stand, which stood on a vote of 9 to 8 with two administrations who are expert in this, one Democratic, one Republican, standing against it with, I have to believe, much more expertise and learned forethought about the constitutionality, I believe that we will not only be tempting prosecutors into witch hunts, but we will be letting down those courageous men and women who risk their lives on a daily basis to preserve the security of this country.

It is the KGB which is laughing at this debate, and yet it is being conducted on both sides with good will. I think the statute with the specific intent standard rather than a reason-to-believe standard would be counterproductive. It would purport to provide a solution to a serious problem of unauthorized disclosure of intelligence identities without actually doing so.

It would raise the specter of the intrusive techniques and the witch hunts.

Mr. EAST. Mr. President, today we are considering S. 391, the Intelligence Identities Protection Act of 1981. This bill, which has almost 50 cosponsors, of whom I am proud to be 1, is the most significant proposal for the reform and strengthening of the intelligence community that the Senate has considered this year. I believe that it is absolutely essential that we pass a bill that would protect the classified identities of American intelligence officers—not just any bill but an effective law that would deter the exposure of their identities, one that is both constitutionally sound and will prosecute those who have specialized in the contemptible and pernicious practice of systematic exposures. I believe that until we pass such a law, there is little purpose in talking about the need for a stronger CIA or FBI. In short, we must put our money where our mouth is.

I wish particularly to address the issue of the constitutionality of the proposed reason to believe, or objective, standard that was in the original bill as introduced by the Senator from Rhode Island. The objective standard was deleted in the Judiciary Committee by a single vote and an intent or subjective standard was adopted.

But, Mr. President, it was the objective standard that I and our 40-odd colleagues chose to cosponsor when we endorsed S. 391. It is this standard also that was overwhelmingly endorsed by the House of Representatives and is now in H.R. 4, the House version of S. 391. Finally, it is the objective standard that is endorsed by the intelligence community itself—the Central Intelligence Agency, the Federal Bureau of Investigation, and the Association of Former Intelligence Officers. I wish to confine my remarks to a defense of the reason-to-believe standard and to urge my colleagues to support and endorse it with me.

We are being told, Mr. President, that the objective standard of the reason-to-believe language is unconstitutional, that it fails to define a bad purpose, that its enactment would jeopardize the effectiveness of the bill and also that it would have a chilling effect on legitimate discussion of intelligence policy and activities in the public forum. I would like to address these charges seriatim, but I would like first to point out that some of them are mutually contradictory.

If reason to believe is unconstitutional, it would be overturned by the courts. This is the argument of its opponents, who say that they would like an effective bill. Yet they also argue that reason to believe would have a chilling effect. If it is to be overturned, then it obviously could not have a chilling effect. We cannot accept the mutually exclusive propositions that a law would be both effective and ineffective.

In regard to constitutionality, I would like to point out that nine Fed-

eral criminal statutes make use of the reason-to-believe standard, and these include both the Espionage Act and Atomic Energy Act. Moreover, five Federal court cases have upheld the reason-to-believe language as constitutional grounds for prosecution. The most significant of these cases is that of *Gorin* v. *United States*, (312 U.S. 19 (1941)), in which the U.S. Supreme Court upheld the reason-to-believe standard in the Espionage Act of 1917 against the defendant's claim that the language was vague and indefinite—precisely the same charge that is being made today and with as little foundation.

While it is true, Mr. President, that the intent standard is also constitutional and that the Department of Justice has stated that an intent standard would be acceptable, the administration, the Department of Justice, and the CIA have been emphatic that they all prefer the reason-to-believe standard, that reason to believe is constitutional and is a more effective prosecutorial tool.

Why is reason to believe preferable to intent? In order to convict a defendant under the intent standard, the burden of proof is far more difficult to establish and actually requires more instrusive investigation than reason to believe. Proof of intent requires inquiry into the state of mind of the defendant before or during the commission of the offense. In the context of the intelligence identities bill, it would also require inquiry into the political and personal associations of the defendant—whether, for example, he had been involved with Counterspy or Covert Action Information Bulletin, what his attitude toward intelligence gathering was, and other beliefs and associations. Since those who oppose reason to believe on constitutional and civil libertarian grounds are concerned about such intrusive inquiries, I would think they would prefer the far less intrusive standard of reason to believe.

Reason to believe simply means what any reasonable man would believe. Thus, use of this standard would not require any intrusive investigation into a defendant's background nor the presentation of evidence concerning his political and personal associations. For this reason, it is preferable to the civil libertarian as well as to the prosecutor.

The argument that reason to believe would have a chilling effect on the exercise of first amendment rights and on discussion of intelligence activities is also without merit and has been grossly exaggerated by the opponents of the bill in the Congress and the media.

I would point out first that the U.S. Supreme Court in a 7-to-2 decision this summer in the case of Haig against Agee found that:

> Agee's disclosures [of covert agents], among other things, have the declared purpose of obstructing intelligence operations and the recruiting of intelligence personnel. They are clearly not protected by the Constitution.

If the disclosure of agents' identities is not protected by the Constitution, then a law punishing disclosure of identities cannot have a chilling effect on the exercise of legitimate rights of expression. The chilling effect argument is therefore without foundation.

However, the language of the reason-to-believe section has been carefully drafted to avoid interference with legitimate discussion and investigation. It is absolutely essential, Mr. President, to bear in mind that reason to believe is only one of the six elements of proof required for conviction in this bill.

Section 601(c), as originally introduced, contains the reason-to-believe language, which would make it illegal for a person to reveal the identity of a covert agent if that person:

First. Knows that the persons to whom he reveals the information are not authorized to receive classified information;

Second. Knows that the information revealed in fact identifies a covert agent;

Third. Intends to disclose information that identifies a covert agent;

Fourth. Knows that the Government is taking affirmative measures to conceal the identity;

Fifth. Engages in "a pattern of activities intended to identify and expose covert agents"; and

Sixth. Has reason to believe that such activities would impair or impede the foreign intelligence activities of the United States.

In sum, before a person can be prosecuted under the reason-to-believe language, the prosecutor must prove all five elements of proof in addition to the reason to believe element.

Furthermore, one of these elements is already an intent standard, and it must be noted that in those parts of the bill that establish defenses and exceptions, there are three areas of disclosures that are excluded from any prosecution, including the revealing of a covert identity to the House or Senate Intelligence Committees. This latter exclusion is intended to allow for the disclosure to responsible authorities outside the intelligence community of abuses or unauthorized intelligence activities without danger of prosecution to the disclosing party.

To prosecute a journalist who investigates intelligence activities, therefore, the prosecutor must show that every one of the elements applies. There are few if any legitimate journalistic investigations in which the revealing of names or identities would be useful, and it should be noted that the entire investigation of the Church committee into CIA activities took place without a single revelation of a covert identity. In other words, preventing the disclosure of agents' identities would not cripple our ability to learn of or prevent intelligence abuses.

It is almost inconceivable, Mr. President, that legitimate discussion of intelligence activities could be prevented or in any way discouraged by the reason to believe language that is proposed.

I urge my colleagues to join with me in supporting the amendment of S. 391 to adopt the reason-to-believe standard that is so necessary for the protection of our intelligence agencies and their personnel, for the security of our country, and for the strengthening and reform of the intelligence community.

(By request of Mr. DENTON the following statement was ordered to be printed in the RECORD:)

● Mr. THURMOND. Mr. President, this proposal to amend S. 391 would restore the original language of section 601(c).

In both versions of the bill, this section addresses the situation in which a person who does not have direct access to classified information knowingly identifies individuals as covert agents of the United States. Beyond this general statement, the technical subtleties of the separate versions make them quite distinct, and because I feel that the amendment offered by the distinguished Senator from Rhode Island embodies the preferable version, I support its adoption.

The language of the proposed amendment reflects the requirement that a putative defendant be involved in the course of a pattern of activities which is intended to identify and expose covert agents. As defined in section 606(10) of the bill, this requires a series of acts with a common purpose or objective. Clearly, then, a single event of republication, without a further showing, probably would amount to a violation of the act.

Moreover, this amendment mandates that it be proven that a putative defendant, while participating in such a pattern of activities, possessed a reason to believe that these activities would impair or impede the foreign intelligence activities of this country. This standard has been the object of much debate and discussion due to its so-called reasonable man aspect, which, it has been said, is a departure from customary criminal law standards. However, in the field of espionage laws, this standard is quite consistent.

For example, 18 U.S.C. 793(e) punishes unauthorized disclosure of national defense information which the person "has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation." Similarly, 42 U.S.C. 2274(b)

punishes disclosure of restricted atomic energy data "with reason to believe such data will be utilized to injure the United States or to secure an advantage to any foreign nation."

This statute clearly distinguishes disclosure "with intent to injure the United States or with intent to secure an advantage to any foreign nation," which is punished under section 2274(a) with more severe penalties.

Therefore, the language of the amendment is consistent with past legislation where Congress has punished disclosure without requiring proof of specific intent, but rather proof that the reasonable foreseeable result would be injury to the United States or advantage to a foreign power.

I believe the amendment of my distinguished colleague from Rhode Island not only is consistent with prior law in this area, but also offers greater protection for the rights of individuals. It must not be forgotten that in any prosecution under this act each and every element must be proven beyond a reasonable doubt to the satisfaction of the triers of fact, not only as to the requisite belief of the wrongdoer, but also as to his involvement in a pattern of activity.

I finally want to remind my fellow Senators of the words of the Supreme Court when it decided Haig against Agee this past June:

> It is "obvious and unarguable" that no governmental interest is more compelling than the security of the Nation. Protection of the foreign policy of the United States is a governmental interest of great importance, since foreign policy and national security considerations cannot neatly be compartmentalized.
>
> Measures to protect the secrecy of our Government's foreign intelligence operations plainly serve these interests. Thus, in Snepp against United States, we held that "[t]he Government has a compelling interest in protecting both the secrecy of information so important to our national security and the appearance of confidentiality so essential to the effective operation of our foreign intelligence service." (Citations omitted.)

I firmly believe that the interest of our Government would be afforded greater protection with the addition of this amendment to this bill, and I urge its adoption.●

COMMEMORATING ROGER WILLIAMS

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate Concurrent Resolution 64.

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

Resolved, That the resolution from the Senate (S. Con. Res. 64) entitled "Concurrent resolution to authorize the Zeta Beta Tau fraternity to conduct a reception in the rotunda of the Capitol on March 31, 1982, to commemorate Roger Williams for his contribution to religious toleration and freedom in the United States", do pass with the following amendments:

Strike out all after the resolving clause, and insert: That appropriate ceremonies are authorized to be conducted in the rotunda of the Capitol on March 31, 1982, to commemorate Roger Williams for his contributions to religious toleration and freedom in the United States. These ceremonies shall be conducted in accordance with conditions prescribed by the Architect of the Capitol.

Amend the title so as to read: "Concurrent resolution to authorize ceremonies in the rotunda of the Capitol for March 31, 1982, to commemorate Roger Williams for his contributions to religious toleration and freedom in the United States.".

Mr. STEVENS. Mr. President, I move that the Senate concur in the House amendments.

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

The motion was agreed to.

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

The concurrent resolution, as amended, was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the concurrent resolution, as amended, was agreed to.

Mr. BIDEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMMENDING DOUGLAS B. HESTER, LEGISLATIVE COUNSEL OF THE SENATE

Mr. STEVENS. Mr. President, I send a resolution to the desk on behalf of Senator THURMOND and ask for its immediate consideration.

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

The bill clerk read as follows:

A resolution (S. Res. 328) commending Douglas B. Hester, the legislative counsel of the Senate, for his service to the Senate.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

(By request of Mr. STEVENS the following statement was ordered to be printed in the RECORD:)

● Mr. THURMOND. Mr. President, there are many individuals who, through their loyalty and dedication, enable the Senate to meet its obligations day in and day out. One of these dedicated individuals is Douglas B. Hester who, on February 19, 1982, completed 30 years of service in the Office of the Senate Legislative Counsel.

After receiving his law degree from the University of Alabama, Douglas Hester came to the Senate on February 19, 1952, as a law assistant. Since that time, he has been promoted to assistant counsel, senior counsel, and has for the past 2 years served as legislative counsel for the Senate. His long career in the Office of the Legislative Counsel is a tribute to his ability, as well as to the wisdom of our predecessors who, in establishing the Office, required that employees be appointed solely on the ground of fitness to perform the duties required of that Office, without reference to political affiliation.

Over the past 30 years, Douglas Hester has made available to the Senate his skill, expertise, and professionalism as a legislative draftsman. His service, as well as that of his staff, is extended in a confidential role without any political consideration. Those Senators and staff members who have worked personally with Douglas Hester know first hand that he has always provided service and assistance willingly and cheerfully.

A native of Alabama, Douglas received his bachelor of science and law degrees from the University of Alabama in 1949 and 1952, respectively. Douglas Hester has served in the U.S. Army and in the U.S. Naval Reserve. He is a member of the bar in the State of Alabama and in the District of Columbia.

Douglas Hester is married to Melissa Hester, a native of Anderson, S.C., and they have two lovely children, Carlotta and Benjamin.

In my tenure as President pro tempore, which places me in a supervisory capacity over the Office of the Legislative Counsel, I have found Douglas Hester to be capable, efficient, and personable. I commend Douglas Hester for his outstanding, tireless, and dedicated service to the Senate over the past 30 years.●

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

The resolution (S. Res. 328) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 328

Whereas, Douglas B. Hester, the Legislative Counsel of the Senate, on February 19, 1982, completed thirty years of service to the Senate; and

Whereas, during this long period of service to the Senate, Douglas B. Hester has performed with dedication and skill;

Resolved, That the Senate of the United States extends its appreciation and gratitude to Douglas B. Hester for his long and faithful service in the Office of Legislative Counsel of the Senate.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to Douglas B. Hester.

89-059 O-85-35 (Pt. 2)

EXTENSION OF DATE FOR SUBMISSION OF REPORT OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS

Mr. STEVENS. Mr. President, I move that the Committee on the Judiciary be discharged from further consideration of H.R. 5021, an act to extend the date for the submission to the Congress of the report of the Commission on Wartime Relocation and Internment of Civilians, and I ask for its immediate consideration.

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

The motion was agreed to.

The PRESIDING OFFICER. The bill will be stated by title.

The bill clerk read as follows:

A bill (H.R. 5021) to extend the act for the submission to the Congress of the report of the Commission on Wartime Relocation and Internment of Civilians.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

● Mr. MATSUNAGA. Mr. President, I rise in support of H.R. 5021, a House-passed bill which would extend the reporting date of the Commission on Wartime Relocation and Internment of Civilians.

In May 1980, the Senate passed S. 1647, a bill providing for a study of the circumstances surrounding Executive Order 9066 and related documents pertaining to the relocation and internment of American citizens and resident aliens during World War II. The measure was subsequently passed by the House and was signed into law on July 31, 1980. Funds in the amount of $1 million were appropriated by Congress, but, because of delays in naming commissioners and appointing a staff, the Commission did not actually hold its first meeting until the latter part of January 1981. In the last year, the Commission has held a number of public hearings, has compiled a voluminous record of testimony, and has reviewed thousands of historical records.

Now the Commission must analyze all of the data that has been gathered and prepare its report to the Congress. The proposed extension of its reporting date to December 31, 1982, would enable the Commission to complete its work in the manner in which Congress intended. No additional funds are being requested by the Commission in connection with this request for an extension of the reporting date.

Mr. President, among the witnesses at the Commission's hearings were many Americans of Japanese ancestry and many residents of the Aleutian and Pribiloff Islands who personally experienced relocation and internment during World War II. Their moving stories, and the testimony of expert witnesses who served in the Roosevelt administration when Executive Order 9066 was issued, merit the Commission's most careful and thoughtful consideration. As one of the principal sponsors of S. 1647, the legislation which authorized the Commission's study, I strongly urge that the Commission be given an additional 10 months to complete its work.●

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill was ordered to a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 5021) was passed.

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

Mr. BIDEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RETURN OF CERTAIN WORKS OF ART TO THE FEDERAL REPUBLIC OF GERMANY

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate Calendar Order No. 406, H.R. 4625.

The PRESIDING OFFICER. The bill will be stated by title.

The bill clerk read as follows:

A bill (H.R. 4625) to authorize the Secretary of the Army to return to the Federal Republic of Germany certain works of art seized by the United States Army at the end of World War II.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill which had been reported from the Committee on Armed Services with amendments as follows:

On page 1, line 3, after "That", insert "(a)";

On page 2, line 2, after "of,", insert "certain";

On page 2, line 6, after "art.", insert the following:

Such committee shall include one member designated by the United States Holocaust Memorial Council (established pursuant to the Act entitled "An Act to establish the United States Memorial Council (94 Stat. 1547; 36 U.S.C. 1402)).

On page 2, line 15, strike "SEC. 2.", and insert "(b)";

On page 2, line 17, strike "the first section of this Act", and insert "subsection (a)";

On page 2, after line 18, insert the following:

SEC. 2. (a)(1) The Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) is amended by adding at the end thereof the following new chapter:

"CHAPTER 21. DIRECTOR OF THE NAVAL NUCLEAR PROPULSION PROGRAM; APPOINTMENT; RESPONSIBILITIES

"SEC. 311. DIRECTOR OF THE NAVAL NUCLEAR PROPULSION PROGRAM; APPOINTMENT; RESPONSIBILITIES.—

"a. (1) There shall be in the Department of Energy a Director of the Naval Nuclear Propulsion Program (hereinafter in this section referred to as the 'Director'). The Director shall serve in the Department of the Navy in the same capacity as he serves in the Department of Energy and shall be appointed by the Secretary of Defense with the concurrence of the Secretary of Energy. No person may be appointed to such position unless qualifed therefor by reason of a technical background and experience in naval nuclear propulsion.

"(2) The term of office of the Director shall be eight years. However, the Secretary of Defense with the concurrence of the Secretary of Energy may terminate or extend the appointment at any time.

"(3) A civilian or an officer of the United States Navy (active or retired) may be appointed to the position of Director.

"b. (1) Within the Department of Energy, the Director shall carry out the responsibilities of the organizational unit. transferred to the Department by section 309(a) of the Department of Energy Organization Act (42 U.S.C. 7158) and shall exercise direct control over all naval nuclear propulsion activities of the Department of Energy, including the Bettis and Knolls Atomic Power Laboratories and Naval Reactor Prototype plants.

"(2) Within the Department of Energy and the Department of the Navy, the Director shall be responsible for all aspects of the naval nuclear propulsion program, including the following:

"(A) Research, development, design, procurement, specification, construction, inspection, installation, certification, testing, overhaul, refueling, operating practices and procedures, maintenance, supply support, and ultimate disposition of naval nuclear propulsion plants, including components thereof, and any special maintenance and service facilities related thereto.

"(B) All aspects of the safety of the reactor plant and the associated propulsion plant, and of the control of radiation and radioactivity associated with naval nuclear propulsion program activities, including prescribing and enforcing standards or regulations affecting the environment and the safety and health of workers, operators, and the general public.

"(C) Training programs, including the Nuclear Power School of the Navy and the Naval Prototype Reactors of the Department of Energy; concurrence in the selection, training, qualification, and assignment of personnel reporting to the Director and of personnel responsible for the supervision, operation, and maintenance of naval nuclear propulsion plants; and providing such other technical assistance to the Chief of Naval Operations as may be required in the selection, training, and qualification of personnel for operating and maintaining naval nuclear propulsion plants.

"(D) Administrative aspects of the naval nuclear propulsion program work, including security, nuclear safeguards, public affairs, procurement, logistics, and fiscal management, as well as review and approval of contracts relating to naval nuclear propulsion.

"c. In carrying out the responsibilities prescribed in this section, the Director shall

have direct access to the Secretary of Energy, the Secretary of the Navy, other senior officials in the Department of Energy and the Department of the Navy and all personnel responsible for supervision, operation, and maintenance of naval nuclear propulsion plants and support facilities.

"d. When the position of Director is filled by a civilian, the pay for such position shall be the same as the pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.".

(2) The table of contents at the beginning of such Act is amended by adding at the end thereof the following:

"CHAPTER 21. DIRECTOR OF THE NAVAL NUCLEAR PROPULSION PROGRAM; APPOINTMENT; RESPONSIBILITIES

"Sec. 311. Director of the Naval Nuclear Propulsion Program; Appointment; Responsibilities.".

(b)(1) Chapter 533 of title 10, United States Code, relating to the distribution in grade of officers of the Navy and Marine Corps, is amended by inserting after section 5458 the following new section:

"§5459. Director of the Naval Nuclear Propulsion Program

"An officer of the Navy appointed to the position of Director of the Naval Nuclear Propulsion Program shall, while serving in such position, hold the grade of admiral (if appointed to that grade by the President by and with the advice and consent of the Senate) and report directly to the Chief of Naval Operations. An officer appointed to such position shall have the responsibilities prescribed in section 311 of the Atomic Energy Act of 1954. The officer holding such position shall be in addition to the number of officers authorized under section 525 of this title.".

(2) The table of sections at the beginning of chapter 533 of such title is amended by inserting after the item relating to section 5458 the following new item:

"5459. Director of the Naval Nuclear Propulsion Program.".

Mr. STEVENS. Mr. President, H.R. 4625 would authorize the Secretary of the Army to return to West Germany certain art works seized by the United States at the end of World War II. On December 10, 1981, the Senate Armed Services Committee agreed to report the bill as amended. At a later meeting on January 27, 1982, the committee decided to remove section 2 from the bill, an amendment on Adm. Hyman Rickover's former position that had been added on December 10. The purpose of that amendment was due to be substantially accomplished in an Executive order that was later issued.

Mr. President, I ask unanimous consent that a colloquy among Senators TOWER, WARNER, and JACKSON on Admiral Rickover's former position be inserted in the RECORD.

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

Mr. JACKSON. Mr. President, I can support the amendment being offered to H.R. 4625, but I feel that it is important to clarify that the intent is not simply to drop the issue of creating by statute offices in the Department of the Navy and in the Department of Energy. The authorities and responsibilities vested in the dual offices held until recently by Admiral Hyman G. Rickover ought to remain vested in large part in his successors. The outstanding record of achievement of the nuclear navy program can only be maintained by continuation of the central focus of authority embodied in Admiral Rickover's offices. The statutory establishment of these offices will first serve to attract some of our most capable naval officers or civil servants, to accept the appointment to this position. Second, the continued concentration of these authorities in one individual will ensure that all aspects of the nuclear navy programs are properly coordinated with no trade-offs being made to the detriment of the outstanding safety record achieved to date. Another important facet of having a central figure in charge of these programs is to maintain strong controls over the quality, cost, and schedule of the work performed by contractors in the manufacture of components for and construction of our nuclear-powered vessels.

During a Armed Services Committee meeting when the amendment was discussed Senators Tower and Warner proposed deletion of the provisions establishing the dual offices for the nuclear navy programs from this bill. It was my understanding that they suggested this action not only without prejudice, but with their expressed interest in and intent to seek to report legislation establishing by statute these dual offices early in this session. I understand that their primary reason for deleting these provisions from this bill is to provide for early enactment of this bill and for a more orderly Committee consideration of the details of the legislation establishing these dual roles. If I have assurances from my distinguished colleagues, Senators Tower and Warner, that my understanding is correct, I will not object to the amendment.

Mr. TOWER. The Senator is correct in his understanding.

Mr. WARNER. I want to assure my colleague that I share his concern for the need to establish these offices by statute to ensure that the remarkable record of our nuclear navy will continue to be the envy of every navy in the world. I plan to take up this matter in the Subcommittee on Strategic and Theater Nuclear Forces at an early point in this session.

Mr. STEVENS. Mr. President, I ask unanimous consent that the proposed committee amendment adding a new section 2 to the bill and the proposed committee amendment to the title of the bill be considered withdrawn, and that the remaining committee amendments to the bill be agreed to.

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

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

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

Mr. BIDEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

S. 1015 INDEFINITELY POSTPONED

Mr. STEVENS. Mr. President, I move that Calendar No. 109, S. 1015, a bill to separate the Peace Corps from the ACTION Agency, be indefinitely postponed.

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

The motion was agreed to.

REFERRAL OF H.R. 3467

Mr. STEVENS. Mr. President, I ask unanimous consent that Calendar Order No. 163, H.R. 3467, be referred to the Committee on Foreign Relations.

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

QUIET COMMUNITIES ACT

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1204.

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

Resolved, That the bill from the Senate (S. 1204) entitled "An Act to amend the Noise Control Act of 1972 as amended by the Quiet Communities Act of 1978", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

That the Noise Control Act of 1972 is amended as follows:

(1) Section 1 is amended to read as follows:

"SHORT TITLE

"SECTION 1. This Act may be cited as the 'Quiet Communities Act'.".

(2) Section 2(a)(3) is amended by striking out "deal with major noise sources" and all that follows.

(14) Section 13(a) is amended by striking out "or section 8".

(15) Section 14(b)(2) is amended by striking out "under sections 6, 7, and 8 of this Act" and substituting "under section 6 or 7 of this Act".

(16) Section 16(a) is amended by striking out "or any labeling regulation under section 8 of this Act".

SEC. 2. Section 19 of the Noise Control Act of 1972 is amended by striking out "$15,000,000 for the fiscal year ending September 30, 1979" and substituting "$7,300,000 for each of the fiscal years 1982 and 1983".

Amend the title so as to read: "An Act to amend the Noise Control Act of 1972, and for other purposes.".

● Mr. GORTON. Mr. President, S. 1204, the Quiet Communities Act, formerly known as the Noise Control Act, is now before the Senate. S. 1204 was acted upon previously by the Senate on July 10, 1981. As it was passed by the Senate, S. 1204 provided not only for reauthorization of the noise control program, but altered the basic structure by which noise emissions would be regulated. At the present,

the Federal Government, through the Environmental Protection Agency, is the sole acting regulatory force with respect to the noise emissions of products. EPA's regulations provide specifications with which manufacturers must comply in designing and producing their products. State governments have the ability, within their discretion, to regulate the use of products within their borders. Some States, including the State which I represent, do regulate the amount of noise that certain products emit. But the States' ability to regulate the manufacture of products or the privilege of sale of specific products based on the amount of noise they emit is totally preempted by the EPA's authority.

S. 1204, as passed by the Senate last year, removed the Environmental Protection Agency's authority to regulate noise emissions, except with respect to railroads and interstate motor carriers. This approach would open the way for States to regulate noise emissions generally, but reserve regulation of the instruments of interstate commerce to the Federal Government.

On December 16, 1981, the House of Representatives amended S. 1204 by substituting its own bill, H.R. 3071. The language of the original House bill is not acceptable.

H.R. 3071 retains general regulatory authority over noise emissions for the Federal Government and the Environmental Protection Agency. Because of the unique local character of some products' noise, the authority to regulate some products was suspended however. The preemptive effect of this regulatory structure is unclear at best, leaving the States without a clear, unpreempted authority to regulate at all.●

Mr. STEVENS. Mr. President, I move the Senate insist upon the version of S. 1204 which passed the Senate on July 10, 1981, disagree to the amendments of the House, request a conference with the House, and authorize the Chair to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. STAFFORD, Mr. GORTON, Mr. SIMPSON, Mr. RANDOLPH, and Mr. BAUCUS conferees on the part of the Senate.

EDITORIAL WRITERS SHOULD READ OWN NEWSPAPER

Mr. JACKSON. Mr. President, yesterday I inserted in the RECORD a news item from the Wall Street Journal discussing recent developments in the Iran/Iraq war. It detailed Soviet involvement in the region and illustrated quite vividly why the area is fundamentally unstable. Yet, Americans seem to be lulled into feeling a false sense of security about our oil supply situation, principally because of a temporary world oil surplus.

Had I read even further in yesterday's Journal, I would have been able to cite a perfect example of that false sense of security. An editorial inexplicably states, "The energy 'crisis' was solved by decontrolling oil and any remaining future risks will be further reduced by natural gas decontrol." Nothing could be further from the truth.

We must come to our senses and realize that the fate of the Western economic system and the stability of our political systems are absolutely tied to events in the Middle East. We will be dependent upon oil from the Middle East for the foreseeable future. Our allies, particularly those in Western Europe and Japan, are in even worse shape because of their lack of domestic oil resources.

No one who has studied these matters believes that we will be able to survive the rest of this century without political instability in the Middle East that will have a drastic effect on our oil supply situation. Yet, we seem unwilling to accept that fact and to plan accordingly. We are limiting our emergency preparedness by limiting our acquisition of oil for the strategic petroleum reserve. Unless we develop alternate forms of energy, including synthetic fuels, we will be sealing our fate for decades to come.

I wish the editorial writers at the Wall Street Journal would read their own newspaper. I ask unanimous consent that the editorial I have mentioned be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. JACKSON. Mr. President, I must take vigorous exception to the position taken in the editorial. I agree with the need to do what we can to lighten the load on the credit markets. But if the financiers think the credit markets are in bad shape now, I urge them to think what kind of shape we would be in in the face of an embargo. I also urge them to think what kind of shape we would still be in 20 or 30 years from now if we do not take the steps necessary to develop domestic energy sources, including synthetic fuels.

EXHIBIT 1

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

SYNFUELS SOLDIERS ON

At a time when the credit markets are overburdened world-wide and the Reagan administration alleges it is looking for places to cut borrowing, a big credit gulper called Synthetic Fuels Corp. is finally nearing its wheeling-dealing stage. It will decide soon how much of a huge federal loan authorization it will commit to private synthetic fuel projects.

Synfuels was a product of the predecontrol energy hysteria of the 1970s, when Congress was coming up with schemes to substitute expensive energy for cheap energy. It rolled out of Congress in 1980 as a new "off-budget" federal entity with authority to ultimately commit $20 billion in government-backed credit, either by guaranteeing loans for projects or guaranteeing that synthetic fuels developers would be able to charge competitive prices.

The "off-budget" description was, however, largely a fiction. The funds for carrying out the corporation's activities come from purchases by the U.S. Treasury of the corporation's notes, and these payments are part of the federal budget. If Synfuels found itself ponying up a lot of cash to cover a failed loan or subsidize an uneconomic plant, the taxpayer would get the bill.

Even if that were not the case, the corporation's guarantee authority, which will total $15 billion by July 1 this year, is simply another form of credit market distortion. The energy "crisis" was solved by decontrolling oil and any remaining future risks will be further reduced by natural gas decontrol. But when Synfuels goes ahead with its plans, new preferred borrowers will be entering the credit markets to raise money to add to the energy glut.

Currently there are 11 projects that have survived the corporation's initial screening. Six are in the South and five in the West. More are distinguished by high capital costs for plants that would produce relatively small amounts of fuel.

They will need government guarantees because their backers don't think they could be financed successfully otherwise. We would guess that they are right about that, now that relative energy prices are falling. Price guarantees, in particular, would be a good way for Synfuels to insure that the taxpayers will ultimately end up paying part of the cost of this fuel.

Synfuels almost certainly will face some other problems down the line. With such juicy plums to distribute, it will be open to charges of political favoritism and, possibly, conflicts of interest.

Congress never likes to admit it made a mistake, particularly a $20 billion mistake. So the political inclination has been to let Synfuels plod along quietly toward the day when it will start issuing reserved seats in the credit market. After all, it was officially described in the act as an "off-budget" federal agency so why should any budget cutter worry?

There are two good reasons: The only synthetic fuel plants we need are the ones that make economic sense; the Synfuels-backed borrowing will crowd out other projects that have a more legitimate claim to credit on the basis of genuine economic feasibility and need.

PETE HACKWORTH

Mr. SYMMS. Mr. President, Pete Hackworth will be missed. Oh yes, that is always said when any friend and associate dies, but such feelings run even deeper when those who knew Pete Hackworth, and were touched by his personality, pause to reflect on his passing.

Pete charged off to his next challenge and even higher calling on Thursday, January 28.

Yes, Pete Hackworth will be truly missed. But the legacy he left is something we can treasure. For Pete loved freedom—individual freedom—and he

was devoted to his family and worked effectively to support community youth activities.

I had the good fortune of having Pete Hackworth serve on my staff in the House of Representatives as my press secretary and administrative assistant. Pete had a delightful way of good naturedly cutting through the dense fog which often surrounds those of us who spend too much time on the banks of the Potomac River. Pete would hammer home to me and remind me that I went to Washington to represent Idahoans who believed that freedom was the issue.

Of course Pete was right. Freedom is the issue. And Pete Hackworth was a master at helping me articulate the principle of individual freedom and dignity to my colleagues and to my fellow citizens who might not yet understand the vital importance of liberty.

Pete Hackworth's commonsense skill at communicating the freedom principle will not be matched.

I want to share a moving story which the managing editor of the Idaho Press Tribune, Rick Coffman, published in his paper on January 31 as well as a tribute which was published on the day of Pete's funeral, February 1, and a column by Wayne Cornell which appeared in the Idaho Press Tribune on February 3 along with the obituary which was carried on January 31. I ask that these articles be printed in the RECORD.

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

PETE HACKWORTH

His only point of reference was himself.

R. E. "Pete" Hackworth, 61, died Thursday evening after a brief illness. There will never be another one like him. There's not even anyone you could compare to Pete, for those who never met Hackworth.

A newsroom is often a tense and pressure-packed environment—deadlines to meet, upset readers, people demanding that their bit of news find its way into a prominent place in the paper and so forth.

But what ever the situation was at the time, when Peter showed up with his Sunday column or a piece of information from his employer, Caldwell Memorial Hospital, everything brightened.

You could't be around Pete and not have a good time. Whether only for a few moments in the newsroom or a night on town, Pete always left the scene a happier place.

He didn't walk into a room he bounced in. He didn't move from place to place, he darted. The issues of the day, local national and international—Pete had an opinion, a cute story and was gone.

Always, though, he returned to engage in some verbal jousting with someone in the newsroom. He enjoyed it. What he probably didn't know is that we enjoyed it more. He made us all feel better.

At the time of his death, Pete wasn't officially a newsman. He'd been one most of his life but left the profession in the early 1970s to join Congressman Steve Symms in Washington, D.C.

Eventually he returned to Idaho and worked for the Caldwell hospital as director of personnel and public relations. But his heart was always in the newsroom. To paraphrase, you can take the boy out of the newsroom but you can't take the newsroom out of the boy.

Several months ago Pete began writing a column for our Sunday editorial page. Francis Bacon once wrote: ". . . men must know that in this theatre of man's life it is reserved only for God and angels to be lookers on."

Pete was no looker on. He offered opinions on the subjects of the day, and solutions. He wrote about life, love, happiness, sorrow. He was as keen an observer about the human condition as has ever set foot in a newsroom.

Pete's gone But never forgotten. Those of us that knew him were proud to call him a friend.

You couldn't help but like Pete Hackworth.

RICK COFFMAN,
Managing Editor,
Idaho Press-Tribune.

RUSSEL E. "PETE" HACKWORTH

Funeral services for Russel E. "Pete" Hackworth, 61, of Caldwell Route 6, who died Thursday at a Caldwell Hospital will be conducted at 2 p.m. Monday at the L.D.S. Stake Center in Caldwell with the Bishop Jim Blacker officiating. Interment will be at the Canyon Hill Cemetery, Caldwell, under the direction of the Dakan Funeral Chapel of Caldwell.

He was born June 24, 1920, in St. Anthony, Idaho, to Nannie Dickerson and Egar Elster Hackworth. He attended school in in St. Anthony, where he lettered in several sports and academic activities.

He served 5½ years in the second World War where he was entertainment director for the armed forces in Hawaii and published the army paper in Latai, Okinawa, and other South Pacific Islands. He was discharged in the fall of 1945 and returned to St. Anthony to work for a local paper.

He met and married Roma LaFay Nuttall on June 6, 1946. They were later sealed for time and eternity in the Salt Lake City Temple.

He worked for the Idaho Falls Post Register, the Salt Lake Telegram, and the Idaho Statesman before coming to work for the Caldwell News-Tribune in 1953. During this time he wrote a daily column, "By The Way," until 1973. He then went to work for KCID. For the next 6 years Hackworth was in Washington, D.C. as public relations director and later as administrative assistant for former Congressman Steve Symms.

He became a director of personnel and public relations for Caldwell Memorial Hospital when he returned from working in Washington, D.C. He held this position for 6 years until the time of his death. He also wrote a Sunday column for the Idaho Press-Tribune, and was correspondent for the Northwest Trailer and Mobile Home News and the Idaho Labor News. He was a self-appointed gourmet, collecting and trying recipes and foods sent by readers of his newspaper column and his friends. During his career he received numerous awards, certificates and recognition from his community and colleagues. He was an active member of the Church of Jesus Christ of Latter-day Saints.

He is survived by his wife LaFay, four sons, Bryon, Rory U.S.A.F., Robb, Sean; three daughters, Shelagh Wright, Kelly Upson, and Molly Hackworth, who currently is serving a mission for the L.D.S. Church in Hong Kong; one brother, Hubert; four sisters, Iva Farney, Ora Conley, Grane Mack and Helen Stuart and eight grandchildren.

He was preceded in death by his parents, two brothers, one sister and one granddaughter.

The family requests memorials be made to the Center for the Study of Market Alternatives, 222 West Bannock St., Boise, Idaho, 83702.

[From the Idaho Press-Tribune, Feb. 3, 1982]

TRIBUTE TO PETE HACKWORTH

Lovers of liberty and the philosophy of individual freedom lost a great friend Thursday night January 28. Pete Hackworth, longtime editor, newsman, columnist and close friend of thousands passed away in the Caldwell Memorial Hospital where he had been personnel and public relation manager since 1975. Hospitalized only since Sunday he died from a "dissecting aneurysm of the aorta" only a few inches from his heart.

Next to his especially close knit family and a host of personal friends and relatives Pete's almost full-time hobby was a great concern with the freedom philosophy of Thomas Jefferson and Adam Smith, especially as it relates to OTHER people's freedom as well as his own. The latter quality distinguished this absolutely delightful human being not only from his many friends in the media, but also from most of the rest of us. He believed that freedom, like love, isn't much good unless you give it to somebody else.

The family requests that memorials in his memory be sent to the Center for the Study of Market Alternatives, 222 W. Bannock Street, Boise, 83702.

[From the Idaho Press-Tribune, Feb. 3, 1982]

PETE HACKWORTH: LIKE KNOWING A ONE-MAN CROWD

(By Wayne Cornell)

Pete Hackworth was the type of fellow you don't forget.

The news of Pete's death last week touched many who have worked in the media in Southwest Idaho during the past decade. Although Pete was no longer a full-time journalist, he was well known. Those of us who served with him in the trenches back when he was editor of Caldwell News-Tribune remember him well.

Pete was about the nearest thing to perpetual motion that ever hit a newsroom. He was here, there, everywhere, all at once. He seemed to have a reinforced mainspring that allowed him to function at a speed about one and one half times average.

You could spot Pete two blocks away when he was out on the street. In the first place, his walk was unmistakable. Actually, it wasn't a walk. Pete was shorter than average, so he had to take about two steps to cover the distance an average person would cover in one stride. He made up for it by taking three steps in that same time period. He could walk a 6-4 man right into the ground.

Back in those days, Pete wasn't what you would call a conservative dresser. On an average day he would turn up at the office wearing a pair of plaid pants, a turtleneck sweater and a striped sport coat. He didn't fool around with colors like grey, brown or

white. Basic colors for Pete were red, orange, violet and yellow.

If you missed the clothes, you couldn't miss the beret. Pete never went anywhere without his black beret, which added a touch of contrast to his flowing white hair and gotee.

Wherever Pete went, there was a crowd, even if he was the only person in the room.

In those days Pete wrote a daily column. He loved to illustrate what he was writing about, and would go to great lengths to get the right picture.

One time Pete decided to write about women's liberation, a touchy subject in the early '70s. He decided to burn a bra as an illustration. I was to take the photo.

At the appointed time Pete showed up with one of the largest bras I have ever seen. We went outside the office. He doused the item with a flammable liquid. Holding it out in front of him with one hand, he lit it with the other.

The flames immediately began roaring up the bra toward Pete's exposed hand.

"Now Pete?" I asked.

"Not yet, Not yet!" he yelled back, as the flames licked toward his fingers.

Finally the entire bra was engulfed by the blaze. As I looked through the viewfinder of the camera it was obvious Pete's goatee was also in danger.

"Now!" Pete yelled.

The photo was vintage Hackworth. It showed him holding on to the last unconsumed square inch of blazing material. On his face was a look of partial amazement, partial shock and partial pain.

Pete had a large family, and he was a fan of the early Volkswagen mini-bus. He drove one for years. There was a problem, however.

As I explained earlier, Pete had a 70 mph personality. The VW bus was only good for about 55 mph. It seemed he replaced the engine in the bus about three times a year. He grumbled about it, but refused to slow down or get a different vehicle.

Although he was a editor, Pete loved to get in on the action. If a report came in of a catastrophic event, he normally beat the reporter, the photographer, the police and the ambulance crew to the scene.

The story is told of the day Pete and a photographer went to the scene of a major accident on Highway 20. Police and wrecker crews were busy cleaning up the blocked lane. Suddenly, off in the distance, the sound of an engine strained to its limit could be heard. Pete looked down the road and saw a car approaching at a high rate of speed.

"Get your camera ready!" Pete yelled at the photographer. "That guy's going to run into the wreck!"

"Naw, he'll never do that," the lensman replied. "No one crashes into an accident scene in broad daylight."

The car came closer, showing no sign of slowing.

"I'm telling you, he's going to crash!" Pete repeated, visibly agitated.

"No way," said the photgrapher.

Now the speeding car was right on top of the scene and Pete was jumping up and down, yelling at the photographer that a one-in-a-million shot was coming. The cameraman remained relaxed.

Crash!

The car, containing a drunk driver, smashed into the existing wreck, causing complete pandamonium.

The photographer turned slowly to Pete, his camera still slung over his shoulder.

"By golly you were right, Pete," he observed.

For one of the few times in his life, Pete was speechless.

Press-Tribune editor Rick Coffman probably said it best last Sunday when he said "Pete's only point of reference was himself." Knowing him was a worthwhile experience.

EL SALVADOR

Mr. HAYAKAWA. Mr. President, in these days of intense and biased attacks on the administration's policy in El Salvador, it was refreshing to come across an article by Max Singer in the January 1982 Hudson Communique—a publication of the Hudson Institute—which offers a balanced and reassuring assessment of the commitment of the Salvadoran army to democratic ideas.

The article, entitled "Will Democracy Survive in El Salvador," traces the history of the Salvadoran military since seizing power in October 1979. According to Singer, the ranking officers believe that government and politics should be under civilian control, legitimacy comes from elections, and the army should be strictly professional. Also, the economic and political structures prior to the revolution were inequitable, and the oligarch had used the old army to protect their economic power. The colonels in the revolutionary governing junta have been pursuing a policy based on four principles: One, ending corruption and violence, particularly in the security services; two, improving the distribution of wealth by land reform and other measures; three, establishing civilian control and a government based on free elections; and four, making peace with Honduras.

Singer's article illustrates the economic and political reforms which have been achieved by the army and the Christian Democratic Party. While no one would claim that the reform program has been completed or that abuses have been eliminated, Singer lays the blame on the extreme right and the antidemocratic left who are fighting the program, rather than any lack of will on the part of the government. If Singer is right, the experiment with democracy in El Salvador would be doomed to defeat if the United States abandons the Duarte government.

I recommend this thought-provoking article to my colleagues, and ask unanimous consent that Mr. Singer's article be printed in the RECORD.

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

WILL DEMOCRACY SURVIVE IN EL SALVADOR?

(By Max Singer)

Believers in democracy are jeopardizing an important opportunity and failing their responsibilities by not paying attention to a victory for democratic ideas in El Salvador.

Democratic ideas prevailed among the officer corps of the Army of El Salvador; as a result they carried out a moderate democratic revolution which brought them to power in October 1979. Although two-thirds of the officers above the rank of major were thrown out, the ones remaining are now united in their commitment to economic and social reform and to basic democratic principles.

There is a strong consensus among Salvadoran officers that the old army-landlord coalition was wrong. Their strongest beliefs are that government and politics are for civilians, that legitimacy comes from elections, and that colonels should not choose governments. They are determined that the army should be professional, serving the whole nation, under policies determined by elected civilians. They also believe that the economic and political structures that existed before the revolution were inequitable, that two hundred families should not own 15 percent of the farmland, and that few people should not have huge fortunes, live in extreme luxury, and export large amounts of money made in El Salvador.

The officer corps also believes that the old army had been taken advantage of by the oligarchs who used the army to protect their economic power. While most officers did not participate, their countrymen perceived them as having been on the side of the wealthy. In fact, they were mostly poor or middle-class boys who went into and through the military academy against stiff competition. (Class of 1962: 1,000 applicants, 150 admissions, 25 graduates, now 14 lieutenant colonels.) What they wanted was a highly professional army, not an army which was used for corrupt purposes and in the interest of the small landlord class.

During the 1970s, these ideas grew and spread within the officer corps, and the men holding them advanced to senior levels. Early in 1979, Colonel Gutierrez, now the only officer in the Revolutionary Governing Junta and also Commander-in-Chief of the armed forces, began to talk with a few other colonels about changing the system. Colonel Garcia, now the Defense Minister, joined this group. They agreed on four principles: (1) end corruption and violence, particularly in the security services, (2) improve the distribution of wealth by land reform and other measures, (3) establish civilian control and a government based on free elections, and (4) make peace with Honduras. They brought into their revolutionary planning a few younger officers in each army post, and took power on October 15, 1979.

They created a civilian government consisting mostly of left and far-left politicians and intellectuals to implement the reforms they wanted. This government failed because they fought among themselves, did not work at their jobs, tried to get control of the army, and were generally impractical or worse. Meanwhile, violent attacks on the government continued, often by groups in which members of the government were actively involved.

Despite this disgraceful performance by the left-wing civilians, when this government collapsed, the army turned to another group of left-wing civilians—the Christian Democratic Party. The Christian Democrats formed a government that was capable of acting. Within a few months they enacted two major land reforms, nationalized the banks and the coffee and sugar export businesses, and started educational reforms. Over three hundred large farms have been turned over to, and are now operated by,

peasant cooperatives. The co-ops are made up of those who worked the farms for the former owners (who are receiving bonds in payment for their property). Elections for a constitutent assembly will be held March 28, 1982; the great bulk of the population will participate and be represented. The army has pledged not to interfere with the elections.

The revolutionary army has also replaced the leaders of the feared security services. Reform of these organizations is difficult because of the ongoing war and the long history of close relationships between the security forces and local landlords.

The sad and dangerous thing is that the officers who committed themselves to democracy have not been welcomed by supporters of democracy in other countries. The Socialist International, liberal U.S. Congressmen, much of the international press, etc., are instead supporting the anti-democratic extreme left group which is attacking the revolutionary government and rejecting free elections. This kind of reception, similar to that encountered by officers in Honduras (who have now supported two free elections giving power to the opposition) does not make their mission easier. The democratic experiment in El Salvador is in danger of military defeat at the hands of a coalition, composed mostly of enemies of the United States and of democracy.

DEVELOPMENTS IN SPACE TECHNOLOGY

Mr. HAYAKAWA. Mr. President, developments in space technology are improving the quality of life for many of America's disabled veterans. Efforts by the Veterans' Administration to advance prosthetic research have produced artificial limbs which function so efficiently they can be adapted to meet the specific and individual needs of each patient.

An informative article appeared in the September 1981 issue of the American Legion magazine, "Space Age Technology Aids Disabled Veterans." Its author, Bonner Day, of the Veterans' Administration, discusses specific advancements designed to help the paralyzed and blinded. Developments such as wheelchairs controlled by the patient's breath, laser equipped canes for the blind, and specially equipped automobiles have contributed to more complete and meaningful lives for disabled veterans. These brave men and women sacrificed their well-being in defense of America, and we, as a nation, have a responsibility to do everything we can to help make their lives as rewarding and fulfilling as modern technology has made possible.

I recommend this article to my colleagues and ask unanimous consent that it be printed in the RECORD.

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

SPACE AGE TECHNOLOGY AIDS DISABLED VETERANS

(By Bonner Day)

Space technology has brought relief to thousands of disabled persons, and, in the process, has saved millions of dollars in hospital care.

The Veterans Administration, through support of research to assist disabled veterans, has been the catalyst in the development of numerous artificial limbs, braces and other aids. These new products have transformed the lives of disabled veterans and nonveterans alike.

As a result, opportunities for the handicapped have reached a new plateau in America, at a time when increasing concern for the disabled has caused the United Nations to establish 1981 as the International Year of Disabled Persons.

And because thousands of veterans now can live at home, millions of dollars are saved every year at VA hospitals.

"Prosthetics will never replace the real thing, but the field has been improved dramatically as a result of space technology," says Shirley Nelson, chief of prosthetics service at the Washington, DC, VA Medical Center. "A person with a remaining hand may feel an artificial arm does little more than fill up a sleeve. But someone with no hands at all invariably chooses to wear a prosthetic device."

The development and improvement of plastics and microelectronics have been major factors in making advances for the disabled possible. But innovative design and imaginative use of materials also have played significant roles.

The Rehabilitation Engineering Center in New York City guides VA research and development of these aids. The devices the center develops and tests address every known disability. The Center's special clinic team, in addition, treats 1,200 veterans a year, while the Center coordinates the fitting of prosthetic devices at the VA's 172 hospitals across the country.

Veterans with service-connected injuries are treated free. Some veterans with nonservice-connected injuries also can qualify under special circumstances.

And though the last amputee from the Vietnam War was fitted years ago, prosthetics experts at VA hospitals still are engaged in fitting the disabled with artificial limbs as well as supplying other aids to help veterans live richer and more productive lives.

Some new amputees are veterans whose war injuries have caused complications. Veterans of earlier wars also provide a steady demand as they seek modern replacements for their older artificial limbs.

The improved devices amount to a technological revolution in the 36 years since World War II ended. The post-World War II artificial leg, for example, has a mechanical knee that is difficult to use. Modern artificial legs have hydraulic-knee mechanisms that help swing the leg forward in walking. This mechanism can be adjusted to move at the most comfortable speed.

A variety of modern artificial legs are fitted to the individual needs of the veteran. Some legs have a hydraulic joint for both the knee and boot. Other limbs have a knee lock for extended standing, while others are especially designed for swimming.

The method of attaching the artificial limb to the remaining leg also has been improved. The artificial leg of post-World War II was attached by a leather corset around the hips. This corset immobilized the thigh and allowed the muscles to atrophy. The older artificial limbs, made of wood, had metal joints and weighed from nine to ten pounds.

The new artificial leg is held in place by a vacuum to the thigh, allowing the thigh to continue to be exercised. New models made of plastic are lighter. One model especially designed for cardiac patients weighs less than two pounds. Most modern artificial legs weigh about five pounds.

Artificial hands and arms have been improved even more dramatically. Hooks for grasping objects have been developed with electric power to provide extra strength. The hooks can be controlled electronically through wires running from hook to muscle nerves in the remaining arm. For cosmetic purposes, plastic gloves painted to look like hands have been developed to cover a hook.

A veteran being fitted for an artificial limb usually will stay in a hospital about 12 weeks. A patient may be fitted with a temporary limb six weeks or sooner after amputation. After exercising with a temporary limb for about six weeks, the patient is fitted with a permanent limb and discharged from the hospital.

A variety of wheelchairs has been developed to compensate for different disabilities. Veterans with legs that must be elevated are given chairs that provide this service. Some wheelchairs are designed for patients who require a semireclining position. Ambulators (standing wheelchairs) have been designed for paraplegics who wish to work at counters or tables. There are wheelchairs for paralyzed patients that are controlled by the patient's breath. By sipping and puffing on tubes, the wheelchair can be maneuvered forward, in reverse or sideways. Wheelchairs are assigned to veterans by prescription after VA experts make individual evaluations.

Disabled veterans can also obtain specially equipped automobiles. Some devices provide hand controls for braking and acceleration. Others provide extra power for low-effort steering for patients with limited hand strength. Wheelchair lifts have been designed for vans and autos.

The loss of an arm or leg in military service qualifies a veteran for equipment to adapt an automobile to his handicap. Those missing a left leg qualify for a dimmer switch on the dashboard, automatic transmission and power brakes. Those without a right leg qualify for a left foot accelerator, plus the items already mentioned.

The equipment is normally installed by commercial firms that specialize in such work, with the VA reimbursing the veterans for the expense.

For the blind, the VA has developed a number of devices. A laser-equipped cane senses objects and communicates their presence by sounding a noise or vibrating in the hand of the user. Another device for the blind turns the pages of a book and reads aloud. A calculator for the blind announces the calculations and then announces the results.

As a result of these improved aids for the disabled, the VA has been able to send many veterans home and free thousands of hospital beds. Through these savings, the VA has held its increases in health care costs to just 60 percent of the national average.

Medical care is still provided by hospitals to those patients who cannot live at home and take care of themselves. Moreover, the psychological needs of the patient have been given a higher priority. Patients want independence. They want to live at home and to be involved in a society of relatives, friends and coworkers. These needs can be addressed through the help of modern aids.

The disabled still have difficulties. The simple chores of living (that those with whole bodies do unconsciously) the disabled

must labor to accomplish. But because of research in the field of artificial limbs and other aids, and with the help of space-age technology, veterans have opportunities today that a generation ago were not even considered possible.

SENATOR RANDOLPH ANSWERS ARTICLES CRITICAL TO POSITIVE SYNFUELS GROWTH

Mr. RANDOLPH. Mr. President, despite deemphasis and cuts in the budget for synthetic fuels, efforts to convert coal to gas and liquid fuels are alive. This will not be true for long, however, if we keep seeing materials which appeared in the Washington Post on February 7, and the Wall Street Journal on February 24, 1982, titled "The Synthetic Fuels Party Has Gone Flat" and "Synfuels Soldiers On." In my opinion the articles are misleading. The headline of the Post article infers negatively that the synfuels industry is dying, but the body of the story actually shows the Board Members of the Synthetic Fuels Corporation are prepared to use their Federal appropriation to benefit our latest attempt to encourage synthetic fuels.

Granted, the current administration is not helping by cutting out research and development support in the Department of Energy for everything except nuclear technologies. Granted, the administration seems only concerned in marketing our most plentiful domestic energy resource overseas, rather than in developing a policy which would increase coal's direct use in our own country. But, while the existing economic climate has forced a decline in industrial initiatives for synfuels, the Corporation will assist in several major projects this year, and in all likelihood several more next year. True, the development of the first commercial synthetic fuels plants will be capital intensive and risky. There is, as Mr. Noble has pointed out, on numerous occasions, no certainty about technology, the cost of construction, or the price and marketability of the product.

Those of us in Congress understood and addressed those possible constraints when we drafted and passed the Energy Security Act of 1980. Although we might not meet the theoretical production goals called for in the act by 1992, the financing mechanisms to help a growing synfuels industry contained in the act are today sound, available, and suitable tools to stimulate a private investment in alternative fuels. Was passage of this act a congressional mistake as stated on the editorial page of the Journal? I think not. The actual mistake is to assume, as does this article, that "the energy crisis was solved by decontrolling oil and any remaining future risks will be further reduced by natural gas decontrol."

The lack of a healthy domestic economy and the lack of total commitment of the White House and energy associated Cabinet officers will slow the program—not kill it. What will cause the program to lose momentum is to incorrectly marshal public opinion against this new effort. As my colleagues know, the headlines are often the only part of an article that is read. Hence, the need for accuracy.

We are developing a destructive methodology for formulating energy policy in this country. We isolate each energy resource, especially those which are nationally plentiful, and dissect it in debate and in the media. After all the negatives are exposed, the decision is made not to use it as a major energy source because there are too many challenges associated with its development. This is happening not only with synthetic fuels, but coal, wood, geothermal, deep and offshore drilling, liquified natural gas, gasohol, conservation activities, and nuclear. The end result—no domestic fuel supply on which this Nation can rely as an alternate to oil and gas.

Mr. President, in 1980, with the passage of title I of the Energy Security Act, we as a nation again took steps to assure a continued supply of internal energy sources. Articles continuing to accentuate the negative about new energy initiatives we attempt will serve to lend truth to the quote that "man will occasionally stumble over the truth, but most of the time he will pick himself up and continue on." I, as one Senator, do not want to vote several years from now on legislation being debated on the question of what to do about liquid synfuels being imported for use into this country, made from domestic U.S. coal exported to other countries around the world.

Mr. President, I ask unanimous consent that the Washington Post and the Wall Street Journal articles referred to in these remarks, be included as part of the RECORD, following this statement.

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

[From the Washington Post, Feb. 7, 1982]

THE SYNTHETIC FUELS PARTY HAS GONE FLAT

(By Joanne Omang)

At the party that was synthetic fuels, the champagne has gone flat, the music has slowed and the headaches are beginning. And Uncle Sam, the genial host, has all but stopped handing out aspirin.

The Synthetic Fuels Corp., which held its third board meeting last week, no longer plans to commit $17.5 billion as fast as possible to encourage the industry dance. The Environmental Protection Agency has abandoned its effort to produce a whole new regulatory approach.

And some of the industry participants have gone home, saying the whole bash was getting too dangerous.

The future of the new synthetic fuels industry now appears to depend on the people it was launched to combat: the international oil cartel. If oil prices keep rising, the multibillion-dollar synfuels industry is on its way.

If they don't, it isn't. And right now, prices are stable.

Few analysts believe this stability is anything more than a lull. But no one is sure, and that uncertainly has cooled the rush to synfuels.

The idea in 1980 was to free America from dependence on imported oil by producing liquid fuels from U.S. coal and oil shale deposits. By 1987, President Carter said, we should be producing 500,000 barrels of synthetic fuel a day, and by 1992 2.1 million barrels a day, about half the current oil import level.

The Synthetic Fuels Corp. was set up to obligate $17.5 billion in federal money for price guarantees, purchase agreements, loan guarantees, loans and joint ventures in that order of priority to get the industry going.

Now the corporation's goal has shifted from massive production to making a political point.

Corporation board chairman Edward Noble has said he just wants to get enough plants started to demonstrate to the Organization of Petroleum Exporting Countries that the technologies work and that the product won't blow the U.S. bank book.

"We do need the technology, and if we don't do anything but show we can do it on a certifiably economic basis, it'll have some influence in the prices OPEC will put to us," he said. "It may be cost-effective in a backdoor type of way, kind of a club under the table."

This reversal for synfuels is the result of three factors, according to Mike Koleda, head of the National Council on Synthetic Fuels Production, a trade association of 55 companies.

First, high interest rates have delayed all capital-heavy projects, and each synfuels plant could cost $3 billion to $5 billion.

Second, synfuels plants started now are not likely to have a product that will be cheaper than regular fuel when the plant is finished in five to 10 years.

Oil prices drive construction prices, so for synfuels to be competitive, the price of regular oil must keep rising after the plant is built. And world oil prices "will be flat or at least soft for this decade," Koleda said. Companies are reluctant to invest with slim prospect of success.

Third, the Reagan administration would rather have private industry shoulder this kind of huge financial job. "It's a very basic, dramatic change in policy," Koleda said.

Noble, a major figure in the synfuels drama, is seen as a product of that policy shift. At 53, the soft-spoken Tulsa oil tycoon admits he had to be convinced the government had any role in the industry. "I saw people offering it as a panacea and it isn't," he said. "I told Congress I wouldn't have voted for it."

He still wants government out of synfuels as fast as possible. Although the corporation expects to have $8.6 billion to commit this year, Noble does not plan to use it all, even though one synfuels plant can cost $3 billion or more.

He wants to have money for future technological processes, he said. Projects that win his go-ahead will be the ones that put up the most money.

Some industry figures object. "Why is he in that job if he doesn't want to spend the money?" asked one western oil company official. To this unhappiness, Noble replies: "That's tough. You don't discourage serious

people. If they just want a free ride they don't need to come around."

The corporation received 63 applications for help in its first round of solicitations, and last week narrowed the list to 11, from which "a few" will be chosen in March, Noble said. Six projects are small in synfuel terms, aiming at eventual production of less than 12,000 barrels a day.

Even if all 11 are successful, with or without federal help, their production will barely exceed 205,000 barrels per day, a far cry from the original target.

To environmental groups, which think EPA's controls over synfuels are inadequate, the slowing is a great relief.

Noble said the Synfuels Corp. will not fund any project until it complies with environmental rules, but synthetic fuels are something new on the planet and not all are covered by existing rules.

In some tests the chemicals caused alarming mutations, cancers and other damage in laboratory animals. Water used in the processing absorbs dangerous chemicals and must be disposed of properly.

Waste dust as fine as talcum powder must be safely handled and disposed of. But an ambitious EPA plan to produce "regulatory guidance documents" for the industry as it was being born was abandoned last fall after $6 million had been spent.

"Designs were changing so fast on the processes it was impossible to come up with a document that would answer all questions," explained Andrew Jovanovich, acting chief of EPA's research and development office when the program was killed.

The agency, hampered by its stiff budget cuts, now plans only to provide teams of experts to advise state and local officials on permit applications from synfuels projects, Jovanovich said. No such teams exist.

Environmentalists charge this is not enough. "The corporation still has no environmental capacity whatsoever, and nobody at EPA is going to monitor it," said Jonathan Lash of the Natural Resources Defense Council.

Rep. Toby Moffett (D-Conn.) plans hearings on the synfuels regulatory situation next month in his Government Operations subcommittee on energy.

Legislation is pending in Congress to revamp federal oil shale leasing, allowing more acreage per company and providing space to dispose of the waste. But there is no agreement on the size of the expansion or who gets to lease additional land.

The Interior Department has allotted six months to write rules for evaluating the social and economic impact of proposed projects, but the effect of large and abrupt population increases at the project sites could be disastrous.

Meanwhile, some projects are going forward.

Three pilot plants got help last year in the last gasp of the Department of Energy's synfuels program: a $2.02 billion loan guarantee for the Great Plains coal gasification project in North Dakota; a $400 million purchase agreement for Union Oil's shale project at Parachute Creek, Colo., and a $1.1 billion loan guarantee for the TOSCO Corp. share of the Colony oil shale project near Parachute Creek. The Exxon Corp. is forging ahead there without asking for federal help.

The slowdown, all sides agree, may help the industry in the long run by providing time to do everything right the first time.

"I'm not sure it would have been a good idea to start 10 projects at once," Noble said. "I'd rather do two or three and have them be damn good."

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

SYNFUELS SOLDIERS ON

At a time when the credit markets are overburdened world-wide and the Reagan administration alleges it is looking for places to cut borrowing, a big credit gulper called Synthetic Fuels Corp. is finally nearing its wheeling-dealing stage. It will decide soon how much of a huge federal loan authorization it will commit to private synthetic fuel projects.

Synfuels was a product of the pre-decontrol energy hysteria of the 1970s, when Congress was coming up with schemes to substitute expensive energy for cheap energy. It rolled out of Congress in 1980 as a new "off-budget" federal entity with authority to ultimately commit $20 billion in government-backed credit, either by guaranteeing loans for projects or guaranteeing that synthetic fuels developers would be able to charge competitive prices.

The "off-budget" description was, however, largely a fiction. The funds for carrying out the corporation's activities come from purchases by the U.S. Treasury of the corporation's notes, and these payments are part of the federal budget. If Synfuels found itself ponying up a lot of cash to cover a failed loan or subsidize an uneconomic plant, the taxpayer would get the bill.

Even if that were not the case, the corporation's guarantee authority, which will total $15 billion by July 1 this year, is simply another form of credit market distortion. The energy "crisis" was solved by decontrolling oil and any remaining future risks will be further reduced by natural gas decontrol. But when Synfuels goes ahead with its plans, new preferred borrowers will be entering the credit markets to raise money to add to the energy glut.

Currently there are 11 projects that have survived the corporation's initial screening. Six are in the South and five in the West. More are distinguished by high capital costs for plants that would produce relatively small amounts of fuel.

They will need government guarantees because their backers don't think they could be financed successfully otherwise. We would guess that they are right about that, now that relative energy prices are falling. Price guarantees, in particular, would be a good way for Synfuels to insure that the taxpayers will ultimately end up paying part of the cost of this fuel.

Synfuels almost certainly will face some other problems down the line. With such juicy plums to distribute, it will be open to charges of political favoritism and, possibly, conflicts of interest.

Congress never likes to admit it made a mistake, particularly a $20 billion mistake. So the political inclination has been to let Synfuels plod along quietly toward the day when it will start issuing reserved seats in the credit market. After all, it was officially described in the act as an "off-budget" federal agency so why should any budget cutter worry?

There are two good reasons: The only synthetic fuel plants we need are the ones that make economic sense; the Synfuels-backed borrowing will crowd out other projects that have a more legitimate claim to credit on the basis of genuine economic feasibility and need.

VIC HRUSKA

Mr. RIEGLE. Mr. President, I felt a deep sense of personal loss when I learned recently of the death of Vic Hruska, a county commissioner in Menominee County, Mich.

Those of us who were fortunate enough to know and work with Vic realize that he was indeed a very special person; an individual who displayed a great deal of sensitivity and commitment toward the concerns of his neighbors; a political figure who possessed a strong sense of morality and humanity and who approached problems with a common sense that made his views appealing and sensible to a great many people.

As a tribute to Vic, I ask unanimous consent that the following article, which appeared recently in the Menominee Herald-Leader, be entered into the RECORD.

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

[From the Menominee Herald-Leader, Jan. 18, 1982]

ON THE PORCH: IN QUIET TALKS WITH VIC HRUSKA, A KEEN SENSE OF JUSTICE EMERGED

(By Pat Egan)

For nearly two years I rented the farmhouse in which Vic Hruska and his family grew. It was a warm old house facing twenty acres of open field and seemingly endless acres of pine swaile. The house had a high porch facing east across a small alder thicket and creek. It was on that porch that Vic Hruska and I used to ramble through politics, through countless books, through history, and through some of the most pleasant afternoons and evenings I ever had.

Vic Hruska was part of my "beat" as a county reporter in Menominee. Though I was living in his family's old home, we approached each other cautiously at first, after meetings he asking me about the deer I might see in the early evenings, if the fireflies were over the creek, if the woodcock was whistling and spiraling in his spring dance yet. Then one day he asked if he could come visit.

The first visit turned into many. I can't remember how many. I in turn visited him in his own home only once, when it was too cold for a visit on the porch. The porch, after all, belonged to both of us.

Vic's political career blossomed late in his life, but it was a bloom which began as a seed early. He had been an active union member and organizer in his years at Lloyds, and was more proud of that fact than all others. For me, a listener, it was obvious that his early union days and his later political days were both simply the manifestation of a deep sense of justice the man had. Whatever was wrong must be righted. I remember once we were warming a discussion of Michigan's problems, and automobile problems, and Vic became emphatic. "Workers here shoulun't be concerned about Japanese competition," he said. "They should be worried about the Japanese worker. If he's working for less than the American worker, then something should be done to get him better pay, not less work." His justice knew no bounds. The Solidarity movement, I often thought, must have pleased him very much.

He will be remembered best, I suppose, as the man who consistantly opposed the airport expansion. It was certainly important to him, but only as yet another matter which did not make common sense. He resented moving people out of their homes and off their land, knowing full well the measure of effort and love some local families have in their land. His own feelings had deep roots. Common sense in turn, was understanding natural laws, and how people obeyed or disobeyed them. He liked to read nature in the sense that we could discuss the drainage of our creek into the Menominee River and it could somehow become much like the forces governing the local economy or even the national economy. He could clearly see the connection, and make me see it.

On one visit Vic noticed from the porch that part of the roof on the barn had collapsed since his last visit. "Some barns seem to last forever when they're used," he said, "but it seems that as soon as a barn isn't used any more it gives up." His own need to keep busy, in use until he died is not surprising.

Maybe he got it from all the books he read, in a cumulative sort of way. He found his most valuable things to come from books. That, he said, was because of his father. He often told how his father encouraged them to read, would gather them in their big common bed on cold nights and read. When they took the sleigh into town to deliver their winter milk, it was also a trip to pick up a new book, and whoever didn't have to run beside the sleigh on the way home got to read the book.

At times, after a few beers he might begin quoting Shakespeare, or something from a favorite poem. Once in awhile he would stop, expecting me to finish up. After all, of the two of us, I was the one with the college degree, in literature of all things, and he was the welder. I, of course, likely as not had no idea what he might be quoting.

He often said his father was always whistling, as the old Czechoslovakian might be digging their precious potato crop. It wasn't until much later that Vic learned his father had been whistling Mozart.

In his own way Vic was always whistling Mozart. He might be talking about zoning or budgeting for the library fund or mental health, but behind it was a complicated weaving of senses which made Vic Hruska an uncommon common man. That, I think, would be his favorite tribute.

THE HEROISM OF MR. NEIL NYBERG

Mr. RIEGLE. Mr. President, I would like to call to the attention of my colleagues a recent act of heroism by one of my constituents, Mr. Neil Nyberg of Battle Creek.

Mr. Nyberg was visiting his sister, a Christian missionary in Zaire, when the event occurred. He was assisting his sister in bringing a class of children to the Ubangi River on an excursion. One female student was apparently caught in the strong currents of the river and was swept downstream. Clearly, this was a life-threatening situation for the young girl.

Without regard for his own safety, Mr. Nyberg dove into the water and managed to drag the girl to the bank. At that moment, he noticed another girl being pulled into the current. Again, he plunged into the river, grabbed the unconscious girl, and brought her to safety.

Mr. President, there are thousands of such acts of heroism every year, and most go unnoticed. These dramatic events usually occur in situations where there is no time for thoughts or personal safety, or decisions of whether one should get involved. President Reagan stated that we do not need to turn to our history books to find heroes, that they are all around us. Mr. Nyberg is one such hero, two young girls are alive today through his efforts, and we can all be thankful that there are people like Mr. Nyberg in our midst.

COOL WATER COAL GASIFICATION PROGRAM

Mr. HAYAKAWA. Mr, President, I wish to call the attention of my distinguished colleagues to a significant energy event occurring in California.

The cool water coal gasification program in Daggett, Calif., has been joined by a Japanese consortium of companies. This involves a large number of great Japanese and American firms in a joint venture which will be of benefit to both Japan and the United States. At a time when there is so much economic rivalry between these nations, I think it is a piece of good news. Together, the program will build and operate a pioneer coal gasification plant. The plant will be operational in 1984.

I have more than once in my life stood at a place in the tapestry of history, where some of the more colorful and important threads in that tapestry came together.

I have that feeling now. Tuesday evening, I attended ceremonies which signal the start of a great joint venture between the land of my fathers and the land of my children. The Japanese partnership is composed of Tokyo Electric Power Co., Inc., Central Research Institute of Electric Power Industry, Toshiba Corp., and Ishikawajima-Harima Heavy Industries Co., Ltd. The U.S. participants are Southern California Edison Co., Electric Power Research Institute (EPRI), Texaco, Inc., Bechtel Power Corp., and General Electric Co.

The outcome of that venture will be a pioneering energy factory in the great State of California which I have the honor to represent. To think that all of these companies are working together to accomplish this project fills me with pride and gratification.

Mr. President, I ask all of my colleagues to join mc in wishing the cool water program every success.

GUN CONTROL

Mr. SYMMS. Mr. President, in statements these past several days, I have discussed the issue of gun control. I have expressed my dismay over a recent Federal district court decision which allows an Illinois community to disarm its own residents. Such a decision strikes at the foundation of our second amendment. In my view, the decision of the Federal district court in this matter was unwise and improper in light of the fundamental liberties involved.

The court in this case refused to address the fundamental underlying issue, which is that men have inalienable rights given not by man but by God. These rights that form a cornerstone of our heritage and culture are most specifically enumerated in the Bill of Rights—the first 10 amendments to our Constitution. These rights set forth the individual guarantees of personal liberties that we, as free men in an open and free society, enjoy. Paramount among these is the natural right of one to provide for the protection of himself, his family, and his property from aggression and tyranny.

The court unfortunately in this instance cavalierly dismissed any consideration of the real issue at hand and ruled instead that based on past court decisions the second amendment applies only to actions involving the Federal Government and, second, that the local ordinance does not conflict with the constitution of the State of Illinois. Such a court ruling cannot stand unanswered. Such a ruling implies that the right to keep and bear arms is not an individual right but rather is something that may or may not exist depending upon the whim of a State or local ruling body. We as a people need to reaffirm that as a Nation of free men we insist upon our right to keep and bear arms that our liberty may be vouchsafed. As Pope John Paul II said in his most recent New Year's message:

> [I]n the name of an elementary requirement of justice, peoples have a right and even a duty to protect their existence and freedom by proportionate means against an unjust aggressor.

Whether an unjust aggressor be an individual criminal or an entire nation, the fact remains and events in our cities and on the world scene only emphasize, that we must be able to provide protection for ourselves, our families, and our property.

The founders of our Nation were very much aware that individual and national freedom rests upon men having the ability of individually and collectively opposing an aggressor. Such was a natural right not dependent upon the good graces of any government or ruling body nor dependent upon any manmade law, for as Frederick Bastiat stated:

Law is solely the organization of the individual right of self-defense which existed before law was formulated.

So conscious of this and jealous of the rights they had won in the War of Independence, the people of the former colonies refused to ratify a constitution unless it contained specific guarantees. These guarantees were designed to protect them from actions by a Federal Government to the same extent they felt themselves already protected from the actions of State government. These guarantees were not collective rights but individual rights.

In vain did Hamilton, writing as Publius in "The Federalist Papers," argue:

Here, in strictness, the people surrender nothing; and as they retain everything they have no need of particular reservations. "We, the people of the United States, to secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." Here is a better recognition of popular rights. . . . The truth, is, after all the declarations we have heard, that the Constitution is itself, in every rational sense, and to every useful purpose, A Bill of Rights.

The people and the States did not accept this. They were not willing to see freedoms, recently won, jeopardized by mere promises of good faith on the part of a government as yet untested. As Madison, also writing as Publius in "The Federalist Papers," stated:

The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny . . . mere declarations in the written Constitution are not sufficient to restrain the several departments within their legal rights.

Madison recognized that the people of the time viewed with suspicion a new and more powerful Federal Government that might not accord the same deference to individual rights as was done at the local level. In "Federal Bill of Rights: Legislative History," Madison wrote:

[T]he great mass of people who opposed it disliked it because it did not contain effecutal provisions against encroachment on particular rights, and those safeguards which they have been long accustomed to have interposed between them and the magistrate who exercises the sovereign power: nor ought we to consider them safe. . . .

Madison then goes on and says that this objection of not having adequate protections for those individual rights universally recognized at the State and local levels may be corrected by merely adding a Bill of Rights so to, "satisfy the public mind that their liberties will be perpetual. . ." Madison was, however, not naive enough to suppose that a mere declaration of rights was enough to protect liberties from encroachment by oppression. Any bill of rights must contain a right that allows for the keeping and preservation of all other rights. Again, writing as Publius in "The Federalist Papers," Madison contrasts the governments of Europe who are afraid to trust the people with arms and aptly points out that this right of owning and possessing arms is an advantage, "which Americans possess over the people of almost every other nation." And why is this an advantage? Because as Madison again states in "The Federalist Papers," this would allow:

[C]itizens with arms in their hands, officered by men chosen from among themselves, fighting for their common liberties. . . . Let us not insult the free and gallant citizens of America with the suspicion that they would be less able to defend the rights of which they would be in actual possession than the debased subjects of arbitrary power would be to rescue theirs from the hands of their oppressors.

It is an incorrect assumption that the founders of our Nation and those involved in its struggle for freedom would give so much consideration to the perpetuation of a natural right at one level of government and yet allow for the existence of that very same right to be secured only by the capricious nature of another level of government. The founders of our Nation perhaps incorrectly assumed that the spirit which actuates the State legislatures and local governments would be subject to the jealous guarding of individual rights. As Jefferson wrote in a personal letter:

[M]y confidence is that there will for a long time be virtue and good sense enough in our countrymen to correct abuses. . . .

Madison saw local, State, and Federal levels of government acting to correct the abuses of each other and of themselves:

In the compound republic of America, the power surrendered by the people is first divided between two distinct governments and then the portion allotted to each subdivided among distinct and separate departments. Hence, a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

There were no prohibitions on the ownership of firearms in the States at that time. State and local governments were too fresh from the hands of oppression. Eight of the original 13 States enacted provisions in their State constitutions to emphasize the necessity of the right to keep and bear arms. Connecticut revamping its original colonial charter, succinctly summarized this individual right at the time by stating:

Every citizen has a right to bear arms in defense of himself and the state.

The need for a declaration of rights to the Federal Constitution and the existence of these rights as belonging to the individual is aptly pointed out by Jefferson in a letter to James Madison:

I hope therefore a bill of rights will be formed to guard the people against the federal government, as they are already guarded against their state governments. . . .

Writing in the spring 1981, George Mason University Law Review, Stephen P. Halbrook summed up the matter:

It is easy to understand why the Bill of Rights as adopted contained the well-known provision in Article II: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." That the term "militia" meant all the people was evident from the version of the amendment that passed the House of Representatives, *to wit*: "A well regulated militia, composed of the body of the People, being the best security of a free State, the right of the People to keep and bear arms, shall not be infringed. . ." The phrase concerning the body of the people was not contained in the Senate version, which was ratified, since this meaning of "militia" had been evident to all since the adoption of the Virginia Declaration of Rights in 1776. Further, the reference to "the people" in the second amendment left no doubt as to who possessed the right just as it is clear that each individual is part of "the people" referred to in the first, fourth, ninth and tenth amendments. However, the specific rejection by the Senate of a proposal to add "for the common defense" after "to keep and bear arms" was meant to preclude any construction that arms bearing was restricted to militia use and to common defense against foreign aggression or domestic tyranny, for some proposals for the amendment added other purposes, such as individual self defense or hunting. In sum, in the *weltanschauung* of 1789, the second amendment recognized an individual right to keep and bear arms for a variety of purposes.

As with all rights, no right is absolute. There are areas of legitimate State interest and need for control. As Jefferson pointed out:

A declaration that the federal government will never restrain the presses from printing anything they please, will not take away the liability of the printers for false facts printed. The declaration that religious faith shall be unpunished, does not give impunity to criminal acts dictated by religious error.

So it is with the right to keep and bear arms. The law cannot and should not be required to allow any use of a firearm deemed appropriate by an individual anymore than the law should allow freedom of speech to be used for libel or slander or the right of assembly to be used for inciting violence. Such abuses of the right to keep and bear arms have been addressed in the National Firearms Act of 1934, the Omnibus Crime Control and Safe Streets Act of 1968, and the Gun Control Act of 1968.

We are not dealing with liberties needed in a long ago era which have subsequently outgrown their usefulness in a modern, sophisticated world. The genius of the Constitution is that it deals with and makes provisions for dangers to human freedom that have always existed and will continue to

exist. It deals not with an era of time which changes with advances in science and technology but with the nature of man which is timeless and never changes. We are dealing with the relationship of man with man and man with government. How envious the people of Poland must be of our Bill of Rights. Yet many Soviet bloc countries, and even the Soviet Union itself, have state documents which declare individual freedoms of speech, assembly, religion, and so on. And yet the people have none of these freedoms in practice. The reason they do not is because the people do not have the means to enforce their rights against the state. Afghanistan has not been swallowed whole by the Soviet Union because it is peopled by fiercely independent and proud men and women with rifles, pistols, and glass containers filled with gasoline. The people of Afghanistan have never allowed themselves to be disarmed and now are thankful for it.

Today, there are few in our Nation who view the Bill of Rights as something which required blood and sacrifice to bring into being. To them it has always existed and they have always benefited from it as a matter of course. As beneficiaries of a heritage of freedom, we cannot view any right contained in our Bill of Rights with complacency. Experience has shown that encroachment of one right leads to the loss of all. The Federal judge, in writing his opinion approving the city ordinance which prohibits the possession of handguns, exercised more foresight than he probably intended when he said of the handgun ban ordinance:

Many social experiments have only small beginnings.

As free men we cannot allow this social experiment—no matter how small its beginning—to infringe upon our right to keep and bear arms.

Past lessons show us that rights once given are seldom recovered.

Many years have passed and many generations have come and gone since the right to keep and bear arms was an issue decided on our Nation's soil. We must equate the same status to the second amendment that has been given other freedoms contained in the Bill of Rights. It is the second amendment that gives life and force to our entire Constitution and establishes the relationship between a people and their governments at all levels. Freedom is still the issue.

MESSAGE FROM THE HOUSE

At 3:41 p.m., a message from the House of Representatives, delivered by Mr. Gregory, one of its clerks, announced that the House has agreed to the following concurrent resolution, with amendments, in which it requests the concurrence of the Senate:

S. Con. Res. 64. Concurrent resolution to authorize the Zeta Beta Tau fraternity to conduct a reception in the rotunda of the Capitol on March 31, 1982, to commemorate Roger Williams for his contribution to religious freedom in the United States.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. TOWER, from the Committee on Armed Services:

Mr. TOWER. Mr. President, from the Committee on Armed Services, I report favorably the following nominations: Vice Adm. Kinnaird R. McKee, U.S. Navy, to be admiral; in the Army National Guard there are three appointments to the grade of major general and below (list begins with Calvin G. Franklin); Lt. Gen. James H. Ahmann, U.S. Air Force, to be reassigned in current grade to a position designated by the President; and in the Marine Corps there are five promotions to the grade of major general (list begins with Roy E. Moss). I ask that these names be placed on the Executive Calendar.

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

Mr. TOWER. Mr. President, in addition, in the Army there are 18,822 permanent promotions to the grade of colonel and below (list begins with Rudolph E. Abbott); in the Air National Guard there are 19 promotions to the grade of lieutenant colonel (list begins with John L. Bradley III); in the Army Reserve there are 189 promotions/appointments to the grade of colonel and below (list begins with Bobby A. Boorigie); in the Army Reserve and National Guard there are 1,629 promotions/appointments to the grade of colonel (list begins with Gerard P. Conva); in the Navy there are 299 permanent promotions to the grade of captain (list begins with Raymond W. Addicott); in the Navy and Naval Reserve there are nine permanent promotions to the grade of commander and below (list begins with Carl V. Catlin); in the Navy and Naval Reserve there are 44 permanent promotions to the grade of lieutenant commander (list begins with Barry M. Amos); in the Marine Corps there are 50 permanent promotions to the grade of second lieutenant (list begins with Rodney M. Hale); and in the Marine Corps there are 50 permanent appointments to the grade of second lieutenant (list begins with Helen Budler). Since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of February 8 and 22, 1982, at the end of the Senate proceedings.)

By Mr. HATCH, from the Committee on Labor and Human Resources:

Cathie A. Shattuck, of Colorado, to be a member of the Equal Opportunity Commission for the term expiring July 1, 1985.

(The above nomination was reported from the Committee on Labor and Human Resources with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. 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 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.

By Mr. DURENBERGER:

S. 2141. A bill to amend the Internal Revenue Code of 1954 to treat as a reasonable need of a business for purposes of the accumulated earnings tax any accumulation of earnings by such business before the death of a shareholder in anticipation of section 303(a) distributions, and for other purposes; to the Committee on Finance.

By Mr. DURENBERGER (for himself, Mr. HEINZ and Mr. MOYNIHAN):

S. 2142. A bill to amend the Social Security Act to provide for a new system of utilization and quality control peer review under the medicare program; to the Committee on Finance.

By Mr. BAUCUS:

S. 2143. A bill for the relief of Yuk Chuen Leung; to the Committee on the Judiciary.

By Mr. RANDOLPH:

S. 2144. A bill to extend the Appalachian Regional Development Act to provide transitional assistance to the Appalachian region; to the Committee on Environment and Public Works.

By Mr. RIEGLE:

S. 2145. A bill to amend the Consolidated Farm and Rural Development Act to change the conditions of eligibility for, and the amount of, financial assistance made with respect to agricultural production losses caused by disaster; to the Committee on Agriculture, Nutrition, and Forestry.

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.

By Mr. TSONGAS:

S.J. Res. 151. Joint resolution designating Sunday, August 1, 1982, as "National Day of Peace"; to the Committee on the Judiciary.

By Mr. MOYNIHAN:

S.J. Res. 152. Joint resolution providing for the designation of the week beginning April 25, 1982 and ending May 1, 1982 as "National Dance Week"; to the Committee on the Judiciary.

By Mr. RIEGLE:

S.J. Res. 153. Joint resolution designating Baltic Freedom Day; 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. DIXON (for himself, Mr. LEAHY, Mr. MATHIAS, Mr. METZENBAUM, and Mr. MOYNIHAN):

S. Res. 325. Resolution expressing the sense of the Senate that a supplemental appropriation should be enacted to restore full funding of the WIN program; to the Committee on Appropriations.

By Mr. TSONGAS:

S. Res. 326. Resolution relating to the imprisonment of Yuri Badzyo; to the Committee on Foreign Relations.

By Mr. MOYNIHAN (for himself, Mr. CANNON, Mr. RANDOLPH, Mr. BAUCUS, Mr. STENNIS, Mr. WILLIAMS, Mr. MATSUNAGA, Mr. MELCHER, Mr. GOLDWATER, Mr. D'AMATO, Mr. SYMMS, Mrs. KASSEBAUM, Mr. WEICKER, Mr. BOSCHWITZ, Mr. HOLLINGS, and Mr. ZORINSKY):

S. Res. 327. Resolution to designate March 1982 as "National Eye Donor Month"; to the Committee on the Judiciary.

By Mr. STEVENS (for Mr. THURMOND):

S. Res. 328. Resolution commending Douglas B. Hester, the Legislative Counsel of the Senate, for his service to the Senate; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURENBERGER:

S. 2141. A bill to amend the Internal Revenue Code of 1954 to treat as a reasonable need of a business for purposes of the accumulated earnings tax any accumulation of earnings by such business before the death of a shareholder in anticipation of section 303(a) distributions, and for other pruposes; to the Committee on Finance.

FAMILY BUSINESS PRESERVATION ACT

Mr. DURENBERGER. Mr. President, family-owned businesses have formed the backbone of the American economy for more than 200 years. Last year we took a number of critical steps in the estate tax area to remove the barriers to passing these family-owned businesses to surviving spouses and future generations. But further action remains to be taken. The Family Business Preservation Act that I introduce today will modify a provision of the Income Tax Code that inhibits families from taking actions during their lifetimes to mitigate the need to sell the business at death. It will also broaden the test for qualification for extended payment of estate taxes to permit shareholders of corporations with 25 or fewer shareholders to qualify.

Our income tax laws pose an imposing barrier to owners of businesses who want to accumulate earnings in the corporation for the payment of future estate taxes. The problem is especially severe for businesses that have a high market value compared with their annual earnings. Corporations are taxed, in addition to the regular corporate tax, at a rate of 27½ to 38½ percent on earnings accumulated each year in excess of $250,000. An exception is made for accumulations for "reasonable business needs," section 537 of the code defines "reasonable business needs" to include accumulations to redeem stock in the year the shareholder dies and years thereafter. But what about the business that has relatively low annual earnings compared to its market value? Heirs will have a large estate tax to pay and yet the corporation will have insufficient annual earnings to redeem the stock for the necessary liquidity.

Family-owned newspapers—the independent newspapers so vital to the free press in our country—are especially hard hit by this accumulation rule. The Wall Street Journal, on August 19, 1981, told the story of the Salisbury (N.C.) Post. The paper with a circulation of 24,700 had earnings of $400,000 the previous year on revenues of about $4 million. The asset value was $3 million, but the market value was about $20 million. Even with the $600,000 exclusion that will be phased in by 1987, the estate tax would be $9.8 million, or 24½ times annual earnings.

My bill would provide relief for businesses facing this situation by expanding the definition of "reasonable business needs," which already permits accumulations to redeem stock after death, to include such accumulations prior to death. These accumulations would be made with aftertax dollars as opposed to pretax dollars that would deprive the Federal Government of revenue from the corporate tax.

Enactment of this legislation would permit businesses to establish a program to set aside funds for redemption of stock at the death of a major shareholder, to undertake the planning so essential for avoiding undue disruption at the time of the death of a principal owner. By taking these steps a business could avoid the necessity of selling to a larger corporation—to a chain, in the case of newspapers—just to meet the liquidity demands of the estate tax.

The bill also deals with a related problem that sometimes hampers family owned businesses from utilizing the provisions of section 6166 of the code to extend the payment of estate taxes over a period of years. One of the three tests to qualify for extended payment is a requirement that the business have 15 or fewer shareholders. Businesses that have been in the family several generations often have more than 15 shareholders even though they are still held by the family. My bill would increase the maximum number of shareholders to 25 to conform section 6166 to the changes made in the Economic Recovery Tax Act last year on the maximum number of shareholders for eligibility for subchapter S treatment.

Mr. President, few actions we took in the Economic Recovery Tax Act were as long overdue and inherently fair as the added protection we afforded small estates from taxes. Small businesses are more important today than they have ever been, and our commitment to protect family-owned businesses from being devastated by estate taxes cannot end with ERTA.

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. 2141

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Family Business Preservation Act".

SEC. 2. SECTION 303 REDEMPTION NEEDS OF A BUSINESS.

(a) IN GENERAL.—Paragraph (1) of section 537(b) of the Internal Revenue Code of 1954 (relating to section 303 redemption needs) is amended to read as follows:

"(1) SECTION 303 REDEMPTION NEEDS.—The term 'section 303 redemption needs' means, with respect to any taxable year of the corporation, the amount needed (or reasonably anticipated in such taxable year to be needed) in such taxable year or any subsequent taxable year to make redemptions of those shares of stock of such corporation to which section 303(a) applies (or to which such corporation reasonably anticipates section 303(a) may apply).".

(b) CONFORMING AMENDMENT.—Subsection (b) of section 537 of such Code (relating to special rules) is amended by striking out paragraph (5).

(c) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to taxable years beginning after December 31, 1982.

SEC. 3 COORDINATION OF SECTION 6166 WITH SUBCHAPTER S.

(a) IN GENERAL.—Paragraph (1) of section 6166(b) of the Internal Revenue Code of 1954 (relating to interest in a closely held business) is amended by striking out "15" in subparagraphs (B)(ii) and (C)(ii) and inserting in lieu thereof "25".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to estates of decedents dying after December 31, 1982.

By Mr. DURENBERGER (for himself, Mr. HEINZ, and Mr. MOYNIHAN):

S. 2142. A bill to amend the Social Security Act to provide for a new system of utilization and quality control peer review under the medicare program; to the Committee on Finance.

PEER REVIEW IMPROVEMENT ACT OF 1982

Mr. DURENBERGER. Mr. President, on behalf of myself and Senators HEINZ and MOYNIHAN, I am introducing legislation to redirect, simplify, and enhance the cost-effectiveness of the professional standards review organizations program under medicare.

As chairman of the Health Subcommittee of the Senate Committee on Finance, I held hearings on the PSRO program last year. Based on the information presented at those hearings, and on experiences with the PSRO program in Minnesota, I am convinced that we cannot afford to abandon the program, nor can we afford to retain it in its present form.

Once again the PSRO program has been targeted for elimination in the proposed Federal budget. In fact, the budget purports to assume a savings from this proposed action. I question that assumption. In hearings before the subcommittee last year even the most severe critical analysis of the program concluded that its costs are about equal to its savings. That analysis, which was performed by CBO, was based on an evaluation of all PSRO's, the effective ones as well as the ineffective ones.

Last year we approved legislation that would eliminate the poor performers. Some 54 PSRO's out of a total of 151 are being eliminated this year. To date, 36 PSRO's have been dropped from the program. What that leaves us with, then, is a proposal to eliminate the effective ones.

According to preliminary discussions with the Congressional Budget Office we can expect an increase in medicare costs, not a decrease, if the remaining PSRO's are eliminated.

The PSRO program was established in 1972 as a result of rapidly increasing costs of medicare and medicaid and the failure of the existing utilization and claims review mechanisms to deal with widespread inappropriate usage of costly health care services—problems that remain with us today.

Peer review affords practicing physicians an opportunity on a voluntary and publicly accountable basis to undertake review of the medical necessity and quality of care provided. From the successes of peer review we have learned that the concept is a valid one, that physicians are willing to work cooperatively with others to assure the effective, efficient, and economical delivery of health care services of proper quality. We have learned that we can reduce, and perhaps ultimately eliminate, unnecessary services which increase risks to patients and waste valuable resources that are needed elsewhere. Most importantly, we have learned that we can accomplish these things through an effective partnership between the Government and the private sector.

But we have also learned from the failures of the PSRO program. We have learned that overregulation and too detailed specifications in laws can restrict innovation in new approaches to review. We have learned that the private sector must be encouraged to institute approaches designed to assure quality while eliminating unnecessary services so that we do not end up with a mere shifting of the costs of health care. And we have learned that administrative functions of organizations engaged in review activities can be arranged in a more cost-effective manner.

Starting in the late 1970's, the effectiveness of PSRO's became a subject of debate both within the administration and the Congress. Although no one has come up with a fully reliable measure of the cost effectiveness of the program, one thing has become clear, there are effective PSRO's as well as ineffective ones.

The legislation I am proposing would capitalize on the positive results of the effective PSRO's through entering into performance-based contracts with them. Eliminated would be the use of Federal grants to support PSRO's. PSRO's as well as any other review entities utilized by medicare would have to prove their effectiveness and value in the marketplace in order to continue their existence.

Mr. President, with medicare costs increasing at record levels we are going to need all the help we can get to moderate the cost of this program and assure quality services for our elderly citizens. Where we have effective private review organizations, we should use them, where they are ineffective they should not be supported. It's as simple as that.

It is curious that while all of the debate is going on in Washington regarding PSRO's, private employers as well as insurers are seeking to contract with PSRO's having proven track records. I think that there is something to be learned here.

Surely medicare, as the largest purchaser of health care in the Nation, should avail itself of cost effective review arrangements where they are available. It would be irresponsible to do otherwise.

What we in Congress, what those in the administration, and what individuals and companies in the private sector have been attempting to do is assure that our limited health care dollars are spent in a fashion that provides for accountability.

We are seeking a common objective and I believe that the legislation I am introducing today will help us meet that objective.

Last year my distinguished colleague, Senator MAX BAUCUS, ranking minority member on the Subcommittee on Health, introduced legislation to make PSRO's more cost effective. Although there are differences in approach between his bill and mine, there are many similarities, and certainly they are identical in intent.

Accordingly, I look forward to working with Senator BAUCUS during forthcoming hearings and Finance Committee action on this important legislation.

Mr. President, I ask unanimous consent that a summary of the major differences between the proposal and existing law as well as the text of the bill be printed in the RECORD.

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

S. 2142

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 "Peer Review Improvement Act of 1982".

REQUIREMENT FOR SECRETARY TO ENTER INTO CONTRACTS

SEC. 2. Section 1862 of the Social Security Act is amended—

(1) by redesignating subsections (b), (c), (d), (e), and (f) as subsections (c), (d), (e), (f), and (g), respectively; and

(2) by inserting after subsection (a) the following new subsection:

"(b) The Secretary shall, in making the determinations under subsection (a) (1), and for the purposes of promoting the effective, efficient, and economical delivery of health care services, and of promoting the quality of services of the type for which payment may be made under this title, enter into contracts with utilization and quality control peer review organizations pursuant to part B of title XI of this Act.".

ESTABLISHMENT OF UTILIZATION AND QUALITY CONTROL PEER REVIEW PROGRAM

SEC. 3. Part B of title XI of the Social Security Act is amended to read as follows:

"Part B—PEER REVIEW OF THE UTILIZATION AND QUALITY OF HEALTH CARE SERVICES

"PURPOSE

"SEC. 1151. The purpose of this part is to establish the contracting process which the Secretary must follow pursuant to the requirements of section 1862(b) of this Act, including the definition of the utilization and quality control peer review organizations with which the Secretary may contract, the functions such peer review organizations are to perform, the method of reimbursement for performance of such functions, the confidentiality of medical records, and related administrative matters to facilitate the carrying out of the purposes of this part.

"DEFINITION OF UTILIZATION AND QUALITY CONTROL PEER REVIEW ORGANIZATION; OTHER DEFINITIONS

"SEC. 1152. (a) The term 'utilization and quality control peer review organization' means an entity which—

"(1)(A) is composed of a substantial number of the licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery in the area, designated by the Secretary under section 1153, with

respect to which the entity shall perform services under this part, or (B) has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery in such area to assure that adequate peer review of the services provided by the various medical specialties and subspecialties can be assured; and

"(2) is able, in the judgment of the Secretary, to perform review functions required under section 1154 and to perform quality review studies as defined in subsection (b).

"(b) The term 'quality review study' means a review of the pattern of quality of care in an area of medical practice where actual performance is measured against objective criteria which define acceptable and adequate practice.

"CONTRACTS WITH UTILIZATION AND QUALITY CONTROL PEER REVIEW ORGANIZATIONS

"SEC. 1153. (a) (1) The Secretary shall establish throughout the United States geographic areas with respect to which contracts under this part will be made. In establishing such areas, the Secretary shall use the same areas as established under section 1152 of this Act as in effect immediately prior to the date of the enactment of the Utilization and Quality Control Peer Review Act of 1982, but subject to the provisions of paragraph (2).

"(2) As soon as practicable after the date of the enactment of the Utilization and Quality Control Peer Review Act of 1982, the Secretary shall consolidate such geographic areas, taking into account the following criteria:

"(A) each State shall generally be designated as a geographic area for purposes of paragraph (1).

"(B) the Secretary shall establish local or regional areas rather than State areas only where the volume of review activity or other relevant factors (as determined by the Secretary) warrant such an establishment, and the Secretary determines that review activity can be carried out with equal or greater efficiency by establishing such local or regional areas. In applying this subparagraph the Secretary shall take into account the number of hospital admissions within each State for which payment may be made under title XVIII, with any State having fewer than 150,000 such admissions annually being established as a single statewide area, and no local or regional area being established which has fewer than 75,000 such admissions annually, unless the Secretary determines that other relevant factors warrant otherwise.

"(C) no local or regional area shall be designated which is not a self-contained medical service area, having a full spectrum of services, including medical specialists' services.

"(b)(1) The Secretary shall enter into a contract with a utilization and quality control peer review organization for each area established under subsection (a) if a qualified organization is available in such area and is willing to enter into such a contract.

"(2) If the Secretary determines that there is no organization available for an area which meets the requirements of section 1152(a), the Secretary may enter into a contract for that area with any other organization which the Secretary determines is capable of carrying out the functions described in section 1154, and for purposes of this part (other than section 1152(a)) such an organization shall be considered to be a utilization and quality control peer review organization.

"(c) Each contract under this section shall provide that—

"(1) the organization shall perform the functions set forth in section 1154(a);

"(2) the contract shall be for an initial term of two years and shall be renewable on an annual basis thereafter;

"(3) the Secretary shall have the right to evaluate the quality and effectiveness of the organization in carrying out the functions specified in the contract;

"(4) the organization may terminate the contract upon 90 days notice to the Secretary;

"(5) the Secretary may terminate the contract upon 90 days notice to the organization if the Secretary determines that—

"(A) the organization does not substantially meet the requirements of section 1152(a), but this subparagraph shall not apply in the case of an organization which entered into such contract under the provisions of subsection (a)(2) of this section;

"(B) the organization has failed substantially to carry out the contract; or

"(C) the organization is carrying out the contract in a manner inconsistent with the efficient and effective administration of this part, but only after such organization has had an opportunity to submit data and have such data reviewed by the panel established under subsection (d);

"(6) the Secretary and the organization shall include in the contract negotiated objectives against which the organization's performance will be judged, and negotiated specifications for use of regional norms, or modifications thereof based on national norms, for performing review functions under the contract; and

"(7) payments shall be made to the organization in the same manner as payments are made to organizations under sections 1816 and 1842.

"(d)(1) Prior to making any termination under subsection (c)(5)(C), the Secretary must provide the organization with an opportunity to provide data, interpretations of data, and other information pertinent to its performance under the contract. Such data and other information shall be reviewed by a panel appointed by the Secretary, and the panel shall submit a report of its findings to the Secretary as soon as possible after such review. The Secretary shall make a copy of the report available to the organization.

"(2) The Secretary may accept or not accept the findings of the panel. After the panel has submitted a report with respect to an organization, the Secretary may, with the concurrence of the organization, amend the contract to modify the scope of the functions to be carried out by the organization, or in any other manner. The Secretary may terminate a contract under the authority of subsection (c)(5)(C) upon 90 days notice after the panel has submitted a report, or earlier if the organization so agrees.

"(3) A panel appointed by the Secretary under this subsection shall consist of not more than five individuals, each of whom shall be a member of a utilization and quality control peer review organization having a contract with the Secretary under this part. While serving on such panel individuals shall be paid at a per diem rate not to exceed the the current per diem equivalent at the time that service on the panel is rendered for grade GS-18 under section 5332 of title 5, United States Code. Appointments shall be made without regard to title 5, United States Code, and the provisions of section 14 of the Federal Advisory Committee Act shall not apply to the panel.

"(e) Contracting authority of the Secretary under this section may be carried out without regard to any provision of law relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the purposes of this part. The Secretary may use different contracting methods with respect to different geographical areas.

"(f) Any determination by the Secretary to terminate a contract under this section shall not be subject to judicial review.

"FUNCTIONS OF PEER REVIEW ORGANIZATIONS

"SEC. 1154. (a) Any utilization and quality control peer review organization entering into a contract with the Secretary under this part must perform the following functions:

"(1) The organization shall review the professional activities in the area of physicians and other health care practitioners and institutional and noninstitutional providers of health care services in the provision of health care services and items for which payment may be made (in whole or in part) under title XVIII for the purpose of determining whether—

"(A) such services and items are or were medically necessary;

"(B) the quality of such services meets professionally recognized standards of health care; and

"(C) in case such services and items are proposed to be provided in a hospital or other health care facility on an inpatient basis, such services and items could, consistent with the provision of appropriate medical care, be effectively provided more economically on an outpatient basis or in an inpatient health care facility of a different type.

"(2) The organization shall determine, on the basis of the review carried out under paragraph (1), whether payment shall be made for services under title XVIII. Such determination shall constitute the conclusive determination on those issues for purposes of payment under title XVIII, except that payment may be made if—

"(A) in the case of a claimant who is an individual entitled to benefits under title XVIII, the claimant did not know or could not be reasonably expected to know that a claim for payment of covered services or items had been denied;

"(B) in the case of inpatient hospital services or posthospital extended care services, the peer review organization determines that additional time is required in order to arrange for postdischarge care, but payment may be continued under this subparagraph for not more than two days;

"(c) such determination is changed as the result of any hearing or review of the determination under section 1155; or

"(D) such payment is authorized under section 1861(v)(1)(G).

"(3) Whenever the organization makes a determination that any health care services or items furnished or to be furnished by any practitioner or provider are disapproved, the organization shall promptly notify such practitioner or provider and the agency or organization responsible for the payment of claims under this Act. In the case of practitioners and providers of services, the organization shall provide an opportunity for discussion and review of the determination.

"(4) The organization shall, after consultation with the Secretary, determine the types and kinds of cases (whether by type of health care or diagnosis involved, or whether in terms of other relevant criteria relating to the provision of health care services) with respect to which such organization will, in order to most effectively carry out the purposes of this part, exercise review authority under the contract. The organization shall notify the Secretary periodically with respect to such determinations.

"(5) The organization shall consult (with such frequency and in such manner as may be prescribed by the Secretary) with representatives of health care practitioners (other than physicians described in section 1861(r)(1)) and of institutional and noninstitutional providers of health care services, with respect to the organization's responsibility for the review under paragraph (1) of the professional activities of such practitioners and providers.

"(6) The organization shall, consistent with the provisions of its contract under this part, apply professionally developed norms of care, diagnosis, and treatment based upon typical patterns of practice within the geographic area served by the organization as principal points of evaluation and review, taking into consideration national norms where appropriate. Such norms with respect to treatment for particular illnesses or health conditions shall include—

"(A) the types and extent of the health care services which, taking into account differing, but acceptable, modes of treatment and methods of organizing and delivering care, are considered within the range of appropriate diagnosis and treatment of such illness or health condition, consistent with professionally recognized and accepted patterns of care; and

"(B) the type of health care facility which is considered, consistent with such standards, to be the type in which health care services which are medically appropriate for such illness or condition can most economically be provided.

"(7) The organization, to the extent necessary and appropriate to the performance of the contract, shall—

"(A) make arrangements to utilize the services of persons who are practitioners of, or specialists in, the various areas of medicine (including dentistry), or other types of health care, which persons shall, to the maximum extent practicable, be individuals engaged in the practice of their profession within the area served by such organization;

"(B) undertake such professional inquiries either before or after, or both before and after, the provision of services with respect to which such organization has a responsibility for review which in the judgment of such organization will facilitate its activities;

"(C) examine the pertinent records of any practitioner or provider of health care services providing services with respect to which such organization has a responsibility for review under paragraph (1); and

"(D) inspect the facilities in which care is rendered or services are provided (which are located in such area) of any practitioner or provider of health care services providing services with respect to which such organization has a responsibility for review under paragraph (1).

"(8) The organization shall perform such duties and functions and assume such responsibilities and comply with such other requirements as may be required by this part or under regulations of the Secretary promulgated to carry out the provisions of this part.

"(9) The organization shall collect such information relevant to its functions, and keep and maintain such records, in such form as the Secretary may require to carry out the purposes of this part, and shall permit access to and use of any such information and records as the Secretary may require for such purposes, subject to the provisions of section 1160.

"(10) The organization shall coordinate activities, including information exchanges, which are consistent with economical and efficient operation of programs among appropriate public and private agencies or organizations including—

"(A) agencies under contract pursuant to sections 1816 and 1842 of this Act;

"(B) other peer review organizations having contracts under this part; and

"(C) other public or private review organizations as may be appropriate.

"(11) The organization shall make available its facilities and resources for contracting with private and public agencies paying for health care in its area for review, as feasible and appropriate, of services reimbursed by such agencies for utilization and quality control activities provided under contract with the Secretary or the States under this part.

"(b)(1) No physician shall be permitted to review—

"(A) health care services provided to a patient if he was directly responsible for providing such services; or

"(B) health care services provided in or by an institution, organization, or agency, if he or any member of his family has, directly or indirectly, a significant financial interest in such institution, organization, or agency.

"(2) For purposes of this subsection, a physician's family includes only his spouse (other than a spouse who is legally separated from him under a decree of divorce or separate maintenance), children (including legally adopted children), grandchildren, parents, and grandparents.

"(c) No utilization and quality control peer review organization shall utilize the services of any individual who is not a duly licensed doctor of medicine or osteopathy to make final determinations in accordance with its duties and functions under this part with respect to the professional conduct of any other duly licensed doctor of medicine or osteopathy, or any act performed by any duly licensed doctor of medicine or osteopathy in the exercise of his profession.

"RIGHT TO HEARING AND JUDICIAL REVIEW

"SEC. 1155. Any beneficiary or recipient who is entitled to benefits under title XVIII, and any practitioner or provider, who is dissatisfied with a determination made by a contracting peer review organization in conducting its review responsibilities under this part, shall be entitled to a reconsideration of such determination. Where the reconsideration is adverse to the beneficiary or recipient and where the matter in controversy is $100 or more, such beneficiary or recipient shall be entitled to a hearing by the Secretary (to the same extent as is provided in section 205(b)), and, where the amount in controversy is $1,000 or more, to judicial review of the Secretary's final decision.

"OBLIGATIONS OF HEALTH CARE PRACTITIONERS AND PROVIDERS OF HEALTH CARE SERVICES; SANCTIONS AND PENALTIES; HEARINGS AND REVIEW

"SEC. 1156. (a) It shall be the obligation of any health care practitioner and any other person (including a hospital or other health care facility, organization, or agency) who provides health care services for which payment may be made (in whole or in part) under title XVIII, to assure, to the extent of his authority that services or items ordered or provided by such practitioner or person to beneficiaries and recipients under such title—

"(1) will be provided economically and only when, and to the extent, medically necessary; and

"(2) will be of a quality which meets professionally recognized standards of health care.

"(b)(1) If after reasonable notice and opportunity for discussion with the practitioner or person concerned, any organization having a contract with the Secretary under this part determines that such practitioner or person has violated an obligation described in subsection (a), such organization shall submit a report and recommendations to the Secretary. If the Secretary determined that such practitioner or person in providing health care services over which such organization has review responsibility and for which payment (in whole or in part) may be made under title XVIII has—

"(A) by failing in a substantial number of cases substantially to comply with any obligation imposed on him under subsection (a), or

"(B) by grossly and flagrantly violating any such obligation in one or more instances,

demonstrated an unwillingness or a lack of ability substantially to comply with such obligations, the Secretary (in addition to any other sanction provided under law) may exclude (permanently or for such period as the Secretary may prescribe) such practitioner or person from eligibility to provide such services on a reimbursable basis. If the Secretary fails to act upon the recommendations submitted to him by such organization within 120 days after such submission, such practitioner or person shall be excluded from eligibility to provide services on a reimbursable basis until such time as the Secretary determines otherwise.

"(2) A determination made by the Secretary under this subsection shall be effective at such time and upon such reasonable notice to the public and to the practitioner or person furnishing the services involved as may be specified in regulations. Such determination shall be effective with respect to services furnished to an individual on or after the effective date of such determination (except that in the case of institutional health care services such determination shall be effective in the manner provided in title XVIII with respect to terminations of provider agreements), and shall remain in effect until the Secretary finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

"(3) In lieu of the sanction authorized by paragraph (1), the Secretary may require that (as a condition to the continued eligibility of such practitioner or person to provide such health care services on a reimbursable basis) such practitioner or person pays to the United States, in case such acts or conduct involved the provision or ordering by such practitioner or person of health care services which were medically improper or unnecessary, an amount not in excess of the actual or estimated cost of the medically improper or unnecessary services so pro-

vided, or (if less) $5,000. Such amount may be deducted from any sums owing by the United States (or any instrumentality thereof) to the practitioner or person from whom such amount is claimed.

"(4) Any practitioner or person furnishing services described in paragraph (1) who is dissatisfied with a determination made by the Secretary under this subsection shall be entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 205 (b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205 (g).

"(c) It shall be the duty of each utilization and quality control peer review organization to use such authority or influence it may possess as a professional organization, and to enlist the support of any other professional or governmental organization having influence or authority over health care practitioners and any other person (including a hospital or other health care facility, organization, or agency) providing health care services in the area served by such review organization, in assuring that each practitioner or person (referred to in subsection (a)) providing health care services in such area shall comply with all obligations imposed on him under subsection (a).

"LIMITATION ON LIABILITY

"SEC. 1157. (a) Notwithstanding any other provision of law, no person providing information to any organization having a contract with the Secretary under this part shall be held, by reason of having provided such information, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) unless—

"(1) such information is unrelated to the performance of the contract of such organization; or

"(2) such information is false and the person providing it knew, or had reason to believe, that such information was false.

"(b) No person who is employed by, or who has a fiduciary relationship with, any such organization or who furnishes professional services to such organization, shall be held by reason of the performance by him of any duty, function, or activity required or authorized pursuant to this part or to a valid contract entered into under this part, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) provided he has exercised due care.

"(c) No doctor of medicine or osteopathy and no provider (including directors, trustees, employees, or officials thereof) of health care services shall be civilly liable to any person under any law of the United States or of any State (or political subdivision thereof) on account of any action taken by him in compliance with or reliance upon professionally developed norms of care and treatment applied by an organization under contract pursuant to section 1153 operating in the area where such doctor of medicine or osteopathy or provider took such action; but only if—

"(1) he takes such action in the exercise of his profession as a doctor of medicine or osteopathy or in the exercise of his functions as a provider of health care services; and

"(2) he exercised due care in all professional conduct taken or directed by him and reasonably related to, and resulting from, the actions taken in compliance with or reliance upon such professionally accepted norms of care and treatment.

"(d) The Secretary shall make payment to an organization under contract with him pursuant to this part, or to any member or employee thereof, or to any person who furnishes legal counsel or services to such organization, in an amount equal to the reasonable amount of the expenses incurred, as determined by the Secretary, in connection with the defense of any suit, action, or proceeding brought against such organization, member, or employee related to the performance of any duty or function under such contract by such organization, member, or employee.

"APPLICATION OF THIS PART TO CERTAIN STATE PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

"SEC. 1158. (a) A State plan approved under any title of this Act, under which health care services are paid for in whole or in part with Federal funds, may provide that the functions specified in section 1154 may be performed in an area by contract with a utilization and quality control peer review organization that has entered into a contract with the Secretary in accordance with the provisions of section 1862 (b).

"(b) In the event a State enters into a contract in accordance with subsection (a), the Federal share of the expenditures made to the contracting organization for its costs in the performance of its functions under the State plan shall be 75 percent (as provided in section 1903 (a) (3)(C)).

"AUTHORIZATION FOR USE OF CERTAIN FUNDS TO ADMINISTER THE PROVISIONS OF THIS PART

"SEC. 1159. Expenses incurred in the administration of the contracts described in section 1862 (b) shall be payable from—

"(1) funds in the Federal Hospital Insurance Trust Fund; and

"(2) funds in the Federal Supplementary Medical Insurance Trust Fund,

in such amounts from each of such Trust Funds as the Secretary shall deem to be fair and equitable after taking into consideration the expenses attributable to the administration of this part with respect to each of such programs. The Secretary shall make such transfers of moneys between such Trust Funds as may be appropriate to settle accounts between them in cases where expenses properly payable from one such Trust Fund have been paid from the other such Trust Fund.

"PROHIBITION AGAINST DISCLOSURE OF INFORMATION

"SEC. 1160. (a) An organization, in carrying out its functions under a contract entered into under this part shall not be a Federal agency for purposes of the provisions of the Freedom of Information Act. Any data or information acquired by any such organization in the exercise of its duties and functions shall be held in confidence and shall not be disclosed to any person except—

"(1) to the extent that may be necessary to carry out the purposes of this part,

"(2) in such cases and under such circumstances as the Secretary shall by regulations provide to assure adequate protection of the rights and interests of patients, health care practitioners, or providers of health care, or

"(3) in accordance with subsection (b).

"(b) An organization having a contract with the Secretary under this part shall provide in accordance with procedures established by the Secretary, data and information—

"(1) to assist Federal and State agencies recognized by the Secretary as having responsibility for identifying and investigating cases or patterns of fraud or abuse, which data and information shall be provided by such organization to such agencies at the request of such agencies at the discretion of such organization on the basis of its findings with respect to evidence of fraud or abuse; and

"(2) to assist the Secretary, and such Federal and State agencies recognized by the Secretary as having health planning or related responsibilities under Federal or State law (including health systems agencies and State health planning and development agencies), in carrying out appropriate health care planning and related activities, which data and information shall be provided in such format and manner as may be prescribed by the Secretary or agreed upon by the responsible Federal and State agencies and such organization, and shall be in the form of aggregate statistical data (without identifying any individual) on a geographic, institutional, or other basis reflecting the volume and frequency of services furnished, as well as the demographic characteristics of the population subject to review by such organization.

The penalty provided in subsection (c) shall not apply to the disclosure of any information received under this subsection, except that such penalty shall apply to the disclosure (by the agency receiving such information) of any such information described in paragraph (1) unless such disclosure is made in a judicial, administrative, or other formal legal proceeding resulting from an investigation conducted by the agency receiving the information.

"(c) It shall be unlawful for any person to disclose any such information described in subsection (a) other than for the purposes provided in subsections (a) and (b), and any person violating the provisions of this section shall, upon conviction, be fined not more than $1,000, and imprisoned for not more than six months, or both, and shall be required to pay the costs of prosecution.

"(d) No patient record in the possession of an organization having a contract with the Secretary under this part shall be subject to subpena or discovery proceedings in a civil action.

"ANNUAL REPORTS

SEC. 1161. The Secretary shall submit to the Congress not later than April 1 of each year, a full and complete report on the administration, impact, and cost of the program under this part during the preceding fiscal year, including data and information on—

"(1) the number, status, and service areas of, and review methodologies employed by, all utilization and quality control peer review organizations participating in the program;

"(2) the number of health care institutions and practitioners whose services are subject to review by such organizations, and the number of beneficiaries and recipients who received services subject to such review during such year;

"(3) the imposition of penalties and sanctions under this title for violations of law and for failure to comply with the obligations imposed by this part; and

"(4) the total costs incurred under titles XVIII and XIX of this Act in the implementation and operation of all procedures required by such titles for the review of services to determine their medical necessity, appropriateness of use, and quality.

"EXEMPTIONS OF CHRISTIAN SCIENCE SANATORIUMS

"SEC. 1162. The provisions of this part shall not apply with respect to a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

"MEDICAL OFFICERS IN AMERICAN SAMOA, THE NORTHERN MARIANA ISLANDS, AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS TO BE INCLUDED IN THE UTILIZATION AND QUALITY CONTROL PEER REVIEW PROGRAM

"SEC. 1163. For purposes of applying this part to American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, individuals licensed to practice medicine in those places shall be considered to be physicians and doctors of medicine.".

FACILITATION OF PRIVATE REVIEW

SEC. 4. Section 1866(a)(1) of the Social Security Act is amended—

(1) by striking out "and" at the end of subparagraphs (A), (B), and (C);

(2) by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", and"; and

(3) by inserting after subparagraph (D) the following new subparagraph:

"(E) to release data with respect to patients of such provider upon request to an organization having a contract with the Secretary under part B of title XI as may be necessary (i) to allow such organization to carry out its functions under such contract, or (ii) to allow such organization to carry out similar review functions under any contract the organization may have with a private or public agency paying for health care in the same area with respect to patients who authorize release of such data for such purposes.".

MEDICAID PROVISIONS

SEC. 5. (a) Section 1902(d) of the Social Security Act is amended—

(1) by striking out "a Professional Standards Review Organization designated, conditionally or otherwise," and inserting in lieu thereof "a utilization and quality control peer review organization having a contract with the Secretary"; and

(2) by striking out "such organization (or organizations)" each place it appears and inserting in lieu thereof in each instance "such organization (or organizations)".

(b) Section 1903(a)(3) of such Act is amended by striking out "Professional Standards Review Organization" and inserting in lieu thereof "utilization and quality control peer review organization".

DEMONSTRATION PROJECTS FOR COMPETITIVE BIDDING

SEC. 6. Section 402(a)(1) of the Social Security Amendments of 1967 (Public Law 90-248) is amended—

(1) by striking out "and" at the end of subparagraph (I);

(2) by striking out the period at the end of subparagraph (J) and inserting in lieu thereof "; and"; and

(3) by inserting after subparagraph (J) the following new subparagraph:

"(K) to determine whether the use of competitive bidding in the awarding of contracts under part B of title XI would be an efficient and effective method of furthering the purposes of that part.".

TECHNICAL AMENDMENTS

SEC. 7. (a) Section 1862 (d)(1)(C) of such Act is amended by striking out ", on the basis of reports transmitted to him in accordance with section 1157 of this Act (or, in the absence of any such report, on the basis of such data as he acquires in the administration of the program under this title)," and inserting in lieu thereof "on the basis of information acquired by the Secretary in the administration of this title".

(b) Section 1861 (v)(1)(G) of such Act is amended by striking out "Professional Standards Review Organization" and inserting in lieu thereof "quality control and peer review organization".

EFFECTIVE DATA

SEC. 8. The amendments made by this Act shall be effective with respect to contracts entered into or renewed on or after October 1, 1982.

MAJOR DIFFERENCES BETWEEN S. 2142 AND CURRENT LAW

PERFORMANCE CONTRACTING

Under present law, there are detailed requirements relating to PSRO trial periods, review procedures, and agreements. While much of this detail was necessary in the early stages of the program it is no longer needed and, in fact, has served to limit flexibility and innovation. My bill would permit deregulation of the program by establishing a contracting procedure which would make the Government a purchaser of review services. The initial term of the contract would be for two years, renewable annually thereafter. The Secretary could terminate the contract at any time if the terms are not being met. A contractee would be provided an opportunity to present information on its behalf, subject to review by a five-member panel of review organization members appointed by the Secretary. The Secretary could accept or reject the panel findings. His decision would be final and not subject to judicial review.

Specific criteria to determine contractee performance would be negotiated and included in the contract between the Secretary and the organization. This would provide the Secretary and the contractee with a basis upon which to judge contractee performance fairly.

CONTRACTEE ELIGIBILITY

The bill provides the Secretary flexibility in the selection of contractees. It removes the current-law restriction that the organization performing review be non-profit, however it includes a requirement, similar to current law, that the organization be composed of, or have available to it, a substantial number of licensed doctors of medicine or osteopathy actually practicing in the area. If no such physician organization is available, the Secretary would be allowed to contract with any other organization he determines is capable of performing these functions. For example, he could contract with a Medicare fiscal intermediary or carrier.

CONSOLIDATION OF GEOGRAPHIC AREAS

Under present law, the Secretary is required to establish PSRO areas throughout the States. 194 such areas have been established. Many of these areas, however, are too small to be efficient. Additionally, some 43 of the 194 designated areas do not have active PSRO's.

In order to improve efficiency and make review more cost effective the bill would require the Secretary to consolidate the geographic areas served by review organizations. In general, each State would be designated as a geographic area. Local or regional areas could be designated only if the volume of review activity and other relevant factors justifies such designation.

DELEGATED REVIEW

Under present law, PSRO's are permitted to delegate review activities to hospital review committees if such committees can demonstrate that they are effective. serious questions have been raised about the effectiveness of individual provider review committees. In addition to the inherent conflict of interest of providers undertaking their own review, there has been widespread indiscriminate delegation of review to hospitals because of limited funds for independent PSRO review. Under the bill delegated review would be eliminated.

FACILITATION OF PRIVATE REVIEW

To facilitate review of private patients, a new requirement has been included which would require a review organization under contract with the Secretary to make its facilities and resources available, where feasible and appropriate, to private payors paying for health care in its area. In order to provide the necessary information for such review, a requirement for the release of patient data would be added to medicare provider agreements. Under the requirement, Medicare providers would be required to release data on medicare patients and the patients of private payors who contract with review organizations.

CONFIDENTIALITY OF PATIENT INFORMATION

The bill also adds a provision which would end the long, drawn-out debate over the status of PSRO's for purposes of Freedom of Information Act requests. It specifies that in carrying out its functions under contract with the Secretary, the review organization would not be considered a Federal agency for purposes of the provisions of the Freedom of Information Act.

ELIMINATION OF AUTHORITY FOR GRANTS AND TECHNICAL ASSISTANCE

Under present law, the Secretary is authorized to provide technical and other assistance to stimulate, develop and qualify organizations as PSRO's. In addition, the current program is providing about $24 million in grants to PSRO's. The bill would eliminate the authority for technical assistance and grants to PSRO's.

MISCELLANEOUS CHANGES

The present law requirement for Statewide and National Councils and advisory groups would be eliminated; the Secretary would be provided authority to determine the appropriateness of awarding review contracts under competitive bidding; and denial of payment for inappropriate inpatient care would be strengthened by placing a limit of 2 days on the length of time available to make arrangements for post discharge care.

● Mr. BAUCUS. Mr. President, I would like to congratulate my colleague from Minnesota, the distinguished chairman of the Health Subcommittee of the Finance Committee, on the bill he has introduced to streamline the Professional Standards Review Organization's (PSRO) program.

I share his conviction, based on hearings before the Health Subcommittee and on the superb performance of the Montana PSRO, that professional review of health services is essential if medicare patients are to receive quality health care at a fair cost.

My colleague's bill contains recommendations that I proposed last year

in S. 1250, as well as a number of other proposed changes that I can wholeheartedly endorse.

It would eliminate a number of detailed requirements from the PSRO law so as to give PSRO's and medicare program officials more latitude in tailoring review efforts to local circumstances. This greater flexibility will stimulate innovation and enable PSRO's to capitalize on new approaches as they are proved successful.

I am also pleased that the bill would call for a substantial reduction in the number of PSRO's. As I stated in introducing S. 1250, many of the existing PSRO's are too small to be efficient and should be consolidated with neighboring PSRO's. In many of the less populous States, it will be possible to consolidate existing PSRO's into a single statewide organization, as has proved so successful in my State of Montana and many other States.

Consolidation of PSRO's need not mean a loss of the local flavor that a PSRO must have if practitioners are to have confidence in its familiarity with local conditions and standards of practice. Like the PSRO from my State of Montana and other statewide PSRO's today, local physicians can retain responsibility for reviewing care in their communities even though the administrative activities are carried out at a central location.

I am, however, concerned about the direction in which other provisions of my colleague's bill might move the PSRO program. To qualify as a PSRO under present law, an organization must be a nonprofit professional organization composed of practicing physicians with a membership that includes a substantial proportion of all such doctors in the area. The statute also sets forth additional requirements, including a requirement that the Secretary of HHS find that the organization is willing and able to perform the functions of a PSRO. Only in the absence of such an organization may the Secretary designate another type of organization to serve as the area's PSRO.

The priority given to peer organizations was designed to afford practicing physicians at local levels an opportunity, on a voluntary and publicly accountable basis, to undertake review of the medical necessity and quality of care provided under medicare. It was intended to substitute responsible, professional review by the community of physicians in an area for the hit-or-miss review which had previously been provided in less than effective fashion by Government and its contractors.

My colleague's bill would eliminate the requirement that priority consideration must be given to nonprofit organizations that are composed of a substantial proportion of their area's physicians. The bill would put a proprietary organization which employs a substantial number of local physicians on an equal footing with a professional organization that represents most of the local physicians. Given the administration's desire to phase out even the most effective PSRO's and fill the vacuum by giving medicare contractors greater review responsibility, I am concerned that the bill could be interpreted in a way that would sound the death knell of peer review in the medicare program.

I am looking forward to working with the distinguished Senator from Minnesota in devising an approach that would enhance the Secretary's ability to select the most effective organizations to serve as PSRO's, but also contain safeguards to assure that the essential character of medicare's peer review program is preserved.●

By Mr. BAUCUS:

S. 2143. A bill for the relief of Yuk Chuen Leung; to the Committee on the Judiciary.

RELIEF OF YUK CHUEN LEUNG

● Mr. BAUCUS. Mr. President, today I am introducing a bill for the relief of Yuk Chuen Leung, a native of China who is currently residing in Billings, Mont. Mr. Leung has been in the United States since 1971 and has established himself as an independent businessman in this country. He has repeatedly tried to obtain status as a permanent resident of this country but due to technicalities, he has been unable to secure this status. As such, his administrative remedies have been exhausted.

Mr. Leung now owns a cafe in Montana which he has invested considerable time and effort in making a profitable enterprise. I am told he is quite a chef and has been a model citizen in the community. It has been attested by the citizens of Billings that he is a man of good moral character, intelligent, honest, gets along well with people, and has never had any trouble with the law enforcement authorities. In addition, he has never been on welfare, paid all necessary taxes since his arrival in 1971, and applied for and received a social security card the first month he arrived in this country.

Mr. Leung arrived in this country aboard a ship on which he was serving as a crewman. He did not depart with the ship which returned to Hong Kong. Although he left his wife and children behind, he felt that America was the land of opportunity in which he could make a decent living for himself. He has shown that spirit of industriousness which we Americans so pride ourselves in. He came here with literally nothing except the clothes on his back, ventured to Montana to begin a new life and has succeeded in becoming an independent businessman—offering a valuable service to others.

Mr. President, I believe Mr. Leung's situation warrants a humanitarian response. It would be a travesty to deport a man who has become a model citizen, one who has earned his keep and never asked anything of this country other than a chance to enjoy the same freedoms that all Americans enjoy. He has built a business from the ground up and without our intervention, all that Mr. Leung has worked for these past 10 years will evaporate. He will be returned to Hong Kong with no more than what he came with. Efforts to sell his business have produced no willing buyers. There appears to be no one in Billings, Mont., with Mr. Leung's particular culinary skills, hence no one able to offer a similar service. With these factors in mind, I urge my colleagues to give full consideration to Mr. Leung's case and the legislation that would provide him with the status of American citizen.●

By Mr. RANDOLPH:

S. 2144. A bill to extend the Appalachian Regional Development Act to provide transitional assistance to the Appalachian region; to the Committee on Environment and Public Works.

APPALACHIAN TRANSITION ASSISTANCE ACT OF 1982

● Mr. RANDOLPH. Mr. President, today I introduce the Appalachian Transition Assistance Act of 1982 to extend the programs of the Appalachian Regional Commission.

This measure would permit the Commission to implement the recommendations of the 13 Governors of the region which were developed during the past year in response to a congressional directive. It extends the highway program for 9 years and provides funds for completion of construction of 550 miles of highest priority roadways in the Appalachian corridor system.

The nonhighway, area development programs would be authorized for an additional 5 years and limited in scope so as to carry out the program of the Governors to concentrate on the most pressing of the region's unmet needs.

The overall transition program is designed to assure that our work and our investment of the last 17 years would produce lasting results.

Total funding authorized by this bill is $2,426,400,000. Of this amount, the largest amount, $2,010,000,000, would be committed to the highway program. The area development activities would be authorized at a level of $399,000,000 and $17,400,000 would be designated for operating expenses.

The Commission would endeavor to complete its health services program in 3 years by extending those services to counties where the need is greatest. It would assist 60 of the most underdeveloped counties in the region meet their most critical needs for public fa-

cilities, especially for safe drinking water and waste disposal. A new emphasis would be given during the period to expanding job opportunities and stimulating private investment in the region. During this period the States have agreed to accept a greater share of the financial responsibility for Appalachian programs.

These are highlights of the transition program developed by the Governors over the past 12 months. I am confident that the Congress and the administration will see the wisdom of approving this program.●

By Mr. RIEGLE:

S. 2145. A bill to amend the Consolidated Farm and Rural Development Act to change the conditions of eligibility for, and the amount of, financial assistance made with respect to agricultural production losses caused by disaster; to the Committee on Agriculture, Nutrition, and Forestry.

FARMERS HOME ADMINISTRATION DISASTER LOANS

Mr. RIEGLE. Mr. President, today I am introducing legislation to revise the operations of the Farmers Home Administration disaster loan program. A little-noticed change in Farmers Home Administration policies last year resulted in thousands of Michigan farmers being denied any disaster assistance after severe rainstorms and flooding in the fall of 1981. This legislation will return FmHA policies to conform with original statutory intent; namely, that all farmers who suffer substantial crop losses due to natural disasters will be eligible for the disaster loan program.

After the storms last fall, the State of Michigan submitted a disaster request that covered 45 counties. After a lengthy 4-month review period, only nine of these counties were certified to receive disaster assistance. Two important changes had taken place in the program that caused this major denial of assistance. One involved the increase in the minimum loss requirement from 20 to 30 percent. Until May 26, 1981, the level of damage required for disaster eligibility was 20 percent, as stipulated by section 1970 of the United States Code. Through administrative actions, USDA increased this threshold amount, and in one stroke eliminated thousands of farmers from participation in the program. It is hard to believe that a 20-percent loss to a farmer's crop is not a disaster by any measure.

The second change that occurred at this time was the use of an "area test" before farmers are eligible for disaster assistance. This was FmHA policy prior to the enactment of Public Law 96-438. That measure required the Secretary to make disaster loans on the basis of an applicant's losses, not a particular area's situation. This policy was reversed last year, and we saw in Michigan farmers in one county being declared eligible for disaster assistance, while their neighbors, who had suffered equal losses, were denied the assistance because of residence in a different county.

The other area that the bill is designed to address is the amount of losses that are covered in the disaster loan program. Legislative actions last year decreased the coverage of these loans to 80 percent of the losses, which only serves to increase the total effect of the disaster on a farmer's operations. This measure will return the coverage to the 90-percent level to provide a broader protection and to increase the assurances to farmers that they will be able to recover from a national disaster.

Mr. President, I am deeply concerned about these policies, as well as other proposed changes in the disaster loan program. These changes will substantially limit the amount of the loans, and will drastically increase the interest rates charged for these loans. I cannot believe that these policies are in the best interest of farmers. They live in an uncertain world, and are wholly dependent on the cooperation of the weather for their own financial security. Our Government should not add to their uncertainties, nor to their burdens, by denying them needed compensation for natural disasters, or charging them exhorbitant rates of interest to the lucky few that might qualify for such aid.

By Mr. MOYNIHAN:

S.J. Res. 152. Joint resolution providing for the designation of the week beginning April 25, 1982, and ending May 1, 1982, as "National Dance Week"; to the Committee on the Judiciary.

NATIONAL DANCE WEEK

● Mr. MOYNIHAN. Mr. President, I am pleased today to introduce a joint resolution celebrating our Nation's proud tradition of excellence in the field of dance and honoring those who have contributed to this excellence by proclaiming the week beginning April 25, 1982, and ending May 1, 1982, as "National Dance Week."

This resolution honors not only the more than 100,000 dancers involved in or preparing for this profession, which is as demanding as it is rewarding, but also the countless directors, technicians, support staff, and spectators who make dance one of the most exciting and challenging of the performing arts. For dance is a source of joy and emotional enrichment to both its performers and audiences alike.

The audience for dance has increased dramatically in recent years; from approximately 1 million in 1960 to nearly 20 million just two decades later. Dance companies are found not only in our major metropolitan centers but in hundreds of smaller cities and towns as well. Dance is, after all, a universal language.

I must say that I am especially proud of the daring, innovative work being done by the many fine dance companies in my own State of New York. They have enhanced immeasurably the quality of life for all New Yorkers, and for that I shall be ever grateful.

Enactment of this legislation will focus much-deserved attention on the art of dance and heighten public awareness of the many contributions, both spiritual and cultural, that dance has made to our society. As such I strongly urge its adoption.

Mr. President, I ask unanimous consent that the 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. 152

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized and requested to issue a proclamation designating the week beginning April 25, 1982, and ending May 1, 1982 as "National Dance Week," and calling upon the people of the United States to observe such week with appropriate ceremonies and activities.●

By Mr. RIEGLE:

S.J. Res. 153. A joint resolution designating Baltic Freedom Day; to the Committee on the Judiciary.

BALTIC FREEDOM DAY

Mr. RIEGLE. Mr. President, today I am introducing a joint resolution calling for the declaration of June 14 as Baltic Freedom Day.

This year, June 14 will mark the 42d anniversary of the brutal occupation by the Soviet Union of the three Baltic nations: Estonia, Latvia, and Lithuania. Soviet subjugation of the brave peoples of these tiny nations continues to this day, in clear violation of the provisions of the Final Act of the Helsinki accords.

As a nation committed to the principle of self-determination, and the preservation of basic freedoms for all peoples, the United States must constantly remind all freedom-loving nations of the continuing oppression under which the Baltic peoples live.

I believe that June 14, the day which in 1940 ushered in decades of Soviet domination and efforts to absorb the unique cultures of the Baltic civilizations, should be a day of reflection for all Americans. We must never forget that the blessings of liberty which we enjoy are still not guaranteed to all peoples of the world.

Special tribute should also be paid to the members of the Baltic communities here in the United States. Their tireless efforts, which have kept the flame of hope alive in the hearts of those in their homeland, are an inspi-

ration to all of us. As Senator from the State of Michigan, I am proud to represent one of the largest Baltic communities in the United States, and have come to know, firsthand, of the many contributions made by these hardworking and talented people.

It is, therefore, in recognition of the continuing struggles of the Baltic peoples to attain their freedom, and in honor of the supportive role played by members of the Baltic communities in this country, that I introduce this resolution and urge all Members to lend their support.

ADDITIONAL COSPONSORS

S. 1840

At the request of Mr. DURENBERGER, the Senator from Michigan (Mr. RIEGLE), and the Senator from Arkansas (Mr. BUMPERS) were added as cosponsors of S. 1840, a bill to amend section 170 of the Internal Revenue Code of 1954 to increase the amounts that may be deducted for maintaining exchange students as members of the taxpayer's household.

S. 1852

At the request of Mr. JEPSEN, the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 1852, a bill to amend the Export-Import Bank Act of 1945 to provide for the extension of credit for agricultural commodities.

S. 1947

At the request of Mr. WEICKER, the Senator from Vermont (Mr. LEAHY), the Senator from South Dakota (Mr. PRESSLER), the Senator from Wyoming (Mr. SIMPSON), and the Senator from Alabama (Mr. HEFLIN) were added as cosponsors of S. 1947, a bill to improve small business access to Federal procurement information.

S. 2008

At the request of Mr. QUAYLE, the Senator from Kansas (Mrs. KASSEBAUM) was added as a cosponsor of S. 2008, a bill to amend the Congressional Budget Act of 1974 to provide for a 2-year budget process, to provide for timely oversight of authorizing legislation and appropriations, and for other purposes.

S. 2022

At the request of Mr. HOLLINGS, the Senator from Michigan (Mr. LEVIN), the Senator from Arizona (Mr. GOLDWATER), the Senator from Georgia (Mr. NUNN), the Senator from Ohio (Mr. METZENBAUM), the Senator from New York (Mr. MOYNIHAN), the Senator from Kentucky (Mr. FORD), the Senator from Florida (Mrs. HAWKINS), the Senator from Alabama (Mr. HEFLIN), the Senator from Louisiana (Mr. JOHNSTON), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Nevada (Mr. CANNON) were added as cosponsors of S. 2022, a bill making supplemental appropriations for the fiscal year ending September 30, 1982, and for other purposes.

SENATE JOINT RESOLUTION 142

At the request of Mr. SPECTER, the Senator from Nevada (Mr. CANNON), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Maine (Mr. COHEN), the Senator from Illinois (Mr. DIXON), the Senator from Kansas (Mr. DOLE), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Missouri (Mr. EAGLETON), the Senator from North Carolina (Mr. EAST), the Senator from Nebraska (Mr. EXON), the Senator from Washington (Mr. GORTON), the Senator from Florida (Mrs. HAWKINS), the Senator from California (Mr. HAYAKAWA), the Senator from Alabama (Mr. HEFLIN), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Washington (Mr. JACKSON), the Senator from Wisconsin (Mr. KASTEN), the Senator from Michigan (Mr. LEVIN), the Senator from Indiana (Mr. LUGAR), the Senator from Georgia (Mr. MATTINGLY), the Senator from New York (Mr. MOYNIHAN), the Senator from Alaska (Mr. MURKOWSKI), the Senator from South Dakota (Mr. PRESSLER), the Senator from Idaho (Mr. SYMMS), the Senator from Massachusetts (Mr. TSONGAS), the Senator from New Jersey (Mr. WILLIAMS), the Senator from New Jersey (Mr. BRADLEY) were added as cosponsors of Senate Joint Resolution 142, a joint resolution to authorize and request the President to issue a proclamation designating March 21, 1982, as "Afghanistan Day," a day to commemorate the struggle of the people of Afghanistan against the occupation of their country by Soviet forces.

SENATE JOINT RESOLUTION 143

At the request of Mr. BAKER, the Senator from Alabama (Mr. DENTON), the Senator from California (Mr. HAYAKAWA), the Senator from North Carolina (Mr. HELMS), the Senator from California (Mr. CRANSTON), and the Senator from Illinois (Mr. DIXON) were added as cosponsors of Senate Joint Resolution 143, a joint resolution to authorize and request the President to designate the week of May 2 through 8, 1982, as "National Physical Fitness and Sports for All Week."

SENATE JOINT RESOLUTION 144

At the request of Mr. DODD, the Senator from Michigan (Mr. RIEGLE), the Senator from Ohio (Mr. GLENN), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Connecticut (Mr. WEICKER), the Senator from New Jersey (Mr. BRADLEY), the Senator from Michigan (Mr. LEVIN), and the Senator from Colorado (Mr. HART) were added as cosponsors of Senate Joint Resolution 144, a joint resolution declaring that it should be the policy of the U.S. Government to encourage unconditional negotiations for the purpose of achieving a cease-fire and a political settlement to the conflict in El Salvador.

SENATE CONCURRENT RESOLUTION 62

At the request of Mr. KENNEDY, the Senator from South Carolina (Mr. HOLLINGS), the Senator from Maryland (Mr. SARBANES), the Senator from New York (Mr. MOYNIHAN), the Senator from Ohio (Mr. GLENN), the Senator from Michigan (Mr. LEVIN), the Senator from Florida (Mr. CHILES), the Senator from Illinois (Mr. DIXON), the Senator from Ohio (Mr. METZENBAUM), the Senator from Maine (Mr. MITCHELL), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Montana (Mr. MELCHER), the Senator from California (Mr. CRANSTON), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Nebraska (Mr. EXON), the Senator from New Jersey (Mr. BRADLEY), the Senator from Michigan (Mr. RIEGLE), the Senator from Rhode Island (Mr. CHAFEE), and the Senator from Washington (Mr. JACKSON) were added as cosponsors of Senate Concurrent Resolution 62, a concurrent resolution to congratulate Hadassah, the Women's Zionist Organization of America on the celebration of its 70th anniversary.

SENATE RESOLUTION 325—RELATING TO THE FULL FUNDING OF THE WIN PROGRAM

Mr. DIXON (for himself, Mr. LEAHY, Mr. MATHIAS, Mr. METZENBAUM, and Mr. MOYNIHAN) submitted the following resolution, which was referred to the Committee on Appropriations:

S. RES. 325

Whereas, unemployment in the United States has risen to 8.5 percent, with over 9 million Americans out of work;

Whereas, the work incentive program (WIN) was designed to provide structured employment-training services and support services to employable recipients of aid to families with dependent children (AFDC) and move them into nonsubsidized, private sector jobs, thereby making them self-supporting;

Whereas, the WIN program has been shown to be cost-effective by aiding in the placement of 310,000 welfare recipients in jobs at a cost of $365,000,000 in fiscal year 1981, thereby reducing AFDC payments by approximately $760,000,000; and

Whereas, WIN offices throughout the United States have been closed or are scheduled to be closed in the near future because of a 33 percent reduction in the Department of Health and Human Services appropriation for the WIN program for fiscal year 1982: Now, therefore, be it

Resolved, That it is the sense of the Senate that the Congress should expeditiously consider making an urgent supplemental appropriation to the Department of Health and Human Services to assure the full continuation of the work incentive program for the fiscal year ending September 30, 1982.

FUNDING FOR WIN

Mr. DIXON. Mr. President, on behalf of Senator LEAHY and myself, today I am submitting a resolution expressing the sense of the Senate that the Congress should expeditiously appropriate urgently needed supplemental funds to restore adequate funding for the work incentive program, or WIN.

The WIN program was created in the 1967 amendments to the Social Security Act and became operational in July 1968. WIN is entirely consistent with the administration's often stated interest in the placement of welfare recipients into private sector jobs—rather than subsidized jobs—so that public support payments can be reduced. WIN is a State-run program with each State having considerable autonomy in structuring its program. It serves those who are most needy in the labor market—hard to employ welfare recipients with multiple barriers to employment. More importantly, the WIN program returns more to the taxpayers than it costs, showing considerably higher welfare grant reductions than program costs.

According to the U.S. Department of Labor's most recent figures for fiscal year 1981, more than 1 million recipients of aid to families with dependent children (AFDC), registered with WIN. More than 310,000 of these registrants were placed in nonsubsidized jobs, with an annualized reduction of $760 million in AFDC payments. WIN cost the Federal Government $365 million in 1981. Thus, this expenditure gave the Government nearly a 2 to 1 return for our money. I believe every American businessman would support a program that recoups almost double the capital invested within a year.

The WIN program placed people in jobs paying an average hourly wage of $4.17. The retention rate was 88 percent, and the annualized wage of those 310,000 people who found employment through the program in fiscal year 1981 was $2,293,356,612. That is taxable income, Mr. President; rather than receiving tax dollars, these people are now taxpayers.

In my own State of Illinois, 300 of the 420 employees of the WIN program will be forced to join those they once tried to assist in seeking employment. These 300 laid-off employees will cost nearly $1 million in unemployment benefits if we do not act to restore adequate funding for this extremely cost-effective program.

It is my intention to amend the first available appropriations bill to add the necessary supplemental funds—$76.8 million—for this program. The amendment will guarantee full continuation of the WIN program through fiscal year 1982. These funds are necessary to enable the States to plan for the effective delivery of services to those who are the neediest in our society—people who have children they must support, and who want to work rather then accept welfare payments.

I strongly support a balanced budget. I have supported in the past and will continue to support reasonable and necessary budget cuts to accomplish that goal. However, we should not be penny wise and pound foolish. The WIN program does not cost the Government money—it saves the Government money. Reducing the WIN program does not help us balance the budget; it makes it more difficult to achieve.

We ought not to cut the budget indiscriminately or shortsightedly. While reducing unnecessary expenses, we need to keep programs that work. WIN is clearly one of those programs.

The Congress acted in an extremely responsible and expeditious manner, in passing the supplemental appropriation for the job service program earlier this month. It is my hope, Mr. President, that we can address this related program in an equally effective way.

SENATE RESOLUTION 326—RELATING TO THE IMPRISONMENT OF YURI BADZYO

Mr. TSONGAS submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 326

Whereas the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights guarantee to all citizens the right to hold opinions without interference and the right to freedom of expression;

Whereas the Final Act of the Conference on Security and Cooperation in Europe commits the signatory nations to respect individual rights and cultural differences;

Whereas the Soviet Union has signed the Final Act of the Conference on Security and Cooperation in Europe, is a party to the Universal Declaration of Human Rights, and has ratified the International Covenant on Civil and Political Rights;

Whereas Yuri Badzyo was dismissed from his research in Philology at the Institute of Literature in Kiev in 1968 as a direct result of his defense of Ukrainian patriots who criticized the "russification" policy toward the Ukraine;

Whereas Yuri Badzyo strived for greater political, cultural, and artistic freedom for the Ukrainian people;

Whereas Soviet officials have also dismissed his wife, Svitlana Kyrychenko, from her position at the Institute of Philosophy, for her actions on behalf of Ukrainian dissidents and for her impassioned support of her husband's ideas and work;

Whereas Yuri Badzyo was arrested on April 23, 1979, and charged with anti-Soviet agitation and propaganda;

Whereas Yuri Badzyo was sentenced on December 21, 1979, to seven years in the notorious Mordovian labor camps, to be followed by five years in internal exile, for ideas contained in a missing, unpublished manuscript: Now, therefore, be it

Resolved, That it is the sense of the Senate that the President, acting directly or through the Secretary of State, should

(1) express at every suitable opportunity and in the strongest possible terms the opposition of the United States Government to the imprisonment of Yuri Badzyo,

(2) urge the Government of the Soviet Union to (A) release Yuri Badzyo from prison, (B) to halt all further harassment of Yuri Badzyo, his wife, Svitlana Kyrychenko, and their children, Bohdana and Serkiy Badzyo, and

(3) inform the Government of the Soviet Union that the Government of the United States, in evaluating its relations with other countries, will take into account the extent to which such countries honor their commitments under international law, especially commitments with respect to the protection of human rights.

SEC. 2. The Clerk of the Senate shall transmit a copy of this resolution to the President with the request that he further transmit such a copy to the Ambassador of the Union of the Soviet Socialist Republics to the United States.

Mr. TSONGAS. Mr. President, I rise to submit a resolution which calls on President Reagan and the Secretary of State to express at every suitable opportunity and in the strongest possible terms our opposition to the imprisonment of Yuri Badzyo. As my colleagues may know, Yuri Badzyo, a leader and patriot of the Ukrainian people, was sentenced on December 21, 1979, to 7 years in a Soviet labor camp to be followed by 5 years of internal exile. Badzyo was arrested and convicted on charges of anti-Soviet agitation and propaganda. It is clear, however, that his only real crime has been his relentless efforts to obtain greater political, cultural, and artistic freedom for the Ukrainian people.

Mr. President, I feel strongly that we must demonstrate to Soviet leaders that their flagrant violation of the internationally recognized human rights of their citizens is unacceptable to the Congress and to the American people.

Apparently, the focus of the Soviet's prosecution was an unpublished book of Badzyo's, "The Right To Live." This book contained a history of Russian policies toward the Ukraine. Evidently, Russian authorities felt that this manuscript threatened Russian domination of the Ukrainian people. The first draft was stolen in 1977, though Badzyo did own several other copies which the Soviets, at his trial, claimed he was planning to circulate. Soviet officials ruled Badzyo's intent constituted anti-Soviet agitation and propaganda.

Other evidence used against Badzyo included letters he had written: One to the Sixth Ukrainian Writer's Conference (1971), in which he defended a Ukrainian prisoner, and another to Soviet authorities shortly before his arrest, which criticized the "russification" policy carried out against Ukrainians.

Prior to his arrest, Yuri Badzyo had been dismissed in 1968 from the Communist Party and from his position as a researcher at the Institute of Literature in Kiev, because of his defense of others who had joined him in resisting the suppression of Ukrainian culture.

The labor camp in which he is currently held, the Mordovian corrective labor colony, is notorious for its conditions of chronic hunger, inadequate medical care, and hard labor. Yet even from the labor camp, Badzyo has continued to resist the oppressive policies of the Soviet Union.

Two years ago, Yuri Badzyo was one of three prisoners who smuggled a message out of their camp, announcing that they were refusing to work during the Olympics to protest the Soviet invasion of Afghanistan. They maintain, and correctly so, that there is an "unbreakable tie between the external political aggressive actions of the Soviet government and internal policy of repression against dissidents."

Badzyo was recently visited by his wife, Svitlana Kyrychenko, who reported that Badzyo is in ill health and is losing his eyesight. Svitlana has been included in the Senate Resolution because she faces possible prosecution as well; the Soviets feel she may have assisted her husband on research for his book. In addition, Svitlana has been dismissed from her post at the Institute of Philosophy for her actions on behalf of Ukrainian dissidents.

Mr. President, I offer this resolution as a testament to the free spirit and courage of this great man whose only crime was to fight for the right of freedom of expression. The Soviets must realize that their efforts to silence him will never succeed. I urge the adoption of this resolution, not only on behalf of Yuri Badzyo and his family, but on behalf of those of his colleagues who have resisted great pressure to maintain their Ukrainian heritage and identity.

SENATE RESOLUTION 327—RESOLUTION DESIGNATING NATIONAL EYE DONOR MONTH

Mr. MOYNIHAN (for himself, Mr. CANNON, Mr. RANDOLPH, Mr. BAUCUS, Mr. STENNIS, Mr. WILLIAMS, Mr. MATSUNAGA, Mr. MELCHER, Mr. GOLDWATER, Mr. D'AMATO, Mr. SYMMS, Mrs. KASSEBAUM, Mr. WEICKER, Mr. BOSCHWITZ, Mr. HOLLINGS, and Mr. ZORINSKY) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 327

Whereas eye banks in the United States have grown from a single institution in 1944 to 80 in 1982; and

Whereas over 15 thousand children and adults in the United States have benefited as a direct result of efforts made by the Eye Bank Association of America; and

Whereas the Eye Bank Association of America has sought to encourage research into the prevention and treatment of eye care in the United States; and

Whereas increased national awareness of benefits rendered through eye donation may add impetus to efforts to expand research activities, and benefit those persons affected by blinding diseases: Now, therefore be it

Resolved by the Senate, That the Congress proclaims the month of March 1982 as "National Eye Donor Month" and urges all citizens to join in this celebration of life with appropriate activity.

Resolved, That March 1982 is declared "National Eye Donor Month".

NATIONAL EYE DONOR MONTH

● Mr. MOYNIHAN. Mr. President, today I am pleased to submit legislation designating the month of March 1982 as "National Eye Donor Month."

I am proud to say that the first eye bank in our Nation was established in New York in 1944. Since the founding of that single institution, the number of eye banks constituting the Eye Bank of America has grown to 80. Over 15 thousand children and adults in the United States have benefited as a direct result of efforts made by the Eye Bank of America.

Designation of March as "National Eye Donor Month" will bring an important humanitarian cause to the attention of the American public. An increased national awareness of the benefits rendered through eye donation will add impetus to efforts to expand research activities in this area and may engender important medical advances.

All those who are involved with eye donation programs deserve our commendation. For their goal, that is bringing sight to the sightless, is surely a noble one. Mr. President, I urge my colleagues to join me in support of this legislation and I ask unanimous consent that the resolution be printed in the RECORD.●

SENATE RESOLUTION 328—RESOLUTION COMMENDING DOUGLAS B. HESTER FOR HIS SERVICE TO THE SENATE

Mr. BAKER (for Mr. THURMOND) submitted the following resolution; which was considered and agreed to:

S. RES. 328

Whereas, Douglas B. Hester, the Legislative Counsel of the Senate, on February 19, 1982, completed thirty years of service to the Senate; and

Whereas, during this long period of service to the Senate, Douglas B. Hester has performed with dedication and skill;

Resolved, That the Senate of the United States extends its appreciation and gratitude to Douglas B. Hester for his long and faithful service in the Office of Legislative Counsel of the Senate.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to Douglas B. Hester.

NOTICES OF HEARINGS

COMMITTEE ON THE BUDGET

Mr. DOMENICI. Mr. President, the Senate Committee on the Budget will hold a hearing of outside economists' outlooks on the economy on Monday, March 1, at 10 a.m. in 6202 Dirksen Senate Office Building. Dr. John Kenneth Galbraith, professor, Harvard University; Dr. Otto Eckstein, chairman, Data Resources, Inc.; and Dr. Alan Greenspan, president, Townsend-Greenspan, are scheduled to testify.

For further information, contact Nancy Moore of the Senate Budget Committee at 224-4129.

Mr. President, the Senate Committee on the Budget will hold hearings on the first concurrent budget resolution for fiscal year 1983 on Tuesday, March 2, in 6202 Dirksen Senate Office Building. At 10 a.m., the Honorable Paul Volcker, Chairman, Board of Governors of the Federal Reserve System will testify and at 2 p.m. Dr. Alice Rivlin, Director, Congressional Budget Office, will testify.

For further information, contact Nancy Moore of the Senate Budget Committee at 224-4129.

Mr. President, the Senate Committee on the Budget will hold a hearing on the defense budget for fiscal year 1983, on Wednesday, March 3, at 10 a.m. in 6202 Dirksen Senate Office Building. Caspar W. Weinberger, Secretary of Defense is scheduled to testify.

For further information, contact Nancy Moore at the Senate Budget Committee at 224-4129.

Mr. President, the Senate Committee on the Budget will hold a hearing on the first concurrent budget resolution for fiscal year 1983 on Thursday, March 4, at 10 a.m. in 6202 Dirksen Senate Office Building. The Honorable Murray L. Weidenbaum, Chairman, the Honorable William Niskanen, member, and the Honorable Jerry Jordan, member, President's Council of Economic Advisers are scheduled to testify.

For further information, contact Nancy Moore of the Senate Budget Committee at 224-4129.

Mr. President, the Senate Committee on the Budget will hold a hearing on the first concurrent budget resolution for fiscal year 1983, on Friday, March 5, at 9 a.m. and 10:30 a.m. in 6202 Dirksen Senate Office Building. Scheduled to appear in the first panel are Mr. Paul Craig Roberts, William E. Simon, professor of economics, Georgetown University, and Dr. John Rutledge, president, Claremont College. Scheduled to appear in the second panel are Dr. Rudolph G. Penner, director of Fiscal Policy Studies, American Enterprise Institute; Dr. Leonard J. Santow, senior vice president and economist, J. Henry Schroder, Bank & Trust Co.; and Dr.

Charles Schultze, senior fellow, Brookings Institution.

For further information, contact Nancy Moore of the Senate Budget Committee at 224-4129.

SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER

Mr. WALLOP. Mr. President, I would like to announce for the information of the Senate and the public the scheduling of a public hearing before the Subcommittee on Public Lands and Reserved Water to consider S. 2133, a bill to designate certain lands in the State of Washington as a national volcanic area, and for other purposes. The hearing will be held on Friday, March 12, beginning at 8 a.m. in room 3110 of the Dirksen Senate Office Building.

Those wishing to testify or who wish to submit written statements for the hearing record should write to the Committee on Energy and Natural Resources, Subcommittee on Public Lands and Reserved Water, room 3104, Dirksen Senate Office Building, Washington, D.C. 20510.

For further information regarding this hearing you may wish to contact Mr. Tom Williams (224-7145) or Mr. Tony Bevinetto (224-5161) of the committee staff.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet during the session of the Senate at 9 a.m. on Thursday, February 25, to hold a hearing on management of Federal assets.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. BAKER. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, February 25, at 10 a.m., to receive a briefing on intelligence matters.

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

SUBCOMMITTEE ON ANALYSIS AND PRODUCTION

Mr. BAKER. Mr. President, I ask unanimous consent that the Subcommittee on Analysis and Production of the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, February 25, at 2 p.m., to receive testimony regarding the quality of analysis.

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

SUBCOMMITTEE ON WESTERN HEMISPHERE AFFAIRS

Mr. BAKER. Mr. President, I ask unanimous consent that the Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Friday, February 26, at 10 a.m., to hold a hearing on human rights in Nicaragua.

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

ADDITIONAL STATEMENTS

ESTONIAN INDEPENDENCE DAY

● Mr. ROTH. Mr. President, yesterday marked the 64th anniversary of the Declaration of Independence of the Republic of Estonia. But for over four decades the people of Estonia have suffered under the oppression of a Soviet military occupation. An entire generation has reached maturity without knowing freedom. Yet the lamp of freedom continues to burn brightly in the mind of every Estonian, young and old.

This year the struggle for freedom in Poland has caused those flames to burn more brightly than ever. Reports reaching the West indicate that sympathy strikes for the Polish Solidarity Movement have been organized in Estonia despite great risks to the strikers. At least 150 people have reportedly been detained. But more strikes are planned. The spread of strikes to Estonia is undoubtedly one of the major reasons for Soviet concern about the success and strength of Solidarity.

The reaction of Estonia and the other Baltic nations is clear evidence of why suppressing the Solidarity Movement is bound to fail. Marshal law is but a temporary setback in an irresistable process of unravelling the bonds of Soviet imperialism. Estonians join their Polish compatriots in freedom and we join both in our common struggle for freedom human rights and national expression.●

RULES OF THE COMMITTEE ON ARMED SERVICES

● Mr. TOWER. Mr. President, I submit the Armed Services Committee Rules of Procedure for the RECORD in accordance with the requirements of rule XXVI of the Standing Rules of the Senate.

ARMED SERVICES COMMITTEE RULES OF PROCEDURE

(Adopted March 26, 1981)

1. *Regular Meeting Day and Time.* The regular meeting day of the committee shall be each Thursday at 10 a.m. unless the committee or the chairman directs otherwise.

2. *Additional Meetings.* The chairman may call such additional meetings as he deems necessary.

3. *Special Meetings.* Special meetings of the committee may be called by a majority of the members of the committee in accordance with paragraph 3 of Rule XXVI of the Standing Rules of the Senate.

4. *Open Meetings.* Each meeting of the committee, or any subcommittee thereof, including meetings to conduct hearings, shall be open to the public, except that a meeting or series of meetings by the committee or a subcommittee thereof on the same subject for a period of no more than fourteen (14) calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated below in clauses (a) through (f) would require the meeting to be closed, followed immediately by a record vote in open session by a majority of the members of the committee or subcommittee when it is determined that the matters to be discussed or the testimony to be taken at such meeting or meetings—

(a) 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;

(b) will relate solely to matters of committee staff personnel or internal staff management or procedure;

(c) will tend to charge an individual with a crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy or will represent a clearly unwarranted invasion of the privacy of an individual;

(d) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(e) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

(1) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(2) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(f) may divulge matters required to be kept confidential under other provisions of law or Government regulations.

5. *Presiding Officer.* The chairman shall preside at all meetings and hearings of the committee except that in his absence the ranking majority member present at the meeting or hearing shall preside unless by majority vote the committee provides otherwise.

6. *Quorum.* (a) A majority of the members of the committee are required to be actually present to report a matter or measure from the committee.

(b) Except as provided in subsection (a) and (c), and other than for the conduct of hearings, six members of the committee shall constitute a quorum for the transaction of such business as may be considered by the committee.

(c) Three members of the committee, one of whom shall be a member of the minority party, shall constitute a quorum for the purpose of taking sworn testimony, unless otherwise ordered by a majority of the full committee.

(d) Proxy votes may not be considered for the purpose of establishing a quorum.

7. *Proxy Voting.* Proxy voting shall be allowed on all measures and matters before the committee. The vote by proxy of any member of the committee may be counted for the purpose of reporting any measure or matter to the Senate if the absent member casting such vote has been informed of the matter on which he is being recorded and

has affirmatively requested that he be so recorded.

8. *Announcement of Votes.* The results of all rollcall votes taken in any meeting of the committee on any measure, or amendment thereto, shall be announced in the committee report, unless previously announced by the committee. The announcement shall include a tabulation of the votes cast in favor and votes cast in opposition to each such measure and amendment by each member of the committee who was present at such meeting. The chairman may hold open a rollcall vote on any measure or matter which is before the committee until no later than midnight of the day on which the committee votes on such measure or matter.

9. *Subpoenas.* Subpoenas for attendance of witnesses and for the production of memoranda, documents, records, and the like may be issued by the chairman or any other member designated by him, but only when authorized by a majority of the members of the committee. The subpoena shall briefly state the matter to which the witness is expected to testify or the documents to be produced.

10. *Hearings.* (a) Public notice shall be given of the date, place, and subject matter of any hearing to be held by the committee, or any subcommittee thereof, at least 1 week in advance of such hearing, unless the committee or subcommittee determines that good cause exists for beginning such hearings at an earlier time.

(b) Hearings may be initiated only by the specified authorization of the committee or subcommittee.

(c) Hearings shall be held only in the District of Columbia unless specifically authorized to be held elsewhere by a majority vote of the committee or subcommittee conducting such hearings.

(d) Witnesses appearing before the committee shall file with the clerk of the committee a written statement of his proposed testimony at least 24 hours not including weekends or holidays prior to a hearing at which he is to appear unless the chairman and the ranking minority member determines that there is good cause for the failure of the witness to file such a statement.

(e) Confidential testimony taken or confidential material presented in a closed hearing of the committee or subcommittee or any report of the proceedings of such hearing shall not be made public in whole or in part or by way of summary unless authorized by a majority vote of the committee or subcommittee.

(f) Any witness summoned to give testimony or evidence at a public or closed hearing of the committee or subcommittee may be accompanied by counsel of his own choosing who shall be permitted at all times during such hearing to advise such witness of his legal rights.

(g) Witnesses providing unsworn testimony to the committee may be given a transcript of such testimony for the purpose of making minor grammatical corrections. Such witnesses will not, however, be permitted to alter the substance of their testimony. Any question involving such corrections shall be decided by the chairman.

11. *Nominations.* Unless otherwise ordered by the committee, nominations referred to the committee shall be held for at least seven (7) days before being voted on by the committee. Each member of the committee shall be furnished a copy of all nominations referred to the committee.

12. *Real Property Transactions.* Each member of the committee shall be furnished with a copy of the proposals of the Secretaries of the Army, Navy, and Air Force, submitted pursuant to 10 U.S.C. 2662 and with a copy of the proposals of the Director of the Federal Emergency Management Agency, submitted pursuant to 50 U.S.C. App. 2285, regarding the proposed acquisition or disposition of property of an estimated price or rental of more than $50,000. Any member of the committee objecting to or requesting information on a proposed aquisition or disposal shall communicate his objection or request to the chairman of the committee within thirty (30) days from the date of submission.

13. *Legislative Calendar.* (a) The clerk of the committee shall keep a printed calendar for the information of each committee member showing the bills introduced and referred to the committee and the status of such bills. Such calendar shall be revised from time to time to show pertinent changes in such bills, the current status thereof, and new bills introduced and referred to the committee. A copy of each new revision shall be furnished to each member of the committee.

(b) Unless otherwise ordered, measure referred to the committee shall be referred by the clerk of the committee to the appropriate department or agency of the Government for reports thereon.

14. Except as otherwise specified herein, the Standing Rules of the Senate shall govern the actions of the committee. Each subcommittee of the committee is part of the committee, and is therefore subject to the committee's rules so far as applicable.

15. *Powers and Duties of Subcommittees.* Each subcommittee is authorized to meet, hold hearings, receive evidence, and report to the full committee on all matters referred to it. Subcommittee chairmen shall set dates for hearings and meetings of their respective subcommittees after consultation with the chairman and other subcommittee chairmen with a view toward avoiding simultaneous scheduling of full committee and subcommittee meetings or hearings whenever possible.

CONCERNS FOR CENTRAL AMERICA

● Mr. GOLDWATER. Mr. President, during the past several months, we have heard or have read a considerable amount on the situation in Central America. With so much at stake, not only for the United States and her allies but, also, our adversaries, it is no wonder that we have been subjected to a barrage of charges and countercharges. If we are ever going to understand this situation, it will have to be viewed in two contexts—local and regional policies as well as the larger, global implications of events in these areas. It is in the larger arena of international policy that Dr. Lewis Tambs of Arizona State University has devoted much of his expertise vis-a-vis Central America. A recognized expert on Latin America, Dr. Tambs has authored several studies on this critical region. For the benefit of my colleagues, I would like to have two of Lew Tambs monographs entered into the RECORD. I would hope that those of us who must debate and, in some cases vote, on the issues of Central America would realize that while local issues have their place in the debate, the global issues represented here are just as important.

Mr. President, I ask that these two papers be printed in the RECORD.

The papers follow:

SHATTERING THE VIET NAM SYNDROME: A SCENARIO OF SUCCESS IN EL SALVADOR

(By Lewis A. Tambs and Frank Aker)

Defeat in South East Asia seared America's psyche. The overrunning of Indo-China by a Soviet-sponsored satellite also almost completed the geographical encirclement of the People's Republic of China (PRC) and enabled the Russian Navy, basing in Cam Ranh Bay on the South China Sea, to endanger the ore and oil Sea Lines of Communication (SLOC) running from Latin America, Africa and Arabia to Japan. In addition, the fall of Saigon in April 1975 unleashed a tide of human misery in South Viet Nam, Cambodia and Laos. Flotsam in the form of some 900,000 boat people fled seaward while others escaped westward seeking an uncertain fate in foeign lands.[1]

The current crisis in Central America and the Caribbean is strikingly similar to the situation six years ago in South East Asia and the South China Sea. But, this time it is the United States of America which is being encircled, not the PRC, and it is America's ore and oil SLOC which is threatened, not Japan's. Moreover, as insurgency inches northward from Nicaragua, to El Salvador to Guatemala and into Mexico, thousands of refugees will not only flee by sea. They will also work their way overland toward the open, upguarded and probably unguardable southern frontier of the United States. For the hidden agenda in Central America is apparently an effort to induce a ripple effect which may inundate the U.S. with a human wave which could destabilize and capsize the Republic.[2]

Evidence of this Marxist-Leninist method of swamping ships-of-state by stimulating mass migration through the instigation of revolutionary warfare abounds—Thailand, Malaysia and Singapore in South East Asia, Somalia in the Horn of Africa, and the U.S. in North America. The physical presence in the continental United States of an increasing number of Cubans, Viet Namese, Nicaraguans, Salvadorans and Guatemalans all testify to a long series of U.S. foreign policy failures. As of 1981 the absorptive capacity of the American people and economy, though strained, has not been saturated. However, if the seeming Soviet Central American scenario succeeds in stampeding only ten percent of the Isthmus' twenty-four millions along with an equal percentage of Mexico's seventy million inhabitants, and only one half of these insurgency-driven innocents recoil across the international line, America may flounder, swamped under a tidal wave of terror stricken refugees. Consequently, it is time to shake off the somnolence of the Viet Nam syndrome and stop the tsunami at its source in Central America in El Salvador.

Victory in El Salvador depends on winning three battles—on the ground, in the media, and in Washington within the administration. All three are ultimately wars of the minds of men and the persistant propaganda campaign to equate South East Asia with Central America is an integral part of the conflict.

Logistically there is no comparison between Viet Nam and El Salvador. The mira-

cle of Viet Nam was not that the U.S. eventually lost, but that the U.S. was able to sustain a campaign for ten years a third of a world away. For the distance from Los Angeles to Saigon is over 8,000 air miles. San Salvador, lying less than 2,300 miles from L.A. International Airport, is closer to Los Angeles than is Washington, D.C. In addition, sea, road and rail routes from the U.S. to Central America are available. Thus, the argument that El Salvador is logistically unsupportable is fallacious.

The Soviet Union, conversely, now confronts in Central America a logistical dilemma similar to what the U.S. contended with in South Viet Nam. For most Soviet shipments embark at Indo-Chinese, Black or Baltic seaports, and traverse the oceans to Cuba where they are trans-shipped to distribution centers in Panama, Costa Rica or Nicaragua. The final destination, El Salvador, involves, then, not only a trans-oceanic passage, but also two transfers. The Communists, consequently, confront a complicated communications conundrum, whereas in South East Asia they were generally able to unload their cargos with impunity directly at Kompong Som (Sihanoukville) in Cambodia or Hai Phong in North Viet Nam. Clearly, the logistical leverage in Central America lies with the U.S. which can supply El Salvador by land, sea or air with facility.

The U.S. logistical liability in South East Asia was compounded by five major military mistakes.

1. The U.S. followed and forced on its allies a war plan of strategic defense and tactical offense.

2. The U.S., ignoring oriental traditions and local conditions, attempted to impose American military models, modes and mores on the indigenous armed forces.

3. The U.S., culturally incapable of conceiving a protracted war, tried to conduct a sharp, short term campaign.

4. The U.S., consequently, committed large numbers of field forces.

5. The U.S. Army employed expensive and vulnerable helicopters as counterinsurgency, close support gun ships rather than relying on them solely for personnel transport and supply.

These five fundamental errors combined with the logistical difficulties and the inability to win international opinion doomed the United States to defeat in South East Asia. None of these need to be repeated in Central America.

The salvation of El Salvador lies in conducting a campaign of strategic offense and tactical defense. The U.S. followed the opposite in Viet Nam and failed. Constrained by the then current concept of limited war and captivated by Karl von Clauswitz's conventional climatic battle, the U.S. adopted the strategic defensive and tactical offensive in South East Asia. Invasion of enemy sanctuaries in Cambodia, Laos and North Viet Nam was restricted. Even air strikes against some obvious military targets were forbidden. Conversely, while conceding the adversary the strategic initiative, U.S. and allied forces sought, in the classical Clauswitzian concept, a bruising battle which would bring military victory and political control of the ground. The U.S. played chess. The foe played *Go*. In a protracted, partisan war, however, the object is not the slaying of thousands of adolescent insurgents who have been impressed into service, but interdiction, encirclement and eventual destruction of the opponent's infrastructure and cadre. Hence, while U.S. and allied armies were chasing the guerrillas seeking a set-piece slaughter where U.S. technology would tell, and consequently, suffering heavy casualties by exposing themselves, the Cong was surrounding isolated towns and hamlets and gaining, not ground, but adherents. For the ultimate goal in revolutionary warfare is support and sympathy—hearts and minds. And these can be won either by extending adequate protection to the civilian population or by terrorizing them into submission. Consequently, the government forces must cut off the head of the snake of the querrila organization.

Only by destroying the revolutionaries who make the revolution can a successful conclusion to an extended, insurgency campaign be completed. These key individuals are concentrated in the revolutionary's infrastructure and cadre. Trained abroad and patiently infiltrated over a long period of time into the nation's social, political, intellectual, economic, religious and opinion making sectors, the revolutionary infrastructure acts as the intermediary between the insurgent mass and the command post and shock troops of the cadre. The guerrillas are the body, the infrastructure serves as the nervous system and the cadre is the brain. Hence, if the body is separated from the system, and the network of nerves, in turn, is isolated from the *cerebrum*, the corpse will collapse. This can be accomplished by severing the enemy's lines of communication and supply. Since the rebels tend to establish their base camps (*focos*) in frontier areas contiguous to sympathetic states and/or in inaccessible tropical terrain they are able to either flee across the border or melt away after inflicting heavy losses on the loyalist forces who have taken the tactical offensive. Conversely, if the allied armies can uncover and break or block the logistical links between guerrillas, infrastructure and cadre, then, the rebels, in order to survive must break cover and attack. Once in the open the irregular levees can be destroyed, eg. Hue in 1968, and the infrastructure and cadre encircled, isolated, and then allowed to self-destruct through starvation, attrition or self-immolation as they beat themselves to death trying to break out of the double iron ring embracing them. But how can the loyalists uncover the communications network and provoke the partisans into attacking? [3]

Strategic offense means more than hot pursuit into neighboring sanctuaries. The Cuban-Sandinista cancer in the Caribbean and Central America can be removed through surgery, killed by chemotherapy or isolated through interdiction. Should invasion or stabilization be ruled out by the U.S. and only the minimalist option be exercised, arms shipments from the Socialist Block can be monitored by satellite and deliveries intercepted by air and sea. Additional tracing on the ground can be insured by tagging weapons and supplies during transfers. Satellite readings will reveal supply routes and concentrations which then can be blocked and encircled. Shortages, exposure, counter infiltration, bounties and black propaganda implanting isolation psychology and mutual distrust will further rattle the rebels. Morale, moreover, will plunge as malfunctioning arms and contaminated food are pumped into the partisan's pipeline. The moral initiative and, with it the tide of battle, will pass to the loyalists. Sanitizing sanctuaries and severing supplies in a strategic offensive are, however, essentially off shore and foreign operations which can only be implemented by the United States or the Organization of American States. The war must also be won on the ground in El Salvador by Salvadorans.

Tactical defense involves more than clinging to static positions and holding on to fortified hamlets. The enemy must be induced into openly engaging by interdicting his internal supply and transport system. Since the object is to discover and destroy the cadre and infrastructure by separating them from the guerrilla mass as well as preventing provisions from reaching the rebel field forces the government troops must practice patience and perseverance in a protracted war.

Patience is paramount. For in spite of satellite guidance and informant's intelligence the insurgents will have many trails and alternate tracks leading from the focos and frontiers to their agents, activists and combat commands. Moreover, most of these routes will lie under jungle cover in rugged, tropical terrain. Consequently, government troops must be prepared to sit astride suspected networks and wait. Battalion size banderas will airlift into areas encompassing indicated enemy paths. Blocks facing both ways will be established. Two landing zones, one inside and one outside the perimeter will be readied. Dug in, the bandera will wait and watch; no search and destroy missions, no movement, no pursuit, few casualties. Two, four, seven, ten days will pass. If the enemy does not open an attack to clear the track, then the route is either redundant or unimportant. The bandera, after installing remotely monitored ground sensors will move out by air and repeat the maneuver until a sensitive network is uncovered. The guerrillas, shorn of communications and short of supplies will have to try and break through. The regulars, well emplaced, armed with automatic weapons with established fields of fire will have their killing ground. If the insurgents are overwhelming the bandera in blockade will either be airlifted out—wounded first—or slip away to reform at another pre-selected block position. An insurrectionist attack from both sides of the track would indicate that the trail leads to or is close to a rebel supply base or command post. Loyalist reinforcements, supported by counter-insurgency aircraft (COIN), can be helicoptered into either or both landing zones and the enemy columns engaged or perhaps even entrapped. In any event, the enemy will have to come out into the open, show himself and take the consequences and—casualties.

Identical blocking operations will be carried on by other banderas simultaneously on a national scale in El Salvador. Eventually, as field forces fade from mounting casualties, lack of logistics and increased desertions, the rebel command will have to commit the infrastructure and cadre to combat. As these guerrillas grind themselves down the focos will also, through trial and error, be found out. When such a base with its Viet Cong tunnels and complement of cadre is uncovered, no effort to engage should be made. Installation of double lines of encirclement, facing inward toward the foco and outward toward any rebel relief force, insuring isolation are enough. Hunger, hygiene and hysteria will do the rest. In time, starvation, filth and insanity will drive the beseiged to surrender, suicide or self-immolation on the surrounding ring of fire. "Wait and Watch," are the orders of the day for the regular army.

Patience and perseverance echo down the ages of Hispanic history. For the twin traditions of protracted partisan warfare and strategic offense coupled with tactical de-

fense are essentially Spanish. The U.S. must not repeat the second major error of Viet Nam by imposing its military model and modus operandi on the Army of El Salvador.

Victory lies in utilizing local traditions and conditions and the elements for success are ingrained in El Salvador. For Hispanics still think of themselves as warriors and are attuned to prolonged warfare, while the Anglo-Americans consider themselves as soldiers and are trained for definitive campaigns. Thus, in Ibero-America the military is a calling, while in the U.S. it is a profession. The pattern of protracted partisan war reaches back in the Hispanic past to Roman times. The conquest of Iberia cost Rome almost two centuries (206BC to 19BC) and the conflict was marked by extended guerrilla resistence led by such warriors as Viriathus (assassinated 139BC), who combined strategic offense with tactical defense, and sixteen month sieges such as at Numancia (134BC-133BC). In addition to these classical examples is the seven hundred year long Reconquista (719-1492) in which the Christians recovered the peninsula from the Muslims. Using the "salami process' the Christians inched southward in an extended series of little wars (guerrillas), bleeding the numerically superior Moors until the invaders were weakened and ready for the coup de grace in climactic battle. With the fall of Granada, Spanish arms reigned supreme in Europe for a hundred and fifty years. Always out numbered and fighting far from the motherland, Spanish infantry was guided by Gonzálo de Córdoba, El Gran Capitán (1453-1515), who initiated the depot system and introduced the modern military concept of strategic offense and tactical defense. While harrying his oppenents with guerrilleros, the Great Capitan would maneuver his main body into an easily defendable position along a route the foe had to keep free. Obliged to assault, the enemy would impale himself on the immobile pikes of serried ranks of regiments (tercios) lined in batalla (battle) while the wings (alas) poured shot into the attackers. Eventually, as the foe broke, the alas would encircle and annihilate. These tercio tactics proved invincible until the French overwhelmed the disciplined Spanish veterans at Rocroi in 1643.

Spanish revenge returned during the Napoleonic Wars. At Bailén in 1808 General Francisco Castaños, after harassing the French columns of General Pierre DuPont with irregulars, interposed his army between the Imperial Legions and their resupply and reinforcements. Castaños, deploying in a defensive position, forced DuPont to waste his regiments in futile assaults and then obliged his capitulation. Thus, the tercio technique—strategic offense and tactical defense plus partisan operations—brought the imperial eagle down for the first time as Bailén

Fresh, French forces arrived, commanded by the Emperor himself. The struggle evolved into an six year long gruelling guerrilla campaign (1808-1814). Similar methods marked the two Carlist Wars (1834-39; 1872-76), the Civil War (1936-39) and the campaign against the maquis along the Franco-Spanish frontier (1945-47). Identical examples abound in Spanish America where the fifteen year long Wars of Independence (1810-1825) and near continuous civil strife since have completed the transition of the tradition to the New World. And El Salvador is the ideal testing ground for re-introduction of tercio tactics.

The Armed Forces of El Salvador have inherited from their Hispanic past the ingredients for victory. They also have the will to win. The U.S. must supply the instruments. In addition, the U.S. must assist in re-Hispanizing the indigenous forces and aid in instructing the troops and police in civil-military relations. For no national counter-insurgency campaign can be won without the support of the populace. The Salvadoran Armed Forces must return to their Judeo-Christian roots and treat their fellow citizens with justice and respect. One of the first moves in the direction of seeking peace through justice will be to place the National, Treasury, Frontier, and Internal Security Police along with the Civil Guard under direct Army control and command. Concurrently, the National Guard should be integrated into the Army and, then, the newly combined Army and National Guard should take over all police functions while the police are retired and retrained. Discipline and professionalism must be instilled in the police forces before they are permitted to reassume their duties in the urban and rural areas. Meanwhile, the amalgamated Army and Guard, using veteran guardsmen as NCO's for new formations, would be expanded to a total of 20,000 and reorganized along Hispanic lines.

Tercio command and combat structure must be introduced. Brigadas/Brigades (military regions), tercios, (departmental regiments), and banderas (all arms battalions) are the new nomenclature. El Salvador should be divided into five military regions, each commanded by a Brigadier. Every Brigadier will supervise the military and police in two or more of the fourteen political departments of the republic. Every department will raise its own tercio which will reside in the provincial capital. Thus, the number of departmental tercios would amount to fourteen. An additional tercio would be stationed in the national capital, San Salvador, and retained as Presidential ready reserve, for a total of fifteen tercios. Each tercio, in turn, will consist of one to three banderas. The bandera, as the basic combat unit, will be composed of eight companies of all arms, including ground and air transport.

The new military regions, Brigadas (BG) are designed to enhance combat control and increase accountability. Each BG would encompass a critical operations zone, a metropolitan area or economic region and to seek, where possible, to cover both banks of major rivers and lakes, especially the San Miguel, Lempa, Illopango and Coatepeque, this insuring continuity of control over crossings and, hopefully, preventing insurgent penetration along previously shared unit boundaries. Utilizing the existing political departments as building blocks the Brigades (BG) would be grouped as follows:

BG-I—La Unión and Morazán.

BG-II—San Miguel, Usulután and San Vicente.

BG-III—Cabañas and Chalatenango.

BG-IV—La Paz, La Libertad, San Salvador and Cuscatlán.

BG-V—Sonsonate, Altuchapán and Santa Ana.

Brigades, Regions, Departments and Capital Cities of El Salvador.

The proposed reorganization initially involves the establishment of a depot in each of the political departments. Each depot, in the fashion of the Gran Capitán, will serve as the home headquarters, recruiting center and drill and parade ground for the tercio. To further local loyalties and increase identification, tercios would carry the departmental colors and wear their provincial insignia. Moreover, each tercio would be autonomous and the colonel commanding would have full responsibility and accountability for pacification of his province. Only a limited number of tercios would carry a full complement of three banderas. All, however, would have at least one. For departments which evidenced a minimum of insurgency, such as Sonsonate, would require only one battalion, while others, like Chalatenango, would need a full three. Thus, though the tercio would serve as the basic unit for administration and identification, the bandera would be the fundamental fighting formation.

Banderas are designed for continuous combat and maximum mobility. Consisting of eight two hundred man companies, equipped with all arms and assigned its own air lift—two transport and one medical evacuation helicopters per company—the bandera is intended to exert unrelenting pressure on the enemy. Companies will work in pairs with a two week rotation of assignments. The cycle will be rest, engage, reserve and furlough. Thus, while two companies are recovering from home leave and retraining for combat, two others will be committed to blockade operations, two more will be held in ready reserve, and the last two will be enjoying two week passes. This two week spacing will insure freshness and flexibility, guarantee rapid reenforcement, provide ample time to repair and maintain the helicopters and, above all, enable the men to physically and psychologically sustain an extended war of endurance where courage and fortitude will prevail.

Pride and professionalism are the essential ingredients of a successful soldier. And in Latin America where machismo reigns and where the military is more than a mere career, pride may be even more important than preparation. Nevertheless, the soldiers of El Salvador must have adequate training and confidence, not only in their leadership, but also in their weapons.

Rank restructure and weapons modernization are essential. Integration of the Army and Guardia Nacional will enable the military to staff new units with experienced guardsmen who can be promoted to non-commissioned-officers. However, the continuing shortage of junior officers can only be met by elevating gifted NCO's to commissioned rank. This can be done by allowing the cream to rise and introducing a system of battlefield promotions. This program will not only insure a supply of proven, platoon leaders, but also tend to break down class barriers and give enlisted personnel vertical mobility and hence, more to fight for. Courage and success on the battlefield must be rewarded. Training for officers and men should be conducted in a safe environment in areas which are free of insurgent activity. Adequate pay, pensions, life insurance and medical support for combatants and their families, are essential. In addition to these support systems, the physical protection of military dependents must be assured so that they are reasonably safe from rebel reprisals. The reward system can not only be material. A public relations campaign to enhance the image of the armed forces along with public recognition in the press and on the television of individuals and units which have performed outstanding acts of heroism will aid the propaganda campaign. Rewards and recognition through bonuses, medals, ribbons and extra furloughs will further raise morale and sustain the will to win. The

troops, no matter how brave and skillful they may be, need modern weapons and equipment.

The Salvadoran Armed Forces are currently carrying obsolete arms into combat. The standard infantry rifle, the H and K, G-3, should be replaced with M-16's. This upgrading would at least give the government forces the same firepower as the guerrilleros, who are equipped with Soviet small arms along with U.S. models captured in Indo China. In addition, if the banderas are to effectively perform their mobile blockade missions, squads must be allotted automatic weapons and backed by grenade launchers and mortars, both light 81mm and heavy 120mm. Should the U.S. Congress be reluctant to appropriate funds for refurbishing, then transfer from Turkey to El Salvador of the $100,000,000 worth of Soviet arms caches uncovered since the military took power should be considered. So deployed and distributed, the weapons would be used against the surrogates of the original supplier.

Modern weaponry should be balanced by new equipment. Tropical, rot-proof uniforms, jungle boots, fiber helmets—preferably the new U.S. Navy battle helmet with shell, light-weight body armor made of Kevlar with chest and groin protection, and even face masks would remarkably reduce casualties. Health would improve and mobility would be enhanced if the blockade banderas were provided with a two week supply of freeze dried campaign rations. Moreover, military medical supplies such as morphine syretes, antibiotics and I.V. solutions are desperately needed. Air evacuation of wounded should also be expanded. The current carry out of casualties costs an average of twelve hours, inflicting needless agony, incapacitation and death on the fighting forces. Poor medical facilities, a shortage of supplies, obsolete arms, inadequate support systems, lack of rewards and recognition, incorrect tactics and blind adaptation of U.S. military models are all contributing to the collapse of the morale of the military in El Salvador. The stalemate which started in July 1981 has been followed by defeatism and fatalism. Nevertheless, if the deficiencies are remedied, and the Salvadorans return to their Hispanic roots and the tercio tradition, El Salvador can still save itself. If not, the U.S. may intervene and, consequently, commit the other errors of Indo-China, for the Anglo-American, unlike the Spanish American, is culturally incapable of conducting a protracted war.

Anglo-Americans are essentially poker players. Yankees play each hand as it is dealt them. Reacting to the cards in hand and trusting to the luck of the draw, North Americans tend, therefore, not to plan or initiate action, but to counter. Moreover, as poker players, they have limited vision, since they play from deal to deal and are, thus, short term in their thinking. Americans also exhibit the naive assumption that opponents will deal the cards again, when in reality, if the Soviets win, they will not only refuse to play, they will take the pot and go home. This U.S. cultural liability is well reflected in the current craze for crisis management. Based on the business theory of the "exception principle," U.S. leaders confront situations as they arise. Hence, be they liberals or conservatives they are reactionaries. Only their reflex response differs. Consequently, U.S. military and foreign policy is a series of unintegrated, isolated acts without continuity or apparent purpose. Contrasting the U.S. view of short, sharp campaigns and crisis management, the Russians, as chess players, plan several moves ahead, as do the Orientals who are addicted to Go and the Hispanic Americans who are dedicated to dominoes. Added to American poker player psychology is an accountant's attitude of business as usual. Board members and bookkeepers consider a war zone as a lost market, rather than the site of contending systems engaged in a long term struggle for supremacy. Thus, as trade and tourism decline, policy is dictated by the profit and loss statement of private companies rather than the national interest. The U.S. propensity for short term profits paired with a poker player mentality have rendered America incapable of enduring either a prolonged ideological effort or a sustained military action. For if massive military intervention fails to win a quick victory, as occurred in Indo-China, the U.S. reaction is to cut its losses by abandoning its allies, opting for the Zimbabwe Solution and accommodating to the enemy who guarantees peace and profit. Consequently, since the conflict may continue for decades, the U.S. should never consider committing field forces to Central America.

Introduction of U.S. ground forces into Central America is neither necessary nor desirable. The elements of victory are already in place in the people and past of El Salvador. Foreign intrusion, be it Anglo-American or Cuban-Sandinista, will only provoke a negative, nationalistic reaction, for a country can only be truly conquered by its own citizens. The U.S., therefore, should limit itself to what it can do best, that is providing treasure, training and technology. Help, plus a "hands off" policy, can, over time, solve the situation. The opposite was practised in South East Asia. The enterprise floundered.

The U.S.'s "hands on" effort in Viet Nam eventually required the introduction of large numbers of ground personnel. This presence induced over-dependency on U.S. forces by the local military, disrupted the Viet Namese economy and exposed the American populace to domestic unrest, as well as an intense and eventually successful international propaganda campaign which weakened the U.S. will to win. As protests and casualties mounted, the U.S. military strove to replace men with machines. Gadgets would substitute for soldiers.

U.S. fascination with technology occasionally leads to dependency. In South East Asia the American military continued to employ helicopters as counter insurgency aircraft (COIN) even after battle experience had proven their extreme vulnerability to even light ground fire. During the Lam Sam operation in Laos 108 helicopters were lost and 600 were damaged between February 8 and April 9, 1971. In spite of the massive helicopter support and immense wastage, some 10,000 South Viet Namese troops were killed, wounded or captured.[4] An estimated equal number of the enemy—who were without air cover—fell. Such an expenditure of men and machines for an even trade with the adversary is unacceptable. A similar situation already exists in El Salvador where, as of early November 1981, thirteen of the government's fifteen helicopters were inoperable. Therefore, helicopters should be limited to transport and air evacuation roles in Central America and not assigned to combat missions as COIN. An admirable substitute with a much higher survival rate would be the Brazilian built Xavante. Jet propelled and designed for brush fire wars in less developed areas, the Xavante's purchase price includes ground crews and maintenance personnel for an extended period. Spanish speaking volunteer pilots could be contracted to operate the aircraft in close support of the banderas in blockade. Thus, once again, the instruments are at hand for victory in El Salvador. But they must be utilized to be effective and this requires will and purpose.

The crisis in U.S. foreign and military policy is metaphysical. The situation in El Salvador is symptomatic of the shrinking of America's spirit and the contraction of U.S. space perception and strategic vision. The mixed signals emanating from Washington which alternate between the limp wrist and mailed fist approach as exemplified by the Caribbean/Central American Action Group on one hand and Secretary of State Alexander Haig on the other indicate indecision and confusion. For the battle within the Reagan administration is but one of the three wars being waged. The other two in the international media and on the ground in El Salvador will only be won or lost when the conflict within the U.S. government is resolved. And the continuing campaign to equate Central America with South East Asia is an effort to influence the decision.

But Central America is not South East Asia. This time the logistics are on our side. Moreover, the five major military mistakes need not be repeated. The U.S., by supplying treasure, training and technology, can aid its allies in:

1. Adopting the strategic offense and tactical defense.

2. Inculcating Hispanic traditions and *tercio* tactics.

3. Conducting a protracted war of perhaps decades duration.

4. Reinforcing the self-reliance of indigenous armies by refusing to commit U.S. ground forces.

5. Utilizing helicopters for air transport and evacuation only and supplying COIN aircraft for combat.

The U.S., by applying these five points, providing the instruments and encouraging allies to fight for their own countries, will, in turn, insure its own survival. For the United States is the ultimate target of the enemy in Central America. By using surrogates and supplying satellites, the Soviet Union is conducting a low cost, low profile, low risk war which is not only eroding the U.S. power perch in the Caribbean and Central America and endangering oil and ore imports which are vital to the U.S., but which also may succeed in stampeding millions of innocent, insurgency-driven refugees from Nicaragua, El Salvador, Guatemala and Mexico into the United States.[5] This possible secret scenario in Central America would, if successful, destabilize the Republic and allow the Soviets to gain their ultimate objective of absolute security—global hegemony—without ever directly confronting the military might of the United States. Thus, the salvation of El Salvador is intimately linked to the future fate of the United States. Whither Washington?

REFERENCE NOTES

[1] See "Guatemala, Central America and the Caribbean: A Geopolitical Glance," *Vital Speeches of the Day* LXVII: 22 (September 1, 1981), pp. 677-684, for a discussion of the strategic dimension.

[2] See Sol W. Sanders, "Our Mexican Time Bomb," unpublished Ms. for an excellent discussion and analysis of the migration problem.

[3] For a brief outline of revolutionary warfare in Latin America by Frank Aker see *Vital Speeches*, pp. 679-681.

[4] Ronald H. Cole, "The Southern Defeat on the Ho Chi Min Trail," in Ray Bonds, ed., *The Viet Namese War* (NY: Crown, 1979), p. 193.

[a] For the exodus of boat people from Nicaragua refer to "Washington Whispers," *U.S. News & World Report* (November 23, 1981), p. 12.

GUATEMALA, CENTRAL AMERICA AND THE CARIBBEAN

(By Lewis A. Tambs)

Central America and the Caribbean act as America's global power perch. Ever since 1898 the ability of the United States to project power eastward across the Atlantic and westward past the Pacific has rested upon a cooperative Caribbean and a supportive South America. And as of Thursday, July 30, 1981 the Caribbean is a cauldron. South America is increasingly isolated. The continental sea of the Caribbean which bound North and South America together is being made a barrier by Soviet sponsored activity.

The erosion of the U.S. position in the closed sea of the Caribbean and the encircling isthmus of Central America portends the collapse of America's global power presence. For the U.S. does not have enough men, money, ships, aircraft or energy to divert massive resources southward and still retain a credible posture in its primary security areas—Southwest Asia, Western Europe and the Western Pacific. Thus, the Caribbean and Central America, although superficially a secondary theater, are part of an overall scenario of Soviet staging.

The Soviet Union seeks absolute security—global hegomony. The strategy is simple. Achieve nuclear superiority and then, under the cover of an atomic umbrella, satellitize and Findlandize the world with a policy of double encirclement: surround the People's Republic of China and strangle the oil and ore supplies vital to the industrialized democracies—Western Europe, the Americas and Japan. The immediate objectives are the two treasure houses of the world—the mineral storehouse of the Southern Africa and the petroleum-laden Middle East.

The danger for the West is defeat not destruction. Acting under the protective parasol of nuclear superiority, Soviet Russia in a massive Mongol Sweep is pinning the military might of NATO in Western Europe while outflanking America's allies by moving into the Middle East and Southern Africa. Simultaneously these modern Mongols seek to encircle the People's Republic of China and interdict the Sea Lanes of Communication (SLOC) and Aerial Skyways of Transport and Resupply (ASTAR) upon which the Western democracies depend. And for the United States, the centerpiece of the Western coalition, which relys on foreign sources for over half of the thirty-two minerals essential for industrial and military use and imports over one third of its oil, the Caribbean and Central America are crucial.

Arabia and Africa may be the petroleum pump. The Indian and Atlantic Oceans may be the oil sea lines of communication. But for the United States, the Caribbean and Central America are the nozzles.

The Caribbean is a closed continental sea. The number of entrances and exits is limited. The Bahamas, Puerto Rico, the Virgin, Leeward, Windward and Grenadine Islands encircle the eastern edge. North, Central and South America ring the rest. The only Pacific passage is the Panama Canal. The center of the circle is dominated by the Greater Antilles—Puerto Rico, Hispañola, Jamaica and Cuba—which also form a barrier between North and South America. Only three channels, Mona, Windward and Yucatan cut through the Antillian island chain which lies athwart the sea lanes connecting the two continents. Additionally, only the Straits of Florida and the Santarén Passage provide an Atlantic entrance to the Gulf of Mexico. The warm tropical waters also wash Mexico and Venezuela, two of the worlds major oil producing nations. Thus, the Caribbean rim and basin is a petroleum focal point.

Through Caribbean channels, Antillian passages and the Panama Canal pulses the petroleum of the Middle East, Ecuador and Alaska. Super tankers sailing from the Persian Gulf around Africa generally do not dock directly in U.S. Atlantic or Gulf ports. Most of these vast vessels transfer their cargoes at the Bahamas, the Virgin Islands, Trinidad, or Curaçao-Aruba into standard size tankers which then sail on to the eastern or southern seaboards of the United States. Even supertankers destined to discharge in the New Orleans terminal must traverse the Caribbean. Venezuelan oil also moves northward through the Mona, Windward and Yucatan Channels. Not all of this oil is crude. Since the U.S. has not completed a new refinery in years much of this imported petroleum is finished product having been processed at off shore locations. The Panama Canal also plays an important role on U.S. energy supply. Oil from Alaska and Ecuador should soon pass through the planned Pacific-Atlantic pipeline in the Republic of Panama augmenting the actual tanker route by way of the former Canal Zone. Another trans-isthmian conduit under consideration for Alaskan oil runs across Guatemala from the Pacific coast to the Gulf of Honduras. Thus, since some three-quarters of all U.S. oil imports are either produced or transit the shore and sea of the New World Mediterranean, whoever controls the Caribbean and Central America could strangle the United States by choking off the petroleum life lines.

The noose is tightening not only on oil but ore. Mexico, with some sixty-seven billion barrels of proven petroleum reserves is also a significant supplier, along with Brazil, of manganese to the U.S. which imports 97 percent of its needs. Guatemala, which started exporting oil in April 1981 from the El Petén and West Chancha fields with estimated reserves of between two and six billion barrels, began shipping nickel in 1978 from the 60,000,000 ton reserve near El Estor on Lake Izabal. U.S. dependency on foreign nickel is 76 percent. Regarding bauxite, the Caribbean basin nations of the Dominican Republic, Haiti, Surinam, Guayana, and Jamaica supply most of the U.S.' 93 percent import requirement. In addition to these strategic minerals which also come from Southern Africa, U.S. steel mills also import significant amounts of iron ore from Venezuela and Brazil, most of which transits the Caribbean. The United States as a mineral and energy dependent nation needs secure supplies from Meso-America and the New World Mediterranean.

Cuba is the key to the Caribbean. Ever since the advent of the maritime empires in the sixteenth century the Pearl of the Antilles has, by virtue of its central location, command of the Windward and Yucatan Channels along with the Santarén Passage and the Florida Straits, and its relatively large size, population, agricultural potential and numerous deep water harbours, served as the strategic center of gravity of the closed, continental sea of the Caribbean. The introduction of air and ultimately missile power in the twentieth century has further enhanced the island's importance. Thus, the coming to power of Fidel Castro in Cuba in 1959 and his subsequent alliance with the Soviet Union altered the geopolitical game in the New World Mediterranean. Moreover, U.S. efforts to contain Castro after the defeat at Playa Girón in 1961 and the promise of non-intervention concluding the Cuban Missile Crisis of 1962 chained U.S. planners to passive policy of reaction and restraint rather than an active program of initiative and offense. Containment of both the U.S.S.R. and Communist Cuba, therefore, committed the United States to a defensive posture and merely enabled Moscow and Habana, not only to establish, but also to insure their sway over their subjects. Curiously, both the Comintern and Castro learned their Latin American lessons from Guatemala.

The Marxist-Leninists used Latin America as a laboratory. During the 1930's the Third International experimented with both direct action and parliamentary penetration as means of winning power. Violence failed in El Salvador in 1932 and again three years later in Brazil. However, in 1938 the Peruvian Comintern agent Eudocio Ravines, utilizing the technique of the Yenan Way taught him by Mao Tse-Tung, succeeded, following the French and Spanish examples, in engineering the establishment of a Popular Front Government in Chile. These two tactics—armed struggle and the via pacifica—remain the standard Communist techniques for seizing control in Ibero-America. But, the Guatemalan interlude of 1944-1954 taught the Marxists something more—how to remain in power.

A small group of Latin American Marxists gathered in Mexico in the autumn of 1954. Fleeing from the forces of the "Liberation Movement" commanded by General Ydigoras Fuentes and Colonel Carlos Castillo Armas which had overthrown the Communist riddled regime of General Jacobo Arbenz Guzmán on June 27, 1954, these refugees pondered their precipitous eclipse. Their ascent under Presidents Juan José Arevalo (1945-50) and Jacobo Arbenz (1950-54) had been swift and certain, their use of infiltration and subversion, masterful, but they were unable to retain control. Why? Analyzing their downfall the Communists extracted these six basic principles: although the middle class can be used to attain power, only by revolutionizing the masses can Marxists maintain themselves in power; a Marxist-Leninist nation in the Americas must integrate economically with the Soviet block in order to reduce dependence on the United States; a Socialist state can hope for nothing from the Organization of American States and all appeals should be made to the United Nations where the Soviet Union sits on the Security Council; political rights should be exercised only by the Communists and the one party state should be empowered to take dictatorial action against its opponents; the Church must be broken, discredited, penetrated or won over in order to eliminate a rallying point for anti-Communists; and the old army must be liquidated and replaced with a Red militia. These six principles were later applied with telling effect in Cuba. Guatemala's Red decade of 1944-1954 provided the script for the Cuban story.

Fidel Castro followed the six principles of retaining power to the letter after occupying Habana in January 1959. The 26 of July Movement was one of many middle class groups in the loose coalition which overthrew authoritarian President Fulgencio

Batista. But liberals, social democrats, conservatives, and romantic utopians were no match for a disciplined, organized Communist cadre which rigorously applied the six principle program and eventually established a totalitarian state. With one exception the six principles were also evoked in Chile between 1970 and 1973 and in Nicaragua after July 1979. Castro counseled both the Socialist Salvador Allende and the Sandinistas to mute point two—"A Marxist-Leninist nation in the Americas must integrate economically with the Soviet block in order to reduce dependence on the United States." For the Communists had seemingly forgotten Lenin's dictum that "The capitalists will fight among themselves to sell us the rope to hang them with." Consequently, as Containment collapsed and Detente dawned it became much more convenient for the Communists to count on the industrialized democracies for trade and aid which would ensure the success and safety of the revolution. Concurrent with the socialization of the Cuban people, Castro exported insurgency. Between 1959 and 1965 Haiti, the Dominican Republic, Venezuela, Colombia, Panama, Nicaragua, Guatemala and Mexico were hit.

Insurrection erupted in Guatemala City on November 13, 1960. The military mutiny was suppressed but the cuartelazo set off some seven years of rural guerrilla warfare lead by former Lieutenants Mário Antonio Yon Sosa and Luis Augusto Turcios Lima. The campaign would cost thousands of lives including that of the U.S. Ambassador and two members of the Military Mission as well as millions of dollars of productive property. The Guatemala Government, acting under the Act of Chapultepec of 1945 which declared that any attack upon a member party would be considered an attack upon all and provided for the collective use of armed force to prevent or repel such aggression, and the subsequent Inter-American Treaty of Reciprocal Assistance of 1947 (Rio Defense Treaty) which constrained signatories to the peaceful solution of disputes among themselves and provided for collective self-defense should a member party be subject to external attack, responded by requesting assistance. In addition, the Guatemalans, under the umbrella of the Rio Treaty and the Inter-American Defense Board, joined with El Salvador, Honduras and Nicaragua in July 1965 to form the Central American Defense Council (CODECA). Since CODECA was conceived specifically to coordinate resistance against possible Communist aggression, Nicaragua's adherence, as of July 1981, is doubtful. Nevertheless, CODECA is still legally and operationally in place.

The founding of CODECA was followed by the election of President Julio César Méndez Montenegro (1966-70). Méndez, a member of the Revolutionary Party (PR)—his inauguaration marked the first time in the twentieth century that a Guatemalan Government had peacefully handed power to the opposition—immediately offered amnesty to the insurgents. The rebels refused. Méndez then ordered Col. Carlos Arana (later president, 1970-74), to flush the guerrillas out of their rural stronghold in Zacapa along the Honduran frontier and authorized farmowners together with their administrators and representatives to bear arms. This deputizing of the agrarian elite, while it did hamper insurgent operations, also resulted in the formation of the so-called 'death squads.' Meanwhile, Arana ran down the rural rebels driving them to desperation and acts of urban terrorism.

The collapse of rural guerrilla operations in Guatemala coincided with the defeat and death of Ernesto "Che" Guevara in Bolivia. By 1968 counter-insurgency had prevailed over rural revolution. Thus, the call of the Latin American Solidarity Organization (LASO) in January 1966 at the Tri-Continental Conference in Habana for many Viet Nams and a Continental Revolution aimed at isolating and destroying the United States through guerrilla warfare was called into question. For the four *focos* or fighting zones designated by LASO—Peru, Colombia, Venezuela and Guatemala—plus the covert center for Continental Revolution—Bolivia—had failed to ignite brush fire wars and spark social revolution. The insurgents, driven to seek shelter in the cities, now turned to urban terrorism.

A re-evaluation of revolutionary warfare was required. What emerged from the combat conditions of the 1960's and the revolutionary writings of such authors as Mao, Vo Nguyen Giap, "Che" Guevara, Régis Debrary, Abrám Guillén, Alberto Bayo, Carlos Wilson, Carlos Marighella and others was a synthesis which is currently being applied with singular success in Latin America. A summary in outline form prepared by Frank Aker follows:

I. BACKGROUND NOTES

A. Spanish inheritance

1. Spanish culture, temperament and history have proven to be compatable with the *concept and style* of guerrilla warfare (guarrilla means "little war").

2. The first large scale example of rural guerrilla warfare in modern times was conducted by Spaniards in 1808-1813 against the French invaders.

3. Latin America has a very high percentage of young people in its population. There is too little industry in this agricultural area to provide needed employment of excess population and to develop a solid middle class. A potential explosive situation exists without the stabilizing influence of the U.S. as a dependable trading partner and as a source of productive and profitable investments.

B. Lenin's legacy

1. Lenin provided political application to guerrilla warfare. He developed a Communistic doctrine of revolutionary war that pits the dissatisfied lower class against the social and government structure that is allegedly abusing it. This has provided many Latin Americans the spark and fuel (excuse) to seize political power by illegitimate and coercive means.

2. Partisan warfare is the only safe, practical means of Communist expansion in this area of the world. It provides the Soviets with a low risk, low cost, low profile approach to the isolation of the U.S. at an extended range from the Russian mother land.

C. Art and science of revolutionary war

1. The Soviets have developed for Latin America a historically and currently plan of action for starting, waging and winning a war of National Liberation. This will eventually lead to hegemony of all of Latin America and compromise the U.S.' ability to be a competing power in world affairs.

2. Moscow and Habana's blueprint (to be outlined) consists of four distinct parts or phases:

a. Organization and preparation.
b. Limited war of expansion.
c. Conventional war and exploitation.
d. Exporting and support of contiguous revolution.

II. PHASE 1: ORGANIZATION AND PREPARATION

(Note: already accomplished in all Meso-American and some South American countries.)

A. Target country selection

1. Underdeveloped countries are Soviet targets of opportunity since they may be in the economic phase of capital formation and, thus, have a few wealthy families, a small middle class and a large majority of marginal rural laborers. While it was once believed that the existence of a large middle class would preclude a revolutionary situation, the concrete cases of Uruguay and Argentina, especially the former where neither deprivation nor tyranny existed have dispelled this myth. Nevertheless, in Central America where the politics of envy of the petit bourgeoisie can be played against the well-to-do producers, the existence of large numbers of unemployed or underemployed agricultural laborers is important. Even in these cases, as Ernesto "Che" Guevara learned to his dismay in Bolivia, other factors such as race and nationalism may prove critical.

2. A choice terrorist target is a nation which is ruled by one man, party, or single family. Cauillismo and personalismo combined with continuismo facilitate focusing. The charge of corruption is an excellent emotional propaganda tool and the revolution will have an easily identifiable reference point.

3. Most Central American and Caribbean countries have societies which are unable to keep up with the dynamic changes of the world. The society is unable to absorb change allowing for breakdown of norms or traditions leaving a discontent-disoriented youthful population. Youth can easily be manipulated by taking advantage of their inherent impatience and idealism through the use of abstract themes that have broad appeal. These themes need not be realistic or attainable, just emotional. Youth are willing to risk all they have, because they do not have much.

B. Initial establishment: Stage 1

Leadership

1. Soviet agents have identified known discontent opinion leaders and have sent them for training in U.S.S.R. for 2-4 years. They have learned how to form and use the political element (infrastructure) to run a revolutionary war. As long as the infrastructure survives—the revolution survives. To this end, numerous candidates are trained.

2. The Soviets have thoroughly analyzed the social class structure identifying grievances as a "cause." The candidates are thoroughly trained to exploit the cause to secure support of factions and people.

3. Soviet emphasis is to develop an indigenous leadership capable of carrying the momentum of Revolution to full term. They must have independent skills to compile an intelligence base needed to formulate campaign plans and to support propaganda objectives and themes.

4. Leaders are sent back to their homeland and initially act independently to form their own competitive organizations. Then, as the cream rises to the top, various leaders will merge their organizations to form coalitions under the more successful leader.

5. First major effort is to win over the Catholic Church by whatever means. This is done by supporting the Church, it works with the poor, etc. To win the Church, they win many supporters.

6. Leaders are instilled with the concept that this only is the beginning and that their ultimate purpose is to overthrow the U.S. These leaders are committed to a protracted war. They are indoctrinated to fight as long as it takes to win.

Guerrilla Cadres

1. Soviets have identified initial cadre members to be trained by seasoned guerrillas in other Latin America revolutions or in special camps located in Cuba, Costa Rica and Nicaragua. They learn physical conditioning, survival, political ideology, and tactics. It is not necessary for the cadre members to be Communist, only that they be dedicated to the overthrow of the government of their country and eventually the overthrow of the U.S.

2. Cadres return to coordinate with the leadership, establish a rural base, to recruit, train, equip and indoctrinate other guerrillas.

3. Individuals of extraordinary ability may rise to positions of leadership within the infrastructure or form their own infrastructure.

4. First actions—to infiltrate members into the policy machinery of mass organizations; news media, unions, schools, cooperatives, church, armed forces, police and government. They start a systematic destabilization and misinformation campaign.

C. Developing support: Stage 2

1. Bases are established by each faction in inaccessible rural terrain to disperse assets—avoiding a single catastrophic blow. Terrain selected is contiguous with a country's border in or close to a revolution. Bases in contiguous countries are most valuable in Phase 1 to avoid government troop encirclement.

2. Strategic holdings in a revolutionary war are not land or space—that is a conventional concept—it is the "hearts and minds of the people." Maps should not show ground held by forces but areas held by people loyal to the revolutionary cause. Rural areas are sparsely populated receiving little direct government protection, assistance and communication. Rural areas will be more susceptible to supporting insurgents if they provide what the government does not.

The guerrilla units dispatch agitators to spread propaganda to immediate area to gain support—provide schools, medical centers, local security, agriculture assistance in return for food, medicine, recruits and information. Hence the close cooperation between insurgents and some international relief agencies.

The concept of dual government (legitimate and revolutionary) emerges.

3. Infiltrated members in urban areas initiate strikes, riots, sabotage, black markets, rumors and agitation of minorities to cause social and administrative disorder.

This initiative will keep government troops and police tied to urban areas. It is cheap to produce, but costly for government to prevent. Best way to purchase time to change attitude.

III. PHASE 2: LIMITED WAR OF EXPANSION

A. Guerrilla military activity

1. Basic assumption—a Latin American government cannot sustain a lengthy internal war financially, psychologically or politically.

The guerrillas must keep constant pressure by maintaining the initiative. Key to controlling initiative is knowledge of enemy's position, strength and intentions done by a solid intelligence system set up in Phase 1 and constantly being expanded to where every civilian can be considered an agent.

2. Guerrillas scatter forces throughout the country and initiate disturbances and demoralizing attacks on supply lines, communications such as railroads and bridges. Weak army columns are ambushed. Hit-and-run raids are sudden, vicious with precise execution and raid dispersal to not allow the government to reinforce, direct air and artillery fires, or isolate insurgents by using paratroops or helicopters. This places a strain upon the government conventional forces by a process of attrition both psychological and physical. Urban activity is stepped up by directly attacking the property and wealth of those in power. Banks are of particular importance both as symbols and as sources of funds.

3. The government, under pressure to maintain world image of stability (politically, militarily and economically), to receive foreign aid, and to have its trade and military alliances honored, will disperse troops to police the threatened areas. This causes government forces to be weak at all points. The guerrillas can concentrate their forces at the government's weak points, one by one; defeating the regular troops in detail, yet preserving their own strength.

4. Government forces will predictably intensify repression with road blocks, house searches, arrests of the innocent, closing streets. Police terror will become routine along with political repression.

Guerrillas will make excellent propaganda use of this both on a local and world wide level. To keep the time honored class privileges, the government power will change hands within the family, party, or even be taken over by the military. Government soldiers will begin to show signs of tiring, they will lose faith and decline in morale.

5. Insurgents will avoid direct confrontations while building a well-armed, mobile army, through capture of arms, recruitment and defection of government troops with this expertise.

B. Terrorism

1. Should for some reason the guerrilla activities fail and/or the government take steps to remove the cause, then the guerrillas will have no other choice but to seek power by terror and intimidation. This is done by committing atrocities not against the government, but against the people on whose behalf the insurrection is instigated.

It will make no difference to the local or world wide press—they will still sympathise and call it a guerrilla action in a civil war.

2. Terrorism can never succeed militarily, only psychologically. It is usually given into by appeasement. This is accomplished by propaganda leading to a negative governmental political approach in which it is believed no defense is possible against terrorism. This leads to a nation's moral exhaustion and a predisposition to surrender.

3. To respond to terrorism an arch-military conservatism develops. This is embodied in a blind adaptation of a European pattern of warfare of ponderous armor and static heavily fortified garrisons. The government leadership is oriented towards a war of mobility and clearly formulated objectives of attack, a strategic approach in which armor is the chosen instrument. This will fail against the guerrilla turned terrorist and will result in an increased feeling of defeatism on the part of the military and ultimately fatalism. All the government needed to have done was change tactics and to be prepared for a protracted war. This military blindness and military conservatism is expensive and will put more strain on the economy than it can stand.

4. Terrorist victory is near when the political element's defeatist attitude infiltrates the military arm. The first sign of this is when the government seeks to negotiate a settlement. This signals the army that the government no longer has confidence in it's ability to win.

C. Demoralization and dissatisfaction of the people with the government

1. Extensive propaganda campaigns. The people will judge what is promised by the rebels not what is provided, but the government must run on its record. As more territory is won over and absorbed, enough people will actively commit themselves to the revolution so that "home guards" can be formed. These local vigilante groups are not combat units, they serve as police and protect guerrilla areas. It is their job to discourage loyalists, obtain information, and oblige support and contributions.

In many cases, Church officials will back the rebel factions, having been won over by the propaganda that the rebels are dedicated to helping the poor.

2. A long internal war compromises foreign relations: no country or company wishes to invest in a risky area or deal with a toppling government. Many major families will begin leaving the country with their wealth.

3. A long war also causes dissention among the people because the government cannot keep order in guerrilla infested areas. Acts of terror and sabotage occur which make civilians lose confidence in the strength and authority of the government. War weariness and war frustration arises.

4. The government, by constantly increasing the troop strength to confront the guerrillas conventionally, will cause a labor drain and subsequent economic and political dislocation.

IV. PHASE 3: CONVENTIONAL WAR AND EXPLOITATION

A. Guerrilla military activity

1. Equalization of manpower and equipment between insurgents and government troops.

Government troops are overextended and revert to defensive posture around fortified bases in a mistaken belief that they must hold territory.

2. Guerrilla army uses positional warfare to pin and hold regular field forces, while mobile units encircle and then destroy government units. The conventional battles will break the back of the government's army and the will to win will be exhausted.

3. Insurgent's final drive will be to capture the capital. This effectively cuts the head of the government snake and without it the rest will die.

B. Guerrilla political activity

1. Negotiations will be well publicized. The press is particularly fond of this type of media event—real or not. The international media will be used to consolidate and repeat the revolution's goals, frustrate the government, and influence world public opinion. The only concessions accepted are those that aid the insurgents. (Never negotiate with a Communist.)

2. Coalition government—any sign of compromise will be a sign of weakness and appeasement leading to ultimate surrender.

V. PHASE 4: EXPORTING AND SUPPORTING OF CONTIGUOUS REVOLUTION

A. Revolutionary puppet government

1. Soviet and Cuban "advisors" will take control of the new government's operations and military. This will leave a rubber stamp government of revolutionary leaders.

2. Internal security will be tightened with any and all opposition brutally disposed of. This organized terror will be coupled with a comprehensive program to direct every aspect of an individual's life—his work and life will be dictated—application of the six principles of retaining power.

B. Next target

1. The recently revolutionized country is then obliged to render assistance to all other wars of National Liberation in the area.

2. Citizens of the newly conquered country will be told it is a source of comradeship, revolutionary ideals, and repayment, and that they must provide bases and training camps, troops, arms and ammunition.

3. The best next objective will be a contiguous nation—Nicaragua, El Salvador, then Guatemala.

The doctrine of Revolutionary War as outlined above in the Aker analysis is driving Central America into chaos. However, as recently as 1977 the five republics—Costa Rica, Nicaragua, Honduras, El Salvador and Guatemala—in spite of the Soccer War of 1969, the Oil Embargo of 1973 and the earthquakes in Nicaragua in 1974 and Guatemala in 1976, were still stable, prospering, progressive and allied to the United States. For though many of the causes are a long standing compound of the "imperfections of man and the cruelties of nature," the collapse of Central America came during the presidency of Jimmy Carter (1977-81).

President Carter came to power with a plan for Latin America. Predicating his policies on three studies—the two "Linowitz Reports" and the "Southern Connection"—which apparently accepted the Marxist-Lenist norms that social revolution is inevitable and that socialism (state capitalism) is desirable, U.S. policy makers, captivated by the concept of controlled revolution, chased the chimera of trying to prevent the political coloration of Latin America from being dyed Russian red by a pre-emptive painting of an American-prescribed pale pink.

The Carter administration opted for the Zimbabwe Solution. Believing that basic human rights could be bettered, that social reforms would elevate the economic standard of living, that ideological pluralism would be assured and that democratic procedure would be guaranteed, President Carter pursued a policy of contributing to change and pushing, what was assumed to be an inexorable process of modernization. Efforts to accelerate the process included cutting off military supplies to Guatemala and Nicaragua, aiding the Sandinistas, encouraging Costa Rica to provide sanctuary for the FSLN (Frente Sandinista de Liberación Nacional), and engineering the overthrow of a duly elected president of El Salvador.

The results of Mr. Carter's well intentioned efforts have been the opposite of the desired ends. Casualties in the Soviet-inspired and Sandinista-supported campaigns in El Salvador and Guatemala average 40 to 60 per day. Human rights violations in Nicaragua alone, not to mention atrocities by both sides in El Salvador and Guatemala, are massive. Some 8,000 political prisoners languish in the People's Prison compared with the fifty-nine persons which President Anastasio Somoza was obliged to release in 1978 when a Sandinista raid obliged him to clean out his jails. Thousands of refugees are homeless. An estimated ten percent of Nicaraguan populace of 2,500,000 has fled seeking sanctuary, not only from the Sandinistas, but also from elements of the Palestine Liberation Organization and other assorted international terrorists. Central American economies are in ruins. Nicaragua's 1980 deficit approached $300,000,000. An amount which even the Libyan loan of $100,000,000 will not match. El Salvador's once thriving agricultural and industrial sector is in disarray due to U.S. imposed experiments. The Guatemalan Government, still solvent, financed much of the area's export trade in 1980 due to the *de facto* bankruptcy of Costa Rica, Nicaragua and El Salvador. Unemployment has soared, rising to approximately sixty percent in Nicaragua and thirty in El Salvador. Ideological pluralism has been pushed aside in Nicaragua where the government, pursuing the six principles of retaining power, has persecuted political opponents, hampered the press and postponed pre-revolution promises of elections; Somoza's Liberal Party would have had some kind of an election in 1981; moreover, he and his family were forbidden to run. Costa Rica, the Switzerland of the South, is racked with leftist terrorist attacks while the right arms its death squads. The Zimbabwe option has failed.

Central American integration has been set back. Long torn between the forces of federalism and centralism, Central America received a tremendous impetus toward economic and political cooperation with the launching of the Alliance for Progress by President John F. Kennedy (1961-63). Understanding that what Latin America needed was more production, the Alliance fomented capital formation, free enterprise and a market economy. Formation of the Central American Common Market was encouraged and aided by the U.S. and enabled the individual republics to specialize and industrialize. Manufacturing averaged an annual ten percent increase from the early 1960's to the early 1970's, thus easing their dependence on agricultural exports and the vagaries of the world market. As economic inter-dependency increased, peaceful political collaboration seemed sure to follow. However, as of July 1981, with the exception of the existing, but unactivated Permanent Commission of the Council for Central American Defense headquartered in Guatemala City, the only cry for union comes out of Managua where the Sandinistas, well supplied with weapons and even armor, are raising a regular army of 50,000 and aspire to mobilize a militia of 200,000 to 300,000. The miserable economic situation and the militarization of society has given the youth of Nicaragua the classic choice: the hunger death or the hero death. But the danger of a Communist takeover in Central America and unification of the area through violence was supposed to dampen with the inauguration of a new president in the United States in January 1981.

Well aware that the Soviet Union is using Cuba as a command post and Nicaragua as a training base, Secretary of State Alexander Haig drew the line against subversion in the hemisphere. However, foreign policy pronouncements seem to be at odds with State Department policy. The Zimbabwe option, exercised by the Carter administration and advocated by the anonymous authors of the allegedly spurious "Dissent Paper on El Salvador and Central America," appears to still be operational.

Indications of this trend are the U.S. advocated and accomplished legal recognition by the Salvadoran junta "of two parties associated with the guerrilla-backed Revolutionary Democratic Front. These were the National Revolutionary Movement, led by Guillermo Manuel Ungo, and the Democratic National Union. * * *" This move (Refer to Aker analysis, III, Phase 2. B. 4., p. 16 and IV, Phase 3. N B. 1. and 2., p. 18) along with Secretary of State Haig's ardent efforts at collaboration with French Socialist Foreign Minister Claude Cheysson, and consequently President Francois Mitterrand's Latin American advisor, Régis Debray—comrade of "Che" Guevara and advisor to Salvador Allende—portend a trend to seek the Socialist International solution for Central America—the Zimbabwe option, again.

The Second International has consistently supported the insurgents in Central America. Prior to the occupation of Managua by the FSLN in July 1979 most of the money was funneled through the West German Social Democratic Party's (SPD) Friedrich Ebert Foundation. In March 1980 President Willy Brandt of the Second International met with other Social Democrats in the Dominican Republic. They voiced their full support for the insurrectionists in El Salvador, specifically the Faribundo Martí Liberation Front. This stand was again substantiated in June 1980 when the Second International stated that it "fully supports the struggle of the Revolutionary Democratic Front (FDR) * * *" in El Salvador. Efforts by the Carter administration to apprise the German Socialists of the full extent of Soviet and Cuban involvement in Central America failed. For the March and June resolutions were reinforced in Madrid in November 1980 when Willy Brandt, Francois Mitterrand—Vice President of the Second International, Olof Palme, Michael Harrington of the Democratic Socialist Organizing Committee of the U.S., Francisco Peña Gómez of the Dominican Republic PSD and Felipe González of the Spanish Socialist Workers Party gathered for the Fifteenth Socialist International Congress. A Committee for the Defense of the Sandinista People's Revolution was also established at the Madrid meeting. Felipe González, who was appointed committee chairman, then proceeded to Habana where he consulted Castro on December 4, 1980. The next day the Socialist International opened a conference in Washington, D.C. called "Euro-Socialism in America." Brandt, Palme, González, Harrington along with the Maryknoll priest Miguel d'Escoto who serves as Foreign Minister of Nicaragua, among others, reiterated their determination to reinforce the FDR. On Sunday, December 7, Brandt made this abundantly clear on the CBS-TV Program "Face the Nation" when he announced that the Second International was not only sending money, but also weapons to the Salvadoran insurgents. (Some sources even claim that the decision to launch *la Ofensiva Final* the following month was made at this meeting.)

González, meanwhile, had gone off to Panama to confer with leaders of COPAL (Confederation of Latin American Parties). Attending the conference at the Holiday Inn in Panama City of December 8, were Dr. Francisco Peña Gomez, Vice President of the International Socialists for Latin America from the Dominican Republic; Hernan Siles Zuazo, then President-elect of Bolivia; Commander Tomás Borge, Minister of the Interior of the Sandinista Government of Nicaragua; Ruben Berrio Martínez, leader

of the Independent Party of Puerto Rico and Vice President of COPAL; Guillermo Ungo, ex-member of the Junta Government of El Salvador; Gustavo Carvajal, President of COPAL and the Institutional Revolutionary Party of Mexico (PRI). Carlos Andrés Pérez of the Democratic Action Party and ex-president of Venezuela reportedly arrived later.

A separate mainly military meeting was also held. González called on General Omar Torrijos, Commander of the Panamanian National Guard, who was accompanied by his G-2, Col. Manuel Noriega—an intelligence officer with close ties to the Cuban Secret Service (DGI) and Commander Tomás Borge.

All of these efforts were to no avail. The guerrillas' Final Offensive of January 1981 failed. The workers and peasants of El Salvador simply declined to rally to their self appointed liberators. Stunned, the Second International awaited the crushing of the revolutionary cause in Central America by the incoming American administration. Gain time! Negotiate!

Negotiation seemed the only salvation. Defeated in the field, Faribundo Marti Liberation Front leaders Juan Ramón Medrano and Guillermo Ungo announced their willingness to parley in mid-February. On February 25 the Government of West Germany offered to mediate. The Latin American section of the International seconded these peace proposals in Panama on March 2, 1981. Powerful pronouncements poured out of Washington. But the actions were impotent. The worldwide socialist movement took heart, especially after the election of Mitterrand. By early June when French Foreign Minister Cheysson visited Washington the crisis was over. Cheysson could confirm this when Sandinista Foreign Minister d'Escoto called on him in Paris on Saturday morning June 20, 1981. Relieved and happy d'Escoto could advise Felipe González and the other delegates gathering in Managua for the opening on June 26 of the International Committee for the Defense of the Sandinista People's Revolution that the U.S. would do nothing. The Americans had opted for the Zimbabwe Solution. After a 'decent interval' El Salvador would be socialist. Next, Guatemala, then Mexico and finally the United States.

What is to be done? Months have been wasted, thrown away. Options which were open in January, March and even May are no longer available. The insurgents, reeling only six months ago, have reinforced, resupplied, reorganized and regained momentum. El Salvador, exhausted by continuous strife and demoralized by the Zimbabwe solution slips away, while Guatemala steels itself for the impending onslaught.

The United States must seize the psychological, military, political and economic initiative!

Psychological: The war is for the minds of mankind. The U.S. must demonstrate that it believes in freedom, that it is willing to sacrifice, that it is ready and willing to endure a protracted war, and that it will not abandon its allies.

Military: Nations can only be pacified by their own people. No U.S. ground forces, besides a minimum of advisors and technicians, should be committed to either El Salvador or Guatemala. The U.S. should aid in the invoking of CODECA and seek, through the Organization of the American States and the Inter-American Defense Board, the cooperation of other American nations. Venezuela, Argentina and Chile are already involved in Central America and other republics would help if they were convinced that they would not be wasted, e.g., like the Brazilians in Angola in 1975-76. Moreover, the U.S. must be prepared to sever arms shipments to the insurgents and should employ the Aker analysis against Nicaragua, where the situation is still fluid, and against Cuba which is a leftist mirror image of Somoza's Nicaragua.

Political: The U.S. should tie economic and military aid to El Salvador and Guatemala to the conducting of open presidential and congressional campaigns and the holding of free elections as scheduled. More importantly, the U.S. must attempt to assure that the government forces in their counter insurgency campaign conduct themselves in the Judeo-Christian tradition, that is with a combination of law and love. The government forces must obey the laws of the land. Only by acting justly with the population can the government win the hearts and minds of the people and insure their loyalty and cooperation.

Economic: Capitalism is concerned with production. Socialism deals with distribution. Even Marx understood that capitalism preceeded socialism. You must have something to give away. The choice, then, is between the two forms of capitalism in producing goods and services is so superior that it is the only viable alternative. Consequently, the U.S. must encourage the supply side, promote investment in industry, agriculture and infrastructure by both public and private lending agencies. Political freedom is tied to economic freedom as human dignity is linked to metaphysics and personal wellbeing.

Central America and the Caribbean are not only America's global power perch, but also a focal point for oil and ore supplies. The erosion of the U.S. position in the closed continental sea of the Caribbean accelerated during the administration of President Carter who's belief in the inevitability of social revolution induced him to adopt the Zimbabwe Option. Unaware or oblivious to contemporary Latin America theory and practice the U.S. abetted the introduction onto the mainland of the Americas a hostile regime in Nicaragua which, aided by the Soviet Union, Cuba and the Second International is exporting revolution to the remainder of Central America. The general assumption that the U.S. would take a strong stand with the inauguration of President Ronald Reagan has so far proven to be incorrect. For the Zimbabwe Solution still stands at State. Only by seizing the psychological, military, political and economic initiative can the U.S. hope to salvage the situation. Mexico and the United States will follow the fall of Central America. To be a contender in the global game of geopolitics a nation must first of all be a survivor. The hour is late. The time is now. *Quo vadis* America?

SIXTY-NINTH ANNIVERSARY OF THE FEDERAL INCOME TAX

● Mr. MATTINGLY. Mr. President, today marks the 69th anniversary of the Federal income tax. While most anniversaries are celebrated, this event is one that is mourned by the American taxpayer. Sixty-nine years ago, an individual's tax obligation only required the equivalent of 1 day's work. Today, however, over 25 percent of an individual's work effort goes to meeting this tax obligation. Among other things, the astronomical growth of the Federal income tax has retarded economic growth and prosperity and has confiscated dollars from the American taxpayer which, otherwise, would have been saved or invested.

One of the best written expositions of the adverse effect of the Federal income tax is illustrated in chapter 3 of Bruce Bartlett's book entitled "Reaganomics." I ask that the contents of chapter 3 entitled "The Cost of Progressive Tax Rates," be printed in the RECORD.

The material follows:

THE COST OF PROGRESSIVE TAX RATES

Income redistribution and progressive taxation are virtually synonymous. Although there are numerous economic arguments in favor of progressivity, based on ability to pay, equal sacrifice, the diminishing marginal utility of money, etc., in the end, equity is the only justification worth seriously considering. As H. C. Simons wrote, "The case for drastic progression in taxation must be rested on the case against inequality—on the ethical or aesthetic judgment that the prevailing distribution of wealth and income reveals a degree (and/or kind) of inequality which is distinctly evil or unlovely."

The problem is, as Friedrich Hayek has noted, "that all arguments in support of progression can be used to justify any degree of progression." As a result, many economists over the years have warned against the adoption of progressive tax rates. In 1863 Prof. J. R. McCulloch said:

"The moment you abandon, in the framing of such taxes, the cardinal principle of exacting from all individuals the same proportion of their income or property, you are at sea without a rudder or compass, and there is no amount of injustice or folly you may not commit."

More recently, Prof. Harley L. Lutz of Princeton wrote:

"Since there is no standard whereby a choice can be made among progressive rate scales, it follows that one scale is just as good as any other as an application of the principle. A progression that rises to a tax rate of 100 percent on all income in excess of $25,000, or even in excess of $5,000, is quite as defensible in terms of the vague and half-baked theory on which the entire system rests as one that imposes a top rate of 5 percent on all income in excess of $1,000,000."

In the United States, marginal income tax rates now go up to 70 percent on taxable incomes above $108,300 for a single individual, with a 50 percent maximum on "earned" income. Of course, average or effective tax rates vary quite widely, depending upon the source of one's income or one's ability to manipulate the tax code. Although much publicity is given to those few wealthy individuals who manage to escape paying any tax at all, such individuals represent a very tiny proportion of all wealthy individuals, most of whom pay substantial income taxes (see table 1).

TABLE 1.—FEDERAL INCOME TAXES OF HIGH INCOME RETURNS, EXPANDED INCOME IN EXCESS OF $200,000 (1976)

	Number	Average income	Average total tax	Average tax rate (percent)
All returns over $200,000	53,587	$414,000	$145,000	35
Nontaxable returns	89	350,000	0	0

Source: Department of the Treasury, Office of Tax Analysis.

So-called tax reformers frequently charge that the U.S. tax system is not progressive at all, because tax deductions, tax shelters, and highly regressive social security, state and local taxes offset the nominal progressivity of the federal income tax. Thus, a recent study declared that "the tax system is virtually proportional for the vast majority of families in the United States." However, more recent work by Prof. Edgar Browning and William Johnson shows that the U.S. tax system is highly progressive, that those with incomes above $100,000 pay an average tax rate of 48 percent, compared to 21 percent for those earning between $10,000 and $15,000. Moreover, the Browning-Johnson data indicate that all taxpayers face very high average marginal tax rates, ranging from 27.4 percent on the lowest 20 percent of income classes to 47.4 percent for the highest 10 percent of income classes (see tables 2 and 3).

TABLE 2.—AVERAGE TAX RATES BY TYPE OF TAX BY INCOME CLASS (1976)

[In percent]

Income class	Average tax rates				
	Sales and excise	Payroll	Income	Property and corporate	Combined
0 to $5,000	2.3	3.3	0.7	5.5	11.7
$5,000 to $10,000	3.0	4.7	2.4	4.4	14.5
$10,000 to $15,000	4.3	7.3	5.3	4.2	21.0
$15,000 to $20,000	5.0	8.4	8.0	4.0	25.3
$20,000 to $25,000	5.2	8.2	9.9	3.9	27.1
$25,000 to $25,000	5.3	7.7	11.2	4.5	28.8
$30,000 to $40,000	5.3	7.1	12.6	5.4	30.4
$40,000 to $50,000	5.4	5.9	13.8	7.8	32.9
$50,000 to $100,000	5.5	3.7	14.4	13.5	37.0
$100,000 plus	5.6	1.1	12.4	28.9	48.0

TABLE 3.—DISTRIBUTION OF TAXES PAID AND MARGINAL RATE BY DECILE (1976)

[In percent]

Decile	Share of total taxes paid					Marginal tax rate total
	Sales and excise	Payroll	Income	Property and corporate	Total	
1	0.7	0.8	0.1	1.0	0.6	
2	1.6	2.0	.6	1.7	1.4	27.4
3	3.0	3.8	1.3	2.5	2.5	25.4
4	4.7	6.3	2.7	3.2	3.9	29.2
5	6.6	9.1	4.5	3.7	5.6	31.3
6	8.6	11.6	6.9	4.3	7.5	31.9
7	10.6	13.5	9.6	5.0	9.4	34.4
8	13.1	15.7	13.3	6.5	11.9	36.4
9	16.9	18.2	19.1	10.6	16.2	47.4
10	34.2	19.0	42.0	61.5	40.9	

Notes: The Browning and Johnson data presented in tables 2 and 3 use estimates of income before taxes but include in-kind government transfers (i.e., food stamps), imputed rental income for owner-occupied housing and accrued capital gains. It is also assumed that the U.S. economy is sufficiently competitive that the tax burden, for the most part, is not shifted from where it is imposed initially. According to this study, using alternative "noncompetitive" assumptions does not result in significant changes in distribution.

Source: Edgar K. Browning and William R. Johnson, "The Distribution of the Tax Burden" (Washington: American Enterprise Institute, 1979).

Most people believe that progressive tax rates are desirable because they allow those with lower incomes to pay less tax. In fact, the main purpose of progressive tax rates is to make tolerable high tax rates on everyone. Historically, tax systems come into being during wartime. The enormous war-spawned revenue demands of government can only be met by unprecedented tax rates on all citizens. In order to elicit the necessary sacrifice without a steep drop-off in work effort, government must put higher tax rates on the well to do. As the tax burden continues to rise and relief is granted to those in the lower tax brackets through higher exemptions, still higher tax rates on the rich are required in order to bring in the same revenue.

When peace comes, governments are reluctant to give up the revenue, using it to buy votes from the lower classes. But the upper classes have more opportunities for escaping high tax rates than do the lower classes; if necessary, a wealthy person can simply stop earning income and live on his wealth, whereas a poorer individual must work to live. Thus Hayek argues that progressive tax rates ultimately cause the poor to pay far more taxes than they would otherwise:

"The illusion that by some means of progressive taxation the burden can be shifted substantially onto the shoulders of the wealthy has been the chief reason why taxation has increased as fast as it has done and that, under the influence of this illusion, the masses have come to accept a much heavier load than they would have done otherwise. The only major result of the policy has been the severe limitation of the incomes that could be earned by the most successful and thereby gratification of the envy of the less well off."

Society unfortunately loses a great deal more than tax revenue when high marginal tax rates prevent entrepreneurs from accumulating wealth. It loses inventiveness, innovation, risk-taking and originality in its business enterprises. Such qualities historically are more highly developed in individual proprietorships and small businesses hoping to become big businesses than in large corporations, which tend to be more concerned about protecting their positions than in taking risks on untested ideas. Thus, even today the largest proportion of important new inventions are still the result of individuals working virtually alone, rather than by big corporate laboratories. Yet tax policies which discourage the accumulation of wealth discourage individual inventiveness. Lord Robbins comments:

"The fact that it has become so difficult to accumulate even a comparatively small fortune must have the most profound effects on the organization of business; and it is by no means clear to me that these results are in the social interest. Must not the inevitable consequences of all this be that it will become more and more difficult for innovation to develop save within the ambit of established corporate enterprise, and that more and more of what accumulation takes place will take place within the large concerns which—largely as a result of individual enterprise in the past—managed to get started before the ice age descended?"

Indeed, the present tax climate severely retards competition and creates monopolies and quasi monopolies, by making it so difficult for new enterprises to challenge the established order. New firms can no longer grow large, as the Ford Motor Company did, by just plowing the profits back into the company year after year, because taxes will seize such a large share. Thus, as Ludwig von Mises notes, society not only loses the value that would have been created by the firms that were prevented from growing, but also the value that would have been created by large firms concerned about competition from newcomers:

"Every ingenious man is free to start new business projects. He may be poor, his funds may be modest and most of them may be borrowed. But if he fills the wants of consumers in the best and cheapest way, he will succeed by means of 'excessive' profits. He ploughs back the greater part of his profits into his business, thus making it grow rapidly. It is the activity of such enterprising parvenus that provides the market economy with its 'dynamism.' These nouveaux riches are the harbingers of economic improvement. Their threatening competition forces the old firms and big corporations either to adjust their conduct to the best possible service to the public or go out of business.

"But today taxes often absorb the greater part of the newcomer's 'excessive' profits. He cannot accumulate capital; he cannot expand his own business; he will never become big business and a match for the vested interests. The old firms do not need to fear his competition; they are sheltered by the tax collector. They may with impunity indulge in routine, they may defy the wishes of the public and become conservative. It is true, the income tax prevents them, too, from accumulating any capital. They are virtually privileged by the tax system. In this sense progressive taxation checks economic progress and makes for rigidity."

This suppression of competition and stifling of innovation caused by the progressive tax system is, perhaps, its single most detrimental effect on the economy in the long run. It probably explains the growing lack of investment opportunity which troubled Schumpeter. It also explains why politicians seeking to bolster the economy from the effects of the many shackles they themselves have imposed will fail if they only consider tax incentives for business and ignore the individual. The fact is that the individual entrepreneur is still the basic motivating force in the economy, not just in terms of new inventions, as noted earlier, but in terms of meeting all of the consumer's wants. Any measures which suppress entrepreneurship will ultimately cause the economy to stagnate.

Of course, circumstances make a great deal of difference in how harmful a given tax or tax burden is to the economy. In times of war, national crisis or patriotic fervor people will accept tax burdens which would cause all production to cease under normal circumstances. Related to this point is the idea that people will suffer different tax burdens depending on what the revenue is to be used for. If people though they would directly benefit in some way from the raising of additional revenue, because it went to build roads or other capital improvements from which everyone benefits, the majority probably would be willing to shoulder a heavier burden than if they though the money was going for some less desirable purpose, such as income redistribution.

In any case, the type of income which is being taxed makes a great deal of difference in determining the capacity of that income to be taxes. Even a small tax burden on entrepreneurial profit would be quite destructive, whereas a tax on monopoly profits or

ground rents might be much higher without adverse consequences. In the case of wage income, many believe that anything above what is necessary for subsistence can be taxed away with impunity. But as Schumpeter points out, "the possible tax yield is limited not only by the size of the taxable object less the subsistence minimum of the taxable subject, but also by the nature of the driving forces of the free economy. Similarly, Sir Josiah Stamp said, "'But taxation is not merely a stationary or static problem, the cutting up of an existing cake—it is a moving and dynamic problem. We have to ask not only how little we can leave him with, but also, how much reduction will he stand before he slackens in work and abstinence? How long will he come up smiling to be taxed this way?

To this proposition people like Frank H. Knight argued that taxes have an income effect; that is, insofar as they deny workers their income, those workers must work more in order to have the same disposable income. If this were always true it would mean that there is effectively no limit to the taxable capacity of labor short of a 100 percent tax rate. However, this argument was refuted by Lionel Robbins, who pointed out:

"Professor Knight's argument assumes that the prices of the commodities constituting real income are unaltered. This is presumably true so far as money prices are concerned. But the relevant conception in this connection is not *money price* but *effort price*, and a change in the rate at which money income can be earned, money prices remaining constant, *constitutes* a change in the effort price of commodities. *The money price is the same but the effort price is diminished.* And, that being the case, the question whether more or less effort is expended is obviously still an open one. It depends on the elasticity of demand for income in terms of effort." (Emphasis in original.)

There was almost no discussion of the problem of taxable capacity during the 1930s, but with the outbreak of World War II and the enormous increase in revenue demands by governments everywhere, economists again took up the issue. While it is recognized that people will probably be willing to carry a heavier burden of taxation in wartime than they would in peacetime, they are still going to look for ways to minimize the tax as best they can.

In 1941, income tax rates in the United States were increased substantially; the bottom rate went from 4 to 10 percent, and rates on all other income classes increased a similar amount. In 1942 the bottom rate was dramatically increased still further, to 19 percent, with the top rate raised from 81 to 88 percent, which began at $200,000 of taxable income. Again in 1944 tax rates were increased, to 23 percent at the bottom and 94 percent at the top. Thus, in 1939 the highest marginal tax rate for someone with an income of $10,000 per year was 10 percent; by 1944 it had quadrupled.

TABLE 4.—COMPARISON OF AVERAGE AND MARGINAL TAX RATES AT VARIOUS INCOME LEVELS (1944) [1]

[In percent]

	United States		Britain	
	Average	Marginal	Average	Marginal
Income:				
$1,000	1.2	2.7	0	0
$2,000	4.8	20.7	13	37.0
$3,000	10.1	20.7	23	45.0
$4,000	12.7	22.5	28	45.0
$5,000	14.7	22.5	35	45.0
$7,500	16.9	33.0	37	45.0
$10,000	19.0	37.0	39	62.5

[1] Family of three.

Source: Tibor Scitovsky, Edward Shaw and Lorie Tarshis, "Mobilizing Resources for War" (New York: McGraw-Hill, 1951), p. 68.

As early as 1942, Prof. Martin Bronfenbrenner argued that the United States was already close to the point of diminishing returns in federal taxation, and that Britain had probably already reached it. A study of war finance in 1943 by Prof. Carl Shoup tried to sort out the economic effects of existing tax rates. Shoup found that "the heavier the tax rate immediately above and below the margin of the worker's income, and the lighter the tax rate on the earnings up to somewhere near the margin, the greater is the work-restricting effect of the tax and the smaller its work-inducing effect." He also found that rationing had the effect of increasing marginal tax rates, because it benefits those with a low time preference while hurting those with a high time preference. In other words, the lower one's income the less it costs to have goods rationed; the higher one's income the more it costs. Thus, if one is restricted to a limited amount of goods to purchase, he has less incentive to earn more income, because there is nothing to buy with it.

By the end of the war, it was generally agreed that an increase in the average rate of taxation and a reduction in the marginal rate would tend to stimulate work efforts, while a reduction in the average rate and an increase in the marginal rate would probably discourage work effort. Hence, if one were only interested in stimulating work effort, without regard to fairness or equity, the ideal would probably be a head tax—with everyone obliged to pay a certain sum such as $1,000 per year. Then the average tax rate would be quite high, but the marginal rate would be zero.

With the end of war, the discussion about an economic limit on taxation took quite a different turn. Inspired by two articles by Prof. Colin Clark, the question was whether a high level of taxation was inflationary. Clark put forth the proposition that when taxation exceeded 25 percent of national income any further increases would be strongly inflationary.

Clark came in for a heavy attack. Joseph Pechman and Thomas Mayer said that Clark's analysis could not be correct because "it is generally accepted that an increase in government expenditures will tend to increase national income in money terms, even if it is balanced by an equal increase in taxes." On the other hand, Benjamin Higgins argued that any increase in taxes would almost certainly be deflationary, not inflationary. Richard Goode found Clark's data to be insufficient to prove his case. Only Dan Throop Smith found Clark's argument to be plausible, although he did not endorse it.

The discussion about Clark's thesis—and indeed, the whole question of economic limits to taxation—soon died out, although some economists still do argue that taxes can have a "cost-push" effect on inflation.

In recent years, economists have returned to the question of the disincentive effects of taxation. Throughout most of the 1950s and 1960s it was generally held that the disincentive effects of taxation on labor supply were negligible, because people had little freedom to vary their hours of work in response to taxes and because the income effect cancelled out the substitution effect. In other words, although taxes make leisure relatively less costly, people must still work harder to maintain the same net income level. The Congressional Budget Office still holds this view.

However, there is now important work which implies that the effects of high tax rates on labor supply and saving are much greater than previously believed. The effect of high tax rates on saving is most easily shown by an example:

Consider an economy in which there are no taxes and suppose that one has $1,000. One can either save it or spend it. If the rate of interest is 5 percent, then saving the $1,000 is equivalent to buying an income of $50 per year. Thus, the cost of consuming the $1,000 is $50 per year, and the cost of having $50 per year is $1,000 of foregone consumption. Now suppose a 50 percent tax is imposed. Afterwards it requires $2,000 of pretax income to buy the same consumer goods—the tax has doubled the cost of consumption. But to have $50 a year of aftertax income one now must get $100 of pretax income. If the market rate of interest is the same, this means that $2,000 must be saved. But to save $2,000 one must have a pretax income of $4,000—the tax has quadrupled the cost of saving. It is now twice as costly to save as consume.

Consequently, it is now estimated that present high tax rates are having a significant effect on the savings rate. Since ultimately capital can be created only by foregone consumption, the decline in personal saving which has developed in recent years must reduce the growth of GNP and the standard of living for all Americans. Recent data suggests that the price we have paid is already quite high (see tables 5, 6 and 7).

TABLE 5.—*Saving as a percentage of disposable personal income*

Year:	*Percent*
1971	7.7
1972	6.2
1973	7.8
1974	7.3
1975	7.7
1976	5.8
1977	5.0
1978	4.9
1979	4.5

Source: Department of Commerce, Bureau of Economic Analysis.

TABLE 6.—GROWTH RATE OF FIXED BUSINESS CAPITAL PER EMPLOYED WORKER IN PRIVATE BUSINESS (1947–78)

[In percent]

	1946–66	1966–73	1973–78	1973–74	1974–75	1975–76	1976–77	1977–78
Total gross	2.0	1.8	1.0	1.6	6.1	−0.6	−1.0	−1.3
Plant	1.1	1.0	.2	.7	5.3	−1.2	−1.9	−2.0
Equipment	4.0	3.0	2.0	2.9	7.1	.2	.2	−.3
Total net	2.5	2.1	.5	1.5	5.2	−1.2	−1.3	−1.5
Plant	1.9	1.5	−.2	.7	4.6	−1.8	−2.3	−2.3
Equipment	3.8	3.1	1.6	2.8	6.1	−.5	.2	−.5

Source: "Statistical Abstract of the United States, 1979," p. 559.

TABLE 7.—ANNUAL GROWTH IN GNP PER EMPLOYED WORKER IN MAJOR INDUSTRIALIZED COUNTRIES (1963–79)

[In percent]

	1963–73	1973–79
Japan	8.7	3.4
West Germany	4.6	3.2
France	4.6	2.7
Italy	5.4	1.6
Canada	2.4	.4
United Kingdom	3.0	.3
United States	1.9	.1

Source: "Economic Report of the President, 1980," p. 85.

Arnold Harberger estimated in 1963, that, in terms of labor supply, when tax rates went from 20 percent at the bottom to 91 percent at the top, such marginal tax rates were reducing work effort by 2.5 percent in the lower brackets to more than 11 percent in the upper brackets. This says, in effect, that if it were possible to extract out of each income class the same tax as was in fact obtained, but in such a way that tax incentives did not distort the choice between labor and leisure at the margin, there would be 11 percent more work out of the top income brackets and 2.5 percent more work out of people in the lower brackets. These figures do not imply that top-bracket people work less than low-bracket people, but only that they work 11 or so percent less than they would in the absence of the income tax incentive for leisure.

More recent evidence derived from the negative income tax experiments conducted by the federal government also indicate a significant negative labor response to high de facto tax rates. An analysis of data from the New Jersey-Pennsylvania experiment, for example, found that white males participating in the experiment reduced their work effort by five to seven hours per week on average. This data is particularly significant because male heads of households were previously thought to be the group least likely to reduce their work effort in response to high tax rates. Data from the Seattle and Denver income maintenance experiments found that husbands reduced their hours worked by 5 percent, wives 22 percent, and female heads of households 11 percent. Based on such evidence, Jerry Hausman of M.I.T. recently concluded:

"The progressivity of taxation may be leading to substantial deadweight loss due to the tax induced distortion. . . . For the mean individual who earns $5 per hour we find the deadweight loss to be $378 which is 4.6% of his net income and 21.9% of tax revenues collected from him. To see the effect of progressivity of the income tax, we repeat the calculations for the mean individual who earns $10 per hour. The deadweight loss now rises to $2,995 which is 19.2% of net income or 71% of tax revenues. . . . For the $5 per hour individual deadweight loss for a proportional tax is $246 or 42.9% less than for the progressive tax case. For the $10 per hour individual deadweight loss for a proportional tax is $1,270 which is 85.5% less than for the progressive tax. . . .

"The finding of a significant income effect and concomitant welfare cost for male heads of households is contrary to the received knowledge in the field, e.g., Pechman [Federal Tax Policy]. But the finding only appears when progressivity of the income tax is accounted for. Since most previous studies did not attempt to model the tax system, their estimates might be interpreted "as if" a proportional tax system existed so that they could not find the income effect found here. To the extent that our findings are substantiated in future research, the previous presumption that the efficiency effect of a progressive income tax system is quite small or zero needs to be revised."

Other studies have shown that taxes have important long-term considerations for individuals quite apart from hours worked. For example, the decision to retire sooner rather than later can be strongly affected by one's tax bracket. It has also been found that the quality of one's work effort is affected by tax rates. Lastly, many individuals make career choices and human capital decisions (such as how much education to get) based partly on tax considerations.

In the early 1950s Professors Walter Blum and Harry Kalven of the University of Chicago Law School undertook an impartial examination of progressive taxation and concluded, "The case for progression, after a long critical look, thus turns out to be stubborn but uneasy." It is, perhaps, an indication of changing times that a prominent economist, Dr. Norman Ture, recently said of progressive taxation, "For the economist qua economist, the case is not uneasy; it is virtually nonexistent."●

SALMON'S MURDEROUS TROUBLE IS ACID RAIN

● Mr. KENNEDY. Mr. President, the problem of acid rain, particularly in the Northeast, continues to worsen. In an eloquent letter which appeared in the New York Times on Tuesday, Anne Simon, author of "The Thin Edge: Coast and Man in Crisis" and other works on the environment, emphasized that we cannot ignore the warning signals that acid rain is poisoning our environment. Ms. Simon's letter discusses the devastating effect of acid rain on the salmon in our lakes and rivers. We also know that acid rain is plaguing the environment in many other ways. It is leaching lead from pipes into our cities' drinking water, destroying our crops, eroding our buildings and monuments, and causing extensive other damage.

Ms. Simon's letter provides an important reminder that we must act now to eliminate the causes of acid rain, and I ask that her letter be printed in the RECORD.

The letter follows:

[From the New York Times, Feb. 23, 1982]

SALMON'S MURDEROUS TROUBLE IS ACID RAIN

TO THE EDITOR: It is heartening that The Times wants to rescue salmon ("A Treaty to Save Salmon," editorial Feb. 12). The Atlantic salmon, Salmo salar, has had many troubles through the years, but in 1982 even an international treaty to regulate fishing cannot protect it. The species' survival requires a hard-hitting political decision of no mean proportions.

The salmon's new, murderous trouble is acid rain which pours into the rivers of the Northeast and Canada, where the fish go to spawn. Salmon is particularly sensitive to acid; reproduction falters, embryos fail to hatch or, if they do, produce infant fish with pathological alterations severe enough to kill or forever maim them.

The acid is sulfur dioxide and nitric acid. The sulfur comes predominantly from Midwest coal-burning power plants, the nitrogen about equally from power plants and automobile discharges. Both are blown east in the clouds to rain into the salmon's crucial reproductive environment, as well as other places.

The scenario has played elsewhere. It was discovered in the 1960's when salmon in the famous fishing rivers of Norway and Sweden significantly declined and river acidity increased. By the 70's there were no fish at all, a change attributed by scientists to acid rain coming via cloud from industrialized western Europe. Short of international action, there was nothing Scandinavia could do.

Canada experiences the same swift salmon decline. In Nova Scotia, 100-year records show the salmon catch holding steady until 1950; today the nine most acidic rivers have no salmon; in many of the rest the fish decrease. It takes 15 to 20 years from the first trouble signs to salmon extinction, Canadian authorities say. They identify half of Canada's acid rain as made in U.S.A.

U.S. salmon cannot keep out of the rain. As rivers east of Maine's Penobscot become more acid, salmon numbers decrease. Efforts to restock Northeast rivers from hatcheries have had some success, but it is predicted that acidification will catch up to them in short order. Palliative measures, such as liming lakes and streams, are temporary at best.

To be in time to save Salmo salar, we have to stop made-in-America acid rain fast. The Environmental Protection Agency has recognized this requirement; the National Academy of Sciences has issued a detailed report on the dangers of acid rain, including the destruction of fish. Last year, bills to amend the Clean Air Act to deal with acid rain were introduced in Congress. The Salmon and Steelhead Conservation and

Enhancement Act of 1980 authorized an advisory commission; President Reagan has not appointed it. The Administration has put aside dealing with acid rain until further study.

The salmon is an "indicator species." Its good health means all is well with our air and water, and, equally, the opposite. Thus, its speeding decline is of deadly concern. It is in our interest to ensure that salmon survive. Today this means immediate U.S. action to clean up the clouds.

ANNE W. SIMON
New York, Feb. 19, 1982

HUD THREATENS HOUSING FOR THE ELDERLY

● Mr. DODD. Mr. President, today's Washington Post carries an alarming story of how the Department of Housing and Urban Development intends to terminate thousands of planned units of badly needed housing for low-income elderly and handicapped citizens.

The program involved is the section 202 program of housing loans to nonprofit sponsors of multifamily rental housing for elderly and handicapped citizens. Under the Department's plans, with very few exceptions, those projects which have not begun construction within 18 months of their reservation of funds, would be canceled, and the money would revert to the Treasury. As many as 156 proposed projects containing about 5,500 units would fall under the HUD ax because they have already reached that 18-month deadline. In effect, the Department is trying to find reasons to terminate proposed projects, when it should be striving to move them to construction.

While it makes sense to cancel projects that clearly will not move to construction, and then allocate the recaptured funds to those projects that can be built, HUD's arbitrary plans allow little room for projects that have experienced difficulties in getting underway to take the very steps that HUD requires of them to produce feasible projects. In fact, many of the difficulties these sponsors are experiencing can be traced directly to the Department's inefficiencies and delays.

In my view, Mr. President, the Department is clearly headed in the wrong direction. Early next week, I intend to offer legislation that would halt HUD's plans for wholesale cancellation of these units, and establish a more reasonable approach to the determination of which projects should be allowed to proceed and which projects should not. The legislation would also insure that any money recaptured from canceled projects would be applied to others that can put the funds to good use.

Mr. President, I ask that the article entitled "HUD Moving To Kill 5,500 Housing Units" be printed in the RECORD.

The article follows:

[From the Washington Post]

HUD MOVING TO KILL 5,500 HOUSING UNITS

(By Sandra Sugawara)

The Housing and Urban Development Department is moving to kill an estimated 5,500 proposed housing units in 156 projects for the elderly and handicapped.

HUD, in effect, gave nonprofit groups that have had projects in the pipeline for two years or more just 10 days to notify HUD that they were ready to start construction in a month. If they didn't, the projects will be canceled.

Low-income housing associations claim that the HUD action is an illegal back-door attempt to rescind money and change housing policies without going through formal rulemaking procedures. They say that if HUD denies funds to the projects, as it has promised, they will sue.

But HUD officials say they are merely attempting to eliminate programs that have been languishing too long in the planning stages, and they contend that the actions are within their legal authority. HUD officials are considering taking similar action against the much larger public housing program for low-income families.

The current controversy surrounds so-called Section 202 housing, a program that lends federal money to nonprofit groups to build projects to provide an alternative to putting the elderly and handicapped in institutions.

It is the only subsidized housing program the Reagan adminstration says it supports, and the only new construction the administration endorses in the fiscal 1983 budget.

The new policy was first outlined in a Jan. 21 telegram that HUD sent its regional offices telling them to stop granting extensions on overdue projects. An organization normally gets 18 months to begin construction from the time HUD money is set aside for a project.

During that time the group must complete a feasibility study, secure land, negotiate with contractors and get approval from local zoning and community development boards and other local and state groups. HUD must approve each step of the process before it will release the funds.

Because the nonprofit groups that run the Section 202 programs generally have less expertise than commercial developers, HUD regional offices in the past routinely have given them the six-month extensions that the rules provide. Additional extensions must come from HUD headquarters.

The telegram was followed by another on Feb. 8, sent to clarify the first, saying projects authorized in fiscal 1979 or before must begin construction by Feb. 19 or be canceled, unless the delay was HUD's fault. Field offices may grant four-month extensions for projects authorized in fiscal 1980 if the delay has been due solely to HUD efforts to set a new interest rate on its loans.

Philip Abrams, HUD's general deputy assistant secretary for housing, said, "Let me emphasize, we are supportive of the 202 program. We don't believe the private sector would provide enough of the proper housing for the frail elderly or the handicapped. But 5,500 units not being built is an unfulfilled promise. They're not housing the elderly."

HUD's new policy is part of an "overall philosophy of clearing the pipeline" to meet the administration's 1985 goal of 3.8 million units of federally assisted housing, according to Abrams. There are 3.4 million existing units and another 700,000 units in the pipeline. Thus HUD must find a way of eliminating 300,000 of those units.

"We think there are 300,000 that are not viable. Of course, only a small amount of those are in 202s," Abrams said. Most would come out of the subsidized low-income housing program, which President Reagan wants to eliminate, and public housing.

According to an analysis by the HUD staff, 33,339 units of housing for the elderly and handicapped are in the pipeline, but most are not past the new deadline. Of the 7,266 overdue units, HUD estimates that 5,500 units or 75 percent "are not going to be able to move forward," Abrams said.

"There are 156 projects that appear to be doomed. We intend to notify the sponsors that we plan to take them off the books unless they can begin construction promptly," he said. "But we expect to be reasonable."

Florence Roisman, an attorney with the National Housing Law Project, who successfully sued HUD over impoundment of housing funds during the Nixon administration, said, "HUD's action with respect to 202s is totally illegal on two grounds."

If HUD wants to change the rules, she said, then it has to follow the Administrative Procedures Act and go through rulemaking procedures. The policy, she added, is directly contrary to the national housing goals established by Congress.

Jeanne P. Kinnard, housing specialist for the American Association of Homes for the Aging and organizer of the Ad Hoc Coalition for Housing for the Elderly, said several sponsors of endangered projects have talked of suing HUD, individually or collectively, after the notices go out that projects have been killed.

"It's very clearly part of what we believe may have to be done. Of course litigation is a measure of last resort," said Kinnard, noting the cost and time involved. "Every attempt is being made to try to get HUD to understand the ramifications of its action through other measures," particularly by appealing to Congress.

Gerald McMurray, staff director of the House subcommittee on housing and community development, said, "Section 202 is about the most popular project under our jurisdiction," and said subcommittee members would object to any wholesale cancellation of projects.

Other congressional aides involved with housing issues said many members resent it when HUD refuses to fund programs that Congress has approved, but they said Congress also sympathizes with the need to clean out the pipeline.

Low-income housing associations are aware of this. "I guess it could fall between the cracks," one association staffer sighed. "It's a relatively small program."●

RULES OF THE SPECIAL COMMITTEE ON AGING

● Mr. HEINZ. Mr. President, I submit for the RECORD the rules of the Special Committee on Aging of the U.S. Senate, in accordance with the requirements of rule XXVI of the Standing Rules of the Senate.

The rules are as follows:

RULES OF THE SPECIAL COMMITTEE ON AGING OF THE UNITED STATES SENATE

(As adopted February 26, 1981)

RULE 1. CONVENING OF MEETINGS AND HEARINGS

1.1 Meetings. The Committee shall meet to conduct Committee business at the call of

the Chairman, to the extent practicable, at least four times a year.

1.2 Special meetings. The members of the Committee may call additional meetings as provided in Senate Rule XXVI(3).

1.3 Notice and agenda.

(a) Hearings. The Committee shall make public announcement of the date, place, and subject matter of any hearing at least one week before its commencement.

(b) Meetings. The chairman shall give the members written notice of any Committee meeting, accompanied by an agenda enumerating the items of business to be considered, at least 5 days in advance of such meeting.

(c) Shortened notice. A hearing or meeting may be called on not less than 24 hours notice if the chairman, with the concurrence of the ranking minority member, determines that there is good cause to begin the hearing or meeting on shortened notice. An agenda will be furnished prior to such a meeting.

1.4 Presiding Officer. The chairman shall preside when present. If the chairman is not present at any meeting or hearing, the ranking majority member present shall preside. Any member of the Committee may preside over the conduct of a hearing.

RULE 2. CLOSED SESSIONS AND CONFIDENTIAL MATERIALS

2.1 Procedure. All meetings and hearings shall be open to the public unless closed. To close a meeting or hearing or portion thereof, a motion shall be made and seconded to go into closed discussion of whether the meeting or hearing will concern the matters enumerated in Rule 2.3. Immediately after such discussion, the meeting or hearing may be closed by a record vote in open session of a majority of the members of the committee present.

2.2 Witness request. Any witness called for a hearing may submit a written request to the chairman no later than twenty-four hours in advance for his examination to be in closed or open session. The chairman shall inform the Committee of any such request.

2.3 Closed session subjects. A meeting or hearing or portion thereof may be closed if the matters to be discussed concern: (1) national security; (2) committee staff personnel or internal staff management or procedure; (3) matter tending to reflect adversely on the character or reputation or to invade the privacy of any individuals; (4) other matters enumerated in Senate Rule XXVI(5)(b).

2.4 Confidential matter. No record made of a closed session, or material declared confidential by a majority of the committee, or report of the proceedings of a closed session, shall be made public, in whole or in part or by way of summary, unless specifically authorized by the chairman and ranking minority member or by a majority vote of the Committee.

2.5 Broadcasting.

(a) Control. Any meeting or hearing open to the public may be covered by television, radio, or still photography. Such coverage must be conducted in an orderly and unobtrusive manner, and the chairman may for good cause terminate such coverage in whole or in part, or take such other action to control it as the circumstances may warrant.

(b) Request. A witness may request of the chairman, on grounds of distraction, harassment, personal safety, or physical discomfort, that during his testimony cameras, media microphones, and lights shall not be directed at him.

RULE 3. QUORUMS AND VOTING

3.1 Reporting. A majority shall constitute a quorum for reporting a resolution, recommendation or report to the Senate.

3.2 Committee business. A third shall constitute a quorum for the conduct of committee business, other than a final vote on reporting, providing a minority member is present. One member shall constitute a quorum for the receipt of evidence, the swearing of witnesses, and the taking of testimony at hearings.

3.3 Polling

(a) Subjects. The committee may poll only (1) internal committee matters including the committee's staff, records, and budget; (2) steps in an investigation, including issuance of subpoenas, applications for immunity orders, and requests for documents from agencies, once the committee has approved the investigation at a meeting; (3) other committee business which has been designated for polling at a meeting.

(b) Procedure. The chairman shall circulate polling sheets to each member specifying the matter being polled and the time limit for completion of the poll. If any member so requests in advance of the meeting, the matter shall be held for meeting rather than being polled. The clerk shall keep a record of polls; if the chairman, with the approval of a majority of the members, determines that the polled matter is in one of the areas enumerated in Rule 2.3, the record of the poll shall be confidential. Any member may move at the committee meeting following a poll for a vote on the polled decision.

RULE 4. SUBPOENAS

4.1 Authorization. Any major investigation, including any investigation in which subpoenas are issued, must be authorized by vote of the committee. Once a major investigation is authorized, the chairman has authority to subpoena the attendance of witnesses or the production of memoranda, documents, records, or any other materials. When the committee or the chairman authorizes subpoenas, subpoenas may be issued upon the signature of the chairman or any other member designated by the committee.

4.2 Return. A subpoena duces tecum or a request to an agency for documents may be issued whose return shall occur at a time and place other than that of a scheduled hearing. A return on such a subpoena or request which is incomplete or accompanied by an objection constitutes good cause for a hearing on shortened notice. Upon such a return, any member may convene a hearing by giving two hours' telephonic notice to all other members. One member shall constitute a quorum at such a hearing. The sole purpose of such a hearing shall be to elucidate further information about the return of and to rule on the objection.

RULE 5. HEARINGS

5.1 Notice. Witnesses called before the committee shall be given, absent extraordinary circumstances, at least forty-eight hours' notice, and all witnesses called shall be furnished with a copy of these rules upon request.

5.2 Oath. All witnesses who testify to matters of fact shall be sworn unless the committee waives the oath. The chairman, or any member, may request and administer the oath.

5.3 Statement. Any witness desiring to make an introductory statement shall file 50 copies of such statement with the chairman or clerk of the committee 24 hours in advance of his appearance, unless the chairman and ranking minority member determine that there is good cause for a witness' failure to do so. A witness shall be allowed no more than ten minutes to orally summarize his prepared statement.

5.4 Counsel

(a) A witness' counsel shall be permitted to be present during his testimony at any public or closed hearing or deposition or staff interview to advise such witness of his rights, provided, however, that in the case of any witness who is an officer or employee of the government, or of a corporation or association, the chairman may rule that representation by counsel from the government, corporation, or association creates a conflict of interest, and that the witness shall be represented by personal counsel not from the government, corporation or association.

(b) A witness who is unable for economic reasons to obtain counsel may inform the committee at least 48 hours prior to the witness' appearance, and it will endeavor to obtain volunteer counsel for the witness. Such counsel shall be subject solely to the control of the witness and not the committee. Failure to obtain counsel will not excuse the witness from appearing and testifying.

5.5 Transcript. An accurate electronic or stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. Any witness shall be afforded, upon request, the right to review that portion of such record, and upon his request and at his expense, a copy of a witness's testimony in public or closed session shall be provided to the witness. Upon inspecting his transcript, within a time limit set by the committee clerk a witness may request changes in testimony to correct errors of transcription, grammatical errors, and obvious errors of fact; the chairman or a staff officer designated by him shall rule on such requests.

5.6 Impugned persons. Any person who believes that evidence presented, or comment made by a member or staff, at a public hearing or at a closed hearing concerning which there have been public reports, tends to impugn his character or adversely affect his reputation may;

(a) file a sworn statement of facts relevant to the evidence or comment, which shall be placed in the hearing record;

(b) request the opportunity to appear personally before the committee to testify in his own behalf; and

(c) submit questions in writing which he requests be used for the cross-examination of other witnesses called by the committee. The chairman shall inform the committee of such requests for appearance or cross-examination. If the committee so decides, the requested questions, or paraphrased versions or portions of them, shall be put to the other witnesses by a member or by staff.

5.7 Minority witnesses. Whenever any hearing is conducted by the committee, the minority on the committee shall be entitled, upon request made by a majority of the minority members to the chairman, to call witnesses selected by the minority to testify or produce documents with respect to the measure or matter under consideration during at least one day of hearing. Such request must be made before the completion of the hearing or, if subpoenas are required to call the minority witnesses, no later than three days before the completion of the hearing.

RULE 6. DEPOSITIONS AND COMMISSIONS

6.1 Notice. Notices for the taking of depositions in an investigation authorized by the committee shall be authorized and issued by the chairman or by a staff officer designated by him. Such notices shall specify a time and place for examination, and the name of the staff officer or officers who will take the deposition. Unless otherwise specified, the deposition shall be in private. The committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness's failure to appear unless the deposition notice was accompanied by a committee subpoena.

6.2 Counsel. Witnesses may be accompanied at a deposition by counsel to advise them of their rights, subject to the provisions of Rule 5.4.

6.3 Procedure. Witnesses shall be examined upon oath administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by committee staff. Objections by the witness as to the form of questions shall be noted for the record. If a witness objects to a question and refuses to testify on the basis of relevance or privilege, the committee staff may proceed with the deposition, or may, at that time or at a subsequent time, seek a ruling by telephone or otherwise on the objection from a member of the committee. If the member overrules the objection, he may refer the matter to the committee or he may order and direct the witness to answer the question, but the committee shall not initiate procedures leading to civil or criminal enforcement unless the witness refuses to testify after he has been ordered and directed to answer by a member of the committee.

6.4 Filing. The committee staff shall see that the testimony is transcribed or electronically recorded. If it is transcribed, the witness shall be furnished with a copy for review. No later than five days thereafter, the witness shall return a signed copy, and the staff shall enter the changes, if any, requested by the witness in accordance with Rule 5.6. If the witness fails to return a signed copy the staff shall note on the transcript the date a copy was provided and the failure to return it. The individual administering the oath shall certify on the transcript that the witness was duly sworn in his presence, the transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall then be filed with the committee clerk. Committee staff may stipulate with the witness to changes in this procedure; deviations from this procedure which do not substantially impair the reliability of the record shall not relieve the witness from his obligation to testify truthfully.

6.5 Commissions. The committee may authorize the staff, by issuance of commissions, to fill in prepared subpoenas, conduct field hearings, inspect locations, facilities, or systems of records, or otherwise act on behalf of the committee. Commissions shall be accompanied by instructions from the committee regulating their use.

RULE 7. SUBCOMMITTEES

7.1 Establishment. The Committee will operate as a Committee of the whole, reserving to itself the right to establish temporary subcommittees at any time by majority vote. The Chairman of the full Committee and the Ranking minority member shall be ex officio members of all subcommittees.

7.2 Jurisdiction. Within its jurisdiction, as described in the committee legislative calendar, each subcommittee is authorized to conduct investigations, including use of subpoenas, depositions, and commissions.

7.3 Rules. A subcommittee shall be governed by the committee rules, except that its quorum for all business shall be one third of the subcommittee membership, and for hearings shall be one member.

8. Reports. Committee reports incorporating Committee findings and recommendations shall be printed only with the prior approval of the Committee. The printing, as Committee documents, of materials prepared by staff for informational purposes or the printing of materials not originating with the Committee or staff shall require prior consultation with the minority staff; these publications shall have the following language printed on the cover of the document: "Note: This document had been printed for informational purposes. It does not represent either findings or recommendations formally adopted by this Committee."

9. Amendment of Rules. The rules of the Committee may be amended or revised at any time, provided that not less than a majority of the Committee so determine at a Committee meeting preceded by at least 3 days notice of the amendments or revisions proposed.

APPENDIX

GUIDELINES FOR INVESTIGATIVE PROCEDURE

1. Preliminary inquiries and requests for information may be initiated by the Committee staff. The Chairman and the ranking minority member may authorize any preliminary investigation by approving a written investigative plan detailing the general purpose and scope of the investigation. Full scale investigations shall be first authorized by the full Committee, as provided for in the Committee Rules.

2. All investigations shall be conducted on a bipartisan basis by Committee staff as appointed by the Chairman and ranking member. Staff shall keep the Committee informed of the progress and proposed changes in continuing investigations.

3. All individuals whose names will be mentioned adversely in public hearings shall be given no less than one week's notice of such hearings and afforded the opportunity to (a) appear before the Committee, (b) send a representative to observe the hearing, or (c) file a written statement for inclusion in the record. In any case, those parties whose names are mentioned adversely shall be sent a copy of the relevant portion of the official transcript and afforded an opportunity to commend. Any member of the Committee may request that any statements filed with the Committee be notarized.

4. All witnesses at public hearings or executive meetings on investigative matters shall be sworn.

5. An investigative summary and witness list shall be distributed to Committee members not less than five days prior to any investigative hearing.

6. Interrogation of witnesses at Committee hearings shall be conducted by members of the Committee and authorized Committee personnel only.

7. Any person who is the subject of an investigation in public hearings may submit to the Chairman questions in writing to be asked of other witnesses called by the Committee. With the consent of a majority of the members present, these questions shall be put to the witness by the Chairman or his designee.

8. All reports and recommendations stemming from Committee investigations shall be printed only with the prior approval of a majority of the members of the Committee, after an adequate period for review and comment.●

THE ERA WILL NOT BE STOPPED

● Mr. RIEGLE. Mr. President, it is almost beyond comprehension that we find ourselves in 1982 still debating whether the women of America—over one-half of our population—should be treated equally under the laws of our land.

But this debate continues and it will until equal rights for women are finally and explicitly guaranteed in the Constitution. While the debate goes on it is imperative that the constitutionally mandated process for consideration of this issue—the ratification process—not be thrown off track or confused by the diversionary tactics of those who fundamentally oppose the equal rights amendment (ERA).

As someone who has long been an advocate and fighter for ERA, I have been greatly troubled by recent developments on the Federal level.

JUDGE CALLISTER RULES AGAINST THE ERA RATIFICATION PROCESS

The recent ruling by Federal District Court Judge Callister on the ERA ratification process is representative of the attempts which are being made to divert and stall ratification efforts. In early January, Judge Callister held in Idaho against Freeman, that Congress lacked the power to extend the deadline for ratification; and further, that States have a right to rescind their ratification actions at any point before the required three-quarters of the States vote to ratify.

The Callister decision marks the first time in American history when a Federal court declared unconstitutional an act of Congress dealing with the process of amending the Constitution. It also represents the first recognition by any Federal body of a State's attempt to rescind its ratification of a constitutional amendment.

Mr. President, I question not only the substance of the Callister decision, but also the signing of this judgment which can only serve to undermine the process of ratification now underway in many States during the final months of the extension period.

As someone who worked hard to secure the extension of the ERA ratification deadline here in the Senate, I am familiar with the questions of rescission and proper congressional voting majorities for extension approval, which have been raised by this case. These questions and others were thoroughly investigated by the sponsors of the legislation in both Houses, in consultation with leading constitutional lawyers.

I am confident that the actions of the 95th Congress in extending for 3 years the ratification deadline for the

ERA will be upheld as legal and proper.

THE JUSTICE DEPARTMENT RESPONSE IS INADEQUATE

The Justice Department recently contributed to the efforts to divert and damage the ERA ratification process. The Department's decision about what position the Government would take on the Callister decision—announcing one day it would appeal the decision and the very next day, issuing a "clarification" indicating it would oppose efforts to secure a quick ruling by the Supreme Court—caused much confusion and contributed directly to the efforts of ERA opponents.

The Justice Department's conflicting positions on the Callister decision ignored its obligation to defend the actions of Congress and raises the suspicion of whether inappropriate influence and political pressures were successfully applied to the Justice Department by groups opposed to ERA. It is essential that the integrity of a constitutional process be maintained and never sacrificed to the transitory political interests of a particular administration.

On January 8, 1982, I wrote to President Reagan expressing my distress over the Justice Department's indecisive and inadequate response to the lower court ruling. I ask that my letter to the President be inserted at this point in the RECORD.

The letter follows:

U.S. SENATE,
Washington, D.C. January 8, 1982.

Hon. RONALD REAGAN,
President of the United States, The White House, Washington, D.C.

DEAR MR. PRESIDENT: I was deeply distressed to learn of the Justice Department's announced intention to oppose an expedited appeal of Judge Callister's recent decision challenging the constitutionality of the Equal Rights Amendment ratification process. I strongly urge you to direct the Justice Department to reverse their position, and seek an expedited decision from the Supreme Court reversing Judge Callister's opinion.

The ratification deadline of June 30, 1982 is less than six months away. Several states which may still act on the Equal Rights Amendment will not have even this much time in which to consider the amendment because their legislatures have sessions which must adjourn well before the June 30 deadline. Rapid review by the Supreme Court of Judge Callister's ruling is, therefore, of critical importance. It is also a matter of fundamental fairness.

The unfortunate manner in which the Justice Department made its decision—announcing one day that it would appeal the Callister decision and the very next day, issuing a "clarification" indicating that it would oppose efforts to secure a speedy ruling by the Supreme Court—suggests that the Justice Department's position may have been inappropriately influenced by political consideration and pressures applied by groups opposed to the Equal Rights Amendment. Certainly such political consideration should have no place in this decision.

The Justice Department has a constitutional obligation to defend the constitutionality of Acts of Congress. It has an obligation as well, to proceed in a manner of scrupulous fairness.

As a long time supporter of the Equal Rights Amendment and as one who was deeply involved in securing Senate passage of the ratification extension, I believe that Judge Callister's decision is wrong and will be overturned by the Supreme Court.

Regardless of the Administration's position on the merits of the Equal Rights Amendment or the ratification extension, the Justice Department has an affirmative obligation to seek rapid Supreme Court action on constitutional questions which are clearly so time sensitive. I sincerely hope that you will agree with me that rapid consideration by the Supreme Court is the only fair course in this matter.

Respectfully yours,

DONALD W. RIEGLE, Jr.

Three days later, I joined 30 of my Senate colleagues in a bipartisan letter to the Attorney General urging the Justice Department to join the National Organization for Women in seeking an expedited appeal before the Supreme Court before more valuable time is lost. The Justice Department responded by requesting that the Supreme Court nullify the Callister decision without a full hearing on the substance of the issues.

THE SUPREME COURT SUSPENDS THE CALLISTER DECISION UNTIL APPEAL IS HEARD

On January 25, 1982, in an important and positive development, the Supreme Court announced its intention to hear the appeal and to suspend the Callister decision until such time as the Court acts. Rapid consideration by the Supreme Court of this extraordinary decision is the only fair and proper course.

It is vital that the national effort to secure equal rights for the women of America not be stopped by a single ill-considered lower court decision.

The equal rights movement must not stop until women are fully guaranteed equal rights under the law.

INCREASED PROTECTION FOR LAW ENFORCEMENT COMMUNITY

● Mr. MOYNIHAN. Mr. President, we know all too well that law enforcement is a particularly dangerous and far too often unappreciated profession. I have recently introduced two bills intended to provide increased protection to the men and women of the law enforcement community, and I would like to share with you two timely newspaper articles giving evidence of the need for such legislation.

The first bill, S. 1815, which I introduced on November 5, would require those who sell bulletproof vests to obtain proper licenses. I introduced this bill after consulting with Phillip Caruso, president of the New York City Patrolmen's Benevolent Association, who told me that bulletproof vests frequently give criminals added protection in the commission of a crime.

This fact, sadly, was borne out by events of October 20, when one armoured car guard and two police officers were killed in a robbery in Rockland County, N.Y., in which at least one of the holdup gang was wearing a bulletproof vest. The vest allowed the assailant, who later was found to have a spent bullet from one of the policemen's guns in his pocket, additional time to inflict a fatal wound on one of the officers.

More recently, FBI agents in Rochester, N.Y., captured Joseph "Mad Dog" Sullivan, a fugitive from justice and a suspect in some 20 killings. Sullivan, when captured, was armed with a .38 caliber snub-nosed revolver and an AR-16 semiautomatic rifle. It came as no surprise that he was also wearing a bulletproof vest. His comment after being apprehended, "I wanted to go out in a blaze of gunfire," was made all the more chilling by the fact that his bulletproof vest could have allowed him to do just that.

Fortunately, Sullivan was captured without any gunfire. But that this man, a man who has been arrested 30 times and convicted 11 times for offenses ranging from disorderly conduct to premeditated murder, was able to purchase the same bulletproof vests that afford protection to our law enforcement officers is simply astounding. We must not allow those who would kill or maim police officers to hide behind the protection of bulletproof vests.

My bill would not deny law-abiding citizens the right to own bulletproof vests. It will, however, make it far more difficult for the likes of "Mad Dog" Sullivan to obtain them.

I have also introduced S. 2128, which would ban the sale, import, use, or manufacture of handgun bullets that are able to penetrate the equivalent of 18 layers of kevlar, which is the composition of the bulletproof vests most often worn by police officers. This measure is strongly supported by police organizations across the country, and I would like to share with you a New York Daily News editorial of January 22 urging a ban on these bullets.

Mr. President, I ask that the Daily News editorial and a February 24 article from the New York Post chronicling the capture of "Mad Dog" Sullivan be printed in the RECORD.

The material follows:

[From the New York Daily News, Jan. 22, 1982]

THE COP-KILLER'S SPECIAL

Just what deadly criminals need, a bullet that will pierce four—yes, four—bulletproof vests of the kind most policemen wear.

No, we're not talking about some futuristic missile. Some imaginative manufacturer already has developed the slug to end

slugs—and the lives of anyone who gets in their way.

Before the lamebrain has a chance to market his super bullet in a big way, we hope Congress will step in to bar its manufacture and sale—even if that means taking on the powerful gun lobby in the process.

There is no legitimate need for such a frighteningly lethal device—not for hunting, not for target shooting, not for self-defense. It's good for just one thing—killing cops—and we have enough policemen dying already without giving criminals even more effective ways of blowing them away.

[From the New York Post, Feb. 24, 1982]

COPS NAB "MAD DOG" HITMAN

Hitman Joseph "Mad Dog" Sullivan, one of the most dangerous fugitives alive and a suspect in at least 20 killings, was captured yesterday with his girlfriend in a lightning FBI raid.

Sullivan, who once boasted he would never be taken alive, moaned to cops moments after his arrest outside a motel in Rochester:

"I wanted to go out in a blaze of gunfire."

Sullivan was prepared to do battle with police. He wore a bulletproof vest and carried a .38 caliber snub-nosed revolver tucked into his belt.

The FBI also found a sophisticated AR-16 semi-automatic rifle and ammunition clip in the back seat of his car.

"We didn't give him the chance to shoot it out," FBI Special Agent Philip Smith told The Post.

Eight agents staking out the Denonville Motel since 2 a.m. yesterday swooped down on Sullivan and his gorgeous brunette girlfriend, Theresa Palmieri, 25, as they were loading their car with suitcases and checking out.

"We received a tip that he was there," said Smith.

"The agents observed him packing suitcases and then the lady came out and got in the passenger seat.

"When Sullivan came out the agents arrested him.

"There wasn't a struggle. We didn't give him the opportunity to go for his gun."

Paul Meyers, owner of the motel, who watched the arrest from his window, told The Post:

"When they turned him around his face looked completely casual, like he was saying, 'So you got me, so what?' "

One law enforcement source said Sullivan bragged about the autobiography he was writing and complained because the FBI nabbed him without any explosive shootout. "He said that would have made a good ending for his book," said one cop.

A movie based on Sullivan's life story is currently being negotiated, starring actor Jon Voight.

Sullivan is the only man in New York State history to escape from Attica, where he was serving time for manslaughter. He was wearing a gold crucifix around his neck and another on a ring when he was taken into custody yesterday.

He was brought before U.S. Magistrate Stephen Joy, who set bail at an astonishing $500,000 after Sullivan pleaded innocent to a bank robbery charge.

The FBI expects to transport Sullivan, 42, to Utica within 48 hours. He will be arraigned there on another bank hold-up charge.

Last night, Sullivan was jailed in the Monroe County Holding Center in downtown Rochester.

He was awaiting the arrival of his close friend and attorney, former U.S. Attorney General Ramsey Clark.

Sullivan's son is named Ramsey, after the nation's one-time top law enforcement official.

The 25-year-old Miss Palmieri, whose last known address was 371 Ave. X, Brooklyn, was charged with harboring a fugitive.

"This guy was one of the most wanted men in the United States," said a detective in Suffolk County, where Sullivan faces an indictment for a throat-slashing double homicide.

"Everybody should be relieved that he's been captured, because he was capable of killing anybody who crossed him."

Sullivan and Miss Palmieri checked into the Rochester motel at 2 p.m. Monday.

"She's been his girl friend for a long time," said one officer.

The FBI refused to say what brought Sullivan back to Rochester, where, last December, he is reported to have cut down a Teamsters union official who was cooperating with a federal grand jury.

Sullivan, allegedly a contract killer for both the Bonnano and Gambino crime families, grew a full beard during his months underground.

The arrest capped months of investigations by the FBI and New York City police. Law enforcement sources said it was intensive legwork by FBI agents Steven Braus, Anthony Nelson and Michael Francis that led them to Sullivan.

They also credited Brooklyn detectives Louis Randazzo, Carl Schroeder, Saul Rodriquez and Edward Woods with playing key roles in the manhunt.

Miss Palmieri is the sister-in-law of Sullivan's partner, identified as Steven Catalanotte, 32.

Catalanotte, who remains at large, is a fugitive ex-cop who met Sullivan while serving time in Attica for dealing in heroin.

Police are also seeking another Sullivan accomplice, Marco Tedesco, who uses the brazen alias Marc Anthony, after the historic Roman general.

The mustachioed Tedesco and Sullivan are suspects in the deaths of a couple in Seldon, L.I. whose throats were cut while an 18-month-old infant slept in a crib nearby.

LITHUANIAN INDEPENDENCE DAY

● Mr. RIEGLE. Mr. President, earlier this month I had the opportunity to celebrate the 64th anniversary of Lithuanian Independence Day with a gathering of Lithuanian Americans in Detroit. That experience again reminded me of the strength of will which has characterized Lithuanians for centuries, and today I would like to pay them a special tribute.

This year's commemoration of the reestablishment of the independent State of Lithuania on February 16, 1918, assumes particular significance in light of continued Soviet aggression around the world. Just as the success of the Polish workers' movement inspired the souls of the Lithuanian people, the imposition of martial law in her sisterland may cast new doubts on the Lithuanian struggle for freedom.

While each passing day presents new opportunities and new obstacles in the effort to rid this captive nation of Soviet domination, the free nations of the world must never allow the flame of hope, which has burned so long in the hearts of the Lithuanian people, to die. Since the illegal Soviet annexation of the nation in 1940, Lithuanian history has been a tragic one. Ravaged first by the armies of Stalin, then by those of Hitler's Nazi Germany, the once independent State of Lithuania finally succumbed to the sheer weight of Soviet power.

Still the effort to win freedom continues. Although the territory that is their homeland remains firmly within the grip of the Soviet Union, attempts to absorb the unique Lithuanian culture have been thwarted by the Lithuanian people—a people who continue to cherish the ideals of a freedom once enjoyed. The continued repression of those whose only crime is the pursuit of basic rights and justice indicates a failing Soviet policy of subjugation which will never be accepted by the freedom-loving Lithuanians.

And so, today, Mr. President, I offer my unwaivering support to all Lithuanians—those still striving to escape Soviet oppression in their homeland, and those here in America whose constant vigilance and work has kept the flame of hope alive for all freedom-loving peoples.●

BROKEN PROMISES TO DETROIT'S ELDERLY CITIZENS: "HUNGER IS A SIMPLE, LOUD CRY"

● Mr. RIEGLE. Mr. President, the Special Committee on Aging held a hearing this morning on "Hunger, Nutrition, and Older Americans: Fiscal 1983 Budget Proposals." Father William Cunningham, who is the director of Focus: HOPE in Detroit, Mich., testified before the committee. Focus: HOPE is an organized movement of metropolitan Detroit volunteers dedicated to improving the quality of life for Detroit's senior citizens. Father Cunningham's words speak to the heart of the matter of hunger and the elderly in this country and the particular plight of thousands of senior citizens in the Detroit area.

I submit his address for the RECORD:

TESTIMONY OF FATHER WILLIAM T. CUNNINGHAM

Senator John Heinz and Members of the Senate Special Committee on Aging: This morning we are players in an utterly predictable scene. Our elderly poor will be described and counted. Good people will plead the cruelty of new program cuts.

Then, some more good people from the Department of Agriculture will say what they are supposed to say, or they will be fired. Everybody knows that. The agents of Agriculture carry an awful burden—not to reveal here what each knows, or should know, about hunger in America, not to say what each feels in his heart and conscience or should feel, but to defend an ideological

course. Their Department—established to assure adequate and equitable production and distribution of food—is again held hostage by the Office of Management and Budget, to be used in an ideological and political stand-off at the expense of its constitutional mandate. They will be loyal to this administration, an otherwise necessary quality in government service, at the expense of a higher moral requirement to relate facts to the well-being of the commonwealth, the service of the American people and the protection of their rights.

Other witness—professional, expert and dedicated—will use cool, scientific terms. They will tell us about the extent of malnutrition among the elderly, its economics, its clinical manifestations, its effects on health, on life. But their scientific rigor may sometimes mask the pain of hunger in abstractions, and their valuable sevice of information may sometimes ignore questions of value and morality.

Unlike malnutrition with all its complexities, hunger is a simple, loud cry.

Hunger in Detroit is desperation. It is old people in restaurants ordering a cup of tea at an uncleared table and furtively eating leftover scraps of french fries and sandwiches. It is opening and eating from packages of cookies or cold cuts on the supermarket shelf while pretending to shop. It's 75 year old Annie Harris, full of pride and dignity, confessing that after her last trip to the hospital for starvation, she would have killed herself if she did not believe in Jesus.

Hunger in Detroit is constant worry. It's worrying whether the part loaf of bread, the remnants of jam, and the last box of macaroni and cheese will take you through three days, until the social security check arrives. It's dropping the same teabag in hot water for the second day. It's Robert Lindsey, 81, teased with the question of what he would do with more food, saying, "that's beyond my comprehension." Hunger is a forced choice between a carton of milk and a roll of toilet paper.

Hunger in Detroit is loneliness. It's not having anything to offer company, if there were company.

Hunger in Detroit is illness, another trip to the hospital because an egg in the morning, tea and toast at noon and hot dogs at night were not enough.

Hunger in Detroit is guilt. It is old people in the Cass Corridor who won't tell you their children's names, because they don't want to be a burden. It is the guilt of sons and daughters who have to abandon their parents because, in today's economy, they can hardly feed their own children.

And hunger in Detroit is anger. It is old people saying, "They treat us like an old horse, only they don't shoot us, they just starve us inch by inch . . . They've got the food, but they just won't give it to us." The anger of old people is quiet despair, knowledge that the refusal of food is a final rejection, that one's fate is a lingering and lonely and fearful and disregarded wait for death.

There are more than 50,000 hungry persons over 65 in Detroit and Wayne County. They are not all of one type. Bill Parham, a gear-cutter, thought his savings would provide a modest retirement for himself and his wife, but those savings were eaten up by extreme jumps in heating bills, high inflation, and illness. James Light worked thirty-two years for a small company with no pension plan. Many, many elderly blacks and women in Detroit were denied equal opportunity during their productive years, so they worked at menial jobs and were paid in cash under the table, with no Social Security.

For most people, poverty arrived when they stopped working. Had they been so destitute all their lives, they could not have lived to be old.

Every lasting human society has held the aged in reverence. The conscious abandonment of old people is a nation's epitaph.

That is the purpose of the fourth commandment—"Honor your father and your mother." Its wisdom is simply that if we take care of those who brought us this far, then our traditions will be respected and our founding ideals will be cherished.

Perhaps this is the real discussion for today—even more than old people and hunger. As a society, we are coming to value only those who are economically productive. This nation proposes to spend much less on children, and to turn its back on the aged, to bankrupt the future and bury the past. It will not recognize and support other necessary kinds of productivity which only the elderly can contribute in the family and the community.

Insuring enough food for the health and well-being of the elderly poor is not a matter of compassion. It is a matter of justice, and wisdom. To deny adequate food is to break our contract with those who have labored and sacrificed to build this country.

The Department of Agriculture is capable of putting an abundant, ready supply of commodities on the shelves of poor, elderly citizens at less than half of the foods' cost in the marketplace. Last fall, Congress passed a law authorizing the Department to do so in Detroit and New Orleans, and Congress appropriated the necessary funds.

The Secretary of Agriculture and Mr. John Bode, defiant of Congress and abusing the Department's capability, today deny those hungry old people.

In the generations to come, if America survives this rupture of morality tolerated for whatever expedient, who will answer for what we have done to the nation's elderly, to our solemn trust, and to our national integrity? Who will explain our broken promise?●

STEVE JONCAS: OUTSTANDING SERVICE TO MASSACHUSETTS

● Mr. TSONGAS. Mr. President, I would like my colleagues to know about the outstanding service that Steve Joncas has given Massachusetts for over 7 years. As he moves to a challenging new position in public service, his accomplishments to date should be recognized.

Steve Joncas directs the work of my staff in Massachusetts, managing their efforts in two primary areas—constituent services and economic development. The job demands an abundance of energy, judgment, geniality, and toughness. Steve has provided these qualities. Indeed, it has been intriguing to watch his personal and professional strengths grow stronger over the years.

Steve Joncas has worked with me since 1975, when I became a Member of the House of Representatives. Initially, he concentrated on the revitalization of Lowell, Mass., the largest city in the Fifth Congressional District. Lowell has become a success story—a classic partnership between government and the private sector—and Steve's work has been an important part of it. On coming to the Senate in 1979, I put him in charge of coordinating the work of the economic development section of my Massachusetts staff, who specialize in developing economic strength in communities throughout the Commonwealth. His performance in that role led to his eventual promotion to overall responsibility for my Massachusetts staff.

On March 1, Steve is beginning a new challenge as executive director of the Lowell Development and Financial Corp. In his new role, he will be right in the middle of efforts to continue Lowell's successful partnership. It is a position for which he is uniquely qualified, and I have every confidence that he will serve Lowell well in his new capacity. Although I shall miss having him on my own staff, I am pleased that he was chosen for this important position.

Mr. President, I want to express my sincere thanks for what Steve Joncas has done for Massachusetts citizens. I look forward to working with him in his new role. I extend my best wishes to Steve, his wife Celeste, and their children, Aaron and Phillip, on this proud occasion.●

ORDER FOR RECESS UNTIL MONDAY, MARCH 1, 1982, AT 11 A.M.

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 11 a.m. on Monday, March 1, 1982.

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

ORDER FOR THE RECOGNITION OF SENATOR COCHRAN AND DESIGNATING PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON MONDAY

Mr. STEVENS. Mr. President, I ask unanimous consent that, following the recognition of the two leaders under the standing order, Senator COCHRAN be recognized for not to exceed 15 minutes for a special order, and I also ask unanimous consent that there then be a period for the transaction of routine morning business for not to exceed 20 minutes, with statements therein limited to 5 minutes each.

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

RECESS UNTIL MONDAY, MARCH 1, 1982, AT 11 A.M.

Mr. STEVENS. Mr. President, I move, in accordance with the previous order, that the Senate stand in recess until 11 a.m. on Monday next.

The motion was agree to; and at 6:18 p.m., the Senate recessed until Monday, March 1, 1982, at 11 a.m.