SENATE—*Wednesday, May 18, 1983*

(Legislative day of Monday, May 16, 1983)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

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

Let us pray.

Gracious God, the Bible declares that "Without a vision, the people perish." (Proverbs 29: 18.) We need a vision for the Senate, Lord. Give us a vision for unity—for a Senate that proves its detractors wrong—a Senate that demonstrates to the world all that our Founding Fathers dreamed when they adopted the Constitution—a Senate that dissolves cynicism among the people, the press, and within its own membership.

Give the Senate a vision for peace—for righteousness—for justice—for truth, a vision which is a fulfillment of the highest, finest, and best aspirations of a free people. Help the Senators to give God room in their business, the openness to hear the voice of the Lord in this critical, tense hour. In Thy name and for Thy sake and the Nation's we pray. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SENATE SCHEDULE

Mr. STEVENS. Mr. President, we have an agreement on the pending bill and expect passage no later than 6 p.m. today. At 10 a.m., we will resume consideration of the immigration bill and pending is the Kennedy amendment, which was offered by Senator SIMPSON on behalf of Senator KENNEDY, No. 1210.

I remind the Senate that any rollcall votes ordered prior to 3 p.m. will be postponed and those rollcalls will commence at 3:30 p.m. There is a rollcall ordered on the Bradley amendment No. 1274. There will be votes ordered, we believe, during this morning that will take place after the Bradley amendment.

The stacking of the votes has been ordered primarily to accommodate the Budget Committee so that it can proceed to further consideration of the budget resolution.

The leadership is quite hopeful that the Budget Committee will be able to resolve the problems concerning that resolution in a successful manner and report back to the Senate today a resolution that can be considered tomorrow.

ALTERATION OF FEDERAL RETIREMENT

Mr. STEVENS. Mr. President, on May 11, the Washington Post carried an informative article featuring a discussion of Federal employee pay and retirement issues by Dr. Donald Devine, Director of the Office of Personnel Management; Ken Blaylock, president of the American Federation of Government Employees; Congressmen FRANK WOLF of Virginia and STENY HOYER of Maryland; Ed Hustead, director of Actuarial Consulting Services for Hay Associates and former chief actuary for the Office of Personnel Management; and Robert Mueller, executive director of Taxpayers for Federal Pension Reform. While I do not subscribe to many of the comments made by the participants, the article accurately portrays the wide divergence of views—factors we must consider when dealing with Federal employee issues.

The article strongly points out the fact that we cannot quickly pass legislation to establish a supplemental retirement system for the new Federal employees who will now be included under social security. The whole article underscores the point that when setting up a supplemental program for new Federal employees, we must do it right. In order to do it right, it is going to take time.

I ask unanimous consent to insert the article in the RECORD.

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

SPEAKING OUT ON ALTERING FEDERAL RETIREMENT

The Washington Post asked six people who are concerned about proposals to change the retirement plans of federal workers to discuss the subject at a luncheon, from which this transcript was taken.

The participants were:

Donald J. Devine, director of the Office of Personnel Management.

Kenneth T. Blaylock, national president of the American Federation of Government Employees, the nation's largest federal union, representing more than 750,000 government workers.

Rep. Frank R. Wolf (R-Va.), of Northern Virginia's 10th District, where roughly 40 percent of the 540,000 constituents are current or retired federal workers.

Rep. Steny H. Hoyer (D-Md.), whose 5th District in Prince George's County includes 80,000 federal workers and retirees.

Robert Mueller, executive director of the Philadelphia-based Taxpayers for Federal Pension Reform.

Edwin C. Hustead, director of actuarial consulting services for Hay Associates and former chief actuary at the Office of Personnel Management.

POST. Doctor Devine, the administration is proposing a major overhaul of the federal retirement system. Can you tell us why they're doing it?

DEVINE. We think that we waste a lot of good manpower when people retire too early. We think there are a lot of problems in the personnel system. They build the wrong kinds of incentives in the system. We think we have to build incentives for people to work. Right now our pension system is so generous that the individual can't afford not to retire pretty close to when he or she becomes eligible. . . . You can't even make a convincing argument to make them stay. . . . I think we've got to change the incentive pattern that's built into our pension system so that it orients itself to work rather than leaving the government.

POST. Do you think the federal retirement system is much more generous than any in the private sector?

DEVINE. There are few things I'm surer of.

POST. What do you think about that?

BLAYLOCK. First off . . . 75 percent of the federal employes don't retire until age 61. So there's only about five or six months difference between the retirement in the private sector and the federal sector. So I don't know that there's an incentive to retire that early. Although they can retire at age 55, the truth is, by far the majority of them don't.

DEVINE. Well, the reason, of course, is that there's an age-and-years-of-service requirement and most people don't reach the service requirement until just before age 60. . . .

POST. You're also proposing to raise the employe contribution rates to 11 percent. Many private pension plans are noncontributory. Do you know of any in the private sector that require employes to contribute 7 or 9 or 11?

DEVINE. It's not all that usual in the private sector, but it is very usual for state and local government employes to contribute equal shares with the share done by the employer. The reason that we have the contribution set at the rate we do is that we feel that this system was sold as a 50-50 contribution program. Most federal employes, certainly before I started speaking out on it, believed that the system was supported 50-50. . . .

POST. People are always talking about the unfunded liability of the Civil Service Retirement Fund. What is an unfunded liability and why should we worry . . . about it?

HUSTEAD. The unfunded liability is the amount of money that you would need today to pay off all the future benefits that are going to be paid to current employes and annuitants. So first you figure the total liability and then deduct the assets you

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

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have in hand and the assets you expect to get, and the remaining is the unfunded liability. Any pension system has an unfunded liability. Most that I know of. It's all a question of relative level. The figure $520 billion in isolation doesn't mean anything.

MUELLER. In the private sector, you'll have unfunded liability. But in the private sector the difference is not the true fund, of unfunded liabilities. They have to set aside money each year—cash. They have to set aside money for profits. So they amortize that unfunded liability. You have no such thing in the federal government. Basically, what you have here is a system that's funded: 87 percent of it is funded by the American taxpayers.

The American taxpayers will look at the fact, have nothing to compare with it in generosity. In the private sector, retirement income is typically Social Security, plus a supplemental corporate-type pension plan. In the private sector, you may have some businesses allowing their people to retire, even if they're only 55. Almost all of them have actuarial reductions; a penalty for early retirement.

Forty-five percent of corporate pension plans define normal retirement age as 65. But even if somebody in the private sector retires—at, say, 60, 57, 56—their income first will be reduced and secondly depend on Social Security, and Social Security by definition provides no benefit before age 62.

HOYER. The comment that was made . . . that the taxpayer is bearing the burden of it. Of course, the taxpayer is bearing the burden of this. These are the taxpayers' employes. It's much fairer to say that their employers are bearing the burden of this. Public employes work for the taxpayers. And they deserve a fair pension plan.

. . . What has happened is that in order to be competitive in the marketplace . . . we beefed up the retirement system. It has, in fact, been an excellent system, to this point in time, and a system by which all I think fair analysis is either comparable to the private sector or exceeds the private sector. . . . But it has been so because it was offsetting a salary system that was clearly behind the private sector.

DEVINE: I think at one time that was true, but we're talking maybe 20 years ago or something like that. . . . Let's look at another very generous pension system, the military pension system. There's a case where clearly that kind of trade-off was made, in terms of trying to attract people, given very low salaries relative to the private sector before the voluntary military went in. . . .

BLAYLOCK. . . . You can't be in retirement in isolation. You're talking about a compensation system. You're talking about an employer, which is the American taxpayer. I don't agree with the concept that's been built into this . . . that people are eating out of the taxpayer's pocket. . . .

Our people work for the taxpayer. They treat veterans, they keep defense equipment running, Social Security—all those services that Congress decided are necessary to deliver for the American people. . . .

But the retirement was designed to be the main portion of the compensation system that attracted and retained competent and qualified workers. That's the whole purpose of it. . . . They put up with that. They put up with the low compensation. They put up with a lot of other things because that early retirement, that 55-year retirement. . . .

HOYER. . . . I have not found any recruiter, not one from the federal government, who hasn't told me that their ability to recruit the kind of people that Don Devine, Steny Hoyer, Frank Wolf, Ken Blaylock and The Washington Post want to see recruited and the public, you, the taxpayers, want to see recruited by the government, has not been substantially diminished because you are no longer competitive with those people you're recruiting against and you're not recruiting against the business in the small town of Clinton, Maryland, in my district.

DEVINE. . . . Where there is a shortage, we have an authority, we have a special pay rate programs. . . .

MULLER. I come from Philadelphia, and we did a survey and looked at different jobs in the federal government and compared them to private-sector Philadelphia wage rates for those same jobs. I should mention that the Bureau of Labor Statistics says on their index that Philadelphia's 98 percent of the average for the United States.

Let me give you some figures. For an accountant with two years of experience, GS-9, federal government, $20,256, private sector, $18,000; accountant five years experience, $34,900 versus $28,000; computer programmer, although they do a little bit better in the private sector, $29,300 versus about $30,000 in the private sector; secretary GS-4, $11,949 in the federal government, $10,000 in the private sector. That's $2,000 difference. . . . In some cases the federal people are paid a little bit more, some cases the private sector is paid a little bit less. But our study . . . suggests that the pay comparability does exist.

WOLF. If I can tie together a lot of what you all said: One, I think, we have a commitment to the federal employes that are there to make sure that we treat them fairly, that we not break pledges that have been made in the past. . . . When we talk about the federal employe, who are we talking about? There are a lot of different categories:

The FBI agent that everybody in this room would ask to come to their assistance immediately if you called them and found out that your daughter or wife or son had been kidnaped—that person is a federal employe.

Those of you who have children and are concerned about drugs in the schools. The drug enforcement agent that's working to keep drugs out of this country is a federal employee.

The cancer researcher out at NIH . . . that person, who could be with a drug company, is a federal employee and is probably staying there because they're dedicated to working on a cause bigger than they are.

The people who were killed in Beirut, 17 of them—four were from my congressional district—again, federal employees.

A little more hazardous activity than perhaps working at the Philadelphia National Bank on Broad Street in Philadelphia. Again, federal employees.

The Secret Service agent that stopped the bullet that would have killed the president of the United states—Timothy McCarthy—is a federal employee.

The person who's working on clean air or clean water or who worked on the Tylenol case for the Food and Drug [Administration] was a federal employee. So I think we have to tie these things down to the services that they do for the federal government, for the taxpayers. We want the best. . . .

I'm going to propose what I've tried to do in the past. I had recommended that we come out with a blue ribbon panel for two years to look into this, to have people appointed by the president, by the speaker of the House and by Senator [Howard] Baker on a bipartisan basis. Each gets six appointments, two Republicans, two Democrats and two independents. Let them take a look at this and come back and report it.

And I'd recommend it to perhaps President Ford or somebody like him could be chairman. And let everybody work from the same data base. . . .

DEVINE. I don't really think there is a lot of disagreement on the statistics. I'm concerned that we're going to have federal employes upset for two years.

WOLF. They're upset now.

DEVINE. Well, listen, I haven't made any secret since I came in as to what my agenda is. It's been out there since day one. These are the things we have to get through. Get 'em behind us. Then we can go ahead without this kind of controversy. Some big changes that have to be made in this system. We're going to have two years of people being upset, rather than making some decision now.

WOLF. But you have to build people's confidence and many of the proposals and we don't have the time to get into now, your retirement proposal going from 7 to 9 to 11. I pointed out the figure during the hearing. If that person is making $25,000 now with a 4 percent pay raise and goes through with the low rate of inflation that we now have with this administration, after those three years that person will have a net loss of $2,155. . . .

If you're 52 and you're done fully successful work, this federal government owes you an obligation because you've stayed with them, you haven't gone out on strike. You've paid your taxes, you've done everything you're suppose to and what if you're faced with a personal situation in your family.

HOYER. . . . The perception clearly is that [federal workers] are not being treated fairly. I would suggest to the employers—that is, the taxpayers—that that is a very bad situation to have your employes in. And, in fact, the answer to Mike Causey's questionnaire of 30,000 people indicated that they currently have the lowest morale at any point in time in the collective memory of all respondents . . . which fully corresponds what I'm sure Frank is hearing in his district, what I'm hearing in my district and what everybody else is hearing in their district and I'm sure, Don, what you're hearing.

DEVINE. Make the changes, get the stuff behind us.

BLAYLOCK. You want to throw the baby out with the bath water by going to the pay system where we pay people based on personal characteristics, which means their race or age or color or education.

DEVINE. That's not so. Come on. . . .

BLAYLOCK. It's in writing. So here with the retirement system you want to throw the baby out with the bath water. Now with the performance system you want to throw the baby out with the bath water.

WOLF. I have a very high support record for this administration. . . . I think we can be supportive of the administration . . . and still treat our employes fair and decent.

I was a federal employe for a while; my dad was a policeman in Philadelphia. I think they're good people, and we can treat 'em fairly. . . . That's why I think we need a blue ribbon panel to spend two years to come up with some fair reckoning.

MUELLER. I think you'll find taxpayers will agree that federal employees deserve a fair and reasonable pension. . . . We've taken the actual formulas used to calculate civil service retirement system. We've taken the formula used to calculate Social Security and we've taken [the formulas] the Fortune 500, your IBM used to calculate their pensions. We plug that into a computer, we apply the same assumptions . . . same careers . . . identical salary histories: Say all retire in 1974 at age 55 with 30 years service, both making the same salary at retirement: $15,000. Everything is the same except for the formulas. . . .

The civil service retirement system . . . provided that federal worker with an $8,558 pension. The private sector guy . . . would not get Social Security—he happens to be one of the less than 50 percent that's lucky enough to be vested and have a corporate pension plan, but . . . regardless of that, that guy will get $2,700 from this Fortune 500 corporate pension plan. Now, at age 62, when Social Security kicks in for the private sector guy . . . the civil service guy is now up to $16,163. the private sector guy now with Social Security, $7,448. . . .

BLAYLOCK. You're dealing with people and you've got to deal with a total compensation system. You can't just deal with the RIF procedure, you can't just deal with performance evaluation, with the retirement, with the health insurance, with the pay. You've got to deal with the total comp.

Now, we have for years said let's deal with that total compensation system. We've never been able to get an administration or a Congress that was willing to begin to deal in realistic terms with total compensation. Right now by all figures—and they're all over the park . . .—total comp in the private sector is leading the federal sector.

The recent cuts in federal and health benefits and what have you, the caps on pay, has brought it down to where they now lead in the private sector by 2 or 3 or 4 percent. The lines are getting shorter at the recruiting office for federal employes, and the truth is a hell of a lot of good federal workers *are* leaving government. A hell of a lot of good managers *are* leaving government.

A lot of people out there don't want to come into this government anymore because they see this attack as constantly coming from people like the Taxpayers Union, from the current administration.

Don, it doesn't help to get up there and say we've got the greatest workers in the world when you're cutting their health benefits, you're cutting their pay, you're cutting their retirement. Don't tell me you think I'm great and then you cut the hell out of me every way you can. And that's what the federal worker is saying. We don't want a plaque: We want recognition and compensation.

DEVINE. I think federal employes should have fair compensation and as I understand that that means fair relative to the private sector. . . . We've been in this debate a hundred times. It's a factual question, and in terms of the total compensation package we pay more than the private sector. We had a bill up there on total compensation comparability, the last administration had a bill up there on total compensation comparability, and the unions didn't want to go.

BLAYLOCK. We sure didn't because it was designed just like yours: You picked a dollar figure you wanted to get to in the budget and then you designed three or four personnel systems to save that dollar figure. You were not trying to get to a fair compensation system.

WOLF. What would be wrong with having a blue ribbon panel on a bipartisan basis?

DEVINE. We just had one. The Grace Commission just finished that. That was a bipartisan group.

HOYER. The Grace Commission was allegedly appointed by the president to look at how to make government more efficient, to apply management techniques from the private sector to make it more efficient. Their proposal on employe pay has nothing to do with efficiency or inefficiency; it has to do with saving money.

DEVINE. It does. No employer pays more than they have to to be fair and to be competitive in the market, and when they look at our system, our personnel system, that's the first thing that hits them. Is how out of step we are relative to the private sector.

POST. I asked our corporate benefits man how this [existing federal employe retirement plan] compares with The Washington Post, which he says is a fairly average retirement benefit thing. He looked it over and said that it was a very generous plan. The thing that he said that stuck out, and the word was "unbelievable" was the COLA. He said that the cost-of-living adjustment was something that he didn't think any private industry in America had. And that that was the one thing that appeared to him to be really different.

BLAYLOCK. Yeah, [but] in the private sector there's a COLA in Social Security.

HOYER. Of course, there's a COLA. All 36 million retirees, whether they're from The Washington Post, General Motors or anybody else, get the same cost of living adjustment applied to their Social Security.

MUELLER. No, they don't. The average civil service pension in 1981 was $12,432. The average in Social Security was $4,632. Let's look in the private sector. A Department of Labor study shows that only 3 percent of all corporate pension plans offer a formal cost-of-living adjustment in their normal retirement formula.

But if you look at that 3 percent figure, you break it down even more. Only 9 percent of that 3 percent provide it based on 100 percent of the change in the CPI, like the civil service retirement system. But if you break that, even that smaller sliver, that 9 percent of 3 percent down, virtually all of those have a cap. So nobody in the private sector, corporate pension plan, has a complete automatic, 100 percent cost-of-living adjustment that's provided.

BLAYLOCK. I think you've got to get back to the purpose of the COLA. You know, this, the whole idea of what this country's all about. Now, the COLA is coming into play, Social Security, federal retirement, military and for other reason, other adjustment, to make sure or to begin to help people who are on fixed income to stay up with the cost of living.

MUELLER . . . This is a fairness and equity issue. Why should federal employes get complete and automatic 100 percent cost-of-living protection when those in the private sector do not have it.

HOYER. That is, of course, however, an issue which has not been raised by Doctor Devine nor this administration. You've got to look at pay and compensation as a package. No administrator of any private sector corporation that your group has made a study of would deal with a particular segment.

Pay, retirement, health benefits, stock options, deductions for business expenses, trips to Jamaica for conventions—everything in that whole package goes together for total compensation. No manager would consider any single element estranged from the other one.

The private sector, when they look at that cost-of-living adjustment, it is clearly more generous than the private sector came up with. No question about that. Any one of us who are public employe advocates would be silly to deny that. . . .

At the same time, if you take a poll of the 36 million Americans who receive Social Security, they feel that that cost-of-living adjustment is absolutely essential. It may be arguable that it's less essential for somebody making two or three times as much on retirement as somebody on Social Security. I think that's a valid argument and we ought not to dismiss it out of hand.

If you cut retirement benefits—substantially, very substantially, as this administration is proposing—without dealing with health benefits, which have been cut dramatically.

Almost everybody that I've talked to now agrees: Pay and health benefits are two other major benefits that federal employes are below. It would be unfair if you reduced the one substantial benefit that federal employers perceive themselves as having. You are going to totally lose any kind of competitive edge that you have that will give personnel officers the ability to continue to recruit the kind of people that we want to get in federal service.

MUELLER. If retirement is so important as a recruiting tool, why is it a fact that the majority of federal employes won't ever get this retirement system? There is a heavy turnover. Isn't it the federal government's responsibility to ensure adequate financial security and retirement for their employes? I would say that they're not when the majority of the people—62 percent—will leave government service without any kind of pension protection. All they'll get is a refund of their 7 percent contribution. They don't have the benefits of Social Security, so they have nothing, in effect.

DEVINE. We changed that. You understand.

MUELLER. Only for new federal employes. I'm talking about current federal employes. Sixty-two percent of them will never get this retirement benefit. We as taxpayers are not taking care of those people because they don't have the affordability of Social Security.

HOYER. It is only the people that stick with you, are performing well because we don't remove them from service. Now that may be a management problem, but that 38 percent who stick with us . . . we treat them well. Nobody is arguing that.

On the other hand, you and I disagree on the statistics that if they went in the private sector, they would get higher pay, more immediate in-hand income. They stay, in many instances, and Frank and I talked to hundreds of people that say, "I have stayed in federal service, not withstanding the fact that I got offers of higher salary in the private sector, because the retirement benefit is more generous and that was the inducement for me to stay on the job."

HOYER. Any corporate manager, whether he's with The Washington Post or any other large corporation, is going to tell you that we ought to resolve personnel questions in a manner that does not have the employes feel like they are the targets of punitive personnel policies. Because if that is the case, your morale will substantially fall off and your performance will follow behind and fall off as well.

I've had employes tell me that if, in fact, they need to come up with another 2 percent of contribution to [keep] the system solvent, they are prepared to do that. They won't necessarily like it.

They would prefer that they don't have to also come up with another 10 percent in federal employe health benefit premiums and have their salaries cut at the same time. They figure you come across all three, that you've undercut them. But they're prepared to respond, I think, honestly and participate in this process, but they don't feel that they're being treated fairly.

WOLF. I don't say that the system is perfect. I don't say that there aren't changes that have to be made. I get letters from federal employes acknowledging that some changes have to be made.

BLAYLOCK. We'd like to see a few labor representatives on that panel. . . . I think the people I speak for will support any compensation system based first off on comparability. We do think that comparability with the private sector is the only fair system of compensation . . . a system of comparability [based] on total compensation we will support.

But we're not going . . . to sit back and just be attacked and be expected to carry the economic burdens of the country and be hung out as scapegoats in an attack on government policy makers, and I include the congressmen, gentlemen, in that.

POST. If you're trying to hire the best people, what's wrong with giving federal workers better benefits in either some or all areas?

MUELLER. Because in the private sector you have to earn a profit to stay in business. In the federal government, they haven't earned a profit in how many years? How long have we had deficit spending. Define that in the private sector they've been in the red for what 19 out of 20 years? They haven't had a surplus since the 1960s.

POST. They were in the red, you know, trying to put a man on the moon.

HOYER. It's not a profit when you have TV back from the moon?

DEVINE. I think the answer is what Mr. Blaylock said. It's a broader question that you can't in an environment, in the government where you're dependent upon the goodwill of the people that pay these benefits, you can't afford to get very far out in front of them. Mr. Blaylock and I, at the theoretical level, we have no differences.

We both agree that we have to pay comparability. And I frankly think the process that the Congress set up to deal with this, that is the pay agent and the federal employes' pay council, is the proper way to do it, in a management-labor kind of environment, which is done in the private sector. Now, the problem as I see it, to be frank about it, is can union representatives afford to be able to do that if—and let's say this is arguable—if, in fact, we are paying substantially over comparability to the private sector? Now, that's a straight out question, and I recognize there are constraints on answering that. But I think that's the problem.

BLAYLOCK. I don't have any problem with that, Don, and I think we demonstrated, my organization leadership, we demonstrated very well during the civil service reform exercise.

HOYER. Maybe outside of the presence of The Washington Post on the record or other people maybe we ought to all sit down. . . .

The point I was trying to make with you, Don, was not in terms of a legal interface that the law requires but your testimony before committees that comparability analysis is incorrect. For all the reasons that you've stated. You believe that certain business ought to be included, state and local employes are not included. Ken obviously has some problem with that. But, in any event, perhaps we ought to sit down at some point in time and kick around where we can agree and where we can't agree and proceed from that point.

BLAYLOCK. I think something like that is going to have to happen but just like Rossow pointed out and the problem we've had in the past I think you're going to have to freeze the current system, leave it alone and operate under that system to get some credibility at least until something like this can be done on a credible basis because if it has no credibility, just like the Hoover Commission, which did the same thing and went and got shot totally down the tube, it had no credibility. The Grace Commission is going to go the same damn way.

You know there were labor representatives supposed to have been on that commission, but they were never involved at all. So whatever you do is going to have to have credibility, not only with the federal workers but with the players on both sides of the issue and the American public, and you're not going to get credibility with a federal employe as long as you're continuing to cut their health benefits, cap their pay and attack the retirement: The list goes on.

DEVINE. You know that's why I tried to focus, and I think Ken is absolutely right. The problem is that we look at the current year where many of the major decisions are already made and that's why I try to push us to look to the future. Now, there's no question we're in a tough kind of environment now. We're making changes as we go along and that's difficult for the unions, and we're under pressure. And I think that's appropriate. But I do think that we do have a mechanism and a pay agent and a federal employes' council that does—it is the law—that does provide the hope for long-term solutions. But somehow we have to get Ken Blaylock and Don Devine out of the fire of the present so we can then look for the future.

Mr. STEVENS. Mr. President, I reserve the remainder of the leader's time.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr. WALLOP). Under the previous order, the Democratic leader is recognized.

A BIPARTISAN BUDGET RESOLUTION

Mr. BYRD. Mr. President, I should like to see us have a budget resolution, but the President of the United States, using the pulpit of national television, has portrayed our suggestions, both Democrats and Republicans, as wanting to increase taxes. If the Reagan administration is going to follow this theme and if the American press is going to buy this nonsense, then I think it is becoming increasingly evident that Democrats in the Senate should let the Republicans take the lead on passing a budget resolution. We as Democrats want to be responsible; we do not want to be accused of increasing taxes as the Nation edges slowly toward a modest recovery. But a national television news conference in which penetrating questions can be easily tossed aside represents a powerful pulpit.

What the President did not say in his speech to the homebuilders on the day before yesterday was that it was his administration that pushed through Congress $99 billion in new taxes last year. The President also did not mention that it was his administration that asked for and received a 5-cent-a-gallon gas tax—another whopping tax increase on the American people last year.

The administration that promised to balance the budget in 1984 is now faced with $200 billion deficits. The administration cannot alibi by saying that this is the Democrats' fault. The President got his program, and it has resulted in tremendous suffering across the Nation. I would have preferred fairness. As for myself, I prefer a cap on the July 1983 tax cut. This would mean that 9 out of every 10 taxpayers in my State would receive their full tax cut of 10 percent. Only the well-to-do would be held to a $500 cap. Everyone would receive a tax cut. This would not be a tax increase as the President would lead the people to believe.

So while the President talks about the need for bipartisanship, he undercuts his own party in the Senate in its belated efforts to work with Democrats and forge a budget compromise.

So I sense a tendency more and more to let the President get a budget passed by his own party. Of course, he indicates that he will not be too highly excited at this point if a budget resolution is not passed. It is the President who apparently has accepted $200 billion deficits as fashionable so long as the rich get richer and the middle class foots the bill.

Mr. President, I want to be conciliatory and bipartisan, but I think the administration has to stop fooling the American people from the pulpit of the Presidency. Does the President really want a bipartisan budget? Does he really want bipartisanship? I wonder. He talks of bipartisanship and then turns right around and kicks the Congress at every opportunity. That includes the Democrats and Republicans alike. He is kicking his own party around. It is going to be difficult for his own party to forge a bipartisan budget when he, the President, continues to be extremely partisan. I have been in Washington going on 31 years, and I have never seen as partisan a White House as we now have in Washington. So as I say, I want to be conciliatory. I want to work with our Republican friends, who differ in some ways

and on some items, but we do need to be bipartisan. I, for one, want to be, but the President is making it extremely difficult.

Mr. President, do I have any time remaining?

The PRESIDING OFFICER. The Senator has 4 minutes remaining.

Mr. BYRD. Mr. President, I do not see any Senator asking for time. I yield back the remainder of my time.

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

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

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

Mr. BYRD. Mr. President, I ask unanimous consent that I may retrieve the 4 minutes I returned.

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

AFGHANISTAN—THE BRUTAL SPRING

Mr. BYRD. Mr. President, late last month, the Soviet Union began its annual spring offensive in Afghanistan. Elsewhere in the world, spring is a time when life renews itself; a time of joy and rebirth following the dormancy of winter. But for the past 3 years, spring in Afghanistan has brought death and carnage as the Soviet forces have reached out into the countryside in a futile effort to extend their influence beyond the garrisoned city of Kabul.

Reports of this year's fighting reveal major increases in the extent and brutality of Soviet operations. Last month the New York Times carried a story that hundreds of Afghan civilians were slaughtered by Soviet air and ground attacks on major refugee routes. In the area of Herat, sources reported that Soviet bombers attacked 35 villages, killing 1,500 men, women, and children. The Wall Street Journal reported that these attacks appear to be part of a new Russian strategy to take their war of occupation to civilians in the countryside. The Russians, using incendiary bombs, lay seige to villages. They surround them, loot homes, burn crops, and demand that survivors agree to support the Moscow-led regime or flee the country. In this way, the Soviets create refugees in order to depopulate the countryside. In a classic Soviet approach to a problem, they reduce the number of people with whom they have to contend in order to make domination easier. This was the method used by Stalin in his own country, and the current Soviet leadership is exporting this same brand of ruthless butchery to suppress the Afghan population. By changing their tactics, using helicopter gunships and introducing new weapons to terrorize the civilian population, the Soviets hope to wipe out all who do not flee or submit to their tyranny in Afghanistan.

At the same time, the Soviets are engaged in a systematic attempt to strip Afghanistan of its natural resources. The Soviets take Afghan natural gas at a price 40 percent below the market rate. Because the meters for Soviet sales are controlled by the Russians, diplomatic sources report that the Soviets simply take what they want at no cost—a "thief's discount." In addition, Russian geologists have been brought into the country to explore other natural wealth. Already, Soviets are exploiting a 1.7 billion ton iron ore deposit northwest of Kabul. Coming from a state that depends on its natural resources for much of its wealth, I find the ravaging of Afghanistan's natural bounty by an occupying force a loathsome thing, offensive to international law and all principles of sovereignty and self-determination.

But the Soviets have been unable to destroy Afghanistan's greatest resource—the brave and indomitable people of that long-suffering country. They continue to fight in more than 80 percent of the country, often with weapons taken from the Soviets. They endure the Russians' brutal attacks, and return to fight again with increased ferocity.

Some experts estimate that the Russians would need nearly five times the number of troops they have thus far committed to dominate the Afghan people. But I do not believe that would be sufficient. As predictable as the return of spring, I am convinced that the people of Afghanistan will continue their relentless fight for freedom. Until the Soviets see the wisdom of cutting their losses and abiding by the U.N. resolutions which call for their withdrawal, they cannot expect an end to the war in Afghanistan; not this spring, and not any other.

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

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

WHY WE SHOULD NOT BUILD THE MX

Mr. PROXMIRE. Mr. President, a big issue that is to be before this body very soon is whether or not we should approve the MX missile as requested by the President. The Appropriations Committee has already acted favorably on that. I was one of those who voted against it, and I wish to say some of the reasons why.

In the first place, Mr. President, we have a perfectly appalling, astonishing capability of retaliating on the Soviet Union in the case the Soviet Union should attack us.

When you put together the survivability of our submarines, our bombers, and our other nuclear capability, it is clear that even if the Soviet Union should attack us with everything they have we would have the capacity to destroy their cities, destroy all significant military targets and kill probably half their people and leave the rest sick and dying.

Mr. President, I just wonder what we need in addition to that.

Futhermore, the MX is vulnerable, extraordinarily vulnerable. It is in a stationary target. It is an inviting target because it would have 10 warheads in one place. The Russians would know where it was. It would be a classic use-it-or-lose-it kind of a situation where they would know we would have to fire on warning and in this kind of an unstable world that kind of hair-trigger mistake is exactly the kind of situation we do not need and should not have.

Mr. President, as I indicated the MX adds nothing significant to our deterrent and there are far less costly ways, including improving our submarine deterrent, including improving our bomber deterrent, of providing an effective and convincing deterrent than the MX.

In addition, as a bargaining chip, that is the last argument that has always been made for a weapons system when they can think of nothing else. As a bargaining chip we would obviously have other assets that would be far better.

Mr. President, we should not have to spend $18 billion or $20 billion for weapons systems that are vulnerable and provocative.

Overall, its cost would certainly be excessive in view of its benefit.

Mr. President, first we already have ample, and I mean superample, nuclear capability to respond to any first-strike attack by the Soviet Union. We have absolutely invulnerable submarines and bombers with a nuclear wallop that could utterly destroy the Soviet Union as an organized society, level its cities, vaporize or incinerate or radioactively infest to the point of death most of their population, leave the sick and dying, and knock out virtually all of their military potential if they should attack.

It is hard to conceive of a more comprehensive and total devastation. If

this is not enough, what in the name of God do we want?

That constitutes one whale of a deterrent. Can anyone with a straight face contend that the MX really adds anything of military value to that overwhelming power? Of course not.

In the second place the standards we should apply to any new nuclear weapons system we adopt should be these: One, is it vulnerable? Two, is it threatening? Three, does it add significantly to our deterrent? Four, is there a better—less costly, more effective alternative? Five, can it be used as an effective bargaining chip? Six, will it make it easier or harder for us to adapt it to a nuclear freeze? And, seven, overall is its cost excessive or reasonable?

How does the MX stack up in meeting these standards? First, it is obviously and conspicuously vulnerable. And oh, how vulnerable. It is stationary, not mobile. It will be sitting in the same site on land, not beneath the ocean or in outer space until it is discovered. It carries not 1 warhead but 10. So with one strike at this MX the U.S.S.R. can knock out 10 warheads. What a tempting, irresistible target. So on a scale of 1 to 10 the MX scores a pitiful 1 on vulnerability. Vulnerable it is.

Second, the MX is certainly threatening for very conspicuous reasons. Here we have a weapons system that will very likely be useless in any kind of second strike. Sure it is designed for second strike purpose. But because it is so vulnerable, because the Soviets can and will target sufficient firepower at it to kill it, it must be fired on warning, on hair trigger and the warning may be in error. We must literally use it or lose it.

Third, it adds nothing to our deterrent. We have an immense naval deterrent, air deterrent, and we can build, if we must, single warhead mobile missiles that will give us a believeable land deterrent. Meanwhile we have our land-based, stationary Minuteman—the weakest and most vulnerable of our triad, but not significantly strengthened in any way by the MX. It adds to our capability of instituting a first strike, but simply to mention the possibility that this Nation would institute a first strike raises the hackles of virtually all the defenders of the MX as well as many other patriots. This country institute a first strike? Are you kidding? No way. The Russians, yes. The United States, never. So for all of us who truly believe the United States believes in peace this MX adds nothing of value.

Fourth, is there a better less costly alternative? As Browning says, let me count the ways. The cruise, the submarines, the bombers, the Midgetman. They go on, and on, and on. Some of these alternatives may not be worth building but they certainly offer a better alternative—less vulnerable, less threatening, more effective militarily than the MX. Can it be used as an effective bargaining chip? No. The U.S.S.R. already has far more of these warheads than we have. Senator McCLURE says they have eight times as many. What benefit to us to trade off for one-eighth of the Soviet land-based missile force. Obviously we would have to bargain other nuclear capability too, and the surrender of our MX would hardly provide a significant pot sweetener.

This bargaining chip argument can be made for any weapon, no matter how ridiculous, hair-trigger threatening it may be. It is a sure sign that the utility of a weapons system is feeble to the point of rigor mortis when they drag out the old bargaining chip argument that can make any turkey look good.

Will the MX made it easier or harder for us to adapt to a nuclear freeze? It will add nothing to our strength with a nuclear freeze and to the extent the nuclear freeze simply rigidified the status quo the MX would leave us with a hair-trigger threatening first-strike weapon that would increase instability and the danger of nuclear war. Overall its cost of $25 billion is obscene in view of its benefits which are virtually nonexistent.

GENOCIDE CONVENTION: JACOBO TIMERMAN'S STORY

Mr. PROXMIRE. Mr. President, on Sunday, May 22, NBC will air the film "Jacobo Timerman: Prisoner Without a Name, Cell Without a Number." This film dramatizes Timerman's widely acclaimed, but highly controversial, book detailing his ghastly experiences in Argentine jails. Timerman was imprisoned after his newspaper took up the cause of the 30,000 prisoners who had disappeared from Argentina's jails. NBC will broadcast this program on Jacobo Timerman, a remarkable man, who has devoted much of his life to exposing the terror suffered by Argentine prisoners, 30,000 people in prison.

The film delves very deeply into Jacobo Timerman's background, what he has done. It has some grizzly torture scenes. But it also shows the relationship of Timerman with his family.

Arthur Unger reviewed the film for the Christian Science Monitor and interviewed its producer, Linda Yellen. In his article, Unger comments that the film delves more deeply than the book into the private life of the Argentine publisher. While the book is basically a diary of Timerman's prison days, the television film concentrates on the effect that Timerman's actions had on his wife and their three sons. The film explores the delicate relationship between Timerman and his wife, a relationship that strengthens under adversity and then further strengthens under freedom.

The film does have its grizzly torture scenes which depict the brutal tactics that the Argentine authorities used to repress those who they considered a threat to their power. However, the focus of the film is not the extent of Timerman's suffering, but the exaltation of his survival and the victory of his spirit of freedom. In Unger's opinion, the film is even more successful than the book in providing a strong testament to the invincibility of human dignity.

By intertwining complex political problems with basic human relationships, Timerman, who cooperated fully in the film, and Yellen, hope to make their audience understand that human rights violations are serious and pervasive.

As Timerman says to reporters in the final scene:

> There are many many other men and women who are being imprisoned around the world today because of their beliefs. There is so much that is good and beautiful around us. But why is it that when we are faced with something ugly, our first inclination is to turn away, to be silent? We must hold our ground. These imprisoned ones can now only dream of freedom. But once you have seen them as I have seen them, you cannot turn away, you cannot be silent. We cannot be silent. . . .

Mr. President, the United States must not remain silent in the face of these human rights abuses. One way for us to strengthen our voice in the protest against grave human rights violations which occur all over the world is to ratify the Genocide Convention. This treaty protects the most basic human right, the right to live, by making genocide an international crime. Our failure to ratify this treaty weakens our ability to protect all groups, regardless of their race, religion, or creed, from the threat of annihilation.

I ask the Senate to demonstrate its support for oppressed groups everywhere by ratifying the Genocide Convention.

Mr. President, I think the U.S. Senate is in a position where we should hold our ground, not turn away, not be silent. We should speak up by ratifying the Genocide Convention. It has been pending before us for 32 years. We know the terrible inhumanity and cruelty that has been imposed on people not only by the Nazis and Hitler's Germany but continues to this day in Cambodia and elsewhere.

Mr. President, I plead with this body to ratify the Genocide Convention.

Mr. President, I thank the leader for giving me this time and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, Senator SPECTER's train has been delayed. Therefore, I ask unanimous consent that we now go into a period of routine morning business that will expire at 10:30 a.m. during that Senator SPECTER may take his time allocated to him under the special order and that the immigration bill be laid before the Senate at 10:30 a.m.

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

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

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

RECOGNITION OF SENATOR SPECTER

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

Mr. SPECTER. I thank the Chair.

S. 1307—MINING RECLAMATION RESERVE ACT OF 1983

Mr. SPECTER. Mr. President, I am today introducing the Mining Reclamation Reserve Act of 1983.

The necessity for this legislation results from the position of the Internal Revenue Service that it will not follow longstanding appellate court cases which permitted taxpayers to deduct the estimated costs of governmentally mandated reclamation expenses. In the 1950's, both the third and fourth circuit courts of appeal concluded that deductions for accrued reclamation expenses were allowable under existing tax law. These decisions held that reclamation expenses could be accrued if two criteria were satisfied: The fact of an obligation to undertake reclamation of the minesite had occurred and the amount of reclamation expenses could be reasonably estimated. However, the IRS has not followed these decisions. More recently, the Federal tax court in *Ohio River Collieries Co.* v. *Commissioner*, 77 T.C. No. 103, December 31, 1982, reached a similar result. The IRS did not appeal the tax court ruling nor did they agree to abide by it in future cases. Because there was no appeal, the question remains open. As a result, audit controversies and litigation will continue over the tax treatment of accrued reclamation expenses. The intent with this bill is to clarify existing law.

This bill will help resolve these controversies by making it clear that accrued reclamation expenses attributable to surface mining are deductible if reclamation is required by the Surface Mining Reclamation and Control Act of 1977 or other applicable State or Federal law. This treatment is entirely consistent with proper accrual method accounting rules for accrual basis taxpayers.

In addition, this bill would extend the same treatment for this expense to cash basis taxpayers. With this consistent and comprehensive tax treatment for all taxpayers who are obligated to undertake reclamation of their surface mine sites, I believe there are significant tax, economic, and social policy goals to be served by the bill.

By prescribing appropriate treatment of accruals, the tax savings would assist companies in financially satisfying their obligations to undertake environmentally sound reclamation projects. Further, the legislation would benefit companies engaged in the extraction of coal, our most abundant source of domestic energy, and thereby have a potentially favorable impact in attaining our national energy goals. Moreover, the bill would address the basic inequity of mandating by law the expenditure of substantial sums of money for reclamation without clearly recognizing the obligation imposed for income tax purposes. It does not seem reasonable for the Federal Government on the one hand to achieve desirable environmental goals but, on the other hand, to deny the existence of the obligation for purposes of its income tax laws.

It should be noted that under this bill the deduction for accrued reclamation expenditures can be recovered on a ratable method over the life of the mine. However, an argument has been made that reclamation expenditures, once reasonably determined, should be accrued and deducted at the time the ground is disturbed, since it is the act of disturbance which causes the obligation to be imposed.

Since we would want to consider existing practices of taxpayers accruing the obligation and the revenue implications, if any, of accruing and deducting the costs of reclamation at the time the obligation first arises, we reserve judgment on this issue at this time.

It is understood that interested persons, including taxpayers engaged in mining activities, will wish to make their views on this issue known during committee hearings. A broad review of this issue with Treasury officials participating will be helpful.

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

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

S. 1307

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Mining Reclamation Reserve Act of 1983".

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

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

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

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

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

"(c) ELECTION OF BENEFITS.—

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

"(2) SCOPE OF ELECTION.—If an election under this section is made with respect to any property, such election shall—

"(A) apply to all estimated expenses of surface mining land reclamation of the taxpayer with respect to such property, and

"(B) specify whether such estimated expenses are allocable to either—

"(i) minerals extracted by surface mining activities, or

"(ii) the portion of the property disturbed by surface mining.

"(3) WHEN ELECTION MAY BE MADE.—

"(A) WITHOUT CONSENT.—A taxpayer may, without the consent of the Secretary, make an election under this section with respect to any property for first taxable year—

"(i) which ends after the date of the enactment of the Mining Reclamation Reserve Act of 1983; and

"(ii) for which there are estimated expenses of surface mining land reclamation with respect to such property.

Such an election shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

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

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

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

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

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

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

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

"(C) is allocable to either—

"(i) minerals extracted by surface mining activities which occur before the close of the taxable year, or

"(ii) the portion of the property disturbed by surface mining which occurs before the close of the taxable year.

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

"(A) which is submitted pursuant to the provisions of section 508 or 511 of the Surface Mining Control and Reclamation Act of 1977 (as in effect on January 1, 1983) and which is part of a surface mining and reclamation permit granted under the provisions of title V of such Act (as so in effect), or

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

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

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

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

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

"(f) SPECIAL RULES.—

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

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

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

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

(c) EFFECTIVE DATE; SPECIAL RULE.—

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

(2) SPECIAL RULE.—If—

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

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

then the taxpayer may make an election under this paragraph to have the method of accounting which he used for such continuous period with respect to such property treated as a valid method of accounting for purposes of the Internal Revenue Code of 1954. The taxpayer may make an election under this paragraph with respect to only one such continuous period at such time and in such manner as the Secretary of the Treasury shall by regulations prescribe.

S. 1308—DEREGULATION OF CABLE TELEVISION FRANCHISE FEES

Mr. SPECTER. Mr. President, I rise today to reintroduce a bill to eliminate the authority of the Federal Communications Commission to regulate the franchise fee which a State, political subdivision, or other governmental entity may impose in connection with any franchise for cable television. This legislation was initially introduced on December 11, 1981.

I believe, Mr. President, the Congress is dedicated to deregulation and in particular to freeing local governments from excessive Federal regulation. This legislation is a logical extension of that principle. Certainly, we do not wish to limit local government's ability to secure funds at a time when the Federal Government is instituting necessary cuts in aid, thereby placing stress on local budgets.

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

The present rule, at least by inference, assumes that the FCC, an appointed Commission, has the wisdom to set limits for franchise rates for local governments and their communities, and elected mayors and councils do not have the wisdom to make such decisions. Any argument that the industry needs this type of Federal control to aid its growth is refuted by the expansion forecast by nearly all observers of the industry. Recently, the Senate Commerce, Science, and Transportation Committee approved legislation to set the franchise fee limit at 3 percent. A compromise was subsequently made to set the limit at 5 percent and this legislation is now on the Senate calendar.

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

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

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

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

S. 1308

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

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

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

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276(d)-276(g), as amended, appoints the Senator from Louisiana (Mr. JOHNSTON) as a member of the Senate delegation to the Canada-United States Interparliamentary Group, to be held in Kenora, Canada, on June 16-20, 1983.

THE IMPACT OF TVA'S NATIONAL FERTILIZER PROGRAM

Mr. STENNIS. Mr. President, since the beginning of the TVA fertilizer program in 1935, the accumulated benefit to the Nation has far exceeded the program's total cost. Present worth of benefits from the adoption of high-analysis fertilizers—projected to 1990—is almost $49 billion, and present worth of savings from process development and improvement is $8.5 billion. A total program cost through 1981 from Federal appropriations was $413 million. When compounded at a 10-percent rate, present value of program cost is $2.79 billion. The partial-benefit/full-cost ratio for the TVA fertilizer program is $20.50 in benefits for each dollar of program cost.

Considering historical or current discount rates, TVA's fertilizer program has been a wise investment—even based on a partial accounting of benefits. Unquantified benefits enhance the wisdom of the original decision.

The TVA national fertilizer program has been a strong force in developing and introducing new technology and has stimulated sweeping changes in the U.S. fertilizer industry. It has also stimulated dramatic advances in the production capability of U.S. farmers. The TVA fertilizer program is one of the most effective research, development, and introduction programs of any government agency. Its research is long term, high risk, and yields a high return. The program's strength is in its comprehensive approach which focuses a broad range of expertise on the challenge of solving complex problems. This vastly improves the efficiency of R&D and technology transfer.

Before the 1930's, advances in fertilizer technology in the United States depended largely on technology transferred from European countries, primariy Germany and England. These countries permitted the forming of fertilizer cartels making possible high rates of return on R&D investments. As U.S. developed technology became available, the power of the technology became available, the power of the cartel, with respect to fertilizer production and processes, declined.

Today the U.S. fertilizer industry is based on U.S. developed technology except for foreign innovations adopted and introduced by the U.S. equipment industry. Whereas the United States depended on foreign technology through the 1930's, it is now the world's principal center of fertilizer technology, largely because of TVA. The European fertilizer industry is relying more on TVA's innovations than on its own.

In the early 1930's the TVA program was oriented toward stimulating fertilizer use to help reverse declining productivity of soils in the Southeastern United States. The program was broadened in the 1950's and 1960's to include work with private fertilizer companies and farmer cooperatives throughout the Nation. This led to increased technical competence in the industry and better service for the American farmer. It also quickened the flow of TVA technology and new fertilizers to the industry and farmers. The program today creates and rapidly transfers a wide range of technical advances and innovations into the economy.

The TVA program benefits all aspects of fertilizer production and distribution by the fertilizer industry and its use by the Nation's farmers. These include benefits from: production and distribution savings from lower cost production technology and lower shipping costs of higher analysis fertilizers; fertilizer use expansion; new onfarm use systems; and stimulation of competition.

TVA's fertilizer program is in the forefront in helping the fertilizer industry and U.S. farmers meet the need for increasing supplies of low-cost food from diminishing and expensive resources. It will continue to develop technology and expand the basic understanding of complex soil-fertilizer interactions leading to more efficient fertilizers and their use.

UNRELIABLE CHEMICAL TEST RESULTS

Mr. SARBANES. Mr. President, I wanted to call the attention of my colleagues to an article and subsequent editorial that have appeared recently in the New York Times. The two items underscore the problem of obtaining reliable test results on chemicals submitted for registration as new pesticides by the EPA. As outlined in these press accounts, an EPA study has found that two-thirds of the tests conducted by one private laboratory in connection with registration of new chemicals were invalid. The 212 chemicals tested by this one laboratory accounted for 15 percent of all chemicals registered by the EPA.

I have introduced legislation, S. 780, to require that EPA maintain an in-house facility to verify the test results regarding biological effects of chemicals submitted for registration. For the past year the EPA has not had such a facility. It seems clear to me, especially in light of this recent revelation, that a Government facility for verifying test results and for spot checking the claims being presented by manufacturers is absolutely essential.

I urge my colleagues to carefully review the two press items which I ask unanimous consent to have printed in the RECORD.

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

[From the New York Times, May 12, 1983]

EPA FAULTS TESTS ON 200 PESTICIDES—WORK BY A LABORATORY INVOLVES CHEMICALS NOW ON MARKET

(By Philip Shabecoff)

WASHINGTON, May 11.—A study by the Environmental Protection Agency has found that two-thirds of all tests conducted by a big private research laboratory to establish the safety of pesticides and herbicides now on the market are scientifically invalid.

The report, which took five years to prepare, finds that virtually all 212 pesticides and herbicides cleared by Industrial Bio-Test Laboratories of Northbrook, Ill., were subjected to at least one invalid test. Many of the pesticides and herbicides are in wide use, including Captan, Paraquat, Lasso, Machete, Orthene and Carbofuran.

Agency officials said the report raised what one of them called "big questions" about the chemicals tested by the company that are still on the market.

But the officials, who asked not to be identified, said the fact that the tests were invalid did not necessarily mean the chemicals posed a threat to human health or safety. It did mean, they said, that new information had to be obtained about the health effects.

The data produced by the laboratory were used by manufacturers to gain Government approval for marketing the chemicals.

The 212 chemicals represent 15 percent of all chemicals registered by the E.P.A., so the invalid tests of the Chicago laboratory could pose a significant problem. There are 44 chemical manufacturing companies involved, many of them major ones such as DuPont, Dow, Monsanto, Ciba Geigy, Olin, Velsicol, and Hercules.

The test were conducted to see if the chemicals posed threats of cancer, birth defects, genetic damage or other health problems.

The environmental agency officials said the agency did not have authority under the Federal Insecticide, Fungicide and Rodenticide Act to order those chemicals that were not adequately tested off the market. That cannot be done until the agency has made a finding that use of the chemicals poses a risk of "unreasonably adverse effects."

ALL WE HAVE ARE QUESTION MARKS

"All we have now are question marks," an official said.

The officials remarked, however, that the flawed testing at least raised the possibility that some of the chemicals could present unknown hazards to public health.

The officials said they had not finished evaluating their findings about the Industrial Bio-Test data and did not know how much more information they would need. They said that where the invalid tests were crucial to the information needed to validate the safety of the substances, the chemical manufacturers would be asked to submit new data in support of keeping them on the market.

Four former directors of Industrial Bio-Test are now on trial in Federal District Court in Chicago on charges of misrepresenting data used by the chemical manufacturers to obtain Government approval for the chemicals.

The 212 chemicals tested by the Chicago laboratory are being examined by the environmental agency in cooperation with the Government of Canada, where many of the pesticides and herbicides are also used. The Ottawa Government has refused to permit the use of 16 of the chemicals until questions raised by the Industrial Bio-Test problems are resolved.

The World Health Organization is also examining the implications of the invalid tests.

But the E.P.A. officials said that the fact that the chemicals were subjected to one or more invalid tests by Industrial Bio-Test did not necessarily present a serious problem. In many cases, there was a wide base of data from other sources that provided sufficient assurances of their safety.

On the other hand, even if past tests on chemicals were scientifically valid, it does not mean they were adequate, they said, explaining that new standards often required different tests.

A number of companies voluntarily submitted new data to the agency after the allegations about the laboratory were made public, the officials said.

FAULTY PROCEDURES CHARGED

The report says only that the tests were invalid because they failed to adhere to accepted scientific procedures. It does not address allegations brought at the Chicago trial that test results presented by the laboratory were fraudulent.

Government lawyers have charged that the company falsified such things as the number of deaths among test animals that were subjected to the chemicals.

The E.P.A. officials said they would have reviewed most of the chemicals tested by Industrial Bio-Test in their normal routine of administering the pesticide law. But their five-year concentration on the laboratory's tests was out of the ordinary, they said.

One official said the pattern of invalid tests found at the Chicago laboratory was "unprecedented" and had "shocked" toxicologists around the country.

The existence of the E.P.A. report was mentioned at the Chicago trial. A copy of it was given to a reporter who requested it.

[From the New York Times, May 16, 1983]

THE SCANDAL IN CHEMICAL TESTING

There is an appalling rent in the safety net that protects the public from hazardous chemicals. New compounds must be tested by law, but what if those hired to do the testing cut corners and fabricate the results? According to a Government study released during a trial now under way in Chicago, 15 percent of all the pesticides on the market have been certified safe on the basis of one or more tests now thought to be invalid.

The tests in question were performed by Industrial Bio-Test Laboratories, four of whose former executives stand accused of providing false data to chemical companies. The companies presented the data to the Government to prove that their products were safe for market.

The charges against I.B.T. are alarming because of the enormous number of different chemicals it tested. The Environmental Protection Agency's study examined I.B.T.'s data pesticides. So far 66 percent of the tests have been judged invalid, only 19 percent acceptable.

I.B.T. has also tested herbicides, food additives, cosmetics, drugs and other products now on the market. The public will be at risk during the time it takes to sort out which of these products were wrongly or prematurely judged safe.

According to an article in The Amicus Journal based on grand jury testimony disclosed by I.B.T.'s attorneys, many of I.B.T.'s test animals were housed in a water-logged room, known as "the Swamp": "Dead rats and mice, technicians later told Federal investigators, decomposed so rapidly in the Swamp that their bodies oozed through wire cage bottoms and lay in purple puddles on the dropping trays." Mortality was so high that it was impossible in some cases to assess the effect of the chemical under test, the article says.

I.B.T. tested products for many of the country's major chemical companies. How then could the scandal remain undetected for so long? Despite the apparent extent of the problem, many who relied on I.B.T.'s services failed to notice anything amiss. The problem was discovered only by accident, when a Government official looking for something else pulled out a file of I.B.T. data by mistake.

At the Food and Durg Administration, a scientific auditing unit quite regularly turns up false or suspicious data. Since only the most carelessly fabricated data are easy to detect, this may be the tip of the iceberg. The Environmental Protection Agency, however, has no such unit. As a large consumer of such product test data, it should institute one without delay, and appoint enough toxicologists to assure quality.

A stronger measure would be to give chemical companies an institutional responsibility for the test results they present. Instead of being contracted out to private laboratories, the safety tests might be conducted at an institute supported by the industry, perhaps with Government participation. Such an institute would have a reputation to protect, and the independence to report any safety problems.

Test results might not flow as fast and freely as those from compliant private testers. But the public and the chemical industry now share a clear interest in avoiding another scandal.

COMMENCEMENT ADDRESS OF HOUSING AND URBAN DEVELOPMENT SECRETARY SAMUEL R. PIERCE, JR., AT VOORHEES COLLEGE, DENMARK, S.C.

Mr. THURMOND. Mr. President, on May 8, 1983, I had the distinct pleasure and privilege of introducing the esteemed Secretary of Housing and Urban Development, the Honorable Samuel R. Pierce, Jr., at the Voorhees College commencement exercises in Denmark, S.C.

As the keynote speaker at this ceremony, Secretary Pierce delivered a superb speech, in which he counseled and challenged the Voorhees graduates on the pursuit of excellence. In his inspiring development of this theme of excellence, Secretary Pierce reminded his audience that completion of a formal education should, in reality, be only the beginning of a continuing quest for further achievement, knowledge, and distinction.

I commend the distinguished Secretary for challenging the Voorhees graduates and, indeed, all of us, to push our performances to the boundaries of individual ability and to strive for excellence in every undertaking. His remarks were particularly timely and appropriate in light of some of the recent reports and evaluations concerning current inadequacies in the American educational system.

Mr. President, Secretary Pierce is an outstanding example of one who practices what he preaches. As my colleagues are aware, he brought with him to HUD, where he has performed capably and with great distinction, excellent credentials as an attorney and an administrator.

Since graduating from Cornell University and its law school, he has been a practicing attorney, a State judge, and general counsel to the Treasury Department. Diligence and integrity in the performance of his duties have become his trademark in whatever capacity he labored. In light of these accomplishments, Secretary Pierce was certainly deserving of the honorary degree of doctorate of laws and the Outstanding Service Award conferred on him by Voorhees College. It is a great privilege for one of the fine institutions of higher education in our State to claim him as an honorary member of its class of 1983.

Mr. President, I also wish to take this opportunity to salute all the 1983 graduates of Voorhees College and wish them the best of luck as they continue down the road to excellence. Voorhees has established itself as one of the preeminent historically black colleges in the Nation. We are proud of the fine job its current president, Dr. George Thomas, the Voorhees faculty, and staff are doing to provide a high-quality educational experience to young people today.

Mr. President, I ask unanimous consent that the remarks of Secretary Pierce at the Voorhees commencement ceremony be printed in the RECORD.

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

REMARKS PREPARED FOR DELIVERY BY SAMUEL R. PIERCE, JR., SECRETARY OF HOUSING AND URBAN DEVELOPMENT

President Thomas, members of the faculty and administration, new graduates, students, and friends. It is a pleasure to be here today. This is a significant occasion in the lives of you who are graduating from Voorhees College, and I appreciate the opportunity to play a part in it.

A commencement is an occasion for looking ahead. You are about to embark on the adventure of living in the adult world—an adventure full of risk and disappointment, but also full of opportunity, hope, and exciting challenges. This is particularly true in the era in which we live. I don't think there has ever been a period in history when there have been so many challenges and opportunities for young people—and especially for Black youth in America.

The future is indeed full of promise, but what you do with it will be up to you. No one—not your parents, not your teachers or professors, and certainly not I—can guide your steps from this point on. Those close to you will be able to offer advice, but only you will be able to chart the course of your lives. You will have to make opportunities for yourselves, and be prepared to take advantage of those which are presented to you.

Your experience at Voorhees College, with its strong commitment to excellence and achievement, will have given you much of the grounding you need to meet the challenges of the future. After four years on this campus, you know well enough what is meant by "excellence"—but you may not have thought of it in terms of its role in your adult life; and that is what I would like to discuss with you today.

Excellence is an end in itself, of course. To excel at something is enormously satisfying, whether it be an academic subject or an athletic pursuit. An artist or composer creates primarily for the satisfaction, the joy, of excellence in creation. But excellence is also a means to other ends. Academic excellence, for example, creates opportunities: to attend graduate school, to win out over other applicants for the best jobs. Indeed, you will find that throughout life, excellence creates opportunities of all sorts. It makes possible significant achievement in any discipline or endeavor.

The truth is that the better prepared you are, the more opportunities will be available to you—and the better able you will be to take advantage of them. It is the surest guarantee you can have that the opportunities will be there, and that you will have what it takes to benefit from them.

Now, excellence is a surprisingly democratic quality. We tend to think of it in connection with Nobel prize-winning scientists, or astronauts, or perhaps professional athletes. But it can also be found among assembly line workers, rock singers, insurance agents, teachers, doctors, or lawyers. James Bryant Conant, a noted educator, once observed that "each honest calling . . . has its own aristocracy based on excellence."

In other words, it doesn't matter what profession, business, or trade you may pursue. You can achieve excellence in anything—if you are willing to make the effort. An ancient philosopher once said that "the gift of excellence . . . is given to few men." That's true—a few women, too. Most of us have to work for it, and work hard.

Your college education has taken you on the first steps down the path to excellence. To be sure, excellence can be achieved without a college degree—and not every graduate will achieve it. But the education you have received at Voorhees, far more than the degree that proclaims it, will serve you well in your quest.

You must guard against the natural inclination, however, once you have left this campus, to let your mind get lazy. The mind is a muscle, and like any other it needs regular exercise. Read, think, pick up fresh insights, challenge your mind every day of your life. You will naturally concentrate on your chosen field of professional endeavor—and so you should, if you are to achieve excellence in your occupation. But don't ever hesitate to broaden your interests and your knowledge. Never be afraid to learn something, new, no matter how unrelated it may be to your major concerns.

Don't trust your future to luck. Random luck may play a role, but you'd be surprised how seldom it really does. In my own life, I've found that the harder I work, the luckier I get. Looking for achievement by pure luck is like playing a lottery: you may win, but the odds are heavily against it. Besides, your accomplishment will mean more to you if you know how hard you had to work for it.

In your quest for excellence, make demands on yourself that are greater than anyone else is likely to expect of you. Push yourself hard, and persevere. If you require more of yourself than anyone else asks, you may occasionally fail to meet your own standards—but very seldom will other people find your performance disappointing.

Above all, never permit yourself to be held back by the conviction that the odds are against you, that circumstances don't favor your efforts. Make your own circumstances if you don't like the ones you see around you. Don't let yourself believe that your excellence won't be recognized or appreciated because there is still racial prejudice and discrimination in the world. It is regrettably true that such evils still exist. But your generation will find them far less troublesome than previous generations.

If you want an example of someone fighting against enormous odds—far greater than anything you are ever likely to encounter—to accomplish a goal, you need look no further than the college from which you are now graduating. Elizabeth Evelyn Wright, who as you know founded the educational institution that is now Voorhees College, had so many strikes against her at the outset that she could have been readily forgiven for abandoning her goal. She was Black, at a time when there was far more prejudice and discrimination that exist today. She was a Southerner, in an era when the raw wounds of the Civil War had not yet healed. And she was a woman, before women had even won the right to vote—much less been "liberated."

Yet Elizabeth Wright ignored the odds, and changed or overcame the circumstances that stood in her way. She demonstrated excellence in intellect, in determination, and in principle. She made her opportunities and took full advantage of them—and she succeeded. Voorhees College—your alma mater—exists today because of the excellence demonstrated by Elizabeth Evelyn Wright.

Booker T. Washington was another Black who overcame the odds through excellence—and perseverance. Washington spent much of his time raising funds for Tuskegee Institute and other causes, which required him to gain access to wealthy members of the White community. He sometimes went about that in ingenious ways. The story is told that he used to visit one of the most prestigious New York hotels and take a seat in the lobby. While there, he arranged to have a friend telephone him every half hour, so that he would have to be paged by the hotel desk. After the hotel's wealthy White patrons had heard Booker T. Washington being paged several times, some of them would become curious about who this apparently important man might be—and would go up and introduce themselves. Washington would take advantage of the chance that gave him to ask for a contribution to Tuskegee—and he often got a large one for his efforts.

Fortunately, few if any of you will ever face the kind of odds that Elizabeth Wright or Booker Washington had to overcome. In fact, if you achieve true excellence in whatever endeavor you may choose as your life's work, I would venture to predict that the obstacles in your path will be relatively few, and small. Excellence is such a scarce, sought after, and appreciated quality that it seldom remains hidden. Once identified, it is usually well rewarded—no matter, today, in what color package it comes.

The rewards of excellence are many. First, as I have noted, is opportunity. By this I mean that the demonstration of excellence leads very often to the chance to achieve—a prerequisite to accomplishment itself. You do well in college, and you may be offered a good first job; you distinguish yourself by an excellent performance there, and you are either promoted or offered a better position with another organization. You write an excellent novel or paint an outstanding portrait, and you are rewarded with contracts for additional books or new artistic commissions.

Another reward for excellence is accomplishment or achievement. By that I mean something concrete—an invention, a breakthrough, an original contribution to the body of knowledge and understanding, a work of art or literature. The examples are as diverse as the range of human activity.

A Black man, Dr. George Washington Carver, developed uses for the common peanut that created an industry in the South and a new source of protein for the world. Thomas Edison perfected the electric light bulb and invented the forerunners of many of the appliances and entertainment devices we take for granted today. Dr. Jonas Salk developed the vaccine that has nearly wiped out polio, a disease that not long ago robbed thousands of their lives or their mobility. Another Black, Dr. Ralph Bunche, effectively mediated a major diplomatic crisis in the Middle East and rose to the second-highest diplomatic post at the United Nations. His efforts in the Middle East, incidentally, won him the Nobel Peace Prize in 1950.

The Reverend Martin Luther King, Jr., and a host of others led a movement for civil rights which has radically altered American life and opened the door to opportunity for millions. The worlds of art, drama, music, and athletics provide countless examples of achievement by Blacks and Whites alike; so many that, if I were to begin to list even the most notable, I would still be here when the Class of 1984 graduates.

Then there are the financial rewards. Very often, although not inevitably, excellence in our society is rewarded with money: a salary, a contract or commission, an award like the Pulitzer or Nobel prizes. Let us be quite clear on this: there is absolutely noth-

ing wrong with monetary reward for excellence or achievement. It is natural and reasonable that a top professional athlete should earn more than a second-rater, or that an outstanding scientist should be awarded a prize that includes cash as well as honor.

But financial rewards should not become an end in themselves. If your goal is merely to make money, it is probable that you will be concentrating too hard on that objective to spend time and energy achieving excellence. Nor are monetary rewards a consistent measure of excellence: mediocre or even poor performance in some endeavors can still reap impressive rewards; while true excellence may earn only rewards that are not financial. In some cases, too—and here I am thinking of the humanitarian service of an Albert Schweitzer or a Mother Teresa—there is no financial measurement that can be applied at all.

Perhaps the greatest reward for excellence, however, is one I have already mentioned: self-satisfaction. Few things in life are so gratifying as the knowledge that one has achieved a pinnacle in performance—that one has made, and met, the highest possible demands on one's self. If you honestly know that about yourself, the recognition of the world at large will be of only secondary importance.

The years you have spent at Voorhees College, an institution committed to the pursuit of excellence, have prepared you well for this continuing quest. Your generation comes of age at a time when the possibilities for the future are virtually unlimited. The world is still a long way from perfect, and I fear it always will be—because humans are imperfect beings. But your horizons need be limited only by your own vision and determination—and by the degree of commitment to excellence that you carry forth from Voorhees into your adult life.

I congratulate you on your commencement, and I wish you well in the years to come.

NO U.S. BAILOUT OF CHILE

Mr. KENNEDY. Mr. President, I wish to express my concern over the report published in the May 11 Wall Street Journal indicating that U.S. monetary authorities are considering arrangements to provide credits to Chile to help it cover payments on its $17 billion foreign debt. The article, which I ask be published in the RECORD at the conclusion of my remarks, indicates that the administration has already approved $144 million in Commodity Credit Corporation guarantees to be used for the purchase of U.S commodities, as well as $50 million through the Export-Import Bank to finance U.S.-made products.

I do not believe that this country should take on the responsibility of bailing out a military regime which betrayed Chile's long tradition of democratic rule and has been censured repeatedly by international organizations for gross human rights violations.

The clear intention of Congress is that any major change in our assistance relationship with Chile should be approached with full congressional cooperation. There are statutory prohibitions against U.S. aid to any country with a consistent pattern of human rights abuses. In the case of security assistance, there is specific legislation against aid to Chile until that country's government makes significant human rights progress, refrains from aiding international terrorism, and brings to justice those indicted by a U.S. grand jury in connection with the 1976 murders in Washington of former Chilean Foreign Minister Orlando Letelier and his associate, Ronni Moffitt.

Since those laws were enacted, there has been no prosecution of the assassins of Dr. Letelier and Ms. Moffitt by the authorities. In fact, the Chilean Government has ignored a $5 million damage judgment against it in favor of the Letelier and Moffitt families.

Inside Chile, the human rights situation has not improved, but has continued to deteriorate. The Chilean Commission on Human Rights reports that 1982 was the worst recent year in Chile, with nearly twice as many political arrests as occurred during 1981. The Pinochet regime has rejected appeals from opposition parties to restore democracy through free elections, and instead is cracking down harder than ever on dissent. Last week two people were reported killed and 200 arrested during a nonviolent national demonstration called by six labor unions to appeal for dialog between the regime and advocates of greater political freedom. During the weekend, Chilean troops, brandishing submachine guns, seized an estimated 1,000 persons in predawn raids, taking them to soccer stadiums and police stations in apparent retaliation for this growing public protest against the Pinochet military regime.

As if we needed any new confirmation of the Pinochet regime's outlaw status, the Washington Post reported May 11 that Federal grand jury indictments have been handed down against arms brokers who have allegedly conspired with the Chilean authorities to circumvent the laws enacted by this Congress prohibiting arms assistance to Chile. The defendants named in the indictment are American citizens and corporations, but officers of the purchasing division of the Chilean Naval Mission have been named as unindicted coconspirators. The charging paragraph of the indictment indicates that, between early 1977 and mid-1982, the defendents—

unlawfully, knowingly, willfully, and intentionally did combine, conspire, confederate, and agree together with each and with diverse other persons whose names are to the Grand Jury unknown, to export military munitions to Chile and to make false export declarations to the United States Customs Service and Commerce Department in violation of the laws of the United States * * *.

The indictment states that, as part of this conspiracy, the defendants—

would and did purchase, sell, and cause to be delivered to the Chilean Naval Mission or its agents items on the Munitions List without obtaining a properly validated export license from the Office of Munitions of the United States Department of State.

I ask that the Washington Post article on this indictment be published in the RECORD as well, at the conclusion of my remarks.

The possibility that the Pinochet regime has been engaged in a systematic and prolonged international effort to circumvent U.S. law has grave, far-reaching implications. It should be crystal clear to anyone that there should be no American assistance whatever to Chile until this matter has been resolved by the appropriate legal processes.

This is hardly a government whose conduct merits an American vote of confidence at this time. Rather, we should reassert our continuing censure of the Pinochet regime for human rights abuse, involvement in international terrorism, and flaunting of American law and legal judgments. Above all, we should not extend a financial lifeline to a regime nearing economic, as well as moral, bankruptcy.

On May 4, Senator PROXMIRE joined me in writing to Secretary of the Treasury Donald T. Regan to express our concern over reports that the administration is considering emergency credits to Chile to help it pay it debts. I am sure that many of our colleagues share the concern we expressed in that letter, which I am requesting also be published in the RECORD.

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

[From the Wall Street Journal, May 11, 1983]

CHILEANS REQUEST $200 MILLION LOAN TO MEET IMF GOALS

Chile has asked the Bank for International Settlements, the Swiss-based central bank for central banks, for a $200 million loan.

The request is part of an effort to raise $400 million to $500 million in short-term funds to help the country get back on track with an economic program stipulated under its agreement with the International Monetary Fund.

A group of 12 international banks advising the country on its foreign debt has agreed to provide about $180 million of the required short-term financing. The rest of the funds could come through some arrangement with U.S. monetary authorities, bankers say.

In a gesture of financial support for the cash-strapped country, U.S. monetary authorities recently wired Chile's creditor banks that the U.S. government has approved $144 million in Commodity Credit Corp. guarantees to be used for the purchase of U.S. commodities, as well as $50 million through the U.S. Export-Import Bank to finance U.S.-made products.

Chile is currently in the midst of getting its creditor banks to stretch out payments on part of its $17 billion foreign debt. The IMF has indicated it is prepared to grant

Chile a waiver on some of its economic targets on the expectation Chile will be able to comply with the program later this year.

[From the Washington Post, May 11, 1983]

BETHESDA BROKER CHARGED WITH ILLEGAL SALE OF ARMS

(By Michael Isikoff)

A Bethesda firm that serves as a broker in the international arms market has been indicted by a federal grand jury on charges of selling military equipment to the Chilean government in violation of U.S. export laws.

The 21-count indictment against United Aviations Industries Inc. and its two principal officers were said by federal officials to be part of a broader investigation into efforts by the regime of Gen. Augusto Pinochet to circumvent an American arms embargo imposed in 1976 after reports of widespread human rights abuses there and Chilean complicity in the murder of Orlando Letelier, the country's former ambassador to the United States.

The indictment charges that United Aviations President Robert Poisson of Chevy Chase and Vice President Anthony Villa of Oxon Hill conspired with two members of the Chilean naval mission in Washington to disguise the shipment of parts for torpedoes, launchers, depth charges, guns and sonar equipment. The shipments were "destined for the Chilean navy," according to the indictment handed up Monday by a grand jury in Norfolk.

Alfred Swersky, lawyer for United Aviations and Poisson, said yesterday that the Chilean government "is and was a customer" of the company, but said that his clients have violated no laws. Bryan P. Gettings, a lawyer for Villa, said his client also denied wrongdoing.

He estimated that the total value of the arms shipments was not more than $50,000. "This is not about a high technology drain to the Russians," Gettings said, "This is peanuts."

Jerry Friedlander, a Washington lawyer for the Chilean government, said his client would have no comment until it has an opportunity to review the charges. The two Chilean navy officers, Capt. Jorege Acuna and Cmdr. Douglas Ashcroft, both of whom had headed the naval mission's purchasing department, were named as unindicted coconspirators. Both are in Chile, Friedlander said.

United Aviations was described by Swersky and others yesterday as a small international arms broker that arranges sales between foreign government purchasers and U.S. weapons suppliers. Swersky said the firm consisted of only five employes, "three of whom are relatives." In addition to Poisson and Villa, he said, the employes include Villa's wife, Villa's daughter and a secretary.

The investigation into United Aviations grew out of Operations Exodus, a Reagan administration program to crack down on the illegal export of critical technology, principally to the Soviet Union and its allies. Recently, officials said, the Customs Service and other agencies involved in Exodus have turned up evidence of Chilean arms purchases.

Late last year, the U.S. attorney's office in Alexandria seized documents relating to Chilean weapons shipments after searching the offices of the Chilean air force mission, which was renting space from an exporting firm in Arlington, officials said yesterday.

The indictment outlines a complicated series of alleged transactions by United Aviations and the Chileans intended to disguise prohibited weapons shipments that were executed through a variety of suppliers, exporters and middlemen. The alleged purchases were begun by the two Chilean navy officers in February 1977, shortly after the embargo went into effect, and continued until July 1982, according to the indictment.

Because the military items were banned by State Department for export to Chile, the indictment charges that United Aviations furnished false or misleading information about the shipments on export declarations.

The indictment specified how one such shipment allegedly occurred. United Aviations ordered a $25,000 purchase of sonar equipment from the Ford Aerospoace and Communications Corp. in Norfolk on May 5, 1981. The cargo was shipped from Norfolk to a Northern Virginia exporting firm. It was seized by customs officials at John F. Kennedy International Airport in New York while being loaded onto a Lan-Chile Air cargo plane on May 27, 1982. The sonar parts had been listed on shipping documents as aircraft parts.

(Also contributing to this article was Washington Post staff writer Al Kamen.)

U.S. SENATE,
Washington, D.C., May 4, 1983.

Hon. DONALD T. REGAN,
Secretary of the Treasury,
Washington, D.C.

DEAR SECRETARY REGAN: We are deeply concerned over reports that the Administration is considering granting Chile a $400 million bridge loan from the Exchange Stabilization Fund, or helping to organize an emergency loan to the Chilean regime through international institutions. This credit would be applied against interest owed by Chile on foreign loans which are currently the subject of rescheduling negotiations with creditor banks.

As you know, U.S. military and economic assistance to Chile was originally curtailed in the International Security Assistance and Arms Export Control Act of 1976. The International Security and Development Cooperation Act of 1981 continues to prohibit security assistance to Chile until the President has certified to Congress that (1) the Government of Chile has made significant progress in complying with internationally recognized principles of human rights; (2) the Government of Chile is not aiding or abetting international terrorism; and (3) the Government of Chile has taken appropriate steps to bring to justice by all legal means available those indicted by a United States grand jury in connection with the murders of Orlando Letelier and Ronni Moffitt in Washington, D.C. in 1976.

It is the clear intention of Congress that any major change in our assistance relationship with Chile should be approached with full Congressional cooperation.

There has been no significant change in the situation in Chile since those laws were enacted. Rather than making the progress which Congress had sought to encourage, the human rights situation in Chile has continued to deteriorate. The Chilean Commission on Human Rights reports that 1982 was the worst recent year in Chile, with nearly twice as many political arrests as occurred during 1981. Nearly 40,000 Chileans remain in exile abroad, and arbitrary detention, torture, internal exile and banishment remain common practices.

The regime in power in Santiago was found by a U.S. Federal District Court in 1979 to be responsible for the Letelier-Moffitt terrorist murders on the streets of Washington. The court ordered the Pinochet Government to pay the Letelier and Moffitt families $5 million in damages, a judgment which the Chilean regime continues to ignore. Administration spokesmen have acknowledged in public testimony that the Government of Chile has failed to investigate fully or prosecute those implicated in these assassinations.

In our view, it would be a travesty of justice for the United States to offer a $400 million bailout to the Pinochet regime—or to the private bankers who stepped in to support that repressive regime when U.S. aid was denied.

Such a bailout would also violate both the spirit and the letter of U.S. law, including the specific legislation on Chile enacted by Congress, and explicit provisions of the Foreign Assistance Act (Sections 116 and 502B), which make clear that U.S. assistance shall not be extended to countries which have a consistent pattern of human rights violations.

In addition, we believe that any such bailout would violate the clear criteria in the law before utilizing the Exchange Stabilization Fund.

For these reasons, we oppose any such bridge loan to Chile, and we urge the administration to reject it.

We would appreciate receiving full information on the status of this reported U.S. loan, together with your assurances that no credit of this magnitude will be authorized without full consultations, in advance, with the Congress.

Sincerely,

EDWARD M. KENNEDY.
WILLIAM PROXMIRE.

CONCLUSION OF MORNING BUSINESS

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

IMMIGRATION REFORM AND CONTROL ACT OF 1983

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

The assistant legislative clerk read as follows:

A bill (S. 529) to revise and reform the Immigation and Nationality Act, and for other purposes.

The Senate resumed consideration of S. 529.

AMENDMENT NO. 1210

The PRESIDING OFFICER. The pending question is the Kennedy amendment No. 1210.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the pending Kennedy amendment be laid aside subject to bringing it forward at the time my colleague returns to the floor; that we now under the time agreement proceed to the consideration of the amendment of Senator HUMPHREY.

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

AMENDMENT NO. 1275

(Purpose: To deny aliens who obtain legalization certain assistance during the period before such aliens become naturalized citizens of the United States)

Mr. HUMPHREY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Hampshire (Mr. HUMPHREY) proposes an amendment numbered 1275.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 195, line 15, strike out "(e)(1)" and insert in lieu thereof "(e)".

On page 195, line 17, strike out "three-year".

On page 195, line 19, insert after "(b)(3)" the following: "and extending to the date on which such alien becomes a naturalized citizen of the United States".

On page 196, strike out lines 14 through 21.

On page 195, line 21, strike "except as provided in paragraph (2),".

Mr. HUMPHREY. Mr. President, how much time is there on this amendment?

The PRESIDING OFFICER. Fifteen minutes equally divided.

Mr. HUMPHREY. Mr. President, as the bill now stands, those illegal aliens granted legal status will become eligible for entitlement benefits in 3 to 5 years—some of them within 3 years, some of them within 5 years. The purpose of my amendment is to preclude eligibility for entitlement benefits until such aliens attain naturalized U.S. citizenship.

I make a distinction between legal aliens, that is, those who have come to the country by awaiting their time in line, and those illegal aliens who in effect are granted amnesty.

With respect to the former, my bill has no effect. That is, legal aliens who come into the country under the quota system are not affected in any way by my amendment. Rather, it is focused on illegal aliens, those who have come into this country illegally and who under this bill are being granted amnesty, that is, permanent resident status or temporary resident status.

Mr. President, we do not know how many illegal aliens there are in this country. Estimates range from 3 million to 12 million. Since we do not know how many illegal aliens there are who will be granted amnesty by this bill and who will eventually become eligible for entitlement benefits, we have no way of knowing how much it will cost the taxpayers of this country to support them under various entitlement programs.

Nevertheless, the Department of Health and Human Services, presumably based on the administration estimate of 6¼ million illegal aliens, has estimated that the cost of entitlement programs for illegal aliens will rise from $165 million in 1984 to over $1 billion per year in 1990—obviously, very great sums.

Are those persons who broke the law, who entered the country contrary to the law due entitlement benefits? I think not.

Should the taxpayers of the United States be expected to provide entitlement benefits to those who are in this country contrary to the law? I think not.

If such illegal aliens eventually become naturalized citizens, then under my amendment they would be due entitlement benefits, provided they meet certain criteria.

The effect of the amendment is very simple. It precludes entitlement benefits to illegal aliens granted amnesty under this bill until they attain naturalized U.S. citizenship.

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

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, the purpose of the legalization program is to bring an illegal subsociety within this Nation out into the open, to say, "Come forward, come out of the fearful subclass that you are presently in, come forward into the light of legalization."

This does not mean citizenship. It means temporary resident alien or permanent resident alien status.

I think we all agree that at least the existence of those subsocieties cannot be good for the United States. Somehow we are diminished as a nation by their existence.

While I understand fully the purpose of the Senator in offering this amendment; it is consistent with his views, and I respect that greatly—and it is a view I share, reducing Federal welfare costs at a time of unacceptably large Federal deficits but I fear that such an amendment will tend to continue the existence of this fearful subsociety that I describe within our Nation.

We must recall that many people who immigrate to this country, those who receive green cards and permanent resident alien status—and that is what a green card is, permanent resident alien status—do not necessarily become naturalized citizens. In fact, an extraordinary percentage of Mexicans who have the opportunity and do have legal green cards never seek naturalization. If I recall correctly, that figure was 80 percent. Eighty percent of the Mexicans with the legal green card do not go on to seek naturalization. They would rather retain the green card.

So, under our Constitution and our laws, it is not necessary for them to naturalize in order to enjoy almost all the benefits and protections of this country, other than the right to vote. Nevertheless, these people do become an integral part of our society, serving in the Armed Forces, contributing in many other ways to the United States—taxpayers, income taxpayers—so to permanently withhold Federal welfare benefits from those aliens who are legalized but never naturalized would perpetuate, in effect, another kind of subclass within the society. That is the very thing we are attempting to eliminate by the legalization program.

The provisions presently in the bill restricts the right of legalized aliens to federally funded welfare benefits for 3 years—that is in there. They are restricted there from any welfare benefits for 3 years while they are in temporary residence status, and for another 3 years if they are in permanent residence status, I think that is eminently fair. It is wholly in keeping with our present immigration law, which provides that immigrants to this country should not be likely to become public charges.

In fact, a person who seeks to naturalize cannot do so if they possibly would be a public charge; nor, I think if they might become public charges after immigration. They are here as economic migrants. They are working, usually single, coming here for one reason, to work. They are not fleeing persecution; they are not refugees. They are economic migrants. The magnet is jobs, and therefore they are working.

So I think what we have done with benefits to temporary resident aliens and permanent resident aliens, providing emergency medical assistance together with disability, if that is required, is eminently fair. To extend the denial of those benefits indefinitely, until the time of naturalization, I think, would perpetuate societal conflict within the country.

I urge rejection of the amendment.

Mr. HUMPHREY. Mr. President, how much time remains?

The PRESIDING OFFICER. Four minutes and sixteen seconds.

Mr. HUMPHREY. Mr. President, I respect the intentions of my colleague from Wyoming, though I disagree with him on this point.

My amendment does not seek to postpone indefinitely eligibility for entitlement benefits. It simply postpones eligibility until illegal aliens granted amnesty under this bill become naturalized U.S. citizens. Therefore, it extends the proscription on entitlement benefits from 3 years, under the bill, to a maximum of 5 years.

There is already a precedent in the bill, as the Senator from Wyoming has

pointed out, for restricting eligibility for various kinds of entitlement benefits. The bill contains those restrictions already. I seek to extend them to the point where the illegal alien granted amnesty becomes a naturalized U.S. citizen.

The Senator from Wyoming wants to bring out this "subclass"—I believe that is the term he used—into a fuller participation in our society. We are doing that under this bill by granting them amnesty. We are granting them amnesty for the crime of having violated our immigration laws. That is a mighty generous act on the part of this Nation, which is already sorely pressed with the problems of unemployment. We are granting them amnesty, forgiving a crime. It is a very generous act.

It does not mean, at the same time, that we have to provide them with all kinds of benefits which they are not otherwise due. We are already granting them amnesty. We are already granting them legal permanent residence, something to which they are not rightly due except by the compassion of our country. We are already granting them permanent or temporary legal residence. So it is not as though we are not already bending over backward to be more than fair to these persons who entered our country illegally.

I think I have made all the points necessary to be made. The citizens of the United States have no obligation to go beyond what is proposed in this bill, which, in my opinion, is very generous to begin with. The citizens of this country have no obligation to pay entitlement benefits to those illegal aliens granted amnesty until they show enough interest in the affairs of our country and participate in the affairs of our country to obtain naturalized citizenship.

So I urge my colleagues, when the vote on this amendment occurs this afternoon, to support its inclusion in the bill.

I yield back whatever remains of my time, and I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. SIMPSON. Mr. President, does not the order of business already provide for the yeas and nays on the various amendments within the time agreement?

The PRESIDING OFFICER. That is not correct.

Mr. SIMPSON. Just one further comment, Mr. President.

I do understand the sincerity with which this amendment is presented. I do not feel, however, that it is one of limitation, because the amendment does extend the date on which an alien becomes a naturalized citizen of the United States. In other words, the benefits will not be provided until the time the alien become a naturalized citizen of the United States; and, by choice, many do not do that. I just want to emphasize that that is the case.

I yield back the remainder of my time.

Mr. KENNEDY. Mr. President, I join the Senator from Wyoming in opposing this amendment. It would further restrict benefits those undocumented aliens who are legalized would receive under the bill. They are now denied all social services or welfare for 3 years, whether they are permanent resident aliens or temporary residents under the bill. Senator HUMPHREY would restrict this for another 2 to 3 years until they become citizens.

There is no basis for such harsh action. All research tells us that these undocumented workers—really undocumented taxpayers—who will be legalized under this bill are here to work, are contributing members of our society, unlikely to need or to go on welfare.

It is without precedent to deny permanent resident aliens the full protection and benefits of our laws.

Since they are contributing their taxes like all of us, why deny them the rights and benefits of programs any lawfully admitted alien has in our society? If costs are the worry, every study tells us that the population profile of the undocumented aliens who will be legalized are not likely to need or seek welfare benefits.

Mr. President, I urge the Senate to reject this amendment.

The PRESIDING OFFICER. The question recurs on the Kennedy amendment No. 1210.

Mr. SIMPSON. Mr. President, the Senator from California (Mr. CRANSTON) is on his way to the Chamber.

I suggest the absence of a quorum at this point.

The PRESIDING OFFICER. How will the Senator have the time charged?

Mr. SIMPSON. I suggest that it run equally against both sides on the bill.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRANSTON. 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 question is on the Kennedy amendment.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Kennedy amendment again be laid aside until the sponsor is present and that we now go in the order of business to one of the Cranston amendments.

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

Mr. CRANSTON. Mr President, my good friend, the Senator from Wyoming (Mr. SIMPSON) has labored long and diligently with a subject that often arouses deep and conflicting emotions.

He has produced a bill he hopes will resolve some questions for which there are no easy answers.

Our immigration laws have long needed overhaul.

And we have long needed to address problems of undocumented workers who abound as a permanent underclass in our society.

In his usual cordial way, Senator SIMPSON has listened to all and proceeded to bring forward S. 529, representing his and the best judgment of the majority of the Judiciary Committee as to how to address these concerns.

I do not share his judgments, but I admire his patience and diligence.

I especially appreciate the Senator's willingness to accommodate me with the additional time I sought—and have since received—to permit Senators to focus on new issues created by this year's committee amendments and to complete negotiations which have resolved at least some issues.

Mr. President, I wish to make plain that I have sought indefinite delay on this bill at no time.

I wish also to express my continuing admiration for the great work of my good friend, the senior Senator from Massachusetts (Mr. KENNEDY), who is planning to rise in his customary way to champion with eloquence the cause of a class of oppressed aliens whom this bill would deprive of judicial review when their claims for political asylum are denied.

He has been so rising, and it was under Senator KENNEDY's leadership that the Judiciary Committee began the complex process of revising our immigration law, a process which even tonight's Senate action will not complete.

Throughout the debate, Senator KENNEDY has applied his unique eloquence on behalf of minorities facing discrimination, homeless political refugees and other helpless people in the face of sometimes cruel proposals for immigration law changes.

His efforts have my complete admiration.

AMENDMENT NO. 1276

(Purpose: To permit Attorney General to waive residency requirement)

Mr. CRANSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from California (Mr. CRANSTON) proposes an amendment numbered 1276.

11-059 O-87-12 (Pt. 10)

Mr. CRANSTON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 198, line 2, strike out the quotation marks and second period.

On page 198, between lines 2 and 3, insert the following:

"(i) The Attorney General in his sole discretion may waive the requirements of subsection (d)(1)(A) or (d)(2)(A) in cases which would result in exceptional and extreme hardship to the alien or to his spouse, parent, or child."

The decision to grant or deny such a waiver shall not be reviewable in any court or administrative proceeding in the United States.

Mr. CRANSTON. Mr. President, this amendment has been modified slightly in discussions with the senior Senator from Wyoming, and I understand he will now accept it.

I thank him for his attention and cooperation on this amendment.

I will give a brief explanation of the amendment if I may.

I support the legalization program.

The whole purpose of having a legalization program—to bring some of the presently undocumented workers into the mainstream—is undercut if overly stringent procedures prevent vast numbers of aliens from qualifying and intimidate many others from even applying.

This amendment addresses the new requirements for continuous and aggregate residency.

The bill, as amended this year, now provides that undocumented workers who have resided in the United States illegally since January 1, 1977, must prove they have never been outside of the United States for more than 30 consecutive days between January 1, 1977, and the date of enactment, nor for more than 180 days aggregately.

For second tier applicants for legalization to temporary resident status, the bill requires proof that any absence between January 1, 1980, and the date of enactment is neither more than 30 days consecutively, nor 90 days aggregately.

My amendment would permit the Attorney General to waive these strict requirements in light of exceptional and extreme hardship to the alien, his spouse, parents, or child.

Under the Senate bill now, no such discretion is allowed, although the Attorney General may under the bill waive the majority of grounds for which a quota immigrant would be subject to exclusion.

What I am concerned about is the alien who left temporarily but stayed out of the country for 32 days because of a family funeral, or because of illness, or some other such matter; one who can document residency in the United States for the past 10 years except for one 3-month period, which, of course, is more than 30 days; or one who has been here for over a decade as a productive, upstanding member of the community, a family breadwinner with several children who are American citizens but is unable to prove to a certainty his residency.

His or her deportation would break up a family and often place children on public assistance.

My amendment would permit the Attorney General to take these compelling factors into account while reviewing the application for legalization.

That is the case for this amendment.

Mr. SIMPSON. Mr. President, I am privileged to serve as chairman of the Veterans' Affairs Committee and on which committee Senator CRANSTON is the ranking minority member. It was not that way when I came here. Those roles were reversed, but within that time, whether I have been in the minority or majority, I have come to find this an extraordinarily thoughtful, consistent, and compassionate person. Someone described him as a person it was difficult to say no to, and I have found that very true I can tell you. But from my knowledge of him as a person and professionally, he is a man well grounded on the issues and well staffed and that has served him well.

Let me say I do accept this amendment with the changes that have been made to meet the conditions that my friend from California described. A person out of the country for more than 30 days at a time without violating the continuous residency requirement, which I think is a necessary requirement, I think that with the changes, with the drafting that Senator CRANSTON has added, it is a reasonable amendment now which will allow the Attorney General to waive the 30-day residence requirement only under the most compelling of circumstances such as were described.

I can assure you that in accepting the amendment it is not in any way intended by the manager, this manager, of the bill to open up any new avenue of appeal or challenge but only to give the Attorney General discretion under very limited circumstances to recognize some very special humanitarian concerns in exceptional cases.

Under those considerations, I am pleased to accept the amendment.

Mr. CRANSTON. I yield back my time.

Mr. SIMPSON. I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from California.

The amendment (No. 1276) was agreed to.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. CRANSTON. Mr. President, I want first to thank the distinguished chairman of the committee for his generous remarks, for his hard work, for his friendship and for his acceptance of that amendment and I hope he will find it beyond his capacity to say no in regard to the next amendment I am going to bring up. I gather from his expression that is not about to be the case.

AMENDMENT NO. 1277

Mr. CRANSTON. I send to the desk a second amendment and ask that further reading be dispensed with.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from California (Mr. CRANSTON) proposes an amendment numbered 1277.

Mr. CRANSTON. I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 197, line 6, strike out "No" and insert in lieu thereof "Except as provided in paragraph (4), no".

On page 197, line 9, strike out "No" and insert in lieu thereof "Except as provided in paragraph (4), no".

On page 197, line 12, strike out "deportation or".

On page 197, between line 18 and 19, insert the following:

"(4) A court of the United States or of any State may review any denial of adjustment of status under this section if such denial were raised in a deportation proceeding conducted under this Act and if such review is based solely upon the administrative record established at the time of the review and if the findings of fact and determination contained in such record shall be conclusive unless the applicant can establish gross abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole."

Mr. CRANSTON. Mr. President, the amendment is identical to the language proposed by the House committee. S. 529 would prevent a court already reviewing a deportation order from examining the legality of the procedure denying the applicant legalization. My amendment merely permits that court to examine the administrative record from the deportee's legalization proceedings to see whether there has been a gross abuse of discretion or whether the findings of fact are directly contrary to clear and convincing facts contained in the RECORD as a whole.

This very limited form of judicial review would not expand the burden of the courts. It would be available only when an improper denial of legalization is raised as a defense in a deportation proceeding already subject to judicial review.

There is a strong reason to believe that, by providing an exclusive reasonable but limited means of court review for administrative proceedings on legalization, this amendment may actually narrow in a constructive way the judicial remedies available to aliens subject to deportation.

The U.S. Supreme Court has repeatedly recognized that there are millions of aliens within the United States, each of them, including those here unlawfully, involuntarily or transitory, entitled to the protection of the 5th and 14th amendments to the Constitution and especially to the due process clause of the fifth amendment.

While a statutory scheme which purports to deny certain classes of aliens the privilege of judicial review may not in and of itself be unconstitutional, there is no way that the Federal courts can be prevented from examining particular abuses of that statutory scheme which amount to constitutional denials of due process of law any more than other court-stripping attempts have been effective. Thus my amendment will specify ground rules on a limited judicial review that otherwise might ultimately be imposed by the courts and it will prevent our immigration proceedings from becoming star-chambers.

It is vitally important that even those we eventually exclude leave knowing that the United States is, as it proudly proclaims, a government of laws.

The subcommittee technical amendment did not strengthen the bill. It weakened it. By stripping the bill of judicial review provisions, the committee encourages the INS to be arbitrary and lawless. By encouraging lawlessness, the bill discourages applicants for legalization. By discouraging legalization, the bill perpetuates rather than solves the problem of undocumented workers. So I urge the adoption of this amendment.

I reserve the remainder of my time.

Mr. SIMPSON. Mr. President, the legalization provisions in this bill, which address, and I trust and hope will resolve, this serious national problem of the illegal subsociety within this country, could obviously result in hundreds of thousands and perhaps even millions of applications for legalization, no question about that. We do not know how many will come forward under legalization but with the proper information and education there will be, I think, millions, and providing a judicial appeal of a denial of legalization could well even more surely overwhelm the court systems and paralyze the legalization process completely.

Obviously, I am speaking against the amendment.

The legalization provisions in the bill provide an extraordinary benefit to eligible aliens. The bill very carefully outlines the eligibility requirements and sets up a framework for the necessary procedures to carry the legalization forward.

Implicit in these requirements and in this framework is the committee's intent that the program be carried out firmly and fairly.

I emphasize again that the legalization program is intended to be a one-time only, one-time shot, and to be carried out carefully over a 15-month period. We will depend on, and have involved in the legislation, the voluntary agencies of this country, both those who are truly the voluntary agencies and those who, under State Department auspices, are voluntary agencies and other appropriate non-Federal organizations, churches, groups within society, self-help agencies, and all of those will be asked and will be required to participate actively in the program to insure its fairness and to insure that eligible aliens will have the assistance they need to perfect their applications.

We have provided for a limited administrative review. The committee feels that this constitutes very well a sufficiently fair procedure, and I earnestly request you to reject this amendment which is only going to provide an additional layer of review. I think it is very important, and this is difficult for some to understand on this issue, to keep this in mind: That if any one of these undocumented aliens had applied for an immigrant visa in their home country, and the consular officer accepted their application, he is the sole judge, a consular officer in the country of their origin is the sole judge, under our laws, as to whether or not the visa for resident status in the United States would be granted to an alien who would be applying lawfully for immigration to our country. That is the law. And I do not think we should turn around and then give additional rights and appeals to the undocumented, who entered illegally into this country and will now be given status under the legalization program. That is not what was ever intended with regard to this kind of judicial review and, as I say, the bill provides administrative review of denial of legalization.

But if this amendment were to pass, it would truly burden the system, the judicial systems, of our country at a time when even now they are overwhelmed, and legalization, without being carefully done, is going to be a tremendous trial enough in itself.

I urge rejection of the amendment.

Mr. CRANSTON. I yield time to the Senator from New Mexico.

Mr. BINGAMAN. I thank the distinguished Senator from California.

Mr. President, I rise in support of the amendment that the distinguished Senator from California has offered here. I also want to point out that one of the factors confusing the debate has been the substantial disagreement about the actual number of illegal aliens in the country.

There is a new report out which I believe needs to be brought to the attention of the Senate. This is a paper by two gentlemen who work for the Population Division of the U.S. Bureau of the Census, Robert Warren and Jeffrey S. Passel. It is entitled "Estimates of Illegal Aliens From Mexico Counted in the 1980 United States Census."

I will quote a very few passages here from the report:

> The estimates of the number of illegal aliens in the United States have varied widely—generally falling in the range of 2 to 12 million, but some wild guesses have been as high as 25 million. . . . As more empirical evidence has become available, the estimates have gotten smaller and smaller. . . .
>
> Census data has suggested that the number of illegal Mexicans in the U.S. is substantially less than many of the earlier conjectural estimates, with a realistic upper bound of no more than 4 million and with the probable total number being even less.

They go on to point out that comparisons of the independently derived estimates of the legal alien population residents in the United States on April 1, 1980, with the census count of aliens indicates that the 1980 census includes at least 2.047 million illegal aliens. Out of these, 931,000, or 45.5 percent, are illegal aliens born in Mexico.

Mr. President, I believe this information is helpful and is supportive of the efforts that the distinguished Senator from California is making with this amendment. It is clear that the numbers we are talking about are substantially lower than many current estimates. I ask unanimous consent that additional excepts from this article be printed in the RECORD.

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

EXCERPTS FROM ESTIMATES OF ILLEGAL ALIENS FROM MEXICO COUNTED IN THE 1980 UNITED STATES CENSUS

(By Robert Warren and Jeffrey S. Passel, U.S. Bureau of the Census)

> Estimates of the numbers of illegal aliens in the United States have varied widely—generally falling in a range of 2 to 12 million but some wild guesses have been as high as 25 million (Siegel, Passel, and Robinson, 1980). Much of the debate on the matter has been unhampered by empirical evidence, with the result that "estimates" have been based on pure speculation, gut feelings, or perceived special interests. As more empirical evidence has become available, the estimates have gotten smaller and smaller. Recent work utilizing Mexican census data (Bean, King, and Passel, 1983) has suggested that the numbers of illegal Mexicans in the U.S. is substantially less than many of the earlier conjectural estimates, with a realistic upper bound of no more than 4 million and with the probable total number being even less.
>
> The research reported here brings together a considerable amount of empirical evidence for estimating the size of the illegal

alien population. In particular, this research serves to set a lower bound on the number of illegals in the country and shifts the numbers debate to a different set of parameters by presenting estimates of the number of illegal aliens who were included in the 1980 census. The estimates were derived by comparing aggregated 1980 census data for the alien population with independent estimates of the alien population residing legally in the United States on the date of the census; the methodology represents an extension of techniques applied by Warren (1982) in analyzing data from the November 1979 CPS. Results are presented by age, sex, and period of entry for all aliens residing in the United States, for aliens from Mexico, and for aliens from other selected countries of origin.

In addition to their contribution to policy discussions, these estimates are useful to the Census Bureau for evaluating the coverage of the 1980 census using demographic analysis. It would be preferable to include estimates of the total number of illegal aliens residing in the United States in the independent population estimates used to evaluate census coverage. However, since definitive estimates are not available for either the total illegal alien population or net flow for any period of time, an alternate procedure, using the figures presented here, would involve first subtracting the estimated number of illegal aliens from the census count. Then, illegal aliens would be excluded from both the census count and the independent population estimates so that the resulting comparison would produce estimates of census coverage for the legally resident population in the 1980 census.

RESULTS OF CENSUS ANALYSIS

Comparison of the independently derived estimates of the legal alien population resident in the U.S. on April 1, 1980 with the census count of aliens indicates that the 1980 census includes at least 2.047 million illegal aliens. Of these, 931,000 or 45.5 percent are illegal aliens born in Mexico. Data are also available by period of entry but caution must be exercised in the interpretation of the time series data. For example, even though the 1980 census indicates the presence of more illegals who entered the U.S. between 1975 and 1980 than who entered the U.S. between 1970 and 1974, the data can not be interpreted as necessarily showing an increase over time in net illegal immigration. The data represent only those present in 1980. Thus, more illegals could have entered the U.S. in the earlier period than the later period; but, the illegal entrants from the earlier period could have emigrated during the later period and consequently not have shown up in the 1980 census. With these caveats in mind, we can examine the time series.

Of the illegals present in 1980, 890,000 or 43.5 percent entered the U.S. during 1975-1980; 551,000 or 26.9 percent entered during 1970-1974; 570,000 or 27.9 percent during the 1960's; and the remaining 36,000 or 1.8 percent entered before 1960. The illegals from Mexico present in 1980 are more concentrated in the later periods of entry with 476,000 or 51.2 percent of the illegal Mexicans entering between 1975 and 1980; 280,000 or 30.1 percent entering during 1970-1974; and 175,000 or only 18.7 percent before 1970. Another way of looking at the same phenomenon is that the proportion of Mexicans among illegals counted in the 1980 census is higher for more recent periods of entry. As noted before, Mexicans represent 45.5 percent of all illegals counted in 1980. However, the Mexican segment of the illegal population represents 53.5 percent of those who entered after 1975; 50.9 percent of those entering during 1970-1974; and only 28.8 percent of the illegals who entered before 1970 and were still in the U.S. in 1980.

The age structure is very plausible for an immigrant population, particularly an illegal immigrant population. Overall, 18.5 percent of the illegal population is under 15; 60.0 percent is at ages 15-34 (68.8 percent at ages 15-39); and 21.5 percent over age 35 (only 12.7 percent over age 40). The Mexican-born illegal population counted in 1980 is younger and more concentrated in the young adult ages. Almost 22.3 percent of the illegal Mexicans are under age 15; 64.0 percent are aged 15-34 years (fully 70.2 percent are ages 15-39); and only 13.7 percent are over 35 years old (only 7.6 percent over age 40).

The age-sex distributions by period of entry are internally consistent as well as consistent over time. It would appear that the characteristics of illegals at entry have been similar over time but that those who entered in earlier years and have stayed are now older than the recent entrants. Thus, it is not surprising that the non-Mexican illegals are older since a much larger proportion of them entered before 1970.

DISCUSSION AND CONCLUSION

The estimates which have been described in this paper introduce as many new questions into the debate about illegal immigration as they answer. The first question must be "Do the estimates represent illegal aliens included in the census?" The foregoing analysis would indicate that the group has many of the characteristics which have been attributed to illegal aliens in terms of age and sex distributions. Internal consistency of this nature would not necessarily result from taking differences between two fairly large populations (such as aliens in the census and aliens registered with INS) unless some group (e.g. illegal aliens) was present in one data set and not the other. Another striking feature of the comparison is the general agreement between the two data systems for non-Mexicans who entered before 1960. The evidence that overall the estimates represent illegal immigrants is extremely compelling.

The estimate of slightly over 2 million illegal aliens counted in the 1980 census must be considered a minimal estimate of the total number residing in the United States, for a number of reasons. First, at several points in the estimation procedure, conservative assumptions were made which, if they were in error, would be expected to err in the direction of underestimating the illegal alien population. Next, the estimates obviously do not include illegal aliens who were not counted in the 1980 census. Finally, the estimates of illegal aliens (counted in the census) are reduced by the number of legal aliens who were omitted from the census. To illustrate, suppose that the census count for the total alien population was 1,000 and the estimated legal population was 800. Simple subtraction gives an estimate of 200 illegal aliens counted. However, if the census missed 100 legal aliens and so included only 700 legal aliens, then the 1,000 aliens counted would include 300 illegal aliens, but the estimation procedure would indicate 200 illegal aliens.

This research still does not provide an answer to the questions of how many illegal aliens are in the country or how fast they are coming. It does however provide another hard-to-come-by piece of empirical evidence with which any estimate must be consistent. That is, any total estimate of the illegal alien population for 1980 would imply a particular number who were not counted. For example, if there were 6 million illegals in the U.S. in 1980, it would imply that roughly 4 million were missed in the census, or an undercount rate in excess of 60 percent. Although the proportion of illegals missed is not known, undercount rates of this magnitude seem improbable in light of the characteristics of the illegals counted and of persons usually missed in the census. The illegal population counted includes large proportions of women and children, groups usually counted well. Furthermore, almost 30 percent of the illegals counted must be reasonably well-established since they had been in the U.S. for more than 10 years in 1980; a group such as this should not have extraordinarily high undercount rates. Finally, some illegals may have perceived that being counted in the census would be in their best interests by providing proof of residence in the U.S. in 1980 in case of future amnesty programs.

By way of comparison, the highest undercount rates measured recently for any group in the U.S. are roughly 20 percent for adult black males in their 30's. For 1980, no rates measured to date exceed 20 percent. Furthermore, the available evidence indicates that the 1980 census missed very few housing units and that undercoverage of the legal population was on the order of one percent. Thus, the assumption of extreme undercount rates for the illegal population would require substantial evidential support.

It should be pointed out that the estimated number of illegal aliens counted in the 1980 census, although small relative to some "guesstimates," still represents a substantial number of people. The number of illegal Mexicans counted (931,000) is almost as great as the number of legal aliens from Mexico (1,194,000). In fact, for persons born in Mexico who entered the U.S. in 1970-1974, the illegal population (280,000) and the legal alien population (282,000) are virtually identical. For persons entering in 1975-1980 the illegal Mexican population counted (476,000) exceeds the legal population (292,000) by about 60 percent! Overall, the illegal alien population from all countries runs about 40 percent of the size of the legal alien population.

We still don't have all the answers about the size of illegal migrant streams to the U.S. This research does provide a firm lower bound on the numbers, however. It should also serve to narrow the range of estimates by introducing another concept—the number and proportion of illegal aliens missed in the 1980 census. The Census Bureau is planning further research to extend the work reported here to smaller geographic areas (states and perhaps SMSA's) and nationally to race groups. A supplement to the April 1983 CPS will provide additional data on aliens which may serve to bring these estimates forward in time and ultimately provide a basis for introducing data on illegal aliens into the Census Bureau's current estimates program.

Mr. CRANSTON. Mr. President, I thank the Senator from New Mexico very much for his support and for his understanding of the issues involved in this amendment and in other matters

before the Senate in this bill and for his leadership in this realm generally.

Let me say just briefly to my friend from Wyoming, my amendment would not add to the burden of the courts. Indeed, my amendment carries out the intent of the committee. It only applies in cases already before the courts.

Moreover, the committee's position would deny legalization in cases where there is a gross abuse of discretion or where the administrative record does not support denial of legalization. For that reason, this review is very much in order and very much needed. I urge adoption of the amendment.

The PRESIDING OFFICER (Mr. WILSON). The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I would simply submit very briefly that this bill provides for administrative review of the issue of legalization and we believe that is quite adequate. We are not dealing with U.S. citizens. We are not even dealing with persons in legal status from other countries. We are dealing with illegal, undocumented workers who have chosen to come forward and they will be processed on a case-by-case basis. To provide a judicial appeal from an extraordinary act of grace, an extraordinarily generous proceeding, I feel would simply overwhelm the court system.

Mr. CRANSTON. Mr. President, I think the only real difference is the Senator from Wyoming is assuming the good will and the perfect performance of the immigration officers who would be involved in various cases. I would like to assume that, but, in cases where that does not turn out to be what actually happens, I think there should be some recourse for those who would otherwise be denied justice. That is the only reason that I suggest that we have this procedure when such circumstances develop.

I am prepared to yield back my time.

Mr. SIMPSON. Mr. President, I will yield back the remainder of my time after this one further comment.

I do share those concerns with the Senator from California, but, under the bill and under the 15-month period, it is obvious that we cannot do the job that is required without the spirited assistance of voluntary agencies in this country, the churches in this country, the nonvoluntary agencies, and the service groups, and that is indeed what we envision. Then the INS would remain the final processing center as these persons seek legalization and are processed on a case-by-case basis.

Mr. President, I yield back the remainder of my time.

Mr. CRANSTON. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on the amendment.

Mr. SIMPSON. Have the yeas and nays been requested on this amendment?

The PRESIDING OFFICER. They have not been.

Mr. CRANSTON. Mr. President, I ask for the yeas and nays on this amendment.

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

The yeas and nays were ordered.

AMENDMENT NO. 1278

Mr. CRANSTON. Mr. President, I send another amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the Kennedy amendment will be temporarily laid aside.

The clerk will report the next Cranston amendment.

The legislative clerk read as follows:

The Senator from California (Mr. CRANSTON) proposes amendment numbered 1278.

On page 195, between lines 11 and 12, insert the following:

"(6) A duly attested declaration by a third party, who is a U.S. citizen, of continuous residency by an individual applying for adjustment of status under this section shall constitute prima facie evidence of physical presence for purposes of this section and, upon submission of such declaration, the burden of proof for demonstrating lack of physical presence shall be borne by the Attorney General.".

Mr. CRANSTON. Mr. President, I remind my colleagues that the language I seek to amend did not appear in last year's version of the Simpson-Mazzoli bill.

Mr. President, the legalization program must offer a reasonable chance to those who risk coming forward.

Otherwise, few people will apply, fearing family separation and deportation, and we will be right back were we started from with unenforceable immigration laws.

With each contested attempt to make these legalization procedures more reasonable, it has been suggested that undocumented aliens are, after all, criminals—here in violation of our immigration laws.

From this premise it is argued either that any procedure, however harsh, is more than undocumented workers have a right to expect, and they ought not to complain; or that, as one of my colleagues proposed earlier, the entire legalization plan should be eliminated.

This is neither realistic nor humane.

But it reflects the ignorance and prejudice that exists with respect to this large class of undocumented workers.

Who are these people?

What are they like?

Let me cite four examples of actual undocumented workers who could benefit from the legalization program.

One couple, living in Houston, Tex., has been in the United States since 1969, about 14 years. Both have worked continuously since then, and managed to save a comfortable amount. They have two children, one of whom is an American citizen.

Another couple has lived in Los Angeles for 15 years. They have both been employed during that time, have managed to save some money, and now own a home. They have two children—American citizens—who attend the public school in their neighborhood.

Another woman of Mexican origin, lives in Corpus Christi, Tex., since 1975. She has four children who are American citizens. This woman supports her family. She has never received welfare or federally funded assistance.

All of these undocumented residents—and millions of others—pay Federal, State, and local taxes. None of these have ever received welfare during their years in our country, nor even unemployment insurance. Each is a solid member of his or her community—representative of much of the undocumented population—and deserves to have his or her residency status legalized.

Now, to qualify for adjustment to permanent legal resident status under this bill, an undocumented worker must meet a series of rigorous tests.

First, the application test: He must apply within the 12-month period which begins 90 days after enactment of this law, unless he is subject to a deportation order, in which case he must apply within 30 days of that order.

He or she must meet the duration test: He or she must have entered as an immigrant before January 1, 1977.

He must meet—or have the Attorney General waive—if Cranston amendment No. 2 is adopted—the continuous residency test: Never out of the country more than 30 consecutive days; not out of the United States an aggregate of more than 180 days; not out of the United States because of a deportation order; must have resided in the United States illegally from January 1, 1977, to the date of enactment.

He or she must meet the admissibility test: Not subject to exclusion, or excludible only for technical reasons; or excludible for other reasons, but the Attorney General has waived the ground of exclusion.

Under no circumstances can he be a criminal; a drug dealer; a spy; a Communist, an anarchist or a Nazi.

He or she must meet the noncriminality in the U.S. test: Never convicted of a felony, or three or more misdemeanors.

And he or she must meet the nonpersecutor test: Must never have assisted in racial, religious, social, or political persecution.

After proving his compliance with all these tests, the applicant for legalization is asked to prove that he was continuously physically present in the

United States from the date of enactment of this bill to the day he applies for legalization.

How does one prove continuous physical presence?

Do the work records include weekends?

What about night time? Sleep time?

Its purpose—according to the INS and the Senate bill's sponsors—is to insure that, once the bill becomes law, the INS does not have to decide whether to admit aliens who come to the border requesting entrance because they claim eligibility for legalization.

For the first 90 days after enactment, at least, this claim is entirely specious. Applications may not be made within that period.

It is simply unfair to exclude those who would otherwise qualify for legalization, in cases where conclusive proof is lacking.

My amendment would permit the border enforcement intended by the proponents while easing the burden on otherwise qualified legalization applicants as to this one requirement.

It would permit an applicant to meet the requirement by filing a sworn statement of a U.S. citizen that the applicant has met the physical presence test.

The INS could still disqualify the applicant if it had proof that the sworn statement was false.

Legalization is a sensible approach to an otherwise insoluble problem.

But all the harsh rhetoric is unrealistic.

Either the legalization program will work, or the whole immigration reform scheme will fail.

There is no realistic way our Government can round up and deport as many as several million unauthorized aliens presently living in the United States.

In our previous attempt—Operation Wetback in the 1950's—there were wholesale violations of civil liberties, including the deportation of American citizens.

The disruption and suffering such an effort would bring to communities, families, and businesses would be catastrophic.

The disorders on our borders and the severe economic dislocations that might well take place in Mexico could shake the very foundations of the already unstable governments of Central America.

A mass deportation of unlegalized aliens would have a devastating impact on Mexico for two reasons:

First, dollars sent back home by Mexican workers constitute the largest single source of dollar earnings for the Mexican economy.

Second, returning migrant workers would strain the Mexican economy, contributing to serious social and economic unrest.

The United States cannot afford an unstable southern neighbor.

My amendment would give the legalization program a better chance to work.

For all of these reasons, I urge its adoption.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER (Mr. MATTINGLY). The Senator from Wyoming.

Mr. SIMPSON. Mr. President, the legalizing provisions of this bill provide an extraordinary benefit to undocumented persons who have resided in this country for more than 3 years. It is necessary that the qualification requirements for this extraordinary benefit, grace and generosity be carefully defined and the procedural requirements be carefully followed.

Our immigration laws have always required—always required—the alien to prove his right to be in this country or his right to a particular status in this country. This should not change now at the very time when we are providing this extraordinary act of grace to undocumented aliens who are here illegally.

Further, the bill provides, and this is a very important part of it, that voluntary agencies and other private and public organizations shall assist the aliens in preparing their applications for the benefits under this program. Those are the organizations that will have all of the expertise and the skills necessary to assist the aliens in preparing the necessary documentation. It is going to be a case of, "Here is how you do it." You may be assured that they will assist the aliens in preparing their documentation.

They will also assist in the educational outreach program in legalization so that each and every eligible alien will be aware of the requirements. There is enough time to do that—15 months—3 months after the date of enactment and then another year.

They will be aware of the requirements and the fact of remaining in the country until legalized. They will therefore be quite aware of the necessity of establishing their location and their residency during that period of time. In order that what? In order that they may take the appropriate action and compile the necessary documentation to receive this extraordinary benefit.

Under our bill, the burden of proof is on the alien to prove that he was physically present in the United States from the date of enactment until legalization.

This amendment would effectively shift that burden of proof to the Government. Indeed it would. And it would be done upon a rather extraordinary act: A U.S. citizen would attest, a third party would attest, to a declaration that the alien had been present for the requisite time. I admit I have a hunch that there will be some very popular third parties in the country who may make a cottage industry as third party. We have a cottage industry in green cards, in all forms of exploitation of these people, and a self-serving statement from a third party out of compassion alone will generate activity under this bill.

I think it is not appropriate. I emphasize again that legalization was a tough one from the beginning. This was the resistance in the United States, which was very simple: Why should we reward people who are here illegally, who have come here undocumented, illegally, without any claim? They are just here. They have violated the laws of the United States of America in the process.

So legalization is an extraordinary benefit, an extraordinary grace, to those who receive it.

Under our laws the burden of proof to establish the right of a particular status has always been upon the alien. This amendment would shift that burden to the Government. We deny ourselves, if this third person is involved. Obviously, a U.S. citizen who has personal knowledge of an alien's physical presence in the United States can come forward and say that at the time of meeting with the voluntary agencies. It might be obviously much more appropriate at that time for him or her to do so because then you can also ask them questions as they are acting as the sponsor or as the person furnishing personal knowledge.

So we do expect the various voluntary agencies and other public and private agencies to have offices—and they do have offices—all over the country. It is not going to be a burden upon the applicant and his witness to appear and personally present the evidence of residency, if that is indeed necessary.

The other reason is that we do not want people to simply walk here to claim this extraordinary status.

That is what we are trying to avoid through the physical residency, physical presence situation. Again, please keep in perspective that these are people in the United States who are here illegally. That is the only qualification for legalization. You cannot be already legal and seek legalization; you have to be illegally present in the United States for a certain period of time in order to qualify for legalization. That is an extraordinary grace in itself.

Mr. KENNEDY. Mr. President, although I certainly agree with the sense of the chairman of our Immigration Subcommittee, the principal sponsor of this bill, I do think that the Cranston amendment has some very important advantages. It is an amendment which I shall support.

I think, as the Senator from Wyoming has pointed out very eloquently in this debate as well as in last year's debate and in the committee, there are two important pillars in this legislation. One is the employer sanctions and the other provision is the legalization program.

It is important, I believe, to make the legalization program to work. What I believe the Cranston amendment does is provide some degree of flexibility in that program. Clearly, if an individual is able to amass a great deal of documentation, if he or she is able to get a good deal of material with the help of the voluntary agencies, that will be presented and the process will be expedited. But, as I understand the Cranston amendment, it is to provide at least some degree of flexibility in this process, such as sworn statements. Clearly, if that sworn statement is inaccurate, he or she is subject to all the penalties which exist for such fraud.

But, Mr. President, we provide, in the United States, for example, even in some States, for just a sworn statement of an individual to go in and vote. We are willing to take the words of citizens—or some States are—to participate in the election process. There are counties in the State of Ohio where an individual can just go in and give a statement and say they are citizens and they want to vote. We put some important reliance upon the sworn statements of individuals in a variety of different ways.

It does seem to me that when we come down to that limited situation, where an individual does fulfill the requirements of the bill, it does provide that degree of flexibility which I think is advantageous and desirable.

The point has been mentioned here, "Well, we have seen cottage industries grow up in the production of documentation." The Lord only knows, there will be additional industries that may grow up as we make the legalization requirements more and more strict for individuals who have every legitimate right under this legislation to begin the process toward citizenship.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. I yield myself 30 seconds on the bill, Mr. President.

I hope that for the reasons that have been outlined by the Senator from California, the amendment will be accepted.

Mr. CRANSTON. Mr. President, I thank the Senator from Massachusetts for his support of this amendment and for his truly tremendous leadership on all the sensitive issues that are involved in this legislation.

Let me say on this amendment that it does not change the underlying burden of proof. It merely suggests a reasonable way to meet that burden, for circumstances might otherwise make absolutely conclusive proof impossible. I think the Senator drew a very good analogy about the citizens of our country who can go and say they are citizens and vote and pick our Senators and pick our Presidents. We should provide some similarly reasonable opportunity to those who are seeking to become citizens of our country.

I thank the Senator.

Mr. SIMPSON. Mr. President, I hear very clearly what my colleagues are stating. They are talking about the issue of citizens' rights, citizens' responsibilities, and citizens' ability to function in our country. I have no qualms about supporting every bit of that. However, we are talking about noncitizens. We are talking about people who came to this country illegally. That is, I think, a statement of absolute fact. I know of no way around that fact. This person, under this amendment, with the sincerity behind it, the third person who would give a sworn statement also has the ability to come forward and be there at the time this person is seeking this extraordinary grace of legalization.

I am not opposed to applicants using affidavits or attested statements, or other documentation to establish their physical presence in the United States. I am sure that will be the most frequently used type of proof. But the attested statement should not, in itself, ever be enough to shift the burden, as it will in this case. That has never happened in the United States within this arena of activity. This amendment would do that.

Certainly, an attested statement is going to be used and should be used, but the personal presence of the third party will take care of the difficulties and get the questions asked and answered that have to be presented.

I yield back the remainder of my time.

Mr. CRANSTON. I am prepared to yield back my time.

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

Mr. SIMPSON. The yeas and nays have been asked for.

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

The yeas and nays were ordered.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the amendments we have been processing this morning be inserted into the sequence for the voting which will take place, under the previous order, this afternoon.

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

Mr. CRANSTON. Mr. President, I should like to make a very brief statement on the bill, if I may. I shall take just a moment.

Mr. KENNEDY. I yield such time as the Senator may need.

Mr. CRANSTON. Mr. President, some of the amendments offered here today could have improved this bill. But even then, I could not support it.

The Senator from Wyoming said the other day that he had long ago concluded that no Senator from California could support any immigration reform bill. I do not concede that point. But I do know that California undoubtedly has more undocumented workers than Wyoming has people.

It may be that we see the nuances of the problem more clearly, but my own attitudes derive from concerns about this bill which were shaped far away from particular California concerns. They relate to how this bill will affect the civil liberties of every person in the United States.

This bill threatens everyone's civil liberties but it poses special dangers to the rights of Hispanics.

Although I have tried to ameliorate some provisions of this bill, I disagree with its direction and focus.

The spectrum of national organizations that have major objections to various provisions in this bill—including the American Bar Association, the ACLU, the U.S. Chamber of Commerce, the United Farm Workers, MALDEF, LULAC, and many, many immigration organizations and church groups—indicates the scope of the problems involved.

My major objection to S. 529 is its imposition of the expensive, dangerous provision that would require every person in the U.S. to have some form of authorization by his or her Government in order to work.

That is a major step toward a police state.

There is no justification for such a drastic program.

It is an extraordinary imposition upon the American people.

This identification system will make every individual in our Nation—no matter where he or she lives—subject to the whims of immigration authorities. Sooner of later, the system will boil down to an internal passport or identifier.

The first tool of any totalitarian regime is a domestic passport.

I have seen this tool used in Hitler's Germany, Mussolini's Italy, and various Communist nations.

We do not want, in our free land, the threat of centralized control and identification of all citizens, even as we come upon 1984.

While I accept the sincere intentions regarding the limited use of such identification cards, neither of us will be here forever to enforce this intent and the record does not indicate that that intent will be fulfilled.

Moreover, the brief history of computerized data banks suggests that ef-

forts to limit the uses of this card will be unsuccessful.

The social security card was also intended by law for use only for limited nonidentification purposes.

Today, hundreds of Government and thousands of private computer systems use social security numbers to index and identify individuals.

And now, this bill would use the social security card as a form of identification for work eligibility.

I am by no means alone in these concerns.

Several members of the Select Commission on Immigration and Refugee Policy concluded that this identifier system could harm civil liberties.

In fact, the Select Commission's recommendation to use an identification card squeaked by with a bare one-vote margin.

The American Civil Liberties Union and the U.S. Civil Rights Commission, as well, recognize the great danger that this act could infringe on our precious rights to privacy and on other rights.

Identification card verification is a misguided overreaction to violations of our immigration laws.

The employer sanctions provisions in this bill also concern me deeply.

I believe employer sanctions will be discriminatory, costly, and ineffective.

I think they will lead to discrimination against those who appear to be foreign in our country.

According to the General Accounting Office, employer sanctions have never deterred effectively either the hiring of undocumented workers or the flow of illegal immigrants in any of the 20 countries in which they have been tried.

It is neither fair nor practical to make employers immigration policemen. Employers' paperwork requirements alone are certain to fuel discrimination.

Hispanics and Asians will be turned away because employers cannot be sure documentation is valid, and will fear sanctions. Since the employer sanctions provision requires that records be kept only after an employee is hired, no proof of this discrimination would survive. And the limited enforcement powers, jurisdiction, and a great case backlog of EEOC means that this discrimination will not be redressed.

On the other hand, the light penalties and minimal risk of enforcement of the sanctions provide little reason to hope that employers who traditionally have exploited undocumented workers will stop doing so.

A less expensive and more effective alternative to the employer sanctions law would be to enforce labor laws already on the books. There would be little profitability in exploiting undocumented workers—and little incentive to hire them—if minimum wage, OSHA and fair labor standards laws were strictly enforced.

I have grave doubts whether this bill will even minimally affect our immigration problems.

Its restrictions on lawful immigration will exacerbate the already existing visa backlogs, since fewer slots will be available.

It can only promote more illegal immigration because of the substantially longer waiting period that visa applicants will face.

Its provisions for importing temporary foreign farmworkers may increase the use of, and reliance on, such workers, at the expense of unemployed American farmworkers.

In fact, the present unemployment rate for domestic farmworkers is among the highest in our land.

It is ironic that, while this legislation purports to curb immigration to the United States in order to protect American workers, it opens the door for hundreds of thousands of temporary agricultural workers. These workers—dependent on the good will of their employers—are more docile and easy to exploit than American farmworkers.

The major cause of illegal immigration is the economic disparity between our country and the countries from which the immigrants come.

For our immigration policy to work, it must include international solutions. We must devote substantial time, effort, and resources to help underdeveloped nations improve their own economies, feed their own people, and realize opportunities to achieve a decent standard of living. Any immigration policy that fails to take into account America's interdependent relationship with other nations, expecially with Mexico and Latin America, is neither realistic nor fair.

I believe that the way to deal with the employment giving to those who are here without documents instead of to American citizens and a less expensive and more effective alternative to the employer sanctions law proposed in this bill would be to enforce labor laws already on the books. There would be little profitability in exploiting undocumented workers and little incentive to hire them if minimum wage, OSHA, and fair labor standards were strictly enforced.

Mr. President, I have grave doubts as to whether this bill will even minimally affect our immigration problems.

The PRESIDING OFFICER. The question occurs on the Kennedy amendment.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Kennedy amendment be laid aside and we await now the presence of Senator McCLURE, but I yield to myself time from the bill to respond to the remarks of the Senator from California.

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

The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, this issue is one of the greatest political no-win issues in which anyone could ever get involved. Every time they write a positive editorial in the San Diego paper or the San Francisco paper or the New York Times or the Washington Post, they kind of rip me up a little out in the State of Wyoming.

I am used to that, but it does not make it any more pleasant.

I have said, and would say so very clearly, that there really are very few Republicans or Democrats in the House or Senate from the State of California that could possibly support this legislation.

I say that because their diverse constituencies will not allow them to do so. When you have the unions in turmoil on the issue, the growers in turmoil on the issue, the businesses of California in turmoil on the issue, the Hispancis of California in turmoil on the issue, you will never be able to respond to that kind of diverse and confusing pressure. I understand that.

I do not know how many illegal undocumented aliens there are in California, but there are a tremendous number of them in the State of Wyoming. Even though we have a State with high altitude and low multitude, we still have a tremendous number of illegal undocumented workers in agriculture and other service industries within my State and in every State in this Union.

My sensitivities have been sharpened by the fact that I grew up in a county of Wyoming which used the bracero system. I saw some significant abuses of that system in my time and often used to represent those persons in pro bono activity, a lot of them, at a time when it was not popular to represent an illegal undocumented worker or a bracero in, say, fighting the car dealer who was president of the chamber of commerce—not a very popular thing for a young lawyer in a small community.

And then I happened to grow up at the age of 13 next to what became the third largest city in Wyoming called the Japanese War Relocation Center. I doubt that many had that experience, to watch American citizens of my age behind wire wearing the same Boy Scout uniforms, carrying the same ringing stories, and reading the same marvelous literature. That is the way it was.

The issue that this sensitive Senator from California expresses from his whole lifetime of progressive civil libertarian outflow is very real, and his life in Nazi Germany and the extraordinary things he did there with trans-

lation of Hitler's various works, I understand that.

This bill does not require any form or kind of a national identification card. That is off the wall. I have said it is off the wall. It would not matter who said it. There is nothing in this bill that requires a national Identification. card.

I cite to my colleagues the report language on page 10:

The committee is most emphatically not requiring or permitting the development of an internal passport or national I.D. card.

We would never have come this far if it had reference to anything else.

The chairman of the Select Commission on Immigration and Refugee Policy was an extraordinary gentleman named Father Ted Hesburgh, who was formerly the chairman of the Civil Rights Commission of the United States.

The record should be absolutely clear as to what this bill does. We have put more protections in this bill to avoid employment discrimination than have even been in any other form of immigration reform proposed by anybody of either party in either House, at least that I have ever read, more than was in the two bills which passed the House in recent years, more than in any bill introduced in this body.

I have heard the argument about the Third World and our duty to them. I hear that. I know that argument. You know what happens when things get better in the Third World and I hope and pray that they get better in the Third World? At least the same things that are happening now. Those who are economically able to earn and produce in the Third World leave. The poor do not leave. They cannot afford to leave. With the present magnet of the United States, the word is out throughout the entire world: "Whether you are a refugee or whether you are an economic migrant, all you have to do is get there. You get there and you're home free."

Nothing more mysterious in this bill than one thing, and I keep throwing it back as a clarion. The first duty of a sovereign nation is to control its borders. We do not. You could stop right there.

I have visited with the Government of Mexico. I visited with former President Lopez Portillo. They are sensitive, extraordinary people. I said to them:

There is nobody in this room but us. What do you want us to do with immigration reform in the United States?

After just saying, of course, that I was not from the executive department or the State Department. And they said, "We would not interfere with what you are doing. We do not want to interfere with what you are doing." I said, "Great. Now, run that again. There is nobody here. What would you have us do?" Still no response. And, finally, I remember President Lopez Portillo saying, "Yes, I have something that I want to share with you that I hope you will do. I hope that you will see that our people are taken care of and not exploited and that they are loved and provided for." I said, "I like that, too. How do we do that when they are there illegally?" And he said, "That is the serious issue, isn't it?" I said, "That's it."

So hopefully, when we talk about the Third World and Mexico, we will see Mexico become as involved because their borders have no control. And you will see that I think in these next months when we see Guatemalan refugee camps on the southern border of Mexico of between 30,000 and 100,000 persons according to various sources; when we see Mexican labor displaced in the oil patch by illegal and undocumented workers from Honduras and Guatemala, who come to Oklahoma, Louisiana, and Texas and break down the very industry that is to lead Mexico out of its economic plight; the sooner we get to the issue in this country—and it does not matter who is the President or what party is in power; the sooner we sit with that southern neighbor and deal with all the issues on the table at the same time, whether it be trade, employment, petroleum, or immigration, we will make some tracks in this country.

As soon as Mexico becomes as deeply involved in the areas of Central America as I know they will, we will again make tracks.

So, as I asked every witness who testified for many months, what happens if we do nothing? I can tell you that the response is not a bright one at all, because if you think you see discrimination now in America, with 108,000 being apprehended at the border in March, and we apprehend only 1 out of 5, and they simply come, then I think you will be witness to something that will really increase discrimination. We will simply go out and give the INS and the border patrol more money to do their job and we will have more sweeps and more operations and more intrusions into the workplace. Finally, the employer will say, "I'm not going to hire anybody who looks 'foreign' "; and there you reach the epitome of discrimination in the United States.

Mr. President, I believe Senator McCLURE is here with his amendment, and I appreciate his presenting it at this time.

I suggest the absence of a quorum, with the time to run equally against both sides.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1279

(Purpose: To require a properly executed warrant before an officer or employee of the Immigration and Naturalization Service may enter a farm or other agricultural operation)

Mr. McCLURE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Idaho (Mr. McCLURE), for himself and Mr. SYMMS, Mr. LAXALT, Mr. TOWER, Mr. WILSON, Mr. CRANSTON, Mr. DECONCINI, and Mr. DOMENICI, proposes an amendment numbered 1279.

Mr. McCLURE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place in the bill insert the following:

Section 287 of the Immigration and Nationality Act (8 U.S.C. 1357) is amended by adding at the end thereof the following:

"(d) Notwithstanding any other provision of this section, other than paragraph (3) subsection (a), an officer or employee of the Service may not enter onto the premises of a farm or other agricultural operation without a properly executed warrant.".

Mr. McCLURE. Mr. President, this amendment, which is cosponsored by Senators SYMMS, LAXALT, TOWER, WILSON, CRANSTON, DECONCINI, and DOMENICI, would require the Immigration and Naturalization Service to obtain a properly executed search warrant prior to entering a farm or any other agricultural operation.

As the situation stands now, INS agents must routinely obtain a search warrant before they can enter any place of business to look for illegal aliens. However, INS agents do not need to obtain a search warrant to enter a farm or a ranch. Without warning, they can descend upon a field and detain anyone they suspect of being an illegal alien. They could not do that anywhere else.

The reason why INS agents are allowed to forgo the usual procedure of obtaining a search warrant is an unfair and, I believe, incorrect and discriminatory interpretation of a legal document which allows farms and ranches to be placed in a separate category from all other places of business.

INS policy now treats agricultural lands as open fields, beyond the scope of the fourth amendment; but the so-called open field doctrine properly applies only to situations in which illegal activity—the so-called fruit of a

crime—is clearly visible to law enforcement agencies.

The open-field doctrine was first set out in the case of Hester against United States. In this case, two men were convicted of moonshining on the basis that law enforcement officials saw the defendants throwing an empty moonshine jug onto their property. The court focused primarily on the fact that the defendants' own acts disclosed the evidence on which their convictions were based.

In the case of farms and ranches, the only activity the INS can see is farm laborers working in the fields, and that is not per se a violation of any law.

It is discriminatory on its face to assume, on sight, that certain farmworkers are undocumented simply because of the color of their skin.

And that is what the INS is doing. They drive by a field. They see someone whose skin is different, and they say there is a presumption of violation of the law, based upon that fact which then gives the application of the open-field doctrine.

If the workers look like they might be illegal aliens, so their logic goes, they then have sufficient reason to enter the fields. Yet only when the agents finally enter the fields can an illegal versus legal status be determined.

There is no question that the fourth amendment protects people, not places; that is exactly the idea that this amendment seeks to reinforce. The objective determination of probable cause by a magistrate—for which all people have guarantees—is not afforded—either to the farmer or the farmworker under the current practice.

This amendment seeks to protect the rights of the farmowner and his employees, who would have the same rights and protections as all other workers and employees if there were walls around their place of work. INS agents have taken full advantage of this situation and have repeatedly abused individual rights and harassed honest farm and ranch workers.

This situation is intolerable. There is absolutely no reason why farmers and ranchers and their employees should not be afforded the same rights and standards of protection that every other businessman enjoys under the fourth amendment of the Constitution—protection from unreasonable search and seizure. Simply because a farm or ranch is an easy mark for the INS—offering the easiest and most cost-efficient means of reaching their quota objectives—is no reason to apply a different set of rules.

The fact that INS agents do not obtain a search warrant to enter agricultural lands has led the INS to concentrate their enforcement activities primarily on agriculture. Nearly 50 percent of all aliens taken into custody were employed on farms. Yet only about 8 percent of the total number of aliens in this country work on farms.

These figures reflect a distinct bias in the enforcement activities of the INS, and they serve notice that farmers and farmworkers are not receiving equal protection under the law as envisioned in our Constitution.

The INS contends that because farms and ranches fall under the category of "open fields," their agents do not have to obtain a search warrant before entering a farmer's fields. Yet a farm is nothing less than a factory without walls—a business operation that is vital to our Nation's economy.

The arbitrary and biased enforcement policy of the INS also results in crop losses for farmers and, ultimately, higher prices for consumers not because of violations of the law but because of enforcement bias. If a farmer's workforce is rounded up for interrogation during harvest time, even if no violation is found, that farmer often has no choice but to let his crops rot in the fields. Some farmers have reported losses as high as $100,000 because of this harassment.

Search warrants, Mr. President, are the general rule, to which legitimate needs of law enforcement may demand specific exemptions. However, no one has granted the INS this exception; they have simply assumed it.

To safeguard the rights of farmers and ranchers—and to insure that all employees are protected under the fourth amendment—we must take corrective steps. My amendment does not establish any particular precedent or protection for farmers and ranchers: it simply guarantees them the same rights enjoyed by every other employer and every other employee in the Nation. I would also add that the House Judiciary Committee has voted to include a similar search warrant requirement in its legislation.

It is remarkable, Mr. President, that legislation is necessary to insure that all Americans receive the protection granted under the Constitution. However, our system has failed in this important civil obligation.

Mr. President, this amendment is supported by a wide range of groups, including the American Farm Bureau, the National Cattlemen's Association, the National Wool Growers Association, the United Fresh Fruit & Vegetable Growers, and the American Civil Liberties Union.

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

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

Mr. SIMPSON. Mr. President, I was reflecting that this is an extraordinary alliance that the Senator just outlined.

Mr. McCLURE. I hope and I believe it will be a successful one.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLURE. Mr. President, how much time remains to the Senator from Idaho?

The PRESIDING OFFICER. Seven minutes and 44 seconds remain.

Mr. McCLURE. I yield 3 minutes to the distinguished Senator from California (Mr. WILSON).

Mr. WILSON. Mr. President, I rise to support the effort by my distinguished friend from Idaho.

I do not think the alliance is all that strange, as our good friend from Wyoming was just observing. I think it is entirely reasonable that people of different specific interests can see a common interest in the necessity of safeguarding the rights of growers, of workers.

Mr. President, I think that this is a necessary amendment simply in terms of equity. If we are going to be honest about it, the fact of the matter is, that it is easy for agents of the Federal Government employed by the Immigration and Naturalization Service, the border patrol, to see what they think is a much simpler way to find illegal aliens, and to put them into what is presently the revolving door, whereby they are for a time removed from the fields, for a time only and then returned.

It is easier than having to go through the kind of procedure that any other small businessman can in fact invoke, and that is the constitutional protection that requires a search warrant.

The point really I think is that we are engaged in the Immigration Reform Act and a number of anomalies, a number of ironic conflicts exist.

Just yesterday, with great wisdom, the managers of this legislation, the distinguished Senator from Wyoming and the distinguished Senator from Massachusetts, agreed to an amendment. They accepted an amendment which takes cognizance of the reality of the difficult situation faced by those who grow perishable commodities and they provided that this new, untried, and untested legislation with its cumbersome bureaucratic procedures that require certification should be cushioned at least to an extent of a 3-year transition period for those workers hired by those who grow perishable commodities.

That was to allow that industry to survive, and not be disrupted in order to avoid the kind of economic dislocation not just to growers but of those whose livelihoods are derived in a subsidiary fashion from the ability of the growers to harvest perishable commodities in a timely fashion, to avoid the kind of crop loss that means not only the loss of employment to those

engaged as well in the packing, processing, distribution, and marketing of those perishable commodities but the kind of crop loss that will mean permanent economic dislocation.

Yet today, the Senator from Idaho is asking simple equity. He is asking that those engaged in that kind of employment be afforded the same constitutional protection as any other small business person who has the right to insist that before his premises be searched that there be a warrant produced indicating that there is just or probable cause for that search to be conducted.

The point really is that the requirement for that kind of equity is to avoid the practical result that otherwise ensues when a search is made without a warrant, when in fact intimidation occurs. If that kind of thing continues to occur as it has in the past the predictable result is that the 3-year transition so wisely afforded by the Senator from Wyoming and the Senator from Massachusetts will be largely vitiated in the effect it seeks to produce which is a cushion of this transition period or this new legislation.

The PRESIDING OFFICER (Mr. ABDNOR). The 3 minutes have expired.

Mr. WILSON. I request an additional minute, by unanimous consent.

Mr. McCLURE. I yield 1 additional minute.

Mr. WILSON. I thank the Senator from Idaho. Let me just say the practical result of not gaining this protection is not only that we have those in a similar situation being treated quite differently for no justifiable reason, no reason really in my view that would satisfy a constitutional requirement for equal protection under the laws, but we also have the practical result that the purpose of the 3-year transition, which is to cushion this industry from the effects of this new legislation, will not be realized. In fact we will have raids on the fields, that people will disappear for days at a time, that there will not be timely harvests, and that the 3-year transition period afforded will not be carried out successfully. I support the Senator from Idaho. I think it is simple equity and it also will abort realization of the results of the 3-year transition sought.

The PRESIDING OFFICER. Who yields time?

Mr. SIMPSON. Mr. President, I always appreciate any participation that I perceive by Senator McCLURE from Idaho, my neighboring State. He is an extraordinary person in following almost every single issue that comes before the Senate. How he does that I have only the deepest admiration for. I happen to chair the areas of veterans affairs and immigration and nuclear regulation, but he chairs Energy and Natural Resources and seems to follow everything in this Chamber, which is an extraordinary thing and I have the deepest admiration for it.

The Senator from California, although new to this body, has riveted upon this issue of immigration reform in an extraordinary way and done an extraordinary job, as witnessed by his success and the extraordinary success of the so-called DeConcini-Wilson amendment of yesterday, a significant breaking of the logjam which was paralyzing this legislation.

Now, with all that, I speak in opposition to the amendment for this reason: The purpose of the legislation is to improve control over illegal immigration. That is it. Increased enforcement is a very key part of that. This amendment would very effectively defeat that purpose by greatly diminishing the ability of the Immigration and Naturalization Service to enforce immigration laws in the very occupations and industries which are presently dominated by the illegal labor force. That is, I guess, irony No. 1, since we are speaking of ironies.

This amendment would effectively eliminate border patrol farm and ranch checks. The Immigration Service does not have the resources available to process warrants, to travel from the site to rural areas, to prepare and sign affidavits and to obtain approval and issuance of the warrant by a magistrate. Anyone who has ever been involved in the practice of law knows that, and especially in rural areas of the United States, that is an impossibility.

Further, the field crews who are involved in this type of illegal employment move rapidly. No, that would be an understatement, they move frantically from place to place when this type of activity is going on, which makes the obtaining of a search warrant a futile effort.

This amendment would reverse several existing Supreme Court holdings on the application of the fourth amendment to open fields. The purpose of the fourth amendment is to protect privacy, not to aid an employer or field boss hiring illegal undocumented persons who are evading our immigration laws. That is not the purpose of the fourth amendment.

As I understand the theory behind this amendment, and I hope I perceive it correctly, it is this: It is not fair that the INS can see into an open field when they cannot see into a factory. I perceive that that is the essence of the argument. So here we are seeking to pass a new and substantive law which protects the knowing employment of the illegal undocumented aliens, and we are presented with an amendment which will greatly reduce our ability to enforce that law. It would be a contradiction in every term to support this amendment if one truly does believe in control.

Mr. President, let me include in my remarks with regard to the Supreme Court decision a list of the various decisions of the Supreme Court on that issue. I ask unanimous consent that it be printed in the RECORD.

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

DECISIONS OF SUPREME COURT

Katz v. U.S. (U.S. 1967) Supreme Court determined—4th Amendment protects people, not places.

Hester v. U.S. (Supreme Ct. 1924) court decided that the special protection accorded to people by the 4th Amendment is not extended to the open fields.

Countless other fact situations produce the same result whether *Hester* or *Katz* is utilized as the basis of decision.

9th Circuit—*U.S. v. Freie:* examination of boxes adjacent to and visible from little-used airstrip in isolated mountainous region.

9th Circuit—*U.S. v. Pruitt:* entry of grove of trees sometimes used as campsite and examination of boxes which had been left there.

Ariz. App. 1973—*State v. Caldwell:* entry of desert area where, "general public was apt to wander" and discovery of marijuana bricks.

California App. 1973—*Dean v. Superior Court:* overflight of and then entry upon field of growing marijuana in an isolated area of Sierra foothills surrounded by forest.

Colorado 1977—*People v. McLangherty:* entry of open pasture and discovery of stolen bee raising equipment.

S.W. 2d. Missouri App. 1974—*State v. Stavricos:* entry of vacant lot & discovery in weeds of paper bag containing drugs.

N.H. A. 2d. 1973—*State v. Hanson:* entry of cultivated area of marijuana surrounded on 3 sides by woods.

Mr. SIMPSON. Immigration officers are presently—and I think this is a very key point—they are presently not permitted to enter farmhouses, or barns, or other farm buildings without a warrant. They cannot do that now. If they suspect illegal aliens are in these places they can now post an officer, and this is what they do, to observe the premises while they obtain a search warrant. They do that now. Those things are not possible in an open field. Illegal workers move quickly, as I say often frantically, from field to field, effectively frustrating the enforcement of the employer sanctions law which we are seeking to pass.

I think most of my colleagues recognize the absolute detail involved in securing a search warrant and that is good because it is a serious and powerful tool of law enforcement, and it should always be tough to get because it is a serious intrusion when officers enter one's home or buildings. They are not lightly granted.

However, agricultural work crews are extremely mobile, moving swiftly. By the time a valid search warrant is secured these crews have frequently moved to another location rendering the warrant invalid and useless.

Countless resources will be wasted by continuing attempts to rewrite affidavits and warrants under continually changing circumstances, while all the employers and the employees are on the run. That is reality.

All of you have received correspondence, letters from another interesting array of groups, mostly involved in law enforcement, and DEA, and Justice, and police chiefs, and law enforcement officers. Those associations have been supportive of the bill but they cannot be supportive of this amendment because here it is: They point out, I think very sensibly, do not put it on the basis of enforcement versus nonenforcement. Put it on the basis that this amendment would undercut the entire law enforcement area or effect in rural areas, not only in immigration enforcement but potentially in other crime enforcement efforts, because while drug enforcement officers need warrants to search buildings for drugs, they do not now need warrants to enter open fields to find marihuana production or cultivation to arrest drug smugglers, they do not need that. While officers need warrants to search buildings for evidence or persons involved in rape, or robbery, or murder, they do not need warrants to search open fields for these same persons or for evidence, and that is as it should be, and it should be then no different for those officers who enforce our immigration laws.

This amendment would have a devastating effect upon control of illegal immigration. The Senator from California speaks of ironies, I described irony No. 1. Now let me describe irony No. 2: How come it is that when agricultural growers do not like illegals being apprehended and disrupting harvests, they say that only 8 percent of all illegals are in agriculture but 50 percent of all apprehensions are in agriculture?

But when they fear losing the illegal aliens as workers through the implementation of employer sanctions, they claim they will not be able to harvest their crops, the food prices will rise unless they have special H-2 agricultural workers and transitional temporary worker programs. That seems very ironical to me.

And, irony No. 3, I guess, is a greater one. Just as we are processing a bill to control illegal immigration, this amendment is offered which will effectively reduce control, one that will severely hamper the enforcement of our immigration laws. Just as the proponents of the legislation ask for 3- or 5-year programs, the proponents of the amendment yesterday asking for 3- or 5-year programs to allow people who are in this country illegally, in this country to work in agriculture during a transition period, they now offer an amendment which will make it evermore difficult to enforce the provisions of the transition program, because it is a wean-away program.

It is letting them start with 100 percent of illegal, undocumented persons in a transitional flow and in a year coming down to 66 percent. How do we find that out? Through law enforcement. And the next year coming down to 33 percent. And how do we find that out? By law enforcement. So that, to me, is an extraordinary irony.

I can only say that I understand the reasoning. It is the amendment that Senator McCLURE so ably presented in the last debate on this issue. But it will effectively freeze and seriously hamper law enforcement which is a very important part of immigration reform.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Let me respond to what my good friend from Wyoming has said. I do not want to take all of my remaining time to make eulogies to him for the work that he has done on this bill and the difficulty of trying to write a bill. It would take all of the remaining time to adequately express the admiration I have for him and the difficulty of the task that he is faced with in constructing this legislation. But, at the same time, neither do I wish to overlook what I think are misstatements or misapplication of fact.

This amendment does not overturn Supreme Court decisions. It simply stops an abusive practice by INS who misapplies the open fields doctrine. The open fields doctrine says where you see a crime being committed, where there is the evidence in front of you, you can go out in that field and look for it. If you see a marihuana plant there, you can go out and seize the evidence with respect to the drug enforcement.

But the only observable incident in this instance is that there is a worker in the field whose skin is a different color. They would not go into that field for any other reason. It is a misapplication of the open fields doctrine to say as a matter of fact, because you see somebody there whose skin is not like a white Caucasian, you can go out there suspecting the incidence of a crime. What does that say to the legal U.S. citizen who is working there totally lawfully? That is the fault of the focus of this practice by INS. That is the focus of the correction of this amendment and it does not overturn Supreme Court decisions.

The Senator from Wyoming says that INS would be hampered. They already must get a search warrant in any other case. In any other case—in the farmer's barnyard, in the farmer's shop, in the farmer's house, in the migrant worker's housing—he must get a search warrant. But if you see somebody out there in the field, you go grab them.

Now, what kind of law enforcement is that? What kind of an excuse is it that it will make it difficult for law enforcement to have to observe constitutional guarantees? We do in every other instance, why not in this instance?

It is suggested that, as a matter of fact, INS would be hampered in their ability to apprehend illegal aliens. Well, what about what it does to their ability to intimidate legal aliens, to infringe upon the rights of lawful citizens of this country, employers and employees alike?

A great demand for enforcement of illegal alien laws, for the enforcement of illegal aliens in this country and their deportation, comes from people who believe that illegal aliens, and rightfully believe, displaced workers from their jobs in this country. This practice by INS focuses their activity where that displacement is the least and diverts their resources away from the legitimate complaint that does occur in 92 percent of the illegal alien employment in this country, which is in a workplace that is not an open field.

If we are really trying to deal with this question of job displacement, why do we not direct the INS to look where the abuses occur and stop looking at the area that is of the least concern, legitimate concern, to the laboring men and women of this country? No, this amendment does not destroy INS. This amendment seeks simply to give the legal employer and the legal employee in this country, regardless of their race, regardless of their language, regardless of where they live and work, the same protection in the Constitution which INS is now depriving them of.

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

The PRESIDING OFFICER. Who yields time?

Mr. SIMPSON. Mr. President, that was a fascinating argument heard before. What this just might allow, if you look at it, if this amendment were passed, instead of all of these concerns about civil rights and discrimination, this amendment just might allow exploitation. Now that is possible, is it not, might I inquire?

Mr. McCLURE. Will the Senator yield on his time?

Mr. SIMPSON. Yes, I will.

Mr. McCLURE. I suggest to the Senator that the real problem, if there is displacement, is in the factory, in the workplace, other than the open field. And so if you are going to look at exploitation, it may well be that we have diverted INS away from the greatest abuses, the greatest degree of exploitation, and turned their attention toward that which is much less important.

Mr. SIMPSON. Mr. President, I understand that and I hear that. It is much easier, if that is the word, to obtain a search warrant in a known factory that the INS perhaps has been observing, that is a persistent hirer of illegal, undocumented workers. Search warrants are more appropriate to be granted in those situations for that type of an operation out of historical examination of the premise and perhaps previous search warrant activity. Those things are real in search warrants. I understand what is being said.

But when we are talking about rights and responsibilities and those things that move us, I cannot help but think that the passage of this amendment will result in exploitation. I do not want to use the words "continued exploitation," because there are those who are in a persistent pattern and practice of using illegal, undocumented workers and it will be a tough haul for them.

It is easy to say that we should enforce the existing laws, that if we only enforce the existing wage-hour laws of the United States, somehow we would not have to do this. That would be wonderful if we had any kind of rational law about illegal, undocumented workers. But we have chosen to grant ourselves in this country, only in America, the extraordinary law on the books that says it is illegal to harbor an illegal, undocumented worker. Then added to that was a thing called the Texas proviso which says, "However, the word 'harbor' does not include employment."

So how are we ever going to enforce laws on our books when it is legal for an employer to hire an illegal but it is illegal for the illegal to work? You cannot bring Alice out of Wonderland when you have a law on the books of the United States like that. I do not see how that can ever come to pass.

I join with my colleague from Idaho in wanting desperately to put more money into EEOC and wage and hour laws, but how will it ever have any effect when we have a basic law on the books that allows this extraordinary departure from sanity?

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

Mr. McCLURE. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLURE. How much time have I remaining?

The PRESIDING OFFICER. Time has expired.

Mr. McCLURE. Will the Senator from Wyoming yield 1 minute from his time?

Mr. SIMPSON. I yield.

Mr. McCLURE. I just wanted to make a comment on a point made by the Senator in his first argument. Getting a search warrant for a factory, a house, a farmshed, a migrant workers' housing project is easy, but it would be hard to get one for a farm place, an open field.

That, to me, simply does not stand either the test of reason or the test of practice in the courts.

If there is reason to believe and a probable cause showing can be made to the magistrate, the search warrants would issue. If, as a matter of fact, that search warrant is issued, the INS agents can descend upon the field without notice and with just as much surprise as is currently the case.

The only thing this eliminates is his ability to run up and down the open roads looking out into the field to perceive whether he sees somebody with a darker skin working out there as the subject of a possible arrest.

Mr. SIMPSON. Mr. President, I ask unanimous consent to yield myself an additional 2 minutes on the bill.

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

Mr. SIMPSON. Let me say in response, and I will yield an additional minute or two to the Senator from Idaho if he wishes to respond further, on this issue of search warrants in open fields versus buildings, that when you get a search warrant on a building you have usually secured the building. You have people there who are waiting for the warrant and the servers to appear. You cannot do that in an open field. There is no way to secure an open field. That is a reality of law enforcement.

My final point is this, because I have heard twice now the reference to the issue of driving along or going along and looking for brown-skinned workers.

What happens in law enforcement is Immigration officers typically make farm checks and workplace surveys on tips. They receive those tips from informers or people who see this going on, what they might describe as exploitation, and so they report that. The subcommittee has never received—and I have asked my staff to glean the records—in 2 years of testimony any evidence that the INS officers randomly drive down roads looking for brown-skinned workers.

They get information that there are illegal workers and then as their limited resources allow they follow up those tips with farm and ranch checks.

I greatly fear that the open fields of this country will become an oasis for illegal employment, were this amendment to be adopted. That is my concern.

Mr. McCLURE. Mr. President, I ask for the yeas and nays on the amendment.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The vote, under the previous order, will occur at 3:30 p.m.

The question recurs on the Kennedy amendment.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Kennedy amendment be temporarily set aside. I now yield to Senator D'AMATO under the regular order.

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

The Senator from New York.

AMENDMENT NO. 1280

(Purpose: To require the Federal Government to reimburse State governments for the cost of incarcerating in State prisons illegal aliens and refugees who commit felonies)

Mr. D'AMATO. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. D'AMATO), for himself, Mr. HATCH, Mr. CHILES, Mr. MOYNIHAN, Mr. BENTSEN, Mr. SPECTER, Mrs. HAWKINS, Mr. JOHNSTON, Mr. WILSON, Mr. LAUTENBERG, Mr. TOWER, Mr. LEAHY, Mr. MURKOWSKI, Mr. INOUYE, Mr. COCHRAN, Mr. BOREN, and Mr. MATSUNAGA proposes an amendment numbered 1280.

Mr. D'AMATO. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place in the bill insert the following:

SEC. . (a) The Attorney General shall reimburse a State for the costs incurred by such State for the imprisonment of any alien who is convicted of a felony by such State.

(b) An alien referred to in subsection (a) is any alien, as defined in section 101(a) (3) of the Immigration and Nationality Act, other than—

(1) an alien who was issued an immigrant visa or who otherwise acquired the status of an alien lawfully admitted for permanent residence, and who was subject to the numerical limitations contained in section 207(a) of the Immigration and Nationality Act (other than an alien accorded the status of a temporary or permanent resident under section 245A of such Act);

(2) an alien who is an immediate relative within the meaning of section 201(b) of such Act; and

(3) an alien who is a nonimmigrant within the meaning of subparagraphs (A) or (G) of section 101(a)(15).

(c) There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

(d) This amendment shall become effective on October 1, 1983.

Mr. D'AMATO. Mr. President, let me first say that the amendment that I speak in favor of is one that has the cosponsorship of 16 of my colleagues, some of whom represent States that

do not have the kinds of problems that my State of New York has with respect to illegal aliens now becoming a great drain on our prison systems and on the resources of our criminal justice system.

Cosponsoring this legislation are Senators HATCH, SPECTER, JOHNSTON, LAUTENBERG, BOREN, BENTSEN, HAWKINS, MOYNIHAN, WILSON, CHILES, TOWER, LEAHY, MURKOWSKI, INOUYE, COCHRAN, and MATSUNAGA. This legislation, which has the full support of the National Governors Association, will require the Federal Government to reimburse the States for the cost of imprisoning illegal aliens, aliens admitted in excess of normal quotas—particularly those entering on the Cuban and Haitian boat lifts—and aliens here on temporary visas, who have been convicted of a felony. My amendment will correct a profound inequity resulting directly from Federal Government immigration policies.

A survey of State prison systems carried out by the New York Department of Corrections has disclosed that there are today at least 4,000 aliens adding to our State's enormous prison overcrowding problems. In New Mexico, 8 percent of felons in State prisons are aliens. In New York 3 percent, or more than 800 prisons are aliens.

States reporting significant numbers of aliens in prison include the following:

Florida	750
Michigan	38
New Jersey	259
New York	832
Ohio	28
Pennsylvania	200
Texas	627
Arizona	111
Louisiana	29
New Mexico	144

No State, however, is, or can expect to remain, untouched by this problem.

Florida, Wisconsin, Arkansas, and Pennsylvania, where Cuban refugee resettlement camps were located, experienced serious crime waves after opening of these camps. Detention centers are currently operating in New York, Florida, Texas, and California. More are planned. Every State has held deportable aliens in custody for the Immigration and Naturalization Service. Every State has incurred expenses for these criminals, which are rightfully a Federal responsibility. Not only has the Federal Government failed to control our borders, in the case of the Marielito Cubans and Haitians, it has welcomed thousands of aliens with open arms—and then said to the States: You deal with them.

As the number of illegal aliens, migrant workers, and asylees entering our country continues to escalate, this burden on our State prison systems will also grow.

Hundreds of thousands of illegal immigrants now enter the United States annually. The yearly inflow of illegal aliens is 500,000. The Immigration and Naturalization Service apprehends nearly 1 million illegal aliens every year. Yet, there are at least 3.5 million, and possibly as many as 12 million, illegal aliens in the United States today.

Since World War II, 1½ million refugees have fled to this country. Hundreds of thousands of Indochinese, Cubans, and Haitians have also been permitted to enter the country in recent years in excess of normal quotas. More than 7 million nonimmigrant students, migrant workers, and other visitors enter this country on temporary visas every year.

It is important to understand why, under this legislation, some categories of aliens will trigger Federal reimbursement, while others will not. Simply stated, there will be Federal reimbursement for State expenditures in connection with alien felons in those cases in which there is no adequate Federal safeguard protecting the States from large influxes of potential criminals. When illegal aliens, refugees, migrant workers, and others admitted on temporary visas are permitted to enter the country, they are admitted according to no set numerical quota. Their admission is essentially a matter of Department of State discretion. The decisionmaking process is one in which foreign policy considerations dominate over the need to safeguard and protect American citizens.

Federal reimbursement will not be required in cases of aliens admitted under numerical quotas because in such cases Immigration and Naturalization Service screening offers the States a substantial measure of protection. An adequate screening process and the very fact of family ties also can protect the States when relatives of American citizens are admitted. For this reason, this class of immigrants is also excluded from Federal reimbursement. Finally, this legislation excludes diplomats because diplomatic immunity prevents their incarceration in the United States.

This is the second bill I have introduced in the last month to help our States deal with the many problems facing their overburdened prison systems. The first bill, the Correctional Facility Development Act (S. 1005) which would provide $1 billion per year for 3 years to the States on a matching basis for prison construction, is currently pending before the Committee on the Judiciary.

I thank those Senators who have added their support for this amendment. I thank them because they pay more than lipservice to our call to aid our States and communities in their fight to make our communities safe and to deal with the epidemic of crime, which has made it impossible for many of our State institutions to house the large numbers of felons placed in the system.

Today, exacerbating the problem of the criminal justice system, is the fact that there are now more than 4,000 aliens in State prisons adding to the fiscal burden of the criminal justice system.

I recognize that fiscal responsibility is important. I recognize that we have budget constraints. I recognize that there are many good works and things that we would like to undertake, but which we simply cannot do.

But I believe that we simply cannot afford to give lipservice to a so-called war on crime and allow our States to be inundated. We cannot afford to give them little in the way of help at this moment in our history when we are considering this historic legislation.

I commend my friend and colleague, Senator SIMPSON, for his outstanding work in attempting to fashion a bill dealing with the incredible complexities of immigration. I think it is important for us to recognize that the Federal Government has indeed helped to create, compound, and exacerbate the illegal alien problem, which is now creating such a great strain on the financial resources of our States.

This is our opportunity to say that the Federal Government will reimburse the States for the cost of the imprisonment of aliens convicted of felonies.

This legislation would require that the Federal Government reimburse States for the cost of imprisoning: First, illegal aliens; and second, refugees and asylees. We are talking about the Marielitos, the Haitians, the boat people, the Vietnamese, and other aliens who commit felonies, those who have been adjudged to have broken the laws of this country and who are now in the State prison systems.

As I mentioned, there is an estimated 4,000 aliens in prisons nationwide. The annual cost of this is approximately $57 million. We calculate that cost on the basis of an annual average cost of some $14,373 for incarcerating a prisoner in the United States.

The cost to the States can be expected to grow. One of the problems we have had is that when this Nation opened up its ports, Fidel Castro, in 1980, emptied his prisons. Many of the estimated 40,000 prisoners that Fidel Castro allowed out of his jails and into our country are making their way through the criminal justice system today. In New York City alone, we have established that within a 15-month period, 56 murders were committed by Marielito Cubans. Every one of those murders was committed by people who were former prisoners. This epidemic is beginning to spread throughout this Nation and we shall find, in State after State and place

after place, alien felons are working themselves through the system to become yet another burden on our already overcrowded State facilities.

Mr. President, our criminal justice system needs aid desperately. We send billions of dollars overseas in foreign aid. We are going to be voting on a controversial bill of $8.3 billion for IMF. For us to say we cannot make available $57 million to aid our States in the war against crime, to help make our communities safe and secure would be a tragedy.

The fact of the matter is that the rest of this immigration bill is going to impact on our State and local governments tremendously. We ought to help them to the extent that we can responsibly. I certainly think it is incumbent upon us to give more than rhetoric and lipservice when we say we join with the States to declare a war on crime. When we talk to people and ask them what disturbs them most, we find that, yes, they are concerned about the economy; yes, they are concerned about the great issues of war and peace. But in area after area, throughout the length and breadth of this great Nation, people are concerned about public safety. You cannot have public safety if the courts do not have spaces to send the prisoners to. You cannot have public safety when you have the situations we have in our States today in which prisoners are being paroled—not because they have served enough time, not because they are model prisoners, but because prisons do not have adequate space.

I submit this amendment because it makes sense, and because it is the fair thing to do. This is the opportune time for us to demonstrate convincingly to the States of this Nation that the Congress of the United States is hearing them and that we can appropriate the moneys or authorize legislation necessary to go forward, to begin to deal with at least a small part of this problem. I hope that we can come together and demonstrate to the American public that we are capable of more than just rhetoric, and that we are prepared to meet this challenge.

You know, Mr. President, we talk in the Preamble to the Constitution about domestic tranquility as a responsibility of this Nation. We are losing domestic tranquility. We have insurrection in the streets, in neighborhoods, in hamlets, in urban centers, in rural areas throughout this Nation. If we do not give help to our local law enforcement officers, after the criminals have been captured, after they have convicted, to see to it that the criminals can be placed in a secure detention center, then we are derelict in our duty and our responsibility.

I suggest that, as a result of our lax immigration policies, and our failures in coping with immigration issues, we have contributed mightily to the problems that our States now are confronted with.

Mr. SIMPSON. Mr. President, I understand the impetus behind the amendment and the good motives of my colleague from New York. I have discussed this with him rather thoroughly and hoped that we could have reached a different result, where I could have, perhaps, proposed something else. Since we were unable to do that, I simply share with him that the scope of this amendment, which I speak against, is very sweeping. It is not just this limited number of people that you might want to get at. It not only applies to illegal aliens; it applies, as drafted, to various other groups, including temporary workers, foreign tourists, asylum seekers, foreign students, refugees. Ironically enough, it will also apply to an H-2 worker who might have come to the Senator's State to pick the apples, or to someone doing business for the State and the employer citizens of the State, who might come here under the H-2 program to work and commit a crime, yet find that that is not a responsibility of the State, that that is a Federal responsibility. That is what this amendment provides.

I can say to him that it is a very significant departure from present law. I can also tell him that it is the very first time that such a measure has been proposed to the committee or to the subcommittee. No hearings have been held on this issue, nor has the subcommittee had the opportunity to study the implications of the broad sweep of this amendment. I pledge to do that. I have mentioned that.

Aliens legalized under the provisions of this bill are persons who have lived and worked and contributed to their communities for more than 3 years. These are the people who have been paying local and State sales taxes and income taxes. These are the people who pay property taxes, indirectly through rents or directly through property ownership. In most instances, indeed, they are workers who are paying their share and are also helping to bear the cost burdens of our penal institutions in this country and in the States, along with the other taxpayers of the country.

Our country has this proud tradition of accepting refugees and displaced persons from around the world. Until the 1960's, the resettlement of those people in our country was accomplished through voluntary agencies, which were truly voluntary. Those volunteers—churches, ethnic groups, family units and others—carried out the resettlement of these newcomers without any significant Federal Government expense. Today, the Federal Government provides reimbursements to the cities and States of the costs of resettling these newcomers for a period of up to 18 months. This amendment would add a significant new Federal responsibility. That is what it does.

Again, Mr. President, it freights this legislation with the helpful argument—to those who want to freight it—that the cost is too great. This is another item added to that. What we do in this place continually is try to see if there is not an increased Federal responsibility in almost everything we do, except for their intrusion. We do not like that, but we sure like their jack. Interesting business.

This amendment has a significant new Federal responsibility. I believe hearings should be held on this issue, on this proposition, before we act swiftly here.

I would have suggested and do suggest as being entirely more appropriate that we include in the reporting requirements under this bill the requirement that the President report to the Congress on an annual basis regarding the number and the cost of State incarceration of illegal aliens and other aliens covered by the proposed amendment.

We will not have any trouble getting that information. There is not a State penal institution in the United States that will not hurriedly present it, and assuredly so. It will be presented with great speed because we have a good idea of the prison population and who is there.

With this information supplied by these reports, this committee would then be in a position to hold hearings and propose some appropriate legislative action.

I urge my colleagues to reject the amendment. I pledge to the Senator from New York and to my colleagues that we will include report language to address the issue. I pledge that the subcommittee will hold hearings on this important issue, but it is one that is impossible to assess right now. If we are going to be responsible—and I hope that is one thing I have done in the midst of this morass—we will then be responsible on this issue also, and I urge that it be rejected, with that pledge to hold hearings and include report language.

Mr. D'AMATO. Mr. President, I thank my distinguished colleague and friend for his indication of support for report language, which will certainly give us a greater knowledge and understanding of the significance of the problem that so many of our States and jurisdictions face. Indeed, this is a significant new responsibility we are asking the Federal Government to assume, but it is one that it should rightfully assume.

We are a great and generous Nation. I certainly do not ask us to turn our backs on immigration policies that give aid, that give compassion, that recognize the great history of our

Nation to open its arms, to give shelter to those who are in need.

But I think we also have to understand that as a result of an inaction and inflexibility and because of a lack of adequate administration of the immigration laws, the Federal Government has created and exacerbated a problem that today has incredible dimensions througout the length and breadth of this Nation.

This amendment is a very, very modest move. The States did not create the situation. The local citizenry did not create this situation. The Federal Government over a period of time has been the cause, and now the burdens are descending upon our citizens.

I am not attempting to suggest that we have crime today simply because aliens commit crimes. In no way am I saying that. Most of the immigrants to our shores are decent, law-abiding, constructive members of society.

Yes, the Federal Government has a responsibility for admitting those aliens, admittedly a minority, who do not fit into that law-abiding category.

I say to my distinguished colleague, what if we get a better count next year? What vehicle are we going to use when we have the Director of OMB who says,

> I would not want to spend $50 million, $60 million, or $70 million even if there are 4,000 aliens who are in our prisons today who qualify, who committed felonies, whether they came in as students or as boat people or as illegals who crossed over.

Should the States be reimbursed? That is the question.

I think they should. I do not think there is any way we can say they should not be reimbursed. They did not create the problem. We did, the Congress, and administration after administration.

I am going to vote for this bill not because it is the cure-all, not because it is the best bill. There are lot of deficiencies. But we have to begin to make the move some place.

I say to my colleagues, that without this amendment, this problem will continue to exist, and whatever we do David Stockman is going to say, "Oh, no, we should not," in his dogmatic interpretation, "fund this."

I think it is an historical opportunity. We should use this opportunity to break ground because what we are doing is seeking justice and equity. Local governments cannot continue to have these burdens placed on them without some assistance.

Is this amendment going to cure the problem? It is a step in the right direction.

I fully understand the great esteem and support that my distinguished colleague carries in the Senate. I wish he were supporting this amendment, because I think it is important that we move forward. Sometimes we just cannot wait for another hearing and another day. I am fearful that we will not have another opportunity to address this problem that faces our society.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. HUMPHREY). One minute, 20 seconds.

Mr. D'AMATO. May I yield a minute to Senator HAWKINS, who I believe has a statement and is a cosponsor of this legislation.

Mrs. HAWKINS. Mr. President, I rise to congratulate the Senator from New York for taking up the battle to insure that State and local governments are protected from the costs associated with undocumented aliens that are now living in the United States. Although his amendment pertains only to the narrow area of criminal justice, it is certainly an important area and one that is costing Florida and our local governments millions of dollars each year.

I am pleased to hear that the Senator from Wyoming is willing to conduct hearings on this next year.

However, I should like to add for the RECORD that during the Mariel boat lift of 1980, a large number of violent and dangerous individuals were released from Cuban jails and mixed among the other Cubans seeking passage to the United States.

The Dade County grand jury concluded an investigation on the impact of the Cuban exodus on the county criminal justice system in May of last year. The findings of the grand jury revealed that among these Cuban entrants, 16 percent were responsible for the total felony arrests in Dade County.

Since the Mariel entrant population represents only 4.6 percent of the total population in Dade County, I think you can work out the math and see that there are over three times more Cuban entrants in Dade County jails than one would expect based on countywide demographics.

The grand jury report goes on to indicate that in addition to significantly increasing the criminal justice caseload, the criminal elements from the Mariel boatlift have resulted in staggering costs to the county. They estimate that the annual cost of housing and processing Mariel entrants and aliens arrested for felonies is in excess of $6 million per year.

These costs are compounded by the fact that both the State of Florida and the Dade County prison systems are under court orders to reduce overcrowded conditions. This means that we will either be forced to release hundreds of people who are incarcerated for felony arrests or are serving sentences for felony convictions. Or we will have to construct new correctional facilities at an estimated cost of $50,250 per year per detainee. In my view, neither option is acceptable. Both place an unfair burden on local taxpayers. These aliens are here in the United States, because of the failure of the U.S. Government to act to prevent them from coming here. As a result, I believe that it is the responsibility of the Federal Government to bear the costs when these people become a danger to society. It certainly is not fair for that burden to fall on the local taxpayers.

I hope my colleagues will support the Senators from New York and Florida in this effort to bring some fairness to the issue of protecting State and local governments from the costs of illegal aliens.

Mr. THURMOND. Mr. President, the amendment presented by the distinguished Senator from New York would reimburse the States for costs to imprison certain aliens who are convicted and sentenced for committing felonies.

Mr. President, this bill is directed at immigration reform and control. It should be limited to that purpose. I understand that the amendment would cover only illegal aliens, aliens admitted in excess of normal quotas and aliens here on temporary visas. Nonetheless, the estimated cost would add, conservatively, $25 million a year to this bill. I do not feel that such an expenditure is appropriate as a part of this legislation and will oppose this amendment.

Mr. CHILES. Mr. President, I rise in support of Senator D'AMATO's amendment which provides for Federal reimbursement to States for the costs of imprisonment of illegal aliens.

My colleagues are all too familiar with the occurrences which led to thousands of inmates from Cuban prisons and mental hospitals arriving on Florida shores. To recap in brief, Fidel Castro recognized a great gap in our immigration policy and forced upon the United States thousands of criminals and mentally ill persons who came in the infamous flotilla of 1980. Hundreds of Cuban Americans took boats to Cuba to retrieve their relatives and friends only to have strangers imposed upon them. Many of these strangers turned out to be undesirables which Castro wanted out of his country. That is the origin of many of the Cuban criminals which now reside in our State prisons.

It did not take long for a lot of these streetwise Cubans to commit crimes in Florida and other States. The crime rate in Florida rose by 25 percent almost overnight. Miami was soon dubbed the crime capital of the United States and our jails and prisons which were already crowded become overcrowded instantly. Law enforcement costs skyrocketed.

Senator D'AMATO's amendment recognizes this significant burden on the

States. As my colleagues are well aware, our State prison systems are already overburdened and overcrowded. They should not have to suffer the consequences of an additional influx of inmates because of the Federal Government's ineffectiveness in controlling our borders. The overcrowding of many of our State prisons with illegal aliens is a good example of a great burden which could have been avoided if we had an effective immigration policy in place. S. 529 goes far in implementing a reformed immigration program. But, I believe that Senator D'AMATO's amendment supplements the program by allowing the States some relief to deal with the costs they are now having to bear.

Mr. President, I am pleased to cosponsor Senator D'AMATO's important amendment and hope my colleagues join in supporting this authorization for Federal reimbursement to States for the cost of incarcerating illegal aliens.

Mr. GORTON. Mr. President, two of my colleagues proposed amendments to this bill which relate to the responsibility of the Federal Government to protect States from adverse impact resulting decisions on immigration matters. The Senator from New Jersey proposed that the block grants included in the bill be replaced by a guarantee of 100-percent reimbursement of the costs incurred by States in providing public assistance to aliens who obtain legal status under the bill. The Senator from New York offered an amendment to have the Federal Government reimburse States for the cost of incarcerating illegal and nonimmigrant aliens.

Both Senators are correct, in my view, in pointing out that decisions on immigration policy and enforcement are entirely within the Federal sphere and that the States should be protected from undue impact arising from decisions over which they have no control. There is a countervailing argument, however, that States may receive significant advantages or benefits from aliens which can offset the costs which sometimes occur. Further, although there is clearly a Federal responsibility in this area, I do not believe it necessarily should be extended to cover all of the vagaries of State welfare regulations, criminal laws, or sentencing policies.

These arguments suggest to me that we should approach blanket reimbursement proposals with great caution. For this reason, I reluctantly opposed the amendments offered by my colleagues from New York and New Jersey. I do think, however, that the concerns which they raised are legitimate. I would, therefore, urge the Senate, through the appropriate committees, to study the burden which aliens may present to State courts and prisons. I would also encourage the Senate to monitor very closely the impact of the legalization program to assure that legitimate Federal responsibilities are met.

Mr. D'AMATO. Mr. President, I do not believe the yeas and nays have been asked for. I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. SIMPSON. Mr. President, how much time do I have remaining on this amendment?

The PRESIDING OFFICER. Nine minutes, fifty-four seconds.

Mr. SIMPSON. I will use a very small segment of that time.

I have listened with interest to the remarks of the Senator from New York. He speaks with some intensity on the issue.

One of the toughest areas throughout the entire procedure that I have to deal with in this issue, as RON MAZZOLI has to in the House, is the specter of four: We deal with emotionalism, we deal with fear, we deal with guilt, and we deal with racism. To let those specters out into the household has never proved to me to be productive in the debate.

I come back to where I was before. I reject the amendment in its present form. I wish we could have adjusted it. We could not. We will let it go up or down. We will find out how that works. It may be very attractive. Federal support is always attractive.

The Senator calls it a problem that has incredible dimensions. I do not know that. The first time I heard it was 2 weeks ago. If the dimensions were that incredible, we have been holding hearings for 2 years. We know of no reliable figures whatsoever. The only figures we have are for Marielitos, and those are sketchy as the Senator so well addresses. We have no figures for the States, no figures from Louisiana, or Wyoming, or Washington; no figures that are good separating out illegals, amnesty violators, permanent resident aliens, tourist visas, no figures from around the United States. It includes much more than illegal aliens.

I have no doubt that when we complete some hearings, we will have some figures. Then I will go with the Senator to David Stockman and say, "These persons in this category of criminals are here because of the Federal Government. These here who are 'illegals' or out of status, and so on—we think the Federal Government should support these systems, and here is where we are."

I can see presenting a case such as that, but not on the information we have here.

Again I come back to the fact that I reject the amendment, and I hope my colleagues will do so. In the course of rejection or approval, I will have report language to address the issue. We will begin to gather our figures from every person in the United States, and we will have hearings on that issue. That is my pledge.

Mr. D'AMATO. I thank my distinguished colleague for his courtesies, for the manner in which he presents his case.

I understand that this is a very difficult bill. I thank the Senator for his pledge to go forward in the manner he has described.

Mr. SIMPSON. I thank the Senator very much. I appreciate that. I will keep that pledge.

The PRESIDING OFFICER. The question recurs on the Kennedy amendment.

Mr. SIMPSON. Mr. President, we are now at the point where there are two remaining amendments. One of them is contingent upon the addressing of the Kennedy amendment. The floor manager of the bill and I are attempting to see if there is a possibility of an accommodation that would be workable. If that is reached, then the Levin amendment will be withdrawn. If that is not reached, then the Levin amendment will be presented. Both have a time agreement, and we are ahead of schedule.

I will suggest the absence of a quorum and request that the time not be charged to either side, because there is very limited time. I think that within an hour or half hour, we might be very close to knowing whether or not we have an accommodation.

Mr. President, there is one other amendment, and that is the Hatfield amendment. I apologize. That remains unresolved, but we are working a possible solution there. At this time, Senator HATFIELD is not in the Chamber.

We need time for the principals to discuss the Kennedy amendment, and I therefore suggest the absence of a quorum and request that the time not be charged to either side.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, during the course of this debate there has been an underlying suggestion that immigration to the United States is, somehow, bad—that the numbers are too high, the impact undesirable, and the consequences for the future are negative.

But as I have said repeatedly during the debate this year and last year, these implications fly in the face of American history and all that we know

about the contributions of immigrants to our society.

A recent example that has been given a great deal of negative publicity has been the flow of Cubans to the United States during the boat exodus of 1980. Clearly, the Cuban push-out was a tragic affair, handled badly, both diplomatically and domestically. And most Americans were understandably alarmed over the chaotic arrival of tens of thousands of Cubans to our shores—despite a 20-year history of welcoming Cuban refugees.

Today, if asked, most Americans would still have a strongly negative feeling toward the Cuban refugees of 1980—believing that they continue to pose problems or are a drain on our society. Yet, in just a few years, the facts are quite the contrary. Like all refugees and immigrants who have come to our shores throughout our history, the Cubans of 1980 have become productive, contributing members of our society. It has not been easy for them. It has not been without difficulties. And some have not done as well as others.

But as a report in yesterday's New York Times documents, the vast majority have adjusted very well, and are doing very well in the United States.

Mr. President, this article speaks for itself, and for those Senators who are still anxious over the impact of the Cuban refugees of 1980, I urge a thorough reading of this excellent report.

Mr. President, I ask unanimous consent to have printed in the RECORD the article to which I have made reference.

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

[From the New York Times, May 17, 1983]

3 YEARS LATER, MOST CUBANS OF BOATLIFT ARE ADJUSTING HERE

(By Reginald Stuart)

MIAMI, May 16.—It began as a small-boat exodus of several thousand Cubans who were welcomed here as refugees from the Castro Government.

As the number of refugees swelled, many Americans became increasingly upset as the Cuban Government labeled those sailing to southern Florida from the port of Mariel misfits and outcasts.

Today, three years and 120,000 Cuban refugees later, experience and some success stories appear to have disproved many predictions that dire consequences would stem from this sudden injection of refugees, few of whom spoke English and most of whom possessed minimal marketable skills.

Crime among adult refugees has not run rampant year in and year out, as many had feared, and crime among juveniles has fallen far short of predictions by a local judge. Work and a pursuit of English have been taken seriously by many, according to workers involved with the refugees.

Among the success stories of those who made the trip from Mariel Harbor is Eduardo Suárez, a television news photographer in Miami, who recently won a Florida Emmy. Jesús Sarmiento became the first of the refugees to graduate from college in this country, finishing at Florida International University this spring with an engineering degree and a 3.5 grade point average. At the Citrus Grove Junior High School here, Jacqueline Olivera and Addys Martinez, two 15-year-olds, are at the head of their classes academically.

Yet, adjusting to life in America, some refugees and resettlement workers say, has been a slow, painful process for many, complicated by language and a generally negative stigma attached to being a "Marielito," as the refugees have become known.

Juan Molina, a 33-year-old artist, has searched as far as Texas for permanent work, but the quest has been frustrated by his inability to speak English and his lack of a high school equivalency certificate. Miguel Hernández, a 27-year-old laborer, has had much the same experience. And 52-year-old José Collado, who eventually got a job as a hotel worker in southern Florida's tourist season, says he has stopped counting the times he has been refused work.

Then there is the question of the refugees' long-term legal status. Congress is debating an immigration bill that includes several proposals to resolve the permanent status of the Marielitos, officially classified by the Immigration and Naturalization Service as "entrants," but the fate of the bill is uncertain. The refugees are not likely to be deported, if, for no other reason, because Fidel Castro has said he will not take them back.

Meanwhile, Carter and Reagan Administration actions are being challenged in Federal court in Atlanta. The questions focus on due process as it affects restrictions imposed on entrants, whether international law sanctions the kind of open-ended detention some of the Cubans contend they are being subjected to, and whether the executive branch has abused its power on parole policy and procedures.

The outcome is likely to have a far-reaching effect on future immigration law. Its immediate effect would be upon 500 Cuban felons who have been detained since coming here, and 500 others who have been detained on a variety of charges arising since they arrived.

"THINGS HAVE WORKED OUT"

"On the whole things have worked out very well," said Denise Blackburn, director of the program staff for the Justice Department's Cuban-Haitian Entrant Program in Washington. "When you consider that we were a country of first asylum and received nearly 125,000 people between April and August 1980, we have remarkably few cases of people who are problems."

That view is generally shared here in Dade County, where 70,000 to 90,000 of the Cubans are estimated to have settled.

"It is kind of a miracle that these people have been able to survive here and make the progress that they have," said Eduardo Padrón, a vice president of the Miami-Dade Community College, who in 1980 was chairman of the Spanish-American League Against Discrimination. "They started out on the wrong foot," he said, reciting reports, believed to have originated in Cuba, that the refugees were hardened criminals, mental patients, homosexuals and espionage agents.

A "NEGATIVE REACTION"

When criminals and others did turn up among the masses of refugees, that was the point at which some people stopped calling the movement the "freedom flotilla" and downgraded it to "boatlift." It was also the time, those interviewed say, that the welcome mat put out by Cuban-American volunteers in Key West was pulled in.

"Over all, I feel they have survived the negative reaction and overall lack of reception," said Mr. Padrón. "Most have assimilated pretty well."

Msgr. Bryan O. Walsh, executive director of Catholic Community Services for the Archdiocese of Miami, said positive aspects of the Mariel refugee era had made it a "remarkable" experience, given the magnitude of the troubles the exodus posed.

Many of the refugees were forced to leave spouses and children behind, he said, and some have become involved in crimes here. Others, he said, have been subjected to racial discrimination because they are black. "They were pushed to the margin of society," he said.

Studies have found those who came here three years ago differ in many ways from the two waves of Cuban exiles in the 1950's and 60's. These differences compounded resettlement problems.

A REFLECTION OF COUNTRY NOW

Demographic studies by Juan Clark of Miami-Dade Community College have confirmed most assessments that the Mariel refugees come closest of the groups to being representative of Cuba's population as it has developed since the Castro takeover in 1959.

In the first wave, 1959-62, 200,000 Cubans came in an organized airlift. More than 90 percent were white middle-aged, well-educated people. They had benefitted from the system that preceded the Castro Government and have established themselves in the social, business and political life in this country. For the most part they came in family units.

In the second wave, 1965-70, 270,000 people who arrived, first by boat then in a more organized airlift. They were also mostly white, but 24 percent were black or mulatto. These were largely educated and many worked at trades and came from Cuba's working class. Again, most came with their families.

In the case of the Mariel refugees, Dr. Clark's study of immigration records found that the large majority were blue-collar workers, less educated, mostly younger males. These had a higher level of divorce than those before them. About 20 percent were not allowed to bring their families and 20,000 males were separated from their wives. Most of the Mariel refugees spoke only Spanish and about half were black.

The Cuban Government stirred the coals of fear by declaring that many of those being sent to America were criminals and social misfits, a fear that was fanned by unrest at several refugee detention camps.

Also, a worsening of the dismal crime scene here in 1980 and early '81 prompted many to point to the Mariel refugees. In a 1981 report by the Dade County grand jury on refugees and crime, the jury said that while Mariel felony arrests had contributed greatly to the 25 percent increase in the caseload over the pre-1980 period, the part attributed to Mariel refugees had been overestimated.

A new allegation about the refugees emerged in recent court testimony when a convicted drug smuggler identified himself as a Cuban agent and said that the Cuban Government smuggled in 7,000 spies in the boatlift, and they were ordered to flood this country with illegal drugs and to spread propaganda. The Cuban Government has

refused to comment on those charges, which have met with some credence among the police and State Department but little among those who worked with the Mariel refugees.

DETAINED FOR 17 MONTHS

Juan Molina was one of the "criminals" released from Cuba. He said he had served nine and a half years of a 10-year prison sentence for stealing a cow to feed his family. When he told American immigration officials that he had been in prison, he spent 17 months in detention here, waiting for a Government decision on what to do with him and several thousand other Cubans.

Upon his release in November 1981, Mr. Molina got a job at a sign painting company that lasted two days. He was on commission and was paid $18. He then went to Texas in search of work; "but found no luck." "The work was no good," he said. He returned to Miami where he works as a house painter.

Mr. Molina says he is working at almost any job he can find while trying to learn English and pass a high school equivalency examination. "Here, if I want to study something, and have the desire and enthusiasm, I can do it," he said. "That'll be the glory for me."

José Collado, a thin black man with salt-and-pepper gray hair, had been in the merchant marine much of his life. He came here expecting to find "liberty," he said. While he is able to enjoy more things here than in Cuba, he said, life has been only "so-so."

His inability to speak English, his being a Marielito, and the color of his skin have been drawbacks.

"I thought at the time, discrimination, racism is still alive," said Mr. Collado. After more than a year's search for regular work, he found a job as a hotel worker at $3.50 an hour last year. But it was seasonal work and he was laid off last month. He is job hunting again though, and taking English lessons. "I plan to live the rest of my life here," he said.

Despite the frustrations, Cecil Gaudie, Miami director of the International Rescue Committee, says that 85 percent of the Mariel refugees have jobs and can look after themselves. Mr. Gaudie, like others involved in refugee resettlement, takes offense at reports that have focused upon the negative side of the Mariel exodus. "The silent majority is almost forgotten," he said. "What you almost always hear about now is the few that are complaining."

RESPONSE OF THE SCHOOLS

To accommodate 15,000 Mariel refugees who are estimated to have entered Dade County public schools in the 1980-81 school year, the system spent $16.5 million, according to Dr. Tee Greer, assistant superintendent for Federal projects administration. The Federal Government reimbursed the county $5 million, he said, while the rest of the cost was made up with budget cuts in other county departments.

Dade County and its municipalities, including Miami, estimate that they spent $130 million absorbing the refugees in 1980-81, and were reimbursed only a fraction of that by Federal agencies. The refusal of the Government to reimburse these local governments fully remains a source of tension here.

A positive note is sounded by Judge Seymour Gelber, administrator of the Dade County Juvenile Court. Three years ago he predicted that juvenile crime among Hispanic children would double by now. The prediction was based on a spot check of juvenile records then. A forthcoming report, he said in an interview, will show that his predictions not borne out.

"I think a close examination will show that it was not as evil a situation as we may have thought." the judge said. "It's not a big issue in the community anymore."

Mr. DURENBERGER. Mr. President, I was very pleased that the House Judiciary and Foreign Affairs Committees have adopted language regarding extended voluntary departure for Salvadorans who are in this country illegally. This decision signifies recognition that the civil war in El Salvador and the violence and terror perpetrated by the far right and the far left have claimed far too many victims and jeopardized the safety and well-being of thousands more.

Many of those who have entered the country have done so since the rebels' final offensive of January 1981, and therefore do not qualify for the amnesty provisions of the Simpson-Mazzoli bill. It is therefore important that we address their status in a special manner.

My deep concern about the plight of the Salvadorans whose lives have been profoundly affected by the violence in their war-torn country has prompted me to contact the State Department numerous times. I have spoken personally with many people during the past several years about the rampant cases of torture and murder carried out against the civilian population by the military, the death squads, and the guerrillas. I believe that the United States bears a certain responsibility for the noncombatant deaths because of our support for the Salvadoran Government and military. This prompted me to meet with then-Secretary of State Alexander Haig over a year ago. I presented him with a letter which outlined my concerns about the refugees who are in this country. I urged him to grant political asylum status to those who had lost family members in the violence and who had a justifiable fear of returning to El Salvador. I wanted to insure that those who truly deserved such status would be assured of receiving it.

When I could see no change in our policies regarding asylum requests, I wrote to Secretary of State George Shultz. Again, I outlined my grave concerns about the plight of the Salvadorans who were in this country and who feared for their safety should they be unwillingly returned to El Salvador. I urged that every opportunity be given to the Salvadorans during the deportation hearings to explain their reasons for fearing a return to their country. I urged that those with a well-grounded fear of persecution or those who presented evidence of torture or repression against their families and coworkers should be granted the opportunity to remain in the United States until it was safe for them to return.

Last month, I had the opportunity to meet with two leaders of a small peasant organization who told me gruesome and horrifying stories of the violence that has been committed against members of their cooperative. The violence they described is typical of the terror that the extremists in El Salvador have carried out for decades. In this instance, however, the Army was involved, which makes the point even more telling.

A land dispute between the cooperative and the former landowner was being resolved in the courts. Not satisfied with the way the proceedings were going, the landowner contacted his son's godfather, who was a colonel in the Army. The landowner donned a mask to conceal his identity and joined the Army patrol in visiting the village and pulling out selected co-op members for revenge. At least 20 people were killed, some by machete slashes in the shape of a cross.

There can be no justification for this type of vicious murder, but unfortunately for the people of El Salvador, this type of wanton violence is far too common. These incidents point up the randomness of the violence and confirm in vivid terms how much the common man and woman have to fear.

While random violence in El Salvador is horrifying because of its arbitrariness and the perpetrators' fascination with perverse methods of torture, the acts of calculated and premeditated violence are even more despicable. Amnesty International has amassed countless testimonies of violence and terror in El Salvador and the rest of Central America. Their investigations have shown repeatedly that those individuals who are relatives of victims, or who have condemned the abuses, face a special threat to their well-being. Additionally, those who have entered the U.S. illegally, been apprehended by the INS, and deported may well risk their lives by returning to El Salvador. This was precisely the case for Santana Chirino Amaya who was found tortured, murdered, and decapitated after he had been deported and returned to El Salvador. A companion, Bernardo Antonio Rivas, 14 years of age, suffered the same fate. In an interview with a former career military officer of the Salvadoran Army, Amnesty International learned that deportees faced a special threat upon their return to El Salvador and were frequently tortured before they were murdered.

The civil war is now more protracted than ever, with no end to the violence in sight. The number of refugees residing in the United States is unknown, but estimated to be at least 60,000. In 1982, the INS granted only 65 Salvadorans political asylum and deported

2,118 to El Salvador. I find it difficult to believe that the INS can support so few asylum petitions, given the kind of evidence that has been presented to me. It is because I believe the evidence is so compelling that I support granting extended voluntary departure status to the Salvadorans who are in this country without proper documentation.

This is not the first time that extended voluntary departure has been granted to the citizens of an entire nation. More importantly, however, if implemented this policy would be a signal that the refugees would eventually return to their country and not become permanent residents of the United States or a burden on our public assistance system.

My support of the granting of extended voluntary departure stems from my firm conviction that refugees who return unwillingly to El Salvador face a special threat that the general population does not face, whether from the right or the left. The evidence that has been presented to me from a variety of sources indicates that this fear is well-founded and that it justifies the same special status that was granted to oppressed people in the past, most notably the Ethiopians, Poles, and Afghans. It is a humanitarian approach for dealing with a serious problem that exceeds the bounds of human decency. It is a humane approach to an inhumane problem.

Mr. President, I ask unanimous consent to have printed in the RECORD my two letters to the Secretary of State and a response from the Department of State.

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

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C., March 26, 1982.

Hon. ALEXANDER M. HAIG, Jr.,
The Secretary of State,
Washington, D.C.

DEAR SECRETARY HAIG: I am writing to you regarding the granting of asylum to Salvadorans in this country.

The United States must continue to be a haven for those who are true political refugees. I recognize that the United States cannot be the only source of asylum for those who flee political persecution. International refugees are an international responsibility. However, I am greatly concerned about the Salvadorans who are in the United States and who seek refugee status.

The United States bears a special responsibility in this instance because of its support for the Duarte government. The Duarte government is being harassed by both the extreme right and the extreme left. As a result, public officials, businessmen, educators, agrarian workers, trade unionists, and peasants face a double threat from those who would bring about leftist repression and those who would return El Salvador to its brutal past.

In recent months the Salvadoran military has been implicated in a number of serious and disturbing incidents involving violence against the unarmed civilian population. The incidence of political persecution, whether from the right or the left, is rising as political factions become increasingly polarized and desperate.

At one time, prominent and wealthy Salvadorans feared kidnapping and random attacks of violence by armed extremists. The activities of the leftist guerrillas are now far more sophisticated and intimidating. The threats to mayors and citizens who participate in the upcoming elections are a case in point. Likewise, on the right, the torture and molestations are ever more gruesome. One no longer needs to be intimately involved in political activity to be a target for repression. Now one can be victimized for merely living in the same village, working on the same farm, or having the same last name as an activist.

Those Salvadorans who have been in this country since the early days of the violence may possibly not qualify for refugee status or asylum under our laws. However, Salvadorans in the United States who have lost family members to the current violence justifiably fear a return to El Salvador. It is my opinion that they properly qualify as political refugees, and should be treated as such.

I want to reiterate that I do not believe that all expatriate Salvadorans merit refugee status. I do, however, urge that you extend every consideration to the requests of Salvadorans for political asylum so that those who truly deserve such status will be assured of receiving it.

Sincerely,

DAVE DURENBERGER,
U.S. Senator.

DEPARTMENT OF STATE,
Washington, D.C., April 7, 1982.

Hon. DAVID DURENBERGER,
U.S. Senate.

DEAR SENATOR DURENBERGER: I refer to your letter of March 26, 1982 about the granting of asylum to Salvadorans in this country.

You correctly point out that violence is an enormous problem in El Salvador and that hardly any segment of the population is immune from this threat. The upshot of this is the fear shared by many Salvadorans of a return to their country. Salvadorans and others in this country may, and frequently do, apply for political asylum status. The granting of asylum in this country is governed by the United Nations Convention and Protocol Relating to the Status of Refugees and U.S. law. Such treaty and law provide sanctuary for persons fleeing persecution.

Under the U.N. Convention and Protocol on Refugees, the United States is prohibited from undertaking the forced expulsion (refoulement) of a refugee to a country or frontier where persecution is likely to occur. In addition, the Refugee Act of 1980 provides for the granting of asylum status to those who establish a well-founded fear of persecution upon return to their country of nationality for reasons of race, religion, nationality membership of a particular social group, or political opinion. The responsibility for establishing a well-founded fear of persecution rests with each applicant.

As a signatory to the United Nations Protocol Relating to the Status of Refugees, the United States is well aware of its obligations and responsibilities, including the prohibition against the refoulement of refugees. We have a long-standing record of support for relief activities on behalf of refugees and a generous resettlement policy. No other country has provided as much assistance or resettlement opportunities to refugees as the United States.

Matters regarding exclusion or deportation proceedings or voluntary departure are, of course, under the jurisdiction of the Immigration and Naturalization Service (INS). The Immigration and Naturalization Service (INS) does not classify Salvadorans or members of any other nationality in the United States as refugees unless they individually establish that their fear of being persecuted is a well-founded one.

A request for asylum should be reasonably related in point of time and circumstances to the flight from the country of nationality. It is our view that the majority of Salvadorans in the United States did not depart their country solely to seek safe haven in this country. Most traveled through third countries before entering the United States, and many of them entered quite some time ago. Other countries closer to El Salvador—Honduras, for example—have been generous in offering safe haven to Salvadorans who have fled. Thus, the United States is not the only possible refuge, nor can it in most cases be considered the country of first refuge.

The INS has informed us that no Salvadoran asylum-seeker is sent back until a determination has been made that the claimant has not established a well-founded fear of persecution. It is not necessary "formally" to request asylum. If a positive indication of unwillingness to return to the homeland is made, and if the unwillingness is based on a fear of being persecuted, that is sufficient to have the case processed through asylum procedures. For those who establish a well-founded fear of persecution upon return to their country, the Department, in its advisory opinion, will so inform the appropriate INS District Office. Those who do not are not eligible for asylum.

In view of the available remedies to refugees from El Salvador under the asylum provisions of the Immigration and Nationality Act, as amended, and the U.N. Convention and Protocol on Refugees, we do not consider blanket voluntary departure status as an appropriate alternative in the circumstances. The Department of State and our Embassy in San Salvador will continue to monitor the situtation carefully. It should go without saying that this is not an easy task. However the procedures for a considered and just determination are in place and are being used by our officers.

I trust that the foregoing views will be helpful in understanding our position on the granting of asylum and on voluntary departure status for Salvadorans in this country.

Sincerely,

ALVIN PAUL DRISCHLER,
Acting Assistant Secretary
for Congressional Relations.

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C., April 27, 1983.

Hon. GEORGE SHULTZ,
Secretary of State,
Department of State, Washington, D.C.

DEAR MR. SECRETARY: I am contacting you regarding my ongoing concern about Salvadorans who have requested political asylum.

Last year, I met with Secretary of State Haig to discuss our policies in Central America, and I brought up the problem of the refugees. During our meeting, I said that I believed these Salvadorans had left their country for a variety of reasons during the

last several years. While I realize that strict criteria exist for granting political asylum, I believe that many of these people justifiably fear returning to their homeland. Although some may have fled originally because of economic reasons, the level of violence and the uncontrolled acts of terrorism that have been committed in their villages since they left have put their very lives in jeopardy. I urged the Secretary to reconsider the criteria for accepting and denying applicants for political asylum so that those who expressed a reasonable fear of reprisal would be allowed to remain in the United States until it is safe to return.

I continue to be very disturbed by the incidents of violence that have been reported to me by many sources. Several weeks ago, I met with two Indians who told me about atrocities committed in their village by the army. I believe the wanton violence they described is not rare in El Salvador. In this instance the army entered a village in Sonsonate where the people had been apolitical and had shown no particular allegiance to either the government forces or the guerrillas. The atrocities committed there in late February were described as a case of harassment by the landowners of the peasant-run cooperative, and could not be attributed to any security threat. I was told that the commander was godfather to the son of one of the large landowners and was asked to interfere because of a business dispute.

As you know so well, Mr. Secretary, the violence in El Salvador knows no boundaries and is not carried out on the battlefield alone. Innocent noncombatants have suffered extraordinary losses because of it. These incidents, which are foreign to us, are unfortunately too routine in El Salvador. They underscore the fear that people have about returning to their villages.

The U.S. agencies responsible for implementing refugee policy have outlined for me the distinction between immigrants and refugees and have stated that many of these applicants do not meet the criteria for political asylum. Many of the Salvadorans, who are not cognizant of the distinctions between these two categories and who fear for their lives, may not immediately say so when first questioned. I believe every effort should be made by INS officers and State Department officials to determine whether violence perpetrated by rightest death squads, the security forces, and leftist guerrillas has created a bona fide reason for these Salvadorans to fear a return to their country.

A number of American churches around the country have been so concerned about the plight of these Salvadorans that they have opened their churches to those who fear for their safety should they return to their homes. While I do not countenance these acts of civil disobedience, I recognize why these groups have chosen to lend their support to these people. They share with me a sense of frustration that the very real threat the Salvadoran refugees face is being underestimated or disregarded.

As I pointed out in my letter to Secretary Haig, the United States bears a special responsibility for events in El Salvador because of our support for the Duarte and Magana governments and the armed forces. Therefore, it is particularly important that we display as much understanding as possible when evaluating the asylum petitions.

I am particularly concerned about our policies because asylum seems to be more easily granted to highly-visible or well-known persons who present far less criteria for fear of persecution than have the thousands of Salvadoran applicants.

I appreciate your assistance in this matter and look forward to your reply.

Sincerely,

DAVE DURENBERGER,
U.S. Senator.

HAITIAN REFUGEES

Mr. CRANSTON. Mr. President, I request that my remarks concerning the plight of the Haitian boat people who were interned by our Government, be printed in the RECORD at the appropriate place with those of other Senators who call for some form of legal status for Haitian refugees.

Mr. President, our Government's discriminatory treatment of these refugees is unprecedented in our Nation's history. Federal courts have twice found that these Haitian refugees were illegally imprisoned by the INS, and that the detention policy was blatantly discriminatory.

These boat people risked their lives across 800 miles of ocean to seek safety and a chance for a free and decent life in the United States. Then, for over a year, 2,000 of these refugees were imprisoned here without bond, on orders of Attorney General Smith.

They arrived on our shores unfamiliar with English and largely uninformed about our legal system.

The INS shuffled them from place to place, often to desolate areas of the Nation, without permitting them to consult legal counsel.

It conducted mass deportation proceedings—including mass hearings—behind closed doors, with no one to explain their rights or to provide adequate translation.

These are the findings of the U.S. court of appeals.

It is unjust and cruel for the INS to continue threatening this small group of Haitians with forcible deportation to Haiti, where they face brutality, imprisonment, or worse.

The uniqueness of their situation and the discriminatory treatment they have already suffered argues that they should be considered for some form of secure legal status.

I hope that the Senate-House conference committee will carefully consider the necessity of bringing the Haitian boat people within this bill's protections by extending the legalization date, as the House Judiciary Committee has done.

THE NEED FOR A PROVISION IN S. 529 GRANTING LEGAL STATUS TO HAITIANS ARRIVING BEFORE JANUARY 1, 1982

Mr. D'AMATO. Mr. President, I rise to request that my comments concerning the necessity of a legal solution for the plight of a small number of Haitian boat people be printed and made part of the RECORD at the same point as those of Senator CRANSTON who joins me to call for legal status for these Haitians.

Federal courts have twice held that the Haitian boat people were illegally imprisoned by the Immigration Service in violation of the U.S. Constitution. Most recently the 11th Circuit Court of Appeals found that this policy was so selective as to be discriminatory.

Mr. President, fundamental justice and human compassion demand that separate provision be made in the Simpson-Mazzoli legislation in conference committee. If a comprehensive legalization program does not include these previously detained Haitians, elementary justice demands that separate provision be made in the legislation granting legal status to Haitians arriving before January 1, 1982.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

LEAVE OF ABSENCE

Mr. BAKER. Mr. President, I have apprised the minority leader and others that it will be necessary for me to be absent from the Senate from 4:15 p.m. this afternoon approximately until sometime tomorrow afternoon in order to attend the functions in connection with the celebration of the 50th anniversary of the founding of the Tennessee Valley Authority, which will be held in Muscle Shoals, Ala., and at which I will speak.

On tomorrow, Mr. President, it will be my sad duty to attend the funeral of a very close friend.

Mr. President, I ask unanimous consent that I may be excused from attending the sessions of the Senate today at approximately 4:15 p.m. until tomorrow at approximately 5 p.m.

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

Mr. BAKER. I thank the Chair.

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

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

AMENDMENT NO. 1281

(Purpose: To provide a procedure for congressional review of any proposal of the President to require an individual to present a national identity card at the time of his hiring, recruitment, or referral)

Mr. HATFIELD. I send an amendment to the desk, Mr. President, and ask for its immediate consideration.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside.

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

The amendment will be stated.

The Senator from Oregon (Mr. HATFIELD) proposes amendment numbered 1281.

Mr. HATFIELD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 108, line 11, strike out "Within" and insert in lieu thereof "Except as provided in paragraph (3), within".

On page 110, between lines 8 and 9, insert the following:

"(3)(A) Before the President implements any change in or addition to the requirements of subsection (b) which would require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, he shall prepare and transmit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report setting forth his proposal to implement such a change or addition. No such change or addition may be implemented if, within 30 calendar days after receiving such report, the Congress adopts a concurrent resolution stating in substance that it objects to the implementation of such change or addition.

"(4)(A) Any such concurrent resolution shall be considered in the Senate in accordance with paragraph (5).

"(B) For the purpose of expediting the consideration and adoption of concurrent resolutions under paragraph (3), a motion to proceed to the consideration of any such concurrent resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

"(5)(A) For purposes of paragraph (3), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated.

"(B) Subparagraphs (C) and (D) of this subsection are enacted—

"(i) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of concurrent resolutions referred to in paragraph (3), and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

"(ii) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner and to the case of any other rule of the Senate.

"(C)(i) If the committee of the Senate to which has been referred a resolution relating to a certification has not reported such resolution at the end of ten calendar days after its introduction, not counting any day which is excluded under subparagraph (A), it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same certification which has been referred to the committee, except that no motion to discharge shall be in order after the committee has reported a resolution with respect to the same certification.

"(ii) A motion to discharge under clause (i) may be made only by a Senator favoring the resolution, is privileged, and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution, the time to be divided equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(D)(i) A motion in the Senate to proceed to the consideration of a resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(ii) Debate in the Senate on a resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(iii) Debate in the Senate on any debatable motion or appeal in connection with a resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

"(iv) A motion in the Senate to further limit debate on a resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommit, a resolution is in order in the Senate.

Mr. HATFIELD. Mr. President, my amendment is a very simple amendment, one which I have discussed with the managers of the bill. I would say that I would in no way attempt to throw any greater obstacles or difficulties in the pathway of the managers of the bill, individuals who have achieved a remarkable feat in bringing such a bill to the floor. I commend them for it. Having been in a similar position of managing appropriations measures, I appreciate the difficulty of having to face a barrage of amendments.

I want to assure them and my colleagues in the Senate that I in no way am trying in any shape or form to undermine the thrust of this bill or to try to sidetrack the bill's progress to final completion. But I do offer this amendment because of very strong feelings that I have on the issue which requires the President of the United States to develop a secure system of identification.

I think that raises some very deep concerns on the part of many people.

I would only suggest here today that what this amendment does is not in any way to try to stop that kind of system or to circumscribe the President's responsibilities given in this bill to develop such a system. The amendment simply would require that once the President determines what is a secure system of identification that he shall present to both Houses of Congress, through the Judiciary Committees, the proposal, the program, the plan, whatever it may be, and that the Congress of the United States will have an opportunity to review that plan before it becomes duly implemented.

Congress would have 30 days to review it, and both Houses would have to act upon it to disapprove the plan. If they want to stop the proposed new identification procedure they would have to take that positive action. Otherwise, if they do not object, the plan would become law.

That basically is the simple thrust of this amendment.

We have clarified the amendment under a recommendation from the managers of the bill, and other interested persons, including the Senator from Iowa (Mr. GRASSLEY), that we put the modifying adjective in this "any new document" or "any new plan." I underscore the word "new" to distinguish it from existing documents that might become the plan which the President would select, such as, perhaps, a social security card. Obviously, there is no intent to ask the President to submit to the Congress the social security card, which we are all very familiar with already.

This amendment means that if the President comes up with a proposal for a secure new form of identification, then he must submit that plan to Congress.

Mr. President, I want to remind my colleagues of exactly what my amendment does and does not do. First, my amendment does not forbid a national identification card from being created. While I would exhaust all of my energies to defeat such a proposal, my amendment merely requires the Senate to vote up or down on a national identification card system. Second, my amendment does not prevent the President from making certain changes in the employee verification section of the bill. If the President wants to upgrade the social security card or put in a phone system to verify employee identification, then he may

do so without submitting the plan to the procedures in my amendment.

However, if the President attempts to implement a national Identification card, in whatever form that may be, then Congress must take this proposal to the floor and vote it up or down. I am hopeful the employee verification system as written in the bill, which uses social security cards, passports, drivers' licenses, and other existing documents, will prove adequate in allowing fair enforcement of newly established sanctions which penalize employers for knowingly hiring illegal aliens.

My amendment is merely a precautionary measure that insures congressional participation in any effort to implement a nationwide identification card. I trust the conferees on this bill will be mindful of the consensus in this body on the subject of a national identification card, and I am grateful that all parties to this amendment have been able to reach an accord on the precise drafting of this amendment.

Mr. President, I ask unanimous consent that Senators KENNEDY, CRANSTON, and JEPSEN be added as cosponsors.

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

Mr. HATFIELD. I also ask unanimous consent that following my remarks a column from the New York Times of September 9, 1982, be included in the RECORD.

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

THE COMPUTER TATTOO

(By William Safire)

WASHINGTON, September 8.—In a well-meaning effort to curb the employment of illegal aliens, and with the hearty good wishes of editorialists who ordinarily pride themselves on guarding against the intrusion of government into the private lives of individual Americans, Congress is about to take this generation's longest step toward totalitarianism.

"There is no 'slippery slope' toward loss of liberties," insists Senator Alan Simpson of Wyoming, author of the latest immigration bill, "only a long staircase where each step downward must be first tolerated by the American people and their leaders."

The first step downward on the Simpson staircase to Big-Brotherdom is the requirement that within three years the Federal Government come up with a "secure system to determine employment eligibility in the United States."

Despite denials, that means a national identity card. Nobody who is pushing this bill admits that—on the contrary, all sorts of "safeguards" and rhetorical warnings about not having to carry an identity card on one's person at all times are festooned on the bill. Much is made of the use of passports, Social Security cards and driver's licenses as "preferred" forms of identification, but anyone who takes the trouble to read this legislation can see that the disclaimers are intended to help the medicine go down.

Most American citizens are being led to believe that only aliens will be required to show "papers." But how can a prospective employer tell who is an alien? If the applicant could say "I'm an American, I don't have any card," the new control system would immediately break down. The very basis of the proposed law is the motion that individuals must carry verifiable papers—more likely, a card keyed to "a new Government data bank"—to prove eligibility for work.

No big deal, say those who consider illegal immigration more fearsome than the coming of an internal passport; if you're legitimate, you shouldn't object. And shucks, law enforcement officials won't use it for anything else, no sirree—at least not until the nation is ready for another legislated step down the staircase.

Most Americans see no danger at all in a national identity card. Most people even like the idea of a piece of plastic that tells the world, and themselves, who they are. "I'm me," says the little card. "I'm entitled to all the benefits that go with being provably and demonstrably me." Good citizens—the ones who vote regularly, and who don't get into auto accidents—might get a gold card.

Once the down staircase is set in place, the temptation to take each next step will be irresistible. Certainly every business would want to ask customers to insert their identity cards into the whizbang credit checker. Banks, phone companies, schools, hotels would all take advantage of the obvious utility of the document that could not be counterfeited. Law enforcement and tax collection would surely be easier, because the Federal Government would know at all times exactly where everybody was and what they were spending.

And then you might as well live in the Soviet Union. One of the great differences between free and enslaved societies is the right of the individual to live and work without the government knowing his every move. There can sometimes be privacy without freedom, as those in solitary confinement know, but there can be no freedom without privacy.

When Patty Hearst managed to remain a fugitive for 591 days, that did not mean the F.B.I. was bad at catching fugitives; it meant that America was a free society. In China or the Soviet Union she would have been captured in days, because it is impossible for ordinary citizens to move about without permission. If our values mean anything at all, they mean that it is better to tolerate the illegal movement of aliens and even criminals than to tolerate the constant surveillance of the free.

The Attorney General, who evidently has no grasp of libertarian conservative principles, will not fight this legislation. When an outside adviser, Martin Anderson—who with his wife, Annelise, at O.M.B. represent what is left of the conservative conscience of the Reagan Administration—objected in a Cabinet meeting to this danger of Federal intrusion, William French Smith was forced to tell Congress of "a small but serious objection" to the identity card clause. He later made his objection meaningless by pretending it was "inappropriate to presume" he would have to do what the bill mandates him to do—come up with a foolproof identity system.

We are entering the computer age. Combined with a national identity card—an abuse of power that Peter Rodino professes to oppose in the House, as he makes it inevitable—government computers and data banks pose a threat to personal liberty. Though aimed against "undocumented workers," the computer tattoo will be pressed on you and me.

Mr. SIMPSON. Mr. President, I thank the Senator from Oregon for his extraordinary attentiveness to this issue. Indeed, he is probing the area which caused the select commission its greatest concern. He has found the issue that causes him his greatest concern. And yet he has always been supportive of the general aspects of this legislation. He has supported that not just orally; he supported it with his vote. I take that thoughtful process, his attentiveness and sincerity, as being a very real part of what he is concerned about.

All of us from the beginning have been concerned about the issue of a national identification card. No one has wanted that. I do not want that. That is why you find continual references to the fact that if we did go to a more secure type of card it would not be carried on the person, it would not be an internal passport, it would not be used for law enforcement. That is all in the bill. But at the time of new-hire employment, it only then would be presented. The purpose of doing that is to protect not only the employer but the employee.

And then providing the penalty for failure to ask for verification protects the minority applicant, because you have to ask it of everyone.

That is what it was and that is what has caused us our tremendous concern.

I feel now with this amendment, with the small addition of the word "new," that it means that if the President comes before this Congress and says, "Here is the new thing," and the new thing consists of a worker identification card, this Congress, the Judiciary Committees, will have the concurrent ability to reject that. In rejecting that, the Congress will have hearings. We will have the full review of how the President reached this. It is a thoughtful approach and it does not—and I emphasize and ask my colleague from Oregon—it does not prohibit the President from presenting to us the possibility of a revised social security card. Is that his understanding?

Mr. HATFIELD. I would say to the manager of the bill that is correct. Let me underscore one word to emphasize the point which the Senator from Wyoming is making. It reads on lines 4, 5, and 6: Before the President implements any change in or addition to the requirements of subsection (b) "which would require an individual to present a new card or other document (designed specifically for use for this purpose)".

In other words, we are not talking about an existing card or the social security card as it now exists today, or under revision by the Moynihan proposal which the Social Security Ad-

ministration is currently implementing, but we are talking about a new national work card, a new document that would be an identification card.

Mr. SIMPSON. I thank the Senator. I will conclude my remarks and then yield to the Senator from Iowa or the Senator from Massachusetts, as they wish.

Please understand that right now we will use present identifiers. Those present identifiers are addressed in the bill. That is what will be used. Then if we go on to a more secure system, this Congress will have every opportunity to assure that it is not, and does not become, as none of us want, a national identification card.

Mr. HATFIELD. Will the Senator yield?

Mr. SIMPSON. Yes.

Mr. HATFIELD. In my expression of gratitude to the managers of the bill, I did want to emphasize, too, my great appreciation to the Senator from Iowa (Mr. GRASSLEY) who has played a very important part in development of this legislation, and I express to him my appreciation for his concerns in this matter, and have noted them by accepting his and Senator SIMPSON's suggestion that the used "new" be inserted to clarify our intent.

I think many times these sessions we have off the floor of the Senate, where we can sit down in the quiet confines of a room and understand with greater clarity the deep concerns of each person, that these sessions facilitate the legislative process. I think what occurred today is a prime example of that.

Mr. President, I am very grateful to the Senator from Iowa for his assistance.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I want to thank the Senator from Oregon for his kind comments. He is amending a section of the bill which I amended last year. I have no objection to his amendment. However, I want to make the record clear that this amendment only applies to new documents. Revisions of existing documentation would not be subject to congressional review. This amendment not only does not apply to an upgraded social security card but the upgrading of other existing documentation as well.

Claims are heard that we have not fully debated this issue. Yet over 300 pages of testimony were generated on this issue alone by the Immigration and Refugee Policy Subcommittee last Congress. During the development of this system, the President is required to report to Congress not once or twice but six times and I can assure you that I will be following these reports very closely to see that the President does move on the development of such a system.

Claims are heard that this system will be a threat to civil liberties; yet, no witness at the hearings responded satisfactorily when asked how an upgraded social security card could impose civil liberty threats. Former Attorneys General Bell and Civiletti and newpapers such as the New York Times, the Washington Post, the Los Angeles Times, and the Boston Globe all agree that no such threat exists.

Neither the transitional nor the permanent verification system will require personal data that is not already available in other Government data banks. Thus, the verification system will either utilize a preexisting data bank or a new one with less information. Furthermore, the bill contains specific safeguards intended to minimize the risk of undue invasion of privacy and the risk of Government abuse:

First. Personal information utilized by the system will not be available to Government agencies, employers, and other persons except to the extent necessary for the purpose of verifying work eligibility.

Second. A withholding of verification will not be lawful except on the basis that the prospective employee has failed to show that he is a U.S. citizen, an alien lawfully admitted for permanent residence, or an alien authorized to be so employed by the immigration law of the Attorney General.

Third. The system will not be available for law enforcement use outside the proposed employer sanctions and present labor law procedures.

Fourth. If the system were to require individuals to present a card or other document, then such document would not be required to be presented for any purpose other than verification of employment eligibility and would not be required to be carried on the person.

The committee is not requiring or permitting the development of an internal passport or national identification card. It is important to note that 44 States already have photos on their drivers licenses and nondrivers have requested photo-bearing cards for identification purposes only. Additionally, Americans being who and what they are, their values and culture and this form of government would never allow a national identification card to happen. Our entire form of Government would have to change for this system to be perverted in some way to the detriment of the American people. If that happens, we will have much more serious concerns than simply a worker eligibility system.

Some claim that current identifiers are sufficient for a verification system; this, however, is not the case.

The permanent Subcommittee on Investigations recently held a hearing specifically on the fraudulent use of government identification. That committee found that over 5 million false Government identification cards were being produced each year. Testimony was received from a gentleman who was in the counterfeiting business for years telling how simple it was to produce false documents. He had a very lucrative business, mostly in the area of the ADIT or green card. A recent pilot project between the Social Security Administration and the INS in Denver concluded that 50 percent of the INS documents presented to establish social security cards and benefits were false. A successful employer sanctions program rests on a secure eligibility system.

The NAACP, AFL-CIO, American Legion, the National Association of Manufacturers, the National Federation of Independent Businesses, the Business Roundtable, FAIR, Zero Population Growth, not to mention renowned civil libertarians such as Father Ted Hesburgh, Elliot Richardson and F. Ray Marshall, all support the development of a universal verification system if we are to have employer sanctions.

In fact, universal verification is the only reliable insurance we have against discrimination. This will be more effective than any amount of funds appropriated for the Equal Employment Opportunity Commission, Civil Rights Commission, or any other anti-discrimination bureaucracy. The best means to eliminate discrimination is to insure that every employer must verify the employment eligibility of every person newly hired. That is the reason for the identifier and that reason has not changed.

Thank you, Mr. President.

Mr. KENNEDY. Mr. President, I yield myself such time as I may need. I shall speak briefly. I want to join in commending the Senator from Oregon for his contribution to this legislation on this particular issue. The select commission, as has been pointed out by the Senator from Wyoming, spent a great deal of time trying to find some way to recommend a procedure to the Congress about how potential employees were going to indicate that they were legally eligible to work in this country. There was a great deal of diversity of views on this issue and the select commission could not agree on a new identification procedure. It is certainly the sense of the Congress, the Judiciary Committee, and the Subcommittee on Immigration that we use the existing identification procedures for the interim period of time. There is, naturally, a very considerable concern about what any administration would recommend to be the ultimate identification vehicle for the future. That issue was partly addressed last year, when we debated the immigration bill, to some extent by the Sena-

tor from New York (Mr. MOYNIHAN), who introduced a sense-of-the-Senate resolution that social security cards be made fraud resistant.

That was not only to protect the social security system, but obviously, I think, from the discussion and debate, he was considering that some form of a revised tamper-proof or fraud-resistant social security card may ultimately be the vehicle for employment identification. I think Senator HATFIELD is assuring the American people that when the final recommendation is made on this issue, and it is an extremely important issue, Congress will have a voice. I think that that is constructive and important and, I think, a very useful addition to this legislation. I urge that the amendment be accepted.

Mr. SIMPSON. Mr. President, I certainly subscribe to the remarks of my good colleague and cofloor manager of this bill. I not only thank the Senator from Oregon, but I thank the Senator from Iowa. If there was one long, loyal helpmate, through many, many hearings, at my side, it was this gentleman from Iowa. He followed it adroitly and thoughtfully, as we have come to know the way he does his work. I appreciate that. I really do. When this one came up, he addressed this issue carefully. The last time we discussed it, I think we reached a good result.

The amendment is quite acceptable to this comanager of the bill also.

Mr. HATFIELD. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Oregon.

The amendment (No. 1281) was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I wonder if the manager will yield a couple of minutes.

Mr. SIMPSON. From the bill, I certainly shall.

Mr. HATFIELD. Mr. President, I know the Senator from Wyoming has taken a lot of static on his leadership in this very important piece of legislation from many different perspectives and from different constituent groups. I know of one at least that has been very critical of the Senator from Wyoming for allegedly proposing and advocating a national identification card.

I should like to take this moment to try to refute that very unfounded and false charge, because even without this amendment, the Senator from Wyoming has in no way been a sponsor or an advocate of a national identification card.

If people would take the time to read the legislation, to read the RECORD, to read the legislative history, then they would know that what the Senator from Wyoming has incorporated in this bill is simply that the President must establish something that cannot be counterfeited, as far as a secure system of identification is concerned. This could be many things, including existing documents.

So to make this charge against the Senator from Wyoming is specious. It is either done out of ignorance or a deliberate misinterpretation, because anyone who takes but a moment to read the legislation or to inform themselves of the available data and material surrounding the history of this legislation would know the contrary to be true.

I add my voice, not only in appreciation for the Senator's leadership, but also in the attempt to at least assist in some small way to allay the fears of those who have been stirred up without foundation, without any evidence, without any fact at all. I decry that kind of political demagoguery. That is all one can call it. I think it is charitable to refer to the people who have criticized Senator SIMPSON in this manner as ignorant.

With this amendment, which merely underscores what the Senator has made clear on the record in the past, I am hopeful that that kind of criticism will now fade into history and that it will not be repeated. It is just unfortunate that we are in these positions at times where we have to defend ourselves and our record or position against claims arising from falsehoods and misperceptions.

I thank the Senator from Wyoming for his courage and for his perserverance in this important legislation.

Mr. SIMPSON. Mr. President, I very much thank my colleague from Oregon. He is very gracious. It is very much appreciated.

Mr. President, to those who are communicating with us electronically, we have now one remaining amendment, which is the Kennedy amendment. There is every possibility that that might be resolved. If not, then there is a 30-minute time agreement on the amendment equally divided, if I am not mistaken.

The PRESIDING OFFICER. The Senator is correct.

Mr. SIMPSON. We will handle that well prior to the time for the record rollcall vote. If that amendment is presented and resolved, the Levin amendment will fall and that would be the end of the regular order amending process.

With that, I suggest the absence of a quorum; that it not be charged to either side at this time.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1282

(Purpose, To Establish the Legalization Review Commission)

Mr. KENNEDY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY) proposes an amendment numbered 1282.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 207, between lines 7 and 8, insert the following:

LEGALIZATION REVIEW COMMISSION

SEC. 303. (a) There is established the Legalization Review Commission (hereafter in this section referred to as the "Commission") which shall be composed of three members appointed by the President from among individuals of the private sector. The President shall designate one member to serve as Chairman.

(b) Each member of the Commission shall receive compensation at a rate equal to the daily rate payable for GS-18 under the General Schedule under section 5332 of title 5, United States Code, for each day, including travel time, such member is engaged in the actual performance of duties as a member of the Commission. All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(c)(1) The Commission shall meet at the call of the Chairman but not less than once every 3 months.

(2) Two members of the Commission shall constitute a quorum.

(d) The Commission shall—

(1) monitor the implementation of the program to adjust the status of aliens under section 245A of the Immigration and Nationality Act;

(2) keep the President currently and fully informed on the degree of compliance with the provisions of such section; and

(3) prepare and transmit, not later than 18 months after the date of enactment of this Act, to the President, the Committee on the Judiciary of the House of Representatives, and the Committee on the Judiciary of the Senate a report summarizing the progress made since such date in carrying out the intent of Congress in enacting section 245A of such Act, together with any recommendations which the Commission may have.

(e) The Commission may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission may administer

oaths or affirmations to witnesses appearing before the Commission.

(f) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission in order to assist the Commission in carrying out this section.

(g) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(h) The provisions of this section shall terminate 18 months after the date of enactment of this Act.

On page 103, in the table of contents, after the item relating to section 302, insert the following:

"Sec. 303. Legalization Review Commission.".

Mr. KENNEDY. Mr. President, the purpose of this Legalization Review Commission would be to assure that full public scrutiny is given to this extraordinary program which involves both Government and non-Government agencies. Because the legalization program relies so heavily upon the involvement and cooperation of the voluntary agencies and nongovernmental groups—and not just upon the Immigration Service—I believe it would be wise to have a body other than INS or the Justice Department to review this program.

Because this program is so unprecedented and is a one-time operation, it is essential that it go forward satisfactorily during the limited time it is authorized.

The Commission would be composed of only three persons, appointed by the President, and have a lifespan of only 18 months, which is the duration of the program. It is my hope that it would be a high-level citizen's review commission—chaired by someone like Father Hesburgh—but not be a new bureaucracy with a large staff.

I have talked to the chairman of the Immigration Subcommittee and the floor manager of the bill about this concept. I know that he has indicated an interest in this idea. I also recognize that this kind of a group can be established by Executive order. It does not need legislative enactment.

I should like to inquire of the floor manager as to his reaction to this concept?

Mr. SIMPSON. Mr. President, I, indeed, have the same interest in assuring that legalization is appropriate and workable, and the idea of a legalization review commission is not repugnant to me in any way, especially if it were very limited in staff so that it does not grow out of control, someone of the stature of Father Hesburgh. Indeed, if we could burden him with one more duty in society, with all the other things he does. The Select Commission is what got us to this point, and we saw the workability of it. So I do appreciate the Senator not making this proposal in the form of an amendment for a vote, but I can assure him that I will work not only toward perhaps the executive action but also toward hearings to see if it might not be a very worthwhile solution.

Mr. KENNEDY. I thank the Senator for that assurance. I welcome a chance to follow up on his response.

With those kinds of assurances, Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

AMENDMENT NO. 1210

The PRESIDING OFFICER. The pending question is on amendment 1210 by the Senator from Massachusetts. Who yields time?

Mr. KENNEDY. Mr. President, as I understand it, in about 2 minutes we start the votes. The amendment which is pending is the amendment which I offered. I would be very hopeful that at the end of the series of votes I will be able to modify the amendment in a way which will be acceptable to the floor manager. But it is my understanding that at the present time under the previous consent agreement we are about to enter into the series of votes.

Mr. SIMPSON. Mr. President, let me just briefly review the situation. Indeed, I think we have reached an accommodation on the Kennedy amendment, but we need not process that now to interfere with the regular order or the time agreement.

The Levin amendment will then be withdrawn after that acceptance, and we can do that at the completion of the stacked votes.

I think that is where we are. We then should be ready to go on to final passage very shortly thereafter.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, will the Senator yield? I have an amendment which I would send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The pending question is on the amendment of the Senator from Massachusetts.

Mr. LEAHY. This is one I have discussed with the chairman of the committee. I ask unamimous consent that it be in order to consider the amendment.

Mr. BAKER. Mr. President, reserving the right to object, I am sorry to say this to the Senator, but I had no notice that there was going to be another amendment added to the list of qualified amendments. If the Senator will give me just a moment, I will see if we can clear that.

Mr. LEAHY. Mr. President, after discussing this matter with the majority leader, the chairman, and the ranking minority member of the committee, I withdrew my unanimous-consent request. I understand that the matter will be taken care of subsequently.

The PRESIDING OFFICER. The request is withdrawn.

Mr. BAKER. Mr. President, the hour of 3:30 has arrived, and I believe that the votes are about to occur. But let me put a unanimous-consent request in respect to the management of those votes. It has been submitted to the minority leader, and I believe he does not object to it. I will state it now for his consideration and that of all Senators.

I ask unanimous consent that following the first rollcall vote which is about to occur, all remaining rollcall votes in sequence be limited to 10 minutes each.

I further ask unanimous consent that there be 4 minutes equally divided, 2 minutes on a side, to intervene between those votes, for the purpose of explaining the upcoming vote.

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

AMENDMENT NO. 1274

The PRESIDING OFFICER. Under the previous order, the question occurs on amendment 1274, offered by the Senator from New Jersey.

Who yields time?

Mr. BRADLEY. Mr. President, this bill took the decision to legalize certain aliens as a Federal responsibility in which States and localities have no say. If it is in the national interest to legalize these people, then it is up to all Americans to share in the cost.

Concentrating the burdens on those States with the heaviest concentration of newly legalized immigrants is not only unfair, but also, I think it is the surest way to engender opposition to the program and to those it is intended to benefit.

What my amendment does is to say that costs associated with public assistance that are incurred by the State in existing State programs that are available to any other citizen of that State should be available to those illegal aliens we are legalizing and should be reimbursed at the Federal level, 100 percent. Otherwise, we are transferring back to the States enormous costs for counties, for local municipalities, and for State governments. I do not think it is the intention of this bill to do that. We have taken a Federal decision to legalize certain aliens, and the Federal Government should pay for that decision.

I reserve the remainder of my time.

Mr. SIMPSON. Mr. President, this amendment, which I oppose, would require the Federal Government to reimburse the State and local governments for welfare benefits and educational benefits.

Please understand that this is not just welfare benefits. This is educational benefits provided to aliens already living and working in the United States.

We have a legalization program here. There is no question about what we are trying to do. We have a provi-

sion about temporary resident aliens and permanent resident aliens. These are not refugees admitted to this country by the President after consultation with Congress. The people legalized under this bill are working here. They have been working and contributing to their communities for a substantial period of time. They have acquired what we call equities and put down roots. These people are paying State and local taxes, income taxes, property taxes, indirectly through rents or directly through home ownership.

Refugees might well be a Federal responsibility of 100 percent, but this is not a 100-percent Federal responsibility. It is a shared responsibility. It recognizes the benefits of legalization received by the State and local governments, including the taxes I mentioned, as well as the responsibilities of the Federal Government. This shared responsibility is recognized in this bill by a provision for Federal block grant assistance to the States based on a formula which recognizes the number of legalized aliens in each State.

The administration has assured me that there will be provision for $1.1 billion to $1.4 billion available for that block grant program.

This is the issue. These people we are talking about here are economic migrants who came here to work—young, single males.

Under a recent Supreme Court decision, we already have a requirement that all alien children in this country are entitled to a free public education. So legalization alone will not increase that.

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

Mr. CHILES. Mr. President, I rise in support of Senator BRADLEY's amendment to authorize reimbursement to State and local governments for the costs incurred by the legalization progam authorized by S. 529, the Immigration Reform and Control Act of 1983.

Mr. President, I am not only pleased to cosponsor the Senator from New Jersey's amendment, I am relieved that at long last other Members of this distinguished body are realizing the importance of Federal assistance in immigration programs. My State of Florida is still bailing out from the unprecedented expenses brought on by the Cuban flotilla and Haitian influx of 1980 and 1981. Florida received very little assistance from the Federal Government during the whole ordeal and what little financial help we got came because several of us in the Florida delegation badgered our friends on the Appropriations Committees to provide some relief to Florida. We got it, but we had to repeat the fight several times. Therefore, I am very pleased that Senator BRADLEY and others are recognizing the need and efficiency of authorizing reimbursement in Federal immigration law.

I must say that I am not a dyed-in-the wool convert to the whole idea of legalization. I have great problems with granting automatic residency to a vast subsociety of undocumented aliens who have lived for years in the United States. I have problems because we are dealing with an unknown number—documented estimates on the number of illegal aliens ranges from 3 million to 12 million persons. Nine million persons is a wide discrepancy and we do not know how many of these unknowns have already participated in our schools, in our health care, and in our social services. The enactment of a legalization program could have a significant impact on Florida. And then, perhaps most of the undocumented aliens have already placed their children in our schools and made themselves available to our health care. Then, the impact of legalization might be minimal. We just do not know. And, I do not like enacting such important policies when we are dealing with such a significant unknown.

I also have problems with the legalization program because in my view we are making it easier for people who illegally entered the United States to obtain residency than for those thousands of persons who have attempted to come through the legal process. My offices in Florida and Washington are inundated with resquests for assistance in getting a relative into the United States. These people are told they must be put on a waiting list which already has thousands of applicants on it. They are puzzled and angered about the legalization program. I understand that concern.

But, I also understand Senator SIMPSON's concern that this subsociety of undocumented persons which has grown to great numbers of persons in the United States must be dealt with in an orderly fashion. S. 529 attempts to provide such a process but I believe that Senator BRADLEY's reimbursement mechanism is more adequate than the one in S. 529. We in Florida are familiar with the great difficulties in block grant reimbursement for immigration crises and I therefore am very pleased to join with Senator BRADLEY in sponsoring a 100-percent reimbursement to State and local governments.

I ask my colleagues to join with us in supporting this important amendment.

Mr. MOYNIHAN. Mr. President, I wish to add my full support for the amendment offered by my distinguished colleague from New Jersey, Senator BRADLEY, to provide 100-percent reimbursement to State and local governments for the cost of providing assistance to newly legalized aliens.

Mr. President, when we speak of illegal aliens, and of the legalization program proposed in the bill before us today, we suffer from a lack of accurate and specific information. No one knows just how many illegal aliens reside in the United States today—the Bureau of the Census estimates the total was between 3.5 and 6 million in 1980. No one knows just how many will become temporary or permanent residents under the legalization proposal. And, as a result, no one knows just what legalization will cost.

Under S. 529, newly legalized immigrants will be ineligible for almost every Federal assistance program. Judging from past court decisions, however, it would appear that State and local governments will be constitutionally required to extend eligibility for their programs to newly legalized aliens. Rough estimates indicate that the resulting costs to State and local governments will be quite significant. New York City, for example, estimates that S. 529 will result in additional costs of $40 to $45 million. The cost to New York State may exceed $200 million. These cost projections are based on estimates of at least 750,000 illegal immigrants in New York City, and over 1 million in the State. The block grant established in S. 529 cannot guarantee even a minimal reimbursement level. It provides no assurance to States and localities that they will be sufficiently compensated for the costs they incur as a result of this legislation.

But while all the facts may not be known, the principle underlying this issue is clear. A weighty decision on immigration policy is about to be made at the Federal level. This is where such a decision ought to, and in fact must, be made. But the immigration bill, as currently written, unfairly would shift the cost of a Federal decision concerning social and medical services to newly legalized aliens on to State and local governments, and especially on to those areas with relatively large numbers of aliens.

It is time we act on the growing problem of illegal aliens; and we must be ready, as a nation, to cover the costs of our actions. We cannot in good conscience pass the financial consequences of our decision on to State and local governments who are suffering their own budgetary difficulties. The Federal Government must remain accountable and responsible for the effects of its decisions. That is why I urge my colleagues to support the concept of full reimbursement, and that is why I wholeheartedly endorse the amendment before us now.

Mr. MATSUNAGA. Mr. President, I ask unanimous consent that I be listed as a cosponsor of amendment No. 1274, the Bradley amendment.

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

Mr. BRADLEY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Twenty seconds.

Mr. BRADLEY. Mr. President, the worst thing that could be said about my amendment is that it is redundant: That because people are working, you will not need money for public assistance or that sufficient assistance is provided under a block grant. At best, it is an insurance policy that guarantees States and localities from incurring an excessive burden.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the amendment of the Senator from New Jersey. 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 Vermont (Mr. STAFFORD) is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arizona (Mr. DECONCINI), the Senator from Colorado (Mr. HART), the Senator from Alabama (Mr. HEFLIN), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Georgia (Mr. NUNN) are necessarily absent.

The PRESIDING OFFICER. Are there any Senators in the Chamber who wish to vote?

The result was announced—yeas 37, nays 57, as follows:

[Rollcall Vote No. 96 Leg.]

YEAS—37

Andrews	Dodd	Pell
Bentsen	Durenberger	Pryor
Biden	Glenn	Randolph
Bingaman	Hawkins	Riegle
Boren	Heinz	Sarbanes
Bradley	Inouye	Sasser
Bumpers	Jackson	Specter
Burdick	Johnston	Tower
Byrd	Lautenberg	Tsongas
Chiles	Levin	Wilson
Cranston	Matsunaga	Zorinsky
D'Amato	Metzenbaum	
Dixon	Moynihan	

NAYS—57

Abdnor	Grassley	Mitchell
Armstrong	Hatch	Murkowski
Baker	Hatfield	Nickles
Baucus	Hecht	Packwood
Boschwitz	Helms	Percy
Chafee	Huddleston	Pressler
Cochran	Humphrey	Proxmire
Cohen	Jepsen	Quayle
Danforth	Kassebaum	Roth
Denton	Kasten	Rudman
Dole	Kennedy	Simpson
Domenici	Laxalt	Stennis
Eagleton	Leahy	Stevens
East	Long	Symms
Exon	Lugar	Thurmond
Ford	Mathias	Trible
Garn	Mattingly	Wallop
Goldwater	McClure	Warner
Gorton	Melcher	Weicker

NOT VOTING—6

DeConcini	Heflin	Nunn
Hart	Hollings	Stafford

So Mr. BRADLEY's amendment (No. 1274) was rejected.

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

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

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, may we have order now?

The PRESIDING OFFICER. There will be order in the Senate.

Mr. STEVENS. Mr. President, the series of six votes will take us all afternoon if we have to keep trying to get order.

AMENDMENT NO. 1275

The PRESIDING OFFICER. The question now recurs on amendment No. 1275 by the Senator from New Hampshire (Mr. HUMPHREY). There are 4 minutes of debate evenly divided. Who yields time?

Mr. HUMPHREY. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. HUMPHREY. Mr. President, I can barely hear myself, and I doubt whether others can hear my voice.

The PRESIDING OFFICER. Will all Senators having conversations please retire to the cloakroom.

The Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, this bill grants amnesty to those who have broken our laws, our immigration laws. That is an act of considerable compassion, I think perhaps an act of too great compassion.

But in any case, I ask, is it necessary for us to go beyond amnesty, to go beyond forgiving the transgression of our laws and in addition to that provide entitlement benefits to those illegal aliens granted amnesty under this bill? I suggest the answer is "No." I suggest the answer is patently unfair to our own taxpayers to have to provide benefits on top of amnesty, to provide entitlement benefits to those who have criminally broken our laws but who are forgiven by this pending legislation.

So the purpose of my amendment is to preclude the extension of entitlement benefits until the illegal aliens granted amnesty under this bill attain naturalized citizenship. It is that simple. They would not be entitled to entitlement benefits. They would not be due entitlement benefits until they became naturalized citizens.

Mr. President, I would point out that we have no idea how much it will cost us if indeed they became eligible for entitlement benefits for the reason that we do not actually know how many illegal aliens there are in this country. The estimates range from 3 million to 12 million. Nobody knows what it is, so it is impossible to determine the cost of entitlement benefits for illegal aliens, but we know it would be very substantial.

I urge my colleagues to accept this amendment. Once again, very simply, it precludes extending entitlement benefits to those illegal aliens granted amnesty under this bill.

The PRESIDING OFFICER (Mr. SPECTER). The Senator from Wyoming.

Mr. SIMPSON. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. The Senate will be in order.

Mr. SIMPSON. Mr. President, the purpose of the legalization program, controversial as it may be, is simply to bring forward people who have been living in a fearful subculture within our society. We are diminished by their existence. And while I understand the Senator's need to present the amendment reducing Federal costs at a time of unacceptably large deficits, I fear the amendment will tend to continue the existence of a subclass of persons. Here is the issue.

Recall that those who emigrate to this country, those who receive green cards as permanent resident aliens, some of them never want to become naturalized citizens.

The PRESIDING OFFICER. The Senate will be in order. Will the staff please cease conversation in the rear of the Chamber? Senators who are talking, please retire to the cloakrooms.

Mr. SIMPSON. Some do not wish to become naturalized citizens and under our Constitution and laws it is not necessary for them to naturalize in order for them to enjoy most of the benefits and protections in this country, other than the right to vote.

These people are an integral part of our society. They serve in the armed services. They contribute in many other ways. They pay taxes. To permanently withhold any Federal welfare benefits from those who are legal but never naturalized will, in effect, perpetuate another subclass within our society.

I know my colleague has a wish for 20 seconds.

Mr. KENNEDY. Mr. President, already in the bill is the fact that we will not provide these social benefits for a period of 3 years. The amendment of the Senator from New Hampshire would extend that for 2 more years or more.

I basically think the amendment is unconstitutional. But, second, as the Senator from Wyoming has said, they pay taxes and, if you ever get in a situation where you have a draft, they will be drafted and they will serve in the Armed Forces of the country. They have all the responsibilities of permanent resident aliens, but under the Senator's amendment, none of the benefits.

I hope, for the reasons that the Senator from Wyoming has outlined, that it will be rejected.

The PRESIDING OFFICER. All time on the amendment has expired.

The question is on agreeing to the amendment of the Senator from New Hampshire (Mr. HUMPHREY). The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS announced that the Senator from Vermont (Mr. STAFFORD) is necessarily absent.

Mr. CRANSTON announced that the Senator from Arizona (Mr. DECONCINI), the Senator from Colorado (Mr. HART), the Senator from Alabama (Mr. HEFLIN), the Senator from South Carolina (Mr. HOLLINGS),and the Senator from Georgia (Mr. NUNN), are necessarily absent.

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

The result was announced—yeas 31, nays 63, as follows:

[Rollcall Vote No. 97 Leg.]

YEAS—31

Abdnor	East	Mattingly
Armstrong	Exon	McClure
Baker	Ford	Nickles
Bentsen	Garn	Rudman
Boren	Hatch	Stennis
Byrd	Helms	Symms
Cochran	Humphrey	Trible
Cohen	Jepsen	Wallop
D'Amato	Kasten	Zorinsky
Denton	Long	
Dole	Lugar	

NAYS—63

Andrews	Hatfield	Packwood
Baucus	Hawkins	Pell
Biden	Hecht	Percy
Bingaman	Heinz	Pressler
Boschwitz	Huddleston	Proxmire
Bradley	Inouye	Pryor
Bumpers	Jackson	Quayle
Burdick	Johnston	Randolph
Chafee	Kassebaum	Riegle
Chiles	Kennedy	Roth
Cranston	Lautenberg	Sarbanes
Danforth	Laxalt	Sasser
Dixon	Leahy	Simpson
Dodd	Levin	Specter
Domenici	Mathias	Stevens
Durenberger	Matsunaga	Thurmond
Eagleton	Melcher	Tower
Glenn	Metzenbaum	Tsongas
Goldwater	Mitchell	Warner
Gorton	Moynihan	Weicker
Grassley	Murkowski	Wilson

NOT VOTING—6

DeConcini	Heflin	Nunn
Hart	Hollings	Stafford

So Mr. HUMPHREY's amendment (No. 1275) was rejected.

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

Mr. McCLURE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1277

The PRESIDING OFFICER. The question recurs on the Cranston amendment No. 1277, with 4 minutes of debate equally divided.

The Senate will be in order.

All those wishing to carry on conversations, please retire to the cloakrooms.

The Senate will be in order.

Mr. SIMPSON. Mr. President, I will quickly utilize a minute of my 2 minutes, giving the opportunity to the Senator from California to come to the Chamber.

I am opposing this amendment. The legalization provisions in this bill I would hope would resolve a serious national problem.

We are going to have hundreds of thousands or even millions of people here under legalization. If every one of them were entitled to judicial review of legalization, it would be an extraordinary burdening of the legal system in the United States. This is a frightening prospect.

Please remember, we are not talking about citizens, we are talking about persons who illegally entered the country.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time on behalf of the proponent of the amendment?

Mr. CRANSTON. Mr. President, this amendment is a modest attempt to make the legalization provisions of this bill slightly more just. It adopts the language of the House Judiciary committee.

It would provide to court's already reviewing a deportation order of an alien whose application for legalization has been denied the opportunity to examine the record of the legalization proceeding to determine whether there has been a gross abuse of administrative discretion or whether the facts as a whole are inconsistent with the findings of fact.

To deny this very limited form of judicial review is to encourage the abuses it is designed to correct.

My amendment will save otherwise eligible aliens from injustice.

I urge its adoption.

I yield back the remainder of my time, Mr. President.

Mr. SIMPSON. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from California. The yeas and nays have been ordered on the amendment.

The clerk will call the roll.

The bill clerk called the roll.

Mr. STEVENS. I announce that the Senator from Vermont (Mr. STAFFORD) is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arizona (Mr. DECONCINI), the Senator from Colorado (Mr. HART), the Senator from Alabama (Mr. HEFLIN), and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

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

The result was announced—yeas 20, nays 75, as follows:

[Rollcall Vote No. 98 Leg.]

YEAS—20

Biden	Lautenberg	Packwood
Bingaman	Leahy	Pell
Boschwitz	Levin	Riegle
Cranston	Matsunaga	Sarbanes
Glenn	Melcher	Specter
Inouye	Metzenbaum	Weicker
Kennedy	Moynihan	

NAYS—75

Abdnor	Exon	Mitchell
Andrews	Ford	Murkowski
Armstrong	Garn	Nickles
Baker	Goldwater	Nunn
Baucus	Gorton	Percy
Bentsen	Grassley	Pressler
Boren	Hatch	Proxmire
Bradley	Hatfield	Pryor
Bumpers	Hawkins	Quayle
Burdick	Hecht	Randolph
Byrd	Heinz	Roth
Chafee	Helms	Rudman
Chiles	Huddleston	Sasser
Cochran	Humphrey	Simpson
Cohen	Jackson	Stennis
D'Amato	Jepsen	Stevens
Danforth	Johnston	Symms
Denton	Kassebaum	Thurmond
Dixon	Kasten	Tower
Dodd	Laxalt	Trible
Dole	Long	Tsongas
Domenici	Lugar	Wallop
Durenberger	Mathias	Warner
Eagleton	Mattingly	Wilson
East	McClure	Zorinsky

NOT VOTING—5

DeConcini	Heflin	Stafford
Hart	Hollings	

So the amendment (No. 1277) was rejected.

AMENDMENT NO. 1278

The PRESIDING OFFICER. The question is on agreeing to the Cranston amendment No. 1278.

Mr. CRANSTON addressed the Chair.

The PRESIDING OFFICER. Four minutes equally divided.

Who yields time?

The Senator from California is recognized.

Mr. CRANSTON. I yield myself such time as I need, which will not be much.

I am prepared to modify my amendment to meet the two objections raised by the Senator from Wyoming. He felt that the procedure proposed to provide an application for legalization would create, as he called it, a "cottage industry in sworn statements," so I propose to modify the amendment and specify that the affidavit come from the applicant's employer.

The PRESIDING OFFICER. Will the Senator suspend?

It requires unanimous consent to have a modification at this time.

Mr. CRANSTON. I am going to ask that the yeas and nays be vitiated shortly. I will proceed in the appropriate way.

Second, the Senator from Wyoming suggested that the amendment would

change the burden of proof. To make sure that it is understood that it is only a rebuttable presumption, I am modifying the amendment to that effect.

I should like to ask the Senator if that is his understanding; if it is modified in that way, is it acceptable?

Mr. SIMPSON. Mr. President, the amendment as modified is very appropriate and it now makes clear that a legalization applicant may use the properly attested statement of his employer to establish a rebuttable presumption of physical presence. I do accept the amendment and appreciate the efforts of the Senator from California.

Mr. CRANSTON. Mr. President, I thank the Senator. In order to save the Senate time, I ask unanimous consent that the yeas and nays be vitiated.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

Mr. CRANSTON. Mr. President, I send a modification to the desk and ask unanimous consent that the amendment be so modified.

The PRESIDING OFFICER. Is there objection?

Mr. CRANSTON. I yield back the remainder of my time and ask that the amendment be adopted.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

The question is on agreeing to the amendment of the Senator from California, as modified.

The amendment (No. 1278), as modified, was agreed to.

AMENDMENT NO. 1279

The PRESIDING OFFICER. The question now occurs on the McClure amendment No. 1279.

Mr. KENNEDY. May we have order, Mr. President.

The PRESIDING OFFICER. Four minutes of debate equally divided.

The Senate will be in order.

The Senator from Idaho is recognized.

Mr. McCLURE. Mr. President, this amendment simply requires that the INS must have a search warrant to enter upon a field as well as a search warrant to enter into any of the buildings where they may seek to enforce the immigration laws and to seek out the illegal aliens in this country.

Mr. President, it seems to me to be entirely wrong to assume that the INS should attempt to use a construction by the Supreme Court which said that search warrants are not necessary to enter an open field when that Supreme Court decision said that is where a crime can be observed to be committed in front of their eyes, the presence of illegal evidence, the presence of illegal activity. The only evidence that they have in this instance is to observe the presence of someone in the field who may appear to be different than the other Americans, and that certainly does not seem to be a justifiable reason to assume the commission of a crime, to justify the application of the open field rule.

This amendment is supported by the American Farm Bureau, the National Cattlemen's Association, the National Wool Growers Association, the Fresh Fruit & Vegetable Growers Association, and by the American Civil Liberties Union.

I hope the amendment will be adopted.

Mr. President, I yield to the Senator for Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, under this legislation we are focusing on employer sanctions to deal with the problems of undocumented aliens.

It seems to me that the focus of INS in the future should be on the front office, not on the fields. If they are going to go into the fields, they should be required to have the search warrants which are required even in a barn or a factory.

The problem we have seen in the past has been the indiscriminate character of the sweeps. Not only are they often a disservice to the aliens but also, in many instances, a grave disservice to American citizens who are caught up in them.

Mr. McCLURE. Mr. President, the only abuse toward which this is directed is the overzealous attention of the INS to the fieldworker problem.

Mr. STENNIS. Mr. President, may we have order? I cannot hear the speaker.

The PRESIDING OFFICER. The Senate will be order.

Mr. McCLURE. The evidence is irrefutable that 98 percent of the illegal aliens are not employed in agriculture. They are in other employment. Yet, 50 percent of those apprehended are in the fields, which indicates that the INS is not directing their enforcement activity at the real problem of displacement of workers in this country.

I hope the amendment will be agreed to.

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

Mr. McCLURE. I yield.

Mr. SYMMS. Mr. President, I thank the Senator very much for offering the amendment.

Mr. President, I reemphasize the point that the sponsor of the amendment has made.

Most of the illegal aliens in this country which are apprehended by the INS are apprehended on farms. There is a growing feeling in the agricultural community that the INS is becoming Gestapo-like in their operations.

Mr. President, I support my distinguished colleague from Idaho (Senator McCLURE) and his amendment requiring that the INS have a search warrant before entering an open field. This is a fundamental issue of fairness and will end the constant disruption of a farmer's work force.

Mr. President, just this past weekend there was a raid by the INS in Sailer Creek, Idaho, not for from Glenns Ferry, involving 30 illegal aliens. A 26-year-old illegal alien, here trying only to earn a living for his family in Mexico, died of a massive heart attack while being chased down by the INS. With instances as this taking place, the local citizens and seasonal labor alike look upon the INS as the Gestapo. It is not only the illegal aliens which flee during on INS raid, I personally have seen instances of legal aliens and even U.S. citizens of Spanish descent fleeing in fear from INS agents because of the tactics of the INS.

Now these farmers are in a bind. Farmers cannot get help locally to perform many of their labor requirements. Further this is a crucial time in the crop cycle, trying to get our crops watered up. Farmers must have assurance that they will have a reliable source of labor that will help in the raising of their crops. The tactics of the INS and tragedy which resulted from this incident cannot be allowed to continue. The rights of the farmer cannot continue to be violated. This is the only type of police-state activity of this nature allowed in the United States. I commend Senator McCLURE for his efforts, and I wholeheartedly support this amendment now as I did in the last session of Congress when Senator HAYAKAWA was its sponsor.

Mr. TOWERS. Mr. President, I would like to take this opportunity to commend my colleagues for the long hours of hard work that have gone into the bill now before the Senate. Certainly, it is not an easy task to attempt to alter the existing system. This legislation is the result of a conscientious and concerted effort on the part of many Senators to allow us to get a handle on this Nation's immigration problems, which are the result of our inability to enforce our borders and which have allowed unprecedented numbers of illegal aliens to enter our country.

However, as much as I would like to see long overdue and much-needed reforms in our immigration laws, I was compelled to vote against this legislation when it passed the Senate last year becuase of my serious reservations about some of the long-term effects of various provisions in the bill, and which I regret are included in almost identical form in the bill now before us, S. 529.

Among my concerns are those provisions in S. 529 which would impose sanctions against those employers who hire illegal aliens. While I am strongly opposed in principle to the deliberate hiring of persons known to be in this country illegally. I do not believe that the provisons embodied in this bill are an appropriate means of addressing the problem.

The mere failure to obtain the necessary documentation which this bill requires for all new hires by all employers of four or more individuals could result in a $500 fine. Actually hiring an illegal alien would lead to a $1,000 fine per alien for the first offense, a $2,000 fine per alien for the second, and, ultimately, a jail sentence upon conviction of a pattern or practice of hiring an undocumented worker.

I believe the recordkeeping burden which this bill would impose is mind-boggling, particularly for small business owners for whom this requirement would be particularly onerous.

Equally as important as the unfair impact which I believe these provisions will have on employers, is the discriminatory effect which I fear employer sanctions may cause againt American citizens or legal aliens of minority groups. If an employer knows he is facing stiff monetary penalties, let alone the possibility of a jail sentence, for hiring an individual who turns out to be an illegal alien, can we be surprised if he elects not to hire anyone who looks or appears to be foreign? I do not believe that even the worthy goal of making certain that people who break our immigration laws are not allowed to work in the United States justifies creating this unconscionable burden on either employer or employee.

As you are aware, many efforts have been made on the Senate floor in connection with this legislation to ameliorate the potentially damaging effects of the current employer sanctions provisions. During consideration of this measure last year, I introduced an amendment to the employer sanctions section of the immigration bill of 1982 which I felt would have worked to diminish the risk of discrimination while, at the same time, controlling the intentional hiring of illegal workers in an effective and workable fashion.

This year, I was pleased to support the amendment offered by my colleague from Massachusetts, Senator KENNEDY. This amendment would have added a necessary safeguard against any possible discrimination resulting from the employer sanctions provisions. it would have provided a mechanism by which discrimination could be addressed by Congress in a timely fashion so that appropriate action might be taken.

To my regret, my own amendment last year and the amendment I supported this year failed to pass the Senate and the concerns over the effect of employers sanctions on both the employer and employee remain unresolved.

At this time, I would like to add that I am pleased to cosponsor two amendments which have been offered to this bill which, in my view, address other real issues of concern.

The amendment to be offered by the Senator from New York, Senator D'AMATO, which I have joined in sponsoring, would require the Federal Government to reimburse States the cost of incarcerating illegal aliens convicted of felonies. In Texas alone, an estimated 500 illegal alien inmates are in prisons, costing taxpayers about $4,500 per inmate, per year. For the same reasons that I do not believe it is fair for the private sector to bear the responsibility of policing our immigration laws, I do not think it is fair for States to bear the high cost of jailing illegal aliens. These individuals; entry into this country was the result of policy decisions over which the States had no control. Therefore, it would appear appropriate, in my view, for the Federal Government to assume responsibility for the result of crimes illegal aliens commit while in this country.

I have also joined in sponsoring the amendment to be offered by the Senator from Idaho, Senator MCCLURE, which would require the Immigration and Naturalization Service to obtain a valid search warrant before entering a farm, ranch, or other agricultural operation. Our agricultural industry is vital to our Nation's economy and welfare as a whole, and as makers of national farm policy, I believe it is essential that we encourage the stability necessary in the agricultural sector to allow the 23 million people who are involved in that industry to do the job they do so well.

Currently, the INS must obtain a warrant prior to entering a place of business, such as a hotel or restaurant, to conduct a search for undocumented workers. However, INS policy now treats agricultural lands as open fields, beyond the scope of the fourth amendment protection, and therefore INS agents do not have to obtain a warrant before entering a private farm or ranch. This open field doctrine has been applied by the courts to those instances where the fruit of the crime is clearly visible to law enforcement officers. This doctrine should not be applied to illegal immigration cases. In my view, it is discriminatory to assume, on sight, that certain farmworkers are illegal aliens simply because of the color of their skin, and these warrantless entries in search of undocumented workers violate the constitutional rights of both the property owners and the workers.

Whether or not the workers who are apprehended on such a raid turn out to be illegal aliens, the entire operation of the farm has been disrupted for a period of time. Many workers, including those who later turn out to be U.S. citizens or authorized workers, are scared to come back to work. The purpose of this amendment, therefore, is to stop the open field raids by INS that severely disrupt farming operations, resulting in thousands of dollars in lost crops and man-hours annually.

Passage of this amendment would not provide any special protection for farmers. It would merely ensure that farmers, ranchers, and farmworkers are afforded the same standard of protection against unreasonable and warrantless searches as other businessmen and workers now enjoy.

I cannot predict what will happen to the immigration bill. However, if it is enacted in its present form, I will monitor its effects on my fellow Texans and do everything in my power to see that the effects of this legislation are not as harmful as I fear they could be. It is my hope that my colleagues also will follow its implementation closely and with an open mind, and be willing to make any changes that prove necessary to keep this well-intentioned attempt at solving our immigration problems from becoming just another onerous and counterproductive set of regulations.

Mr. SIMPSON. Mr. President, the purpose of this legislation is to improve control over illegal immigration. This amendment effectively removes that control.

It is ironic that yesterday, when the growers were talking about illegals being apprehended and disrupting the harvest, they said that only 8 percent of all illegals are in agriculture but 50 percent of the apprehensions are made there. But when they fear losing the illegal aliens as workers, through the implementation of employment sanctions, they claim they will not be able to harvest or that food prices will rise unless they have these special programs for the transitional workers. They cannot have it both ways.

The issue here is that this is the most effective way of control. The open fields have been described very carefully in Supreme Court decisions. There is no way for law enforcement personnel, under the circumstances that will take place here, to process warrants, no way to go through rural areas, no way to travel from the site and prepare and sign affidavits when you have field crews involved in activity which is not just rapid—it is frantic. There is no way that can work.

The issue before us today is another one, and it is simple: By adoption of

this amendment, you have opened various oases of discrimination and exploitation. That is what you do when you adopt this amendment.

Mr. HUDDLESTON. Mr. President, does any time remain?

The PRESIDING OFFICER. Nine seconds.

All time has expired.

The question is on agreeing to the amendment of the Senator from Idaho. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER) is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arizona (Mr. DECONCINI), the Senator from Colorado (Mr. HART), the Senator from Alabama (Mr. HEFLIN), and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

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

The result was announced—yeas 62, nays 33, as follows:

[Rollcall Vote No. 99 Leg.]

YEAS—62

Andrews	Garn	Moynihan
Armstrong	Goldwater	Murkowski
Baucus	Hatch	Nickles
Bentsen	Hatfield	Pell
Biden	Hawkins	Percy
Bingaman	Hecht	Pryor
Boren	Helms	Riegle
Boschwitz	Humphrey	Roth
Bumpers	Inouye	Rudman
Burdick	Jackson	Sarbanes
Chafee	Jepsen	Sasser
Cochran	Kasten	Stennis
Cranston	Kennedy	Stevens
D'Amato	Lautenberg	Symms
Denton	Laxalt	Tower
Dixon	Leahy	Wallop
Dodd	Levin	Warner
Dole	Matsunaga	Weicker
Domenici	McClure	Wilson
East	Melcher	Zorinsky
Exon	Metzenbaum	

NAYS—33

Abdnor	Grassley	Packwood
Bradley	Heinz	Pressler
Byrd	Huddleston	Proxmire
Chiles	Johnston	Quayle
Cohen	Kassebaum	Randolph
Danforth	Long	Simpson
Durenberger	Lugar	Specter
Eagleton	Mathias	Stafford
Ford	Mattingly	Thurmond
Glenn	Mitchell	Trible
Gorton	Nunn	Tsongas

NOT VOTING—5

Baker	Hart	Hollings
DeConcini	Heflin	

So Mr. MCCLURE's amendment (No. 1279) was agreed to.

Mr. MCCLURE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1280

The PRESIDING OFFICER. The Senate will be in order.

The question now recurs on the amendment of Senator D'AMATO, No. 1280. Who yields time?

Mr. SIMPSON. Mr. President, I just happened to reflect for a moment about what would happen if the ACLU and the National Farm Bureau got together. I thought that would be an explosive situation, and I found that to be exactly correct. [Laughter.]

Mr. D'AMATO, please, for his amendment.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, we have debated this amendment and I want to say that my esteemed colleague, Senator SIMPSON, has been most gracious in offering to undertake a study and to hold hearings with respect to the number of illegal aliens, refugees, migrant workers and other aliens who are now in our prisons at great expense, after having been tried and convicted of felonies.

Mr. MOYNIHAN. Mr. President, may we have order? The Senator is making an important point.

The PRESIDING OFFICER. The Senator is correct. The Senate will be in order. The Senate is now in order, and the Senator from New York is recognized.

Mr. D'AMATO. Alien felons are a great burden on our State judicial systems and our penal institutions, which are literally bursting at the seams.

Again I am appreciative of Senator SIMPSON's offer to conduct a study. But I think the fact is that now is the time to act and demonstrate that the Federal Government does have a responsibility to help the States cope with the problems that it has caused. The States did not create this problem. They find themselves victimized; our local taxpayers find themselves victimized. Our prisons are bursting and we are paroling people, not because they should be or are entitled to be out on the streets but because we have no room to incarcerate them.

Unless we expect to be able to continue our war on crime with rhetoric and without positive action, we must move in this manner, in this place, and at this time to support our words with action. And that is what this amendment calls for.

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

Mr. D'AMATO. Certainly.

Mr. CHILES. I just want to join with the Senator from New York and simply say our jails are full. They are illegal aliens and people who have violated their paroles. We cannot send them back to Cuba because Cuba will not take them back. Yet right now the burden of those people falls on State government and local government, and that is simply not fair and it ought to be a Federal responsibilitly. It is a Federal responsibility of immigration, and I urge the Senate to adopt the Senator's amendment.

The PRESIDING OFFICER. All time of the proponents has expired.

The Senator from Wyoming.

Mr. SIMPSON. Mr. President, it would be a good argument if it were left on the basis that this affected only illegal aliens.

This amendment is very sweeping.

Mr. KENNEDY. May we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order.

Mr. SIMPSON. This amendment in its present draft includes temporary workers, foreign tourists, asylees, foreign students, refugees, and H-2 workers.

I have explained several times to the Senator from New York that the first time we ever heard of this issue was 2 weeks ago.

It is a significant departure from present law. I have promised him hearings, I have promised him report language, and I can assure you that when we inquire of the various penal institutions in the States as to what their population is that should be paid for by the Federal Government we will get some figures, and when we get those figures I will go with the Senator from New York and we will discuss that with the administration and see that people pick up their Federal responsibilities.

But this amendment is totally sweeping. It involves our proud heritage of accepting refugees and immigrants and this amendment includes about seven categories of persons. I have promised him a time for hearings. I have promised him a time for report language, and I urge the rejection of the amendment.

Mr. KENNEDY. Mr. President, I join with the Senator from Wyoming in opposing this amendment. I think we ought to, as the Senator has mentioned, have some hearings and some additional information. I really have questions about whether this is the right vehicle. If we are going to have such an amendment it should be on, perhaps, the Department of Justice authorization bill or on the appropriations bill sometime in this session.

I basically am openminded on the concept, but I think that is the wise way to proceed. For those reasons I will vote against it.

The PRESIDING OFFICER (Mr. JEPSEN). The Chair will advise the Senator that all time has expired on both sides. The question is on agreeing to the amendment of the Senator from New York. 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) is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arizona (Mr. DECONCINI), the Senator from Colorado (Mr. HART), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Alabama (Mr. HEFLIN) are necessarily absent.

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

The result was announced—yeas 55, nays 40, as follows:

[Rollcall Vote No. 100 Leg.]

YEAS—55

Abdnor	Helms	Nickles
Andrews	Humphrey	Nunn
Bentsen	Inouye	Pressler
Biden	Jackson	Pryor
Boren	Jepsen	Riegle
Boschwitz	Johnston	Rudman
Bumpers	Kasten	Sarbanes
Burdick	Lautenberg	Specter
Chiles	Leahy	Stafford
Cochran	Levin	Stennis
D'Amato	Long	Stevens
Denton	Lugar	Tower
Domenici	Matsunaga	Trible
East	Mattingly	Tsongas
Ford	McClure	Warner
Garn	Melcher	Weicker
Hatch	Metzenbaum	Wilson
Hawkins	Moynihan	
Heinz	Murkowski	

NAYS—40

Armstrong	Exon	Pell
Baucus	Glenn	Percy
Bingaman	Goldwater	Proxmire
Bradley	Gorton	Quayle
Byrd	Grassley	Randolph
Chafee	Hatfield	Roth
Cohen	Hecht	Sasser
Cranston	Huddleston	Simpson
Danforth	Kassebaum	Symms
Dixon	Kennedy	Thurmond
Dodd	Laxalt	Wallop
Dole	Mathias	Zorinsky
Durenberger	Mitchell	
Eagleton	Packwood	

NOT VOTING—5

Baker	Hart	Hollings
DeConcini	Heflin	

So Mr. D'AMATO's amendment (No. 1280) was agreed to.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LEAHY. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1210

The PRESIDING OFFICER. The question recurs on the Kennedy amendment No. 1210. The Senator from Wyoming has 12 minutes remaining and the Senator from Massachusetts has 14 minutes remaining. Who yields time?

Mr. KENNEDY. Mr. President, I send a modification of my amendment to the desk.

The PRESIDING OFFICER. It will take unanimous consent to modify the amendment.

The Senate will be in order.

The Chair advises the Senator that it will take unanimous consent to modify the amendment.

Mr. KENNEDY. I ask unanimous consent to be able to modify the amendment.

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

The amendment, as modified, is as follows:

On page 123, after line 10, insert the following new subsection:

(c) Section 236(a) (8 U.S.C. 1226(a)), as amended by section 126 of this Act, is further amended by inserting after the second sentence the following new sentence: "To the extent practicable, the hearing shall be conducted in a nonadversarial, informal manner, except that the applicant is entitled to be assisted by counsel (in accordance with section 292), to present evidence, and to examine and crossexamine witnesses.".

On page 123, line 11, strike out "(c)" and insert in lieu thereof "(d)".

On page 127, line 9, strike out "(5)(A)" and insert in lieu thereof "(5)".

On page 127, lines 12 and 13, strike out "by the Attorney General under subparagraph (B) or".

On page 127, strike out lines 14 through 25.

On page 131, amend lines 1 and 2 to read as follows:

(1)(A) in the matter before paragraph (1), by striking out "The procedure" and all that follows through "any prior Act" and inserting in lieu thereof the following: "Notwithstanding section 279 of this Act, section 1331 of title 28, United States Code, or any other provision of law (except as provided under subsection (b)), the procedures prescribed by and all the provisions of chapter 158 of title 28, United States Code, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of exclusion or deportation (including determinations respecting asylum encompassed within such orders and regardless of whether or not the alien is in custody and not including exclusions effected without a hearing pursuant to section 235(b)(1)(B)) made against aliens within (or seeking entry into) the United States";

(B) in paragraph (1), by striking out "not later than six months" and all that follows through "whichever is the later" and inserting in lieu thereof "by the alien involved or the Service not later than 45 days from the date of the final order";

(C) inserting ", in the case of review sought by an individual petitioner," in paragraph (2) after "in whole or in part, or";

(D) by inserting "in the case of review sought by an individual petitioner," in paragraph (3) after "(3)"; and

(E) by inserting "exclusion or" before "deportation" in paragraph (4);

On page 131, amend lines 14 through 17 to read as follows:

"(B) to the extent that an order relates to a determination on an application for asylum, the court shall only have jurisdiction to review (i) whether the jurisdiction of the immigration judge or the United States Immigration Board was properly exercised, (ii) whether the asylum determination was made in accordance with applicable laws and regulations, (iii) the constitutionality of the laws and regulations pursuant to which the determination was made, and (iv) whether the decision was arbitrary or capricious;",

(6) in paragraph (7)—

(A) by inserting "or exclusion" after "deportation" each place it appears,

(B) by striking out "subsection (c) of section 242 of this Act" and inserting in lieu thereof "section 235(b) or 242(c)", and

(C) by striking out "a deportation order;" and inserting in lieu thereof "an exclusion or deportation order; and",

On page 131, strike out line 23 and all that follows through page 132, line 8.

On page 132, lines 9 and 12, strike out "(2)" and "(3)" and insert in lieu thereof "(b)(1)" and "(2)", respectively.

On page 133, line 9, strike out "thirty" and insert in lieu thereof "45".

On page 133, line 21, insert "exclusion or" before "deportation".

On page 135, insert after line 14 the following:

"(3)(A)(i) Upon the filing of an application for asylum, the immigration judge, at the earliest practicable time and after consultation with the attorney for the Government and the applicant, shall set the application for hearing on a day certain or list it for trial on a weekly or other short term hearing calendar, so as to assure a speedy hearing.

"(ii) The hearing on the asylum application shall commence on the earliest practicable date after the date the application has been filed. The holding of an asylum hearing shall not delay the holding of any exclusion or deportation proceeding.

"(iii) In the case of an alien who has filed an application for asylum and who has been continuously detained pursuant to section 235 or 242 since the date the application was filed, if a hearing on the application is not held on a timely basis under clause (ii) or a decision on the application rendered on a timely basis under subparagraph (B), and if actions or inaction by the applicant have not resulted in unreasonable delay in the proceedings, the Attorney General shall provide for the release of the alien subject to such reasonable conditions as the Attorney General may establish to assure the presence of the alien at any approporiate proceedings, unless the Attorney General has reason to believe that the release of the alien would pose a danger to any other person or to the community, that the alien meets a condition described in one of the subparagraphs of section 243(h)(2), or that the alien is subject to temporary exclusion under section 235(c).

On page 135, line 15, strike out "(3)(A)" and insert in lieu thereof "(B)".

On page 135, line 21, insert "verbatim" after "complete".

On page 135, line 23, after the period insert the following new sentence: "The immigration judge shall render a determination on the application not later than 90 days after the date of completion of the hearing.".

On page 136, line 1, strike out "(B)(i)" and insert in lieu thereof "(C)(i)".

On page 136, after line 13, insert the following new clauses:

"(D) Upon the filing of a notice of appeal the decision of an immigration judge to the United States Immigration Board under section 107(b), the Attorney General and the Board shall provide that a transcript of the hearing is made available as soon as practicable.

"(E) The Attorney General shall allocate sufficient resources so as to assure that applications for asylum are heard and determined on a timely basis under this paragraph.".

On page 148, line 15, strike out "or the Attorney General".

Mr. KENNEDY. Mr. President, we are getting close to the time of passage, but I welcome the opportunity on this final item to have worked very closely with the Senator from Wyoming and also the Senator from Michigan, the Senator from Colorado, and others who have been very much concerned about the whole issue of judicial review.

May we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order.

Mr. KENNEDY. Mr. President, I will briefly spell out what is currently in the Senate bill and where the House of Representatives is on the same issue, and what compromise has been made in the working group that drafted the amendment before us. I understand that it is now acceptable to the manager of the bill.

The original bill S. 2222 last year, had a structure for administrative law judges as asylum judges and a Presidentially appointed U.S. Immigration Board. No provision was made for a review of the Board's decision.

The House bill kept that structure and superimposed on top of it the appeals to the Federal Circuit Court of Appeals.

The pending Senate bill changed the structure to immigration judges with the Attorney General appointing Immigration Board. Judicial review continues to be limited. Only if the Attorney General certifies a case is his modification then reviewable by a court of appeals. The Senate has a 9-member board and the House a 6-member board.

The compromise amendment I am offering goes with the Senate bill. However, the Attorney General's certification is eliminated and there is provision for judicial review to the circuit court of appeals.

The Senate bill deletes the statutory habeas corpus review in the district court, but the House bill specifically retains it and says habeas corpus petitions may be brought individually or on a multiple-party basis in Federal circuit courts of appeals. The compromise amendment deletes statutory habeas corpus review.

However, we do provide for a limited judicial review in asylum cases. The court is limited in its review only to, first, whether the jurisdiction of the administrative law judge or Board was properly exercised; second, whether the asylum determination was in accordance with applicable laws and regulations; third, the constitutionality of the laws and regulations pursuant to the determination; and, fourth, whether the decision was arbitrary or capricious.

That is the compromise.

So we have retained both the constitutional habeas corpus and a limited statutory habeas corpus provision. What we have done is follow the administrative provisions that are in the Senate bill, but established the House provisions on judicial review. It seems to me, Mr. President, that this is a very important adjustment to what is in the legislation now, and it seems to me to achieve the basic kinds of protections which we are interested in protecting.

On the issue of the habeas corpus, in many instances we are talking about decisions of life or death, where an individual may be deported back to parts of the world where his life may very well be threatened. So this whole issue is of enormous importance and consequence. It deserves the consideration of this body.

I welcomed during the work of the subcommittee and the full committee, and particularly in the past several days, both the continued cooperation of the chairman of the committee and the Justice Department and the various Senators who share these concerns—and there are many on both sides of the aisle—and who have helped to reach this compromise.

I will be glad to go into greater detail. I have tried to make the legislative history concise and precise on this particular issue, but I will welcome further explanation within the time limit.

As I have described it, I am hopeful this amendment can be adopted.

Mr. SIMPSON. Mr. President, this has been a very knotty problem with regard to the entire reform issue. It is the area of judicial review.

Senator KENNEDY had a viewpoint which included the use of administrative law judges and some other procedures which were originally unacceptable. In the long course of negotiations we now have come to this situation which is where we have a full, upfront type of hearing, cross-examination, open or closed, right to counsel, administrative hearings, administrative appeals. We stay with the Senate language on summary exclusion matters. We stay with the language on habeas corpus. We have adjusted the review process. The amendment still gives control of the adjudication procedure within the Department of Justice. That is what we were seeking. That Department will have the ability to react to immigration emergencies through this procedure.

There will be a limited judicial review of asylum cases, and there will be judicial review of deportation and exclusion cases.

I think it is an appropriate amendment. The system will certainly be more workable than it is now.

I ask unanimous consent to enter into the RECORD a most extraordinary docket review of an actual case which proceeded from a person admitted as a visitor to the United States on August 24, 1974, who brought over his fiance and two children, U.S. citizens, were born. That case now, 8 years later, is at the status of petition for review filed with the U.S. Court of Appeals for the First Circuit.

That is what happens in asylum cases. That is what happens when we learn how to use the systems. I want that in the RECORD. I think all Senators would be interested in that.

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

[No. 82-1829]

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

(Thomas Le Blanc and Marie Margaret Le Blanc, Petitioners v. Immigration and Naturalization Service, Respondent. Petition for Review of an Order of the Board of Immigration Appeals—Brief for Respondent.)

Date and events.

Aug. 24, 1974: Thomas Le Blanc admitted as a visitor to the United States until 9-10-74. (A.R. 228).

June 15, 1975: Margaret Le Blanc, nee Commodore admitted as a visitor to the United States until 6-20-75. (A.R. 230).

Oct. 25, 1975: Petitioners marry. (A.R. 53).

Dec. 12, 1975: Thompson Sonel Le Blanc is born. (A.R. 223).

Jan. 19, 1978: Petitioners Reported to INS.

Feb. 19, 1978: Petitioners granted until such date to depart voluntarily.

Mar. 19, 1978: Petitioners granted until such date to depart voluntarily. (A.R. 228).

Mar. 28, 1978: Petitioners failed to depart. Order to Show Cause (OSC) issued.

Apr. 12, 1978: Deportation hearing opened. Hearing continued upon Petitioners' request. (A.R. 239).

Apr. 25, 1978: Deportation hearing reconvened. Petitioners conceded allegations in OSC, requested and were granted 75 days to depart voluntarily. (A.R. 234).

July 8, 1978: Petitioners requested and were granted until such a date to depart voluntarily from the United States.

Oct. 8, 1978: Petitioners requested and were granted until such a date to depart voluntarily from the United States.

Jan. 20, 1979: Petitioners requested and were granted until such a date to depart voluntarily from the United States.

Apr. 1, 1979: Petitioners requested and were granted until such a date to depart voluntarily from the United States.

May 24, 1979: Petitioners requested and were granted until such a date to depart voluntarily from the United States.

June 1, 1979: Petitioners requested and were granted until such a date to depart voluntarily from the United States.

July 23, 1979: Christopher Thomas Le Blanc is born. (A.R. 51).

Sept. 1, 1979: Petitioners requested and were granted until such a date to depart voluntarily from the United States.

Oct. 5, 1979: I-166 issued (Notice to report to INS for deportation).

Oct. 15, 1979: Deportation notice cancelled due to hurricane in Dominica. Thirty (30) day extension granted until 11-15-79.

Jan. 25, 1980: Motion to Reconsider and Reopen and to Stay Deportation Proceedings filed with Immigration Court. (A.R. 223).

Feb. 22, 1980: INS' opposition to motion is filed (A.R. 225).

Apr. 25, 1980: Motion denied by Immigration Judge. (A.R. 222).

Aug. 29, 1980: Petitioners requested and were granted until 9-5-80 to depart voluntarily from the United States.

Sept. 5, 1980: Motion to Reconsider and Reopen and Permission to File Petition of Suspension of Deportation filed by Petitioners with the Immigration Judge. (A.R. 281).

Sept. 17, 1980: Brief in opposition to motion filed by INS. (A.R. 220).

Sept. 29, 1980: Petitioners' motion denied by the Immigration Judge. (A.R. 217).

Oct. 17, 1980: An untimely Notice of Appeal to the BIA is filed by Petitioners.

Mar. 26, 1981: Petitioners' appeal is dismissed by the BIA.

July 17, 1981: Petitioners were granted until such a date to depart voluntarily from the United States.

Aug. 1, 1981: Petitioners were granted until such a date to depart voluntarily from the United States.

Aug. 7, 1981: Petitioners request for deferred action denied by the District Director.

Sept. 24, 1981: Motion to Reconsider the decision of the BIA dated 3-26-81 is filed. (A.R. 213).

Sept. 30, 1981: Petitioners were granted until such a date to depart voluntarily from the United States.

Oct. 19, 1981: The BIA declines to reconsider its decision.

Dec. 14, 1981: Petition for Review filed with the United States Court of Appeals for the First Circuit, No. 81-1860.

July 28, 1982: First Circuit Court of Appeals affirms the decision of the BIA.

Aug. 17, 1982: I-166 issued (Notice to Report to INS for deportation).

Aug. 17, 1982: Application for stay of deportation made by Petitioners to District Director.

Aug. 24, 1982: Application for stay denied by District Director.

Aug. 24, 1982: Motion to Reconsider, Reopen, and for Stay of Deportation filed with the Immigration Judge (A.R. 184).

Aug. 24, 1982: INS files opposition to motion. (A.R. 185).

Motion is denied by Immigration Judge.

Aug. 25, 1982: Telephonic request for a stay is made to the BIA. Request is denied. (A.R. 183.)

Sept. 7, 1982: Petitioners file Motion for a Temporary Restraining Order and Motion Preliminary Injunction in the United States District Court for the District of Puerto Rico (A.R. 173).

Sept. 7, 1982: District Court Judge issues Temporary Restraining Order. (A.R. 171).

Sept. 13, 1982: Motion to Stay Deportation, Reopen Proceedings and Remand for the Purpose of Applying For Suspension of Deportation filed by Petitioners with the BIA. (A.R. 23).

Sept. 16, 1982: The BIA denies Petitioners' motion to reopen. (A.R. 169).

Sept. 23, 1982: Stipulation entered between INS and Petitioners' counsel. (A.R. 22(a)).

Sept. 29, 1982: Written application for stay of deportation filed by Petitioners with the District Director. (A.R. 19).

Oct. 4, 1982: The District Director denies Petitioners' application. (A.R. 18).

Oct. 8, 1982: The BIA denies Petitioners' Motion to Reopen. (A.R. 15).

Oct. 14, 1982: Complaint filed by Petitioners in the United States District Court for the District of Puerto Rico. No. 82-2491JP. (A.R. 1)

Nov. 5, 1982: Petition for Review filed with the United States Court of Appeals for the First Circuit, No. 82-1829.

Mr. SIMPSON. We need a procedure which is both fair and expeditious. I believe this amendment will provide that. I appreciate the efforts of the Senator from Massachusetts.

Mr. KENNEDY. Finally, Mr. President, I commend the work that has been done by the chairman of the Immigration Subcommittee in simplifying the administrative procedures for asylum review. I think important progress has been made.

In arguing for the elimination of judicial review from the asylum process, proponents have said this is necessary because judicial review will result in delays and in the creation of huge backlogs.

Well, Mr. President, this simply is not true today, and there is no sound reason to believe it will be so in the years to come.

Currently, of the more than 150,000 asylum claims pending, less than 2 percent of these are in the courts.

The facts are that the current backlog is a consequence of the failure to provide sufficient funds and personnel to administer the asylum process. What we have today are administrative delays, not judicial delays.

This has been confirmed by the study completed last December by the Immigration and Naturalization Service—the conclusions of which I will enter into the RECORD later.

According to the INS report:

One question frequently asked is, "is the current law with regard to asylum adjudication workable?"

INS says:

We do not know the answer because INS was never able to implement fully the asylum provisions of the 1980 refugee act. . . . additionally, at the very time when the new asylum provisos went into effect in 1980, the Government actively encouraged the filing of irrelevant and frivolous claims. Further, the Government publicized its inability to process this large volume thereby exacerbating the problem. The media also mistakenly publicized the view that all aliens were utilizing the multiple layer of appeals possible under the current law when in fact only about 2 percent of the cases, mostly class action suits, went beyond the administrative appeal machinery.

That is the conclusion of the INS—that administrative problems have caused the current backlog, not judicial review.

Yet this bill unless we accept this compromise amendment, would gratuitously repeal existing rights for judicial review, when those rights are not the source of the current problem. The administrative reforms contained in this bill are the answer—not the unnecessary elimination of judicial review.

I believe it is wrong to restrict legitimate rights for judicial review under normal conditions—but it is even worse to do so for the wrong reasons.

Mr. President, I ask that the text of the conclusions from the INS report be printed at this point in the RECORD.

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

ASYLUM ADJUDICATIONS: AN EVOLVING CONCEPT AND RESPONSIBILITY FOR THE IMMIGRATION AND NATURALIZATION SERVICE

(Report prepared by Immigration and Naturalization Service, Washington, D.C.)

CONCLUSION

By its very nature this review has focused on "what's wrong" rather than "what's right" with asylum adjudications. Nevertheless, the comments and recommendations come directly from INS officers and are directed at helping INS turn the asylum issue around. The task is eminently do-able and all interviewees evinced a willingness to work towards that goal.

Of the many recommendations in this study, four are critical. The Service should:

Make the completion of asylum adjudications a priority in fiscal year 1983;

Train a special asylum officers corps;

Review and revise both the asylum application and the interim regulations and operating instructions; and

Develop a monitoring mechanism to track uniformity and consistency in asylum adjudications and provide feedback to the field.

One question frequently asked is, "Is the current law with regard to asylum adjudications workable?" We do not know the answer because INS was never able to implement fully the asylum provisions of the 1980 Refugee Act. For this most difficult, time-consuming, and politically controversial work, we neither trained our officers, developed comprehensive final regulations and operating instructions, or gave priority to the effort.

Additionally, at the very time when the new asylum provisos went into effect in 1980, the government actively encouraged the filing of irrelevant and frivolous claims. Further, the government publicized its inability to process this large volume thereby exacerbating the problem. The media also mistakenly publicized the view that all aliens were utilizing the multiple layer of appeals possible under the current law when in fact only about 2 percent of the cases, mostly class action suits, went beyond the administrative appeal machinery.

Asylum is a "sacred cow". Of all the adjudications the Service does—almost 1.8 million a year—the one that most Americans probably identify with is the refugee/asylum action. These stories make dramatic reading from escapees over the Berlin wall, the Hungarian freedom fighters, to the Vietnamese boat people. Probably few newspaper reporters would be interested in writing a story on completion of an I-130 relative petition unless there were unusual circumstances. But almost every reporter covering immigration is interested in asylum adjudications.

This places a special responsibility on INS. It also gives us maximum opportunity to report accurately and clearly what we are doing. The Service should publicize its commitment to reducing the asylum backlog in fiscal year 1983. The word should go out that these applications will not languish in district offices for months and in some cases years.

Does the Service need new legislation to deal with asylum? Both the Administration and the Congress are actively considering new proposals. Common to both is the view that a specially trained group of people are needed to do this most complex adjudication. This view has merit whether it be specially trained INS officers or immigration judges. Both proposals also reflect the view that multiple appeals have led to the explosion of asylum claims and the backlog buildup. While that may be a future problem if the appeal mechanisms are not clarified, it is not a major cause of the current asylum predicament.[1] Pending new asylum legislation, our efforts should be directed toward making the current system work and we can do that by making regulatory, not statutory, changes.

The months ahead present a unique challenge for INS. Whether or not we have new legislation, the Service has an obligation [2] to reduce significantly the asylum backlog and to communciate to the public a new message with regard to asylum claims. This must be done uniformly, consistently, and it should be carefully monitored. We must know what is happening in the field and accurately report and act on that information.

We must also acknowledge that the prime responsibility for asylum adjudications rests with the Immigration Service, not the Department of State, for it is only the immigration officer who can make the required independent judgment. With this commitment, plus officer training, asylum adjudications are doable and the Service can move ahead to play its rightful leadership role in this important area.

TABLE 1.—ASYLUM CASES PENDING NATIONWIDE

[As of March 1982]

Country of nationality	Number	Percentage
Cuba	50,920	49
Iran	14,511	14
Nicaragua	10,514	10
El Salvador	9,363	9
Haiti	5,623	5
Poland	3,495	3
Ethiopia	1,441	1
Afghanistan	1,090	1
All others (includes nationals of more than 50 countries	8,011	8
Total	104,968	

TABLE 3.—ASYLUM CLAIMS PENDING, LOS ANGELES DISTRICT OFFICE (INCLUDING SANTA ANA)

[As of March 1982]

Country of nationality	Pending beginning of month	Received	Transferred out	Completed	Pending end of month
Afghanistan	121		2		119
Argentina	17				17
Bangladesh	3				3
Bulgaria	9				9
Burundi	1				1
Cambodia	4				4
Chile	18				18

[1] The exception, of course, is class action suits brought in behalf of some detained, excludable aliens.

[2] The Simpson-Mazzoli proposals would leave with INS all asylum applications made prior to a transition date which in all likelihood would be at least six months after enactment. Therefore, INS would still have 50,000 plus cases (the exact number would depend upon the eligibility criteria set for the legalization program) to handle even if future cases were directed toward a newly formed immigration judiciary.

TABLE 3.—ASYLUM CLAIMS PENDING, LOS ANGELES DISTRICT OFFICE (INCLUDING SANTA ANA)—Continued

[As of March 1982]

Country of nationality	Pending beginning of month	Received	Transferred out	Completed	Pending end of month
China	68	10			78
Colombia	3				3
Cuba	140	1			141
Czechoslovakia	17				17
Dominican Republic	3				3
Ethiopia	233	16		1	248
German Democratic Republic	2				2
Ghana	2				2
Greece	1				1
Haiti	6				6
Honduras	10	1			11
Hungary	51				51
Iran	5,154	337	25		5,466
Iraq	238		2		236
Jordan	10				10
Kenya	2				2
Laos	5				5
Lebanon	375	1	4		372
Libya	3				3
Mexico	8				8
Netherlands	1				1
Nicaragua	580	85	1	1	663
Pakistan	29	1			30
Panama	1				1
Peru	3				3
Philippines	88	12	1		99
Poland	77	76			153
Rhodesia	6				6
Romania	58		1		57
South Africa	5				5
Spain	1				1
Sweden	2				2
Syria	65		1		64
Turkey	56				56
U.A.R. (Egypt)	260	30			290
Uganda	24				24
U.S.S.R.	21				21
Vietnam	49		1		48
Yugoslavia	19				19
Zaire	4				4
El Salvador	2,531	383	8		2,906
All others	523	55			578
Total	10,907	1,008	46	2	11,867

Mr. KENNEDY. What I would do, Mr. President, is to ask unanimous consent to include at this point in the record, as we hear where there have been abuses of judicial review, three rather dramatic cases where an immigration judge ruled against a particular individual and because under the current law there are appeal procedures, they went up to the circuit court and the circuit court found for the individuals. I think any fair examination of those three cases would indicate that if those people had been deported they would not be alive today. So judicial probably save these three people from persecution.

I ask that these three cases be printed at this point in the RECORD.

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

SAMPLE CASES

There have been several cases where asylum has been denied by the INS and the Administration have been reversed by United States Courts of Appeals. Although the number of reversals are few in number, the facts in these cases indicate why judicial review is crucial as an independent check on administrative discretion in the asylum area. The cases are discussed below:

1. *McMullen* v. *INS* 658 F.2d 1312 (1981)—Peter Gabriel John McMullen is a citizen of the United Kingdom and the Republic of Ireland. McMullen joined the British Army and was sent to Northern Ireland in 1969. While there he says he learned of British plans to attack unarmed civilian demonstrators in order to provoke a response from the Provisional Irish Republican Army (PIRA), a clandestine offshoot of the IRA. McMullen deserted and joined the PIRA. In 1974, he resigned from the group and was arrested by the Republic of Ireland. He served three years in prison during which time he was segregated by prison authorities from PIRA members. After being released, McMullen was asked to help the PIRA again; he says he refused at first but was intimidated into cooperating. However, he refused an order to kidnap an American bar owner, and was told by a friend that he was to be killed for this insubordination. McMullen fled to the United States, entering the country illegally. Once in the U.S., he cooperated with investigations of PIRA activities by the Bureau of Alcohol, Tobacco and Firearms and Scotland Yard.

When INS initiated deportation proceedings against McMullen, he provided evidence that 1) the PIRA murders traitors, 2) the PIRA considered him a traitor and 3) the Government of the Republic of Ireland is unable to control the PIRA.

The immigration judge found that McMullen was not deportable.

On October 1, 1980, the Board of Immigration Appeals (BIA) reversed based on INS' argument that McMullen's testimony was not reliable because he was a self-interested witness. INS did not refute specific claims made by McMullen.

On October 13, 1981, the U.S. Court of Appeals reversed the board, ruling that 1) factual findings under the Refugee Act of 1980 are subject to review under the substantial evidence test, and 2) the evidence did not support the BIA's finding that McMullen had not shown that he was likely to be persecuted if he returned to Ireland.

2. *Stevic* v. *Sava* 678 F.2d 401 (1982)—Pedrag Stevic is a Yugoslav citizen who came to the United States in June 1976 on a six-week visa. He remained in the country after the visa expired despite two orders to leave. Instead of complying with the second order, Stevic moved to reopen deportation proceedings in order to argue that he would be subject to prosecution if he returned to Yugoslavia. He said he had been active in Ravna Gora, an anti-communist exile organization, and similar organizations to which the Government of Yugoslavia is known to be hostile. He said his father-in-law, a U.S. citizen who was also a member of Ravna Gora, was sentenced to three years in prison while visiting Yugoslavia as a tourist in 1974 and committed suicide after his release.

On August 1, 1979, the immigration judge denied Stevic's motion to reopen deportation proceedings.

On January 18, 1980, the BIA dismissed Stevic's appeal of the judge's decision.

On September 3, 1981, the board denied a second motion to reopen, in which Stevic argued that passage of the 1980 Refugee Act had substantially changed the standard for granting asylum and that refugees no longer had to show a "clear probability" that they would be singled out for persecution.

On May 5, 1982, the Court of Appeals ruled that the 1980 act had changed the law and that Stevic's claim should be tested in a plenary hearing. On July 29, 1982, the court denied INS' petition for rehearing.

3. *Reyes* v. *INS* 693 F.2d 597 (1982)—Liane Reyes is a Philippine citizen who entered the United States in 1975 on a student visa and remained in the country after her visa

expired. In 1979, INS began deportation proceedings. Reyes requested political asylum. She stated that she had participated in anti-Marcos activities in 1963 or 1964; that in 1964 or 1965 she was taken out of school and detained and questioned for several days; and that she was disciplined several times in school for making disruptive anti-government statements. Reyes also entered into the record a letter from the Director of Mass Media of the Catholic Church in the Philippines describing incidents of persecution against others and warning her not to return to the country.

On July 29, 1980, the immigration judge denied Reyes application for asylum.

The IAB affirmed the judge's decision, dismissed Reyes' appeal, and ordered her to leave the country.

On November 11, 1982, the Court of Appeals reversed the board and directed that asylum be granted. The court held that Reyes had "presented evidence not only sufficient to bring her within risk and tenor of new provisions of Immigration and Nationality Act, but also presented overwhelming evidence supporting her claim."

Mr. KENNEDY. We want to expedite the process, speed up the administrative procedure, but we also want to insure that there will be some protection in the form of judicial review.

The final point I make on this issue is that it is not easy or inexpensive to go to the circuit court. It costs several thousand dollars to start off. Any circuit court can dismiss frivolous cases; they can do that at the present time. It is only really the egregious cases that do involve the issues of constitutional or statutory habeas corpus that we are dealing with.

I thank the floor manager for his cooperative attitude and also the Senator from Michigan (Mr. LEVIN), who has been very, very active in these negotiations, and the ranking member on the minority side of the Judiciary Committee (Mr. BIDEN) who has followed this whole issue of immigration and has been enormously concerned with this particular phase of it.

For the record, Mr. President, I would like to conclude by asking that a very definitive and thorough memorandum prepared by the American Civil Liberties Union be printed at this point in the RECORD.

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

[Memorandum]

AMERICAN CIVIL LIBERTIES UNION,
Washington Office, April 27, 1983.

From: ACLU.
To: Interested Persons.
Subject: Immigration Bill (S. 529).

The Immigration Bill will shortly be coming to the Senate floor. The ACLU believes that legalization of the status of undocumented workers is an urgent civil liberties matter. However the bill as reported is seriously flawed:

It would strip the courts of their jurisdiction to review asylum claims leaving the matter to the executive branch. The State Department often recommends against asylum on political grounds ignoring the requirement in U.S. law and treaty that asylum be granted to any person with a reasonable fear of prosecution on political grounds.

It establishes an employer sanction scheme that will lead to discrimination against Hispanics without creating any remedy for the discrimination. The proposed scheme will not deal effectively with employment of undocumented workers and could lead to a worker identity card.

It would provide for legalization of less than one third of the undocumented workers now in the U.S. and would establish a two tier system creating categories of permanent residents and aliens.

When the bill comes to the floor we urge you to support amendments which will be offered to restore Judicial review and create a more effective and efficient asylum system (Kennedy Amendment); substitute a sanctions scheme which will reduce discrimination and more effectively deter the hiring of undocumented workers; and liberalize the legalization scheme.

The attached package provides additional information on each of these issues.

STATEMENT OF JOHN H. F. SHATTUCK, NATIONAL LEGISLATIVE DIRECTOR; WADE J. HENDERSON, LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION ON THE IMMIGRATION REFORM AND CONTROL ACT OF 1983—S. 529

Mr. Chairman and Members of the Subcommittee: We appreciate the opportunity to appear before this Subcommittee to present the views of the American Civil Liberties Union on the question of immigration reform legislation. The American Civil Liberties is a nationwide, non-partisan organization of more than 275,000 members, devoted solely to protecting and enforcing the Bill of Rights.

The debate on the floor of the House of Representatives last year makes clear, we believe, that this legislation arouses intense passions from many directions and that the legislation could have a profound impact on the nature of our society. We believe that it is urgent to seek to develop a national consensus on legislation which will in fact deal with the problem of millions of undocumented workers and which does so in a way which is consistent with our national commitment to equal protection, non-discrimination, and respect for human and civil rights.

In the past, the ACLU has opposed specific legislation because we believed that the employer sanctions provisions posed a threat to civil liberties, would inevitably lead to discrimination in hiring, and would be unenforceable. We have also objected to the provisions relating to political asylum because we believed that they would have violated the due process rights of those seeking political asylum and were not consistent with our treaty obligations.

Mr. Chairman, we hope that all of those involved in this process will be willing to take a fresh look at this problem to see if solutions can be found which meet the objectives which we all have.

In taking our own new look at this issue we have focused on the importance of legalization for the protection of civil liberties. There are only two alternatives to an effective and humane legalization program and both of them pose unacceptable costs from a civil liberties perspective.

The first option is to do nothing. This would mean that we would continue to have in the United States millions of people who should be entitled to the protection of the Bill of Rights but unable to enjoy those rights. Those who are here without the documentation required by current law are unable to vote or to otherwise participate in the political process; they are unable to call upon the government or the courts to protect them when their political or civil rights are violated by the government, by their employers or by others; they are unable to organize effectively through labor unions and other associations. The ACLU views the continuation of this situation as an intolerable limit on the protections to which all persons in the United States are entitled under our Constitution.

The second option is to seek to identify, apprehend and deport all or most of the undocumented individuals now living in the United States. The consequences of such an effort are so horrendous that it has not been seriously proposed. Finding the individuals to deport would require a process of intrusion into the lives of many Americans and would inevitably result in violation of constitutional rights. Moreover, it would be unjust and inhumane to seek to deport individuals who have been productive and law-abiding members of the community.

Thus we are left with the third option which is an effective and generous legalization program. The ACLU views the enactment of such a legalization scheme as one of the most urgent tasks facing the Congress. We believe that such a program must be consistent with the following principles:

1. All aliens who have continuously resided in the United States since January 1, 1982 should be eligible for the legalization program;

2. all aliens eligible for legalization should be granted permanent resident status and the temporary resident provisions of the bill should be deleted;

3. all legalized aliens granted permanent resident status should be granted the full rights and privileges accorded permanent resident aliens under current law;

4. state and local government should be provided impact aid, pursuant to an appropriate formula, to assure that the legalization program does not unfairly burden state and local taxpayers in certain areas of the country; and

5. that persons eligible for the program be granted one year from the beginning of the program to apply to legalize their status.

We are prepared to work with this Committee and others in the Congress for the speedy enactment of legislation which embodies these principles. Mr. Chairman, we recognize that any legislation which provides for legalization must as a practical matter contain provisions which would deter employers from simply continuing to hire new undocumented workers.

In the past the ACLU has opposed the sanctions provisions contained in the legislation and we must continue to oppose such procedures. We do so on the grounds that they would lead inevitably to discrimination against some Americans and because it would almost certainly lead to an employee identity card with serious civil liberties consequences. We also believe that the arrangements which have been proposed in the past will simply not work. Those employers who are engaged in the practice of hiring undocumented workers, will, we believe, continue to do so. We urge the Committee to consider carefully the evidence as to the effectiveness of this scheme. It is not sufficient to say that sanctions are necessary. A system which will not accomplish its purposes and which at the same time will give rise to dis-

crimination and pose a massive threat to civil liberties is simply unacceptable.

We respectfully suggest that the Committee look to alternatives.

A new approach which we believe merits attention would focus on those employers who engage in a pattern and practice of hiring undocumented workers. Under this approach, it would be unlawful for employers intentionally to hire undocumented workers, but there would be no general requirement for the government to develop—and employers to inspect—a new secure form of identification. Rather, enforcement would center on firms found to engage in a pattern and practice of intentionally hiring undocumented workers. Any employer cited for such violations would then be required to report any new hiring to the government. Responsibility for enforcing the law would not rest with the INS but rather the officials having experience in enforcing employment laws. This unit would be also charged with insuring that enforcement of the law did not result in unlawful discrimination.

This approach would have the virtue of focusing the immigration enforcement effort on large employers with a clearly established record of employing and exploiting undocumented workers. It would thus eliminate the incentive for all employers to "play it safe" by discriminating against "foreign-looking" workers, and it would encourage large employers to comply with fair labor standards laws in order to avoid being targeted for close scrutiny as a suspected exploiter of undocumented workers.

The ACLU has asked a group of employment discrimination experts to work with us and other interested groups to see if this approach can be translated into a scheme which will actually accomplish the objective and do so without giving rise to discrimination or to a worker identification card. We hope that the Committee will not move forward so quickly as to foreclose careful consideration of this approach.

Finally, there is the issue of asylum adjudication. First, the number of undocumented immigrants in the United States today is estimated by the Senate Report on S. 2222 to a number between 3.5 to 6 million or more. The backlog of asylum cases is 140,000—a very small percentage of the total undocumented population, assuming that all asylum claimants are in the United States, "illegally," eliminating the entire asylum backlog would hardly make a dent in the number of illegal immigrants in the country.

Second, court cases appealing or challenging administrative determinations and procedures are not responsible for the current backlog. As the House Judiciary Committee Report last year concludes:

"The Committee is convinced that the abolition of judicial review of asylum determination would be unwise. Indeed, the facts support the position that administrative shortcomings, not judicial interference, has caused the enormous backlog in asylum cases. . . Today, it takes the State Department four months to respond to an INS request for a country condition report. In turn, over 70,000 asylum petitions are currently awaiting decisions by INS. Comparing the number of court cases, one finds that in FY 1981 INS received over 63,000 asylum applications. Yet in that year there were less than 500 court cases challenging exclusion or deportation orders. And of course, the vast majority of those court cases did not involve asylum at all. In short, it would be unfair to blame existing backlogs on the courts."

We believe that the administrative scheme which was embodied in the bill as reported by the House Judiciary Committee last year is a good one which commands wide support. We urge the Committee to give it careful consideration. In addition, we believe that, consistent with the Refugee Act of 1980 and the international treaty obligations of the United States, those who arrive at our shores must be informed of the right to counsel before they are summarily deported. We also believe all existing rights of judicial review must be maintained, including the right of the district courts to hear allegations of pattern and practice violations by the INS without exhaustion of administrative remedies.

We must bear in mind that we are dealing often with poor and confused and frightened people who arrive on our shores without any clear knowledge of their rights. In our haste to deny entry to those who are excluded by our current laws we must not send away those who are genuinely fleeing from political persecution.

Mr. Chairman, attached to this brief statement are three memoranda spelling out our positions on legalization, sanctions, and political asylum in greater detail. We would be pleased to respond to your questions and we look forward to working with you, other members of the Committee and your staffs in seeking to develop a consensus on the vital issue of immigration reform.

[Memorandum]

AMERICAN CIVIL LIBERTIES UNION,
Washington Office, April 25, 1983.

From: ACLU.
To: Interested Parties.
Subject: Political Asylum in the Immigration and Reform and Control bill (S. 529)

The Immigration bill as reported by the Senate Judiciary Committee strips the courts of their jurisdiction under current law to review Executive Branch decisions denying political asylum to aliens in the United States. It violates the spirit and intent of the Refugee Act of 1980 and the 1967 U.N. Protocol on Refugees (to which the United States adhered in 1968) both of which commit the United States to provide asylum to any person with a reasonable fear of persecution because of political beliefs or associations without regard for the effect of the grant of asylum on U.S. relations with the alien's country.

The recent episode involving the Chinese tennis player and continuing policy toward requests for asylum by Salvadorans illustrate the dangers of the court-stripping provisions of S. 529.

It is clear that the United States government carefully weighed the impact of granting asylum to Hu Na on its relations with the People's Republic of China. Although it ultimately decided to grant asylum it might well refuse to do so in future cases if the People's Republic of China's objections seem to pose a serious threat to U.S.-P.R.C. relations. Yet under existing U.S. law and the U.N. protocol, a person's right to asylum is dependent solely on whether he or she has a well-founded fear of persecution. If Hu Na had been denied asylum she could have appealed to the courts which could have overruled an Executive Branch determination. Under S. 529 the courts are prohibited in most cases from reviewing asylum claims. (The only two exceptions are when the Attorney General overrules an immigration board grant of asylum and when a denial of asylum involves procedural unfairness.)

The State Department Country Report on El Salvador concedes that the judicial system in that country is not functioning and that there are serious human rights violations. Yet the Department consistently advises the INS that Salvadorans who seek political asylum do not have a well-founded fear of persecution and the INS routinely denies asylum. It appears that the Executive Branch denies asylum to Salvadorans because it does not want to strengthen the position of those who argue that military aid to that country should be suspended because of their human rights situation.

Refugees from other countries ranging from Yugoslavia to South Africa and Iran have been denied asylum by the Executive Branch and have appealed to the courts.

Two objections are raised to retaining judicial review of denials of asylum. Neither has merit.

First, it is argued that the asylum process must be streamlined if the illegal immigration problem is to be solved. However, asylum applicants are an insignificant part of the undocumented worker problem and judicial review is not the cause of the breakdown of the administrative structure for processing asylum claims. Of the estimated six million or more undocumented workers in the United States only approximately 150,000 have applied for asylum. (Moreover, most of these are "special" cases involving Cubans, Haitians, Nicaraguans and Iranians, as well as Salvadorans.) Of the pending asylum applicants, fewer than 500 individual cases are now in the courts. The ACLU strongly supports efforts to improve the asylum process—we believe that the changes in the House version of the bill go far in the right direction—but we do not believe it should be done at the cost of denying those who seek asylum the right of judicial review. Indeed the House Judiciary Committee concluded last year that:

"The Committee is convinced that the abolition of judicial review of asylum determination would be unwise. Indeed, the facts support the position that administrative shortcomings, not judicial interference, has caused the enormous backlog in asylum cases. . . . Today, it takes the State Department four months to respond to an INS request for a country condition report. In turn, over 70,000 asylum petitions are currently awaiting decisions by INS. Comparing the number of court cases, one finds that in FY 1981 INS received over 63,000 asylum applications. Yet in that year there were less than 500 court cases challenging exclusion or deportation orders. And of course, the vast majority of those cases did not involve asylum at all. In short, it would be unfair to blame existing backlogs on the courts."

The second objection raised to retaining judicial review of political asylum decisions is that an asylum applicant who is outside the United States has no such right of judicial review. This argument ignores one of the basic tenants of the American constitutional system which is to afford certain protections to all "persons" within our borders. An alien outside the United States has no recourse to the American judiciary to appeal any arbitrary or capricious action by the Executive Branch of the government, but the federal courts are open to all persons in the United States to appeal a variety of denials of constitutional and statutory rights. Because Chinese seeking asylum in the United States at the American Embassy in Tokyo can—and are—turned away by a consular officer with no right to appeal—is

no reason to deny that right of appeals, both administrative and judicial, to one who reaches our shores. In fact, S. 529, as reported, gives that person rights of administrative appeals which are not available if the person is not in the United States. There is no reason why the applicant should not also be afforded the right of judicial review.

[Memorandum]

AMERICAN CIVIL LIBERTIES UNION,
Washington Office, February 25, 1983.

To: Senate Judiciary Committee.
From: American Civil Liberties Union.*
Re Immigration: Asylum, exclusion, and deportation.

INTRODUCTION

This memorandum sets forth the ACLU's concerns regarding the Asylum, Exclusion, and Deportation provisions of the "Immigration and Control Act of 1983" (S. 529). Two other memorandums set forth our concerns regarding the employer sanctions and legalization provisions of the legislation.

OVERVIEW

The ACLU supports reform of the current administrative and judical process for determining the bona fides of aliens seeking entrance to the United States. We recognize that the current process is cumbersome and inefficient and that the growing administrative backlog of asylum cases is both a burden on the government and on those entitled to asylum who are forced to wait, often held in custody, for determinations to be made in their cases.

However, we remain deeply troubled by the thrust of the asylum, exclusion, and deportation sections of S. 529 (sections 121 through 124) which attempt to achieve administrative efficiency at the expense of an alien's right to a fair hearing on his immigration status and judicial review of that determination.

Asylum claims are literally matters of "life or freedom." No administrative burden or backlog of cases can justify summary exclusion or truncated administrative or judicial review in cases involving persons who may be threatened "on account of race, religion, nationality, membership in a particular social group, or political opinion" if returned to his home country and is therefore entitled under our law to asylum.[1]

This law includes our treaty obligations to refrain from refoulement under Article 33 of the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, a treaty to which we became a party in 1968.[2]

Most distressing, the underlying rationale for curtailing due process rights in asylum cases is the a twin set of assumptions (a) that clearing the current backlog of cases will contribute significantly to the "control" of illegal immigration and (b) that court cases brought under current law which the bill seeks to bar have created the backlog. Both assumptions are demonstrably untrue.

First, the number of undocumented immigrants in the United States today is estimated by the Senate Report on S. 2222 to number betwen 3.5 to 6 million or more.[3] The backlog of asylum cases is 140,000—a very small percentage of the total illegal population assuming that all the asylum claimants are in the United States "illegally.[4] Eliminating the entire asylum backlog would hardly make a dent in the number of illegal immigrants in the country.

Second, court cases appealing or challenging administrative determinations and procedures are not responsible for the current backlog. As the House Judiciary Committee Report last year stated:

"The Committee is convinced that the abolition of judicial review of asylum determination would be unwise. Indeed, the facts support the position that administrative shortcomings, not judicial interference, has caused the enormous backlog in asylum cases . . . . Today, it takes the State Department four months to respond to an INS request for a country condition report. In turn, over 70,000 asylum petitions are currently awaiting decision by INS. Comparing the number of court cases, one finds that in FY 1981 INS received over 63,000 asylum applications. Yet in that year there were less than 500 court cases challenging exclusion or deportation orders. And of course, the vast majority of those court cases did not involve asylum at all. In short, it would be unfair to blame existing backlogs on the courts."[5]

The court cases not only do not justify curtailing due process rights. They underscore the need for more protection of those rights. The "pattern and practice" lawsuits which the legislation seeks to curtail would not have resulted in lengthy and burdensome litigation if the INS had not systematically violated the due process rights of aliens, including failure to seriously consider the claims of asylum applicants, denial of effective assistance of counsel, failure to notify applicants of their rights under the law, and failure to afford aliens fair and impartial hearings. See, e.g./, *Haitian Refugee Center* v. *Civiletti*, 503 F. Supp. 442 (S.D.Fla. 1980), *modified on other grounds*, 676 F.2d 1023 (5th Cir. 1982); *Laissez-Mol Vigil* v. *Sava*, Nos. 81 Civ. 7372, 7371 (RIC), (S.D.N.Y., March 5, 1982); ORANTES-HERNANDEZ v. *Smith*, 541 F. Supp. 351 (C.D. Calif. 1982).

Finally, the Senate Judiciary Committee Report appears to justify its "expedited" procedures on the grounds that a "significant portion of these persons (who make up the backlog) may be 'economic migrants' and thus not legally qualified for asylum."[6] Not only does this prejudge the cases, but it erroneously suggests that the backlog consists of Haitians and others fleeing primarily from economic hardships. Yet significant numbers of asylum applicants come from countries where strong cases may be made for refugee status. For example, INS figures show that 3,388 come from Poland; 12,636 from Nicaragua, 925 from Afghanistan; 369 from Hungary; 325 from the Philippines; 432 from Romania; and 18,921 from Iran.[7]

In sum, it is unwise, unjustifiable, and unnecessary to handle the asylum backlog by curtailing fundamental due process rights. Below, we will argue for restoring those rights and will offer amendments to accomplish this end. At the same time, we will strongly recommend the adoption of the administrative reforms contained in the original version of S. 2222 last year, which were in large measure adopted by the House Judiciary Committee, as the most effective way to handle the asylum, exclusion issue. Combined with the "temporary status" provisions for Haitians and Cubans who make up almost half the current backlog of cases and the hiring of additional administrative personnel. We believe streamlining can be achieved without sacrificing the rights of aliens in the adjudication process.[8]

SUMMARY EXCLUSION

Section 121 establishes a procedure under which an alien who "does not have the documentation required to obtain entry into the United States" or appears not to "have any reasonable basis for legal entry" and "has not applied for asylum under section 208" would be summarily "excluded from entry into the United States without further inquiry or hearing." Such a determination would not be subject either to administrative or judicial review. (Sec. 122, 123)

The ACLU strongly objects to summary exclusion. First, this procedure is a significant curtailment of the rights of aliens available under current law, principally the right to present his or her case for admissibility or asylum at an adversarial hearing before an immigration judge with legal representation.[9] Second, it can lead to the exclusion of aliens who may have bona fide claims to refugee status under our laws and treaty obligations.

As the Immigration and Nationality Law Committee of the New York Bar Association points out in its Report on Summary Exclusion:

"A refugee who would experience persecution might be turned away from the border under the proposed procedures without any recourse simply because of an inability to articulate the reasons that persecution is feared or to persuade the inspector that the fear is well-founded or because he or she is afraid to speak to authorities."[10]

Quoting from the Handbook on Procedures and Criteria for Determining Refugee Status published in 1979 by the United Nations High Commissioner for Refugees (UNHCR), the New York Bar Association Immigration Committee points to the psychological, language and other barriers which may make it impossible for a refugee arriving at the border to establish his or her bona fides:

"It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological in submitting his case to the authorities of a foreign country, often in a language not his own. . . . (Para. 190) An applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents . . . (Para. 196)

"A person, who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-a-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case. (para. 198)"[11]

RECOMMENDATION

We recommend that the examining immigration officer be required to notify arriving aliens of their right to counsel and that the notice be in writing and in the language of the arriving alien. (Amendment 1 To Be Supplied)

"First, we note that the right to counsel exists in any exclusion or deportation hearing under current law and that the proposed legislation does not seek to abrogate that right.[12] The Immigration and Naturalization Service today provides lists of free legal services available to indigent aliens.[13]

Second, because these are matters of "life or freedom," we think there is nothing else short of retaining current law to insure that bona fide asylum claims are presented. See

Footnotes at end of article.

Orantes-Hernandez v. *Smith*, 541 F. Supp. 351 (C.D. Calif. 1982).

Reform of Asylum Procedure

In testifying on S. 2222 before the Senate Judiciary Committee in April 1982, we recognized the need for reform of current asylum determination procedures. We applauded, with only certain reservations, the legislation's proposed scheme, including (1) the creating of an independent United States Immigration Board (USIB) within the Department of Justice which would be appointed by the President with the advice and consent of the Senate; (2) the authority of the Board Chairman to appoint specially trained administrative law judges to conduct asylum hearings; (3) the requirement of a "non-adversarial" hearing which at the same time preserved the right of an alien to be represented by counsel, to call and cross-examine witnesses, and to have a complete record of the proceedings. The procedure established the basis for fair hearings and administrative appeals, particularly since the administrative judges and USIB would be independent from those who are charged with enforcing the immigration laws.

Unfortunately, the full Senate Judiciary Committee at markup chose to place the administrative structure where it is now, under the control of the Justice Department. Section 122 authorizes the Attorney General to appoint the USIB and immigration judges to hear asylum, exclusion, and deportation cases. The legislation does preserve the basic asylum hearing contained in S. 2222 as introduced.

RECOMMENDATION

To insure fair and impartial asylum hearings, we strongly urge the Committee to reconsider its position and restore the independent administrative structure. Ideally, the Senate Judiciary Committee should adopt the administrative structure and procedures contained in H.R. 7357 as reported by the House Judiciary Committee last September and contained in the house bill as introduced this year.

First, the House bill establishes a USIB appointed by the President with the advice and consent of the Senate and authorizes the Chairman to appoint specially trained administrative law judges. (Sec. 122) This insures both independence and necessary expertise in sensitive asylum matters.

Second, the House asylum procedures (Sec. 124) improve on those contained in the Senate bill in the following significant ways:

(a) set time limits to expedite proceedings which are not unduly burdensome on applicants when considered in combination with the right of an alien to reopen an asylum determination on broader grounds of "changed circumstances" than provided in the Senate bill (see below);

(b) provides for the release of aliens on parole in cases where they are not responsible for hearing delays;

(c) explicitly provides that applicants "shall be advised of the privilege of being represented by counsel";

(d) requires hearings to be recorded "verbatum" and a transcript to be made available not later than 10 days after the completion of a hearing;

(e) permits an alien to secure an asylum hearing even though (1) time limits have passed, (2) his application has previously been denied, or (3) have an administrative judge reopen a proceeding after a determination if he or she can show that in the interim "changed circumstances have resulted in a change in the basis for the alien's claim of asylum." This is a particularly important difference from the Senate bill which limits changed circumstances to "changed circumstances in the country of the alien's nationality." The Senate bill ignores the possibility that material facts may come to light in the United States which would have led to a different result had they been known at the time of the determination (for example, circumstances may not change in a country but more facts become known that would lead to a conclusion that a particular person's life or liberty would be threatened by returning him to his country of origin) or that the conduct of the person after the determination may put his life in danger (for example, the applicant has performed acts or stated opinions which are unacceptable to authorities in his country giving rise to a well-founded fear of persecution); [14]

(f) gives the administrative law judge additional discretion to grant an asylum hearing if "the interests of justice require the consideration."

Review of Asylum, Exclusion, and Deportation Orders

Under the Senate bill, federal courts may not review administrative asylum and exclusion orders except pursuant to a writ of "habeas corpus under the Constitution." (Sec. 123) Because of the gravity of the issues at stake and the fact that court cases are not the primary cause of the current administrative backlog, we believe this curtailment of federal court review is far too severe. While the present process, involving federal district court and then appellate court review of final orders is cumbersome and duplicative, we believe judicial review of the merits of the administrative decision is necessary and warranted.

RECOMMENDATION

We recommend the Senate Judiciary Committee adopt the House Judiciary Committee provision permitting circuit court review of final orders in asylum and exclusion cases but under the standard of whether the findings of fact are supported by "substantial evidence." This would afford the same measure of judicial review the Senate bill provides in deportation cases under Section 123.

We note with approval that the Senate Judiciary Committee Report language suggests that judicial review is available by interpreting "habeas corpus" review to include whether procedures could "be relied on for an objective determination, on the merits, of whether or not the individual applicant satisfies the statutory definition of 'refugee' in INA section 101(a)(42)."

Rather than such an ambiguous formulation of habeas corpus, which may lead to protracted litigation designed to convince the federal district courts to review the merits of petitions (with the potential of defeating the Committee's intent to streamline the process), we believe the Committee should explicitly provide for appellate review by the federal circuit courts. Aliens will have their day in court and the Congress will have eliminated the cumbersome and repetitive multiple reviews under current law.

RECOMMENDATION

Judicial review should also include review of denials of petitions to reopen or reconsider because of "changed circumstances" outside the context of a final order. (Amendment 3 To Be Supplied) This right available under current law is eliminated by the Senate bill (Sec. 123(b)).

We recognize that multiple stays based often on frivolous motions have been used to delay execution of final orders, sometimes resulting in delays of several years in the departure of aliens not otherwise entitled to stay in the country. However, it must also be recognized that deserving cases do arise after final orders are entered. See *Sida* v. *INS*, 665 F. 2d 851 (9th Cir. 1981): *Ravancho* v. *INS*, 658 F. 2d 169 (3rd Cir. 1981). An alien may only then obtain the assistance of counsel or material facts may come to light which would entitle an alien to asylum. Again recognizing that these cases account for only a fraction of the current backlog (about 300 such appeals were filed in 1981-1982), some adjustment should be made to insure that deserving cases are reviewed. Rather than rule out judicial review altogether, the Committee should instead provide for review but develop an expedited procedure for screening out nonmeritorious motions brought only for purposes of delay.

Habeas Corpus and Pattern and Practice Litigation

The Senate bill limits the jurisdiction of the federal courts to consider habeas corpus petitions to "the right of habeas corpus under the Constitution." (Sec. 123) This may be misinterpreted to limit the availability of the writ to address statutory and treaty violations, including violations of the Protocol Relating to the Status of Refugees, rights available under current law. It also gives rise to concern about what constitutes custody for purposes of invoking habeas corpus jurisdiction.

The ACLU views this as needless ambiguity, since the Senate Judiciary Committee Report, we note approvingly, goes to considerable lengths to interpret "habeas corpus under the Constitution" broadly. The Report states that custody includes those "parole pending their hearing" as well as physical custody for purposes of habeas corpus. The Report interprets "under the Constitution" to include not only whether the individual adjudication was "through fundamentally fair procedures" but whether the procedures could be "relied on for an objective determination, on the merits, of whether or not the individual applicant satisfies the statutory definition of 'refugee' in INA section 101(a)(42)", thus implying review encompassing statutory and treaty obligations. The Senate Report also makes it clear that individual or multi-party habeas actions are allowed.[15]

RECOMMENDATION

If this is the Committee intent—and we believe it must be to preserve fundamental rights of alien—we recommend that the Committee clarify the scope of habeas corpus in the statute as accomplished by the House Judiciary Committee last year.

The House committee version avoids the risk of misinterpretation or confusion by incorporating the "right of habeas corpus under chapter 153 of title 28, United States Code" (Sec. 123(b)), which confers jurisdiction to address violations of Constitution, statute, or treaty. The House version also explicity provides that petitions may be "based upon custody effected pursuant to . . . (the Immigration and Nationality Act)," and may be brought "individually or on a multiple party basis as the interests of judicial efficiency and justice may require." (Sec. 123(b))

We note with approval that the Senate Judiciary Committee Report states that a habeas corpus petition is the proper method of challenging due process violations such as

a "pattern or practice of denying asylum applications made by aliens from a particular country because of their national origin rather than on the basis of the merits of their individual claims."[16] While few in number, "pattern or practice" litigation has proved crucial in protecting aliens rights. See *Haitian Refugee Center* v. *Civiletti*, 503 F. Supp 442 (S.D. Fla. 1980), *modified on other grounds*, 676 F. 2d 1023 (5th Cir. 1982), in which the district court ruled that the asylum adjudication process had been perverted in connection with a government Haitian Program designed to expel Haitians without regard to the individual circumstances of their cases.

However, the Senate bill and Senate Judiciary Committee Report do not make it clear that "pattern and practice" litigation is now and should continue to be available without requiring exhaustion of administrative remedies. The Report states that the "Committee intends, to the degree constitutionally appropriate, that the courts not prevent the commencement of the administrative process or interrupt or stay ongoing administrative determinations . . . ."[17] This report language may lead to a change in the traditional rules of exhaustion which ought to be preserved.

RECOMMENDATION

We recommend that the legislation be amended to explicitly provide for "pattern and practice" suits and specify that petitioners need not exhaust agency proceedings when (1) the agency cannot supply an adequate remedy; (2) the agency action will cause irreparable injury; (3) the agency has exceeded its statutory authority; or (4) pursuing an administrative remedy would be futile.[18]

Aliens placed in circumstances such as the Haitians or Salvadorans should not be required to exhaust administrative remedies before challenging clear government patterns and practices of denying them rights under statute and the Constitution. Again, this litigation accounts for only a fraction of the backlog, and the backlog is the fault of the government for its practices and not the fault of petitioners whose rights have been violated. (See Overview Supra)

Access to Information

Section 124(c) of the bill, added by amendment on the floor last year, authorizes a blanket denial of access under the Freedom of Information Act to all federal agency records or proceedings concerning requests for asylum, refugee status, withholding of deportation or any other relief arising from a claim of persecution on account of race, religion, political opinion, nationality, or membership in a particular social group.

The intent of the provision is to allay fears that persecuting authorities may obtain access to the information and use it to the detriment of asylum applicants. We support the intent of the provision but believe it sweeps far too broadly.

First, it would prevent individuals who are themselves the subject of such proceedings from obtaining access to any of the records generated by their own requests for relief. They may even be denied access to information which they themselves provided. We doubt that this result was intended by the drafters.

Second, it would bar third parties, such as the press and human rights organizations, from obtaining information necessary to monitor the asylum process. If the purpose is to protect the confidentiality of sensitive applicant records, it should be noted that the Freedom of Information Act already exempts "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." 5 U.S.C. 552(b)(6).

However, since there may be some question whether the sensitive records here are exempt under FOIA, a narrow amendment could clarify the exemption of this information without denying third parties information about the way in which asylum, refugee status, and similar proceedings are conducted.

RECOMMENDATION

The Senate Judiciary Committee should adopt an amendment which exempts the information, but makes the exemption inapplicable to first-party requests and to third party requests to the extent that the information does not reveal sensitive information which reasonably could be expected to disclose the identity of an applicant for asylum. (Amendment 4 To Be Supplied)

FOOTNOTES

* Prepared by Jerry J. Berman and Morton H. Halperin. Contact for further information.

[1] INA Section 243(h). See Refugee Act of 1980 (Pub. L. 96.212, 94 Stat. 102).

[2] 19 U.S.T. 6257, T.I.A.S. No. 2322, 606 U.N.T.S. 268.

[3] Immigration Reform and Control, Report of the Committee on the Judiciary United States Senate on S. 2222 (Report No. 97-485) (June 30, 1968), p. 4.

[4] INS Servicewide Totals, September 1982.

[5] Immigration Reform and Control Act of 1982, Report of the Committee on the Judiciary, House of Representatives, 97th Congress (Report 97-890 Part 1 September 28, 1982), p. 53.

[6] Senate Report Supra, p. 4.

[7] INS Servicewide Totals, June 1982.

[8] Section 301 establishes temporary status for Cubans and Haitians.

[9] See 8 U.S.C. sections 1158, 1225, 1226, 1362.

[10] Report on the Summary Exclusion and Judicial Review Provisions of Pending Legislation to Amend the Immigration Laws by the Immigration and Nationality Law Committee of the Association of the Bar of the City of New York (Nov. 1982) p. 4.

[11] New York Bar Report, pp. 5-6.

[12] 8 U.S.C. Section 1362.

[13] See 8 C.F.R. Sec. 236.2, 242.1(c).

[14] Comments by the Office of the United Nations High Commissioner for Regugees on the Immigration Reform and Control Bill of 1982, H.R. 6514.

[15] Senate Report, pp. 12-14.

[16] Senate Report, p. 13.

[17] Senate Report, p. 14.

[18] See New York Bar Association Report for Discussion of Exhaustion Case Law and "Pattern and Practice" Recommendation.

[Memorandum]

THE LAWYERS COMMITTEE FOR INTERNATIONAL HUMAN RIGHTS,
New York, N.Y.

CONSEQUENCES OF THE PROPOSALS TO LIMIT JUDICIAL REVIEW UNDER THE PROPOSED IMMIGRATION REFORM AND CONTROL ACT OF 1982

(By Arthur C. Helton)

INTRODUCTION

This memorandum discusses the nature and extent of judicial review for asylum applicants under current law in deportation and exclusion cases, and possibly consequences of the enactment of the review provisions in the Simpson-Mazzoli bill (S. 2222, H.R. 5872). The memorandum is designed to answer questions posed by Congressional staff in connection with the proposed legislation.

CURRENT HABEAS CORPUS

The writ of habeas corpus is available to aliens whether they are in exclusion or deportation proceedings.[1] The writ has constitutional foundation and it has been codified.[2] As the writ challenges the legality of a deprivation of liberty, a person must be in "custody" in order to apply for the writ. While once construed strictly by the courts, the custody requirement has been liberally interpreted by the Supreme Court and held to be satisfied by limitations on a person's liberty where such "restraints [are] not shared by the public generally." [3] This liberal construction of the custody requirement, furthermore, has been extended by the courts to the immigration area, including findings that there is sufficient restraint where the alien: (1) has been released on bond after a deportation order; [4] (2) is subject to supervision upon a final order of deportation; [5] and even (3) is neither detained nor released with or without bond upon a final order of deportation.[6]

However, in a few instances, courts have questioned the availability of habeas where the restraint on liberty is premised only upon an outstanding order of deportation.[7] Indeed, one court has suggested that the "held in custody" language of 8 U.S.C. § 1105(a)(9) limits habeas jurisdiction.[8] While the soundness of these statements may be questionable, they introduce an element of uncertainty in habeas jurisdiction in the immigration area.

PROPOSED HABEAS LEGISLATION

Under both the current House and Senate judiciary committee versions of the proposed Immigration Reform and Control Act,[9] the use of habeas corpus in asylum cases could be further limited. Section 123(b) provides that nothing in the bill "shall be construed as limiting the right of habeas corpus *under the Constitution*" [emphasis supplied]. As the precise meaning of the phrase, "under the Constitution" is unclear, it may be misinterpreted to limit the availability of the writ in certain cases.

The writ of habeas corpus has two bases in American law; constitutional and statutory.[10] The scope of inquiry under the present habeas statute, 28 U.S.C. § 2241 *et seq.*, extends to whether the custody violates the Constitution, laws, or treaties of the United States.[11] The proposed legislation, by apparently limiting the writ to constitutional matters, may be misconstrued to preclude its use to address statutory and treaty violations, including violations of the Protocol Relating to the Status of Refugees. Such an interpretation would have precluded relief in a recent case where both statutory and treaty obligations (but not constitutional rights) were the basis for granting habeas corpus relief to asylum applicants in exclusion proceedings. *Laissez-Moi Vigile* v. *Sava*, 81 Civ. 7371, 7372 (S.D.N.Y. March 5, 1982).[12] The risk of confusion or misinterpretation should be avoided by deleting the phrase, "under the Constitution" from Section 123.

Even if habeas remains unqualified, there are questions about what constitutes sufficient restraint of liberty to invoke the writ in immigration cases. It should be made clear that habeas is available to challenge all exclusion and deportation orders.

CURRENT PETITION FOR REVIEW

In 1961, Congress passed legislation establishing the petition for review mechanism for deportation orders. Under this provision, a petition can be filed within six months in the United States Court of Appeals where the deportation proceeding was conducted or the petitioner resides. The legislation eliminated declaratory review in connection

Footnotes at end of article.

with exclusion and deportation orders, but expressly preserved the right to habeas corpus.[13] The petition remedy permits an alien to obtain a definitive court ruling before experiencing the disruption and dislocation required to comply with an order of exclusion or deportation.

CURRENT SCOPE OF REVIEW

In the immigration area, courts may directly review errors of law, including whether agency personnel have proceeded in violation of statute or Constitution.[14] Direct review is also available with respect to procedural unfairness in the agency, such as deprivation of the right to counsel,[15] or in the conduct of a hearing.[16]

The factual basis for the order may be reviewed in order to ascertain whether there is "substantial evidence" in the record to support the determination.[17] Also, administrative discretion may be reviewed to determine whether that discretion has been abused, including whether discretion had actually been exercised,[18] or whether it has been abused in its exercise.[19] While the circumstances in which a particular standard is applied are not always clearcut,[20] the level of judicial scrutiny is generally quite limited. Indeed, review is ordinarily limited to the administrative record, and a court will not conduct a *de novo* hearing on matters which were or should have been considered in the administrative proceeding.[21] One exception to the rule is a challenge based on unfairness outside of the administrative record.[22]

PROPOSED PATTERN AND PRACTICE JURISDICTION

The proposed legislation seeks to eliminate judicial review "of a final order of exclusion or a final order respecting an application for asylum."[23]

Federal court jurisdiction, however, should be preserved in cases that attack patterns and practices inimical to the assertion of asylum-related rights. Such cases are very few in number, but they are crucial to protecting an alien's right to pursue asylum. *See*, e.g., *Haitian Refugee Center* v. *Civiletti*, 503 F. Supp. 442 (S.D. Fla. 1980), *affd sub. nom., Haitian Refugee Center* v. *Smith*, F. 2d (5th Cir., Unit B, 1982). It makes no sense to require asylum applicants to go through unlawful or unfair proceedings in order to be able to challenge pattern and practice violations. Jurisdiction for these purposes should be maintained.

The retention of a limited federal jurisdiction over asylum cases would not be burdensome to the courts, particularly since the number of asylum cases which have come before the federal courts have been quite modest. According to information presented to the Congress,[24] in April from 1979 to 1981 there were only 12 appeals to the Circuit Courts of Appeals that involved asylum or 243(h) claims. Similarly there have been few federal class action lawsuits challenging procedural irregularities. The burden on the courts has been minimal.[25]

FOOTNOTES

[1] 8 U.S.C. §§1105a(a)(9)(b). A limitation on the right to apply for the writ is that the subject matter not have been previously determined in a court proceeding (e.g., a petition for review in a deportation case), unless grounds are presented which could not have been presented in the prior proceeding, or if the prior proceeding was not an adequate remedy. 8 U.S.C. §1105a (c). *See Tanfara* v. *Esperdy*, 347 F. 2d 149 (2d Cir. 1965) [habeas review precluded when issues could have been litigated in prior review proceeding].

[2] U.S. Constitution Article 1, Section 9; 8 U.S.C. §2241 *et. seq.*

[3] *Jones* v. *Cunningham*, 371 U.S. 236 (1963) [prisoner released on parole permitted to challenge conviction]. *See also Hensley* v. *Municipal Court*, 411 U.S. 345 (1973) [challenge permitted where petitioner had been released on own recognizance].

[4] *Varga* v. *Rosenberg*, 237 F. Supp. 282 (S.D. Cal. 1964) [challenge permitted for alien released on bond after deportation order].

[5] *Marcello* v. *District Director*, 472 F. Supp. 1199, 1204 (E.D. La. 1979), *affd*, 634 F. 2d 964 (5th Cir. 1981), *cert. den.*, 452 U.S. 917 (1981).

[6] *Flores* v. *I.N.S.*, 524 F. 2d 627, 629 (9th Cir. 1975) ["there was sufficient immediacy of action and interference with freedom to support habeas corpus jurisdiction"]. *See also Yen* v. *Kissinger*, 528 F. 2d 1194 (9th Cir. 1975).

[7] *Marcello* v. *District Director*, 634 F. 2d 964 (5th Cir. 1981), *cert. den.*, 452 U.S. 917 (1981); *Smith* v. *Morris*, 442 F. supp. 712, 713 (E.D. Pa. 1977) [referring to "murkiness" and "lingering uncertainties" in statutory language]. *See Daneshvar* v. *Chauvin*, 644 F. 2d 1248, 1251 (8th Cir. 1981) [while custody includes restraints imposed on freedom of movement resulting from a final order of deportation, writ not available to challenge finding of deportability].

[8] *Marcello* v. *District Director*, 634 F. 2d 964 (5th Cir. 1981), *cert. den.*, 452 U.S. 917 (1981). This interpretation, however, is inconsistent with the design of 8 U.S.C. §1105 (a) to avoid possible constitutional infirmities by expressly preserving the right to habeas corpus. C. Gordon and H. Rosenfield, 2 *Immigration Law and Procedure* 50 (March 1982 Supplement). *See also Sotelo Mondragon* v. *Ilchert*, 653 F. 2d 1254, 1256 (9th Cir. 1980).

[9] The so-called Simpson-Mazzoli Bill S. 2222 and H.R. 5872 introduced March 17, 1982.

[10] The constitutional core of habeas derives from the common law. Under the Constitution, courts may inquire only into the lawfulness of custody and detention. *McNally* v. *Hill*, 293 U.S. 131, 136-37 (1934); *Johns* v. *I.N.S.*, 653 F. 2d 884, 896 (5th Cir. 1981); H. Hart and H. Wechster, *The Federal Courts and the Federal System* 1427 (2d ed. 1973). Congress may add to this constitutional core by legislation. *Marcello* v. *District Director*, 534 F. 2d 964, 972 (5th Cir. 1981).

[11] 28 U.S.C. §2241(c)(3).

[12] In the *Vigile* case, District Judge Robert L. Carter found the continued detention of fifty-three (53) Haitians to be an abuse of discretion and discriminatory under the Protocol Relating to the Status of Refugees.

[13] Section 106, Act of 1952, 8 U.S.C. §1105a, as amended by §5, Act of September 26, 1961, P.L. 87-301, 75 Stat. 651.

[14] In the exclusion context, constitutional entitlements are somewhat restricted. *Shaughnessy* v. *Mezei*, 345 U.S. 206 (1953); *Knauff* v. *Shaughnessy*, 338 U.S. 537 (1950).

[15] *Chlomos* v. *U.S. Dept. of Justice*, 516 F. 2d 310 (3rd Cir. 1975); *Castro-Nuno* v. *I.N.S.*, 577 F. 2d 577 (9th Cir. 1978).

[16] *Hirsch* v. *I.N.S.*, 308 F. 2d 562 (9th Cir. 1962) [order predicated on charge different from that presented at hearing]; *Si* v. *Boyd*, 243 F. 2d 203 (9th Cir. 1957) [production of prior statements by witnesses]; *Hyun* v. *Landon*, 219 F. 2d 404 (9th Cir. 1955) *affd by equally divided court*, 350 U.S. 990 (1956) [depositions taken without notices].

[17] *Ocon* v. *Del Guercio*, 237 F. 2d 177 (9th Cir. 1956). See 8 U.S.C. §1105a (4) regarding deportation orders.

[18] *Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

[19] *Hang* v. *I.N.S.*, 360 F. 2d 715, 719 (2d Cir. 1966) [discretion would be abused "if it were made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis such as an invidious discrimination against a particular race or group."]

[20] For example, administrative action in the immigration area is sometimes analyzed in two phases: (1) an alien's statutory eligibility for a benefit applied for, and (2) a discretionary determination as to whether the benefit should be accorded. Ordinarily, the substantial evidence standard is applied to the former, and the abuse of discretion standard to the latter. In some instances, however, the preliminary appraisal of eligibility may involve issues of fact, e.g., "good moral character" or "hardship." Some courts have found the abuse of discretion standard applicable to these elements. *See*, e.g., *Anderson* v. *Holton*, 242 F. 2d 596 (7th Cir. 1957); *Brownell* v. *Cohen*, 250 F. 2d 770 (D.C. Cir. 1957); *Estrada-Ojeda* v. *Del Guerico*, 252 F. 2d 904 (9th Cir. 1958). Other courts have found the substantial evidence standard appropriate. *See*, e.g., *Brathwaite* v. *I.N.S.*, 633 F. 2d 657, 659 (9th Cir. 1980); *Chan* v. *I.N.S.*, 631 F. 2d 964, 972 (5th Cir. 1981), *cert. den.*, 452 U.S. 917 (1981).

[21] *Kessler* v. *Strecker*, 307 U.S. 22 (1939). *See* 8 U.S.C. §1105a(a) (4) as to deportation cases.

[22] *See Accardi* v. *Shaughnessy*, 347 U.S. 260 (1954).

[23] Section 123(b)(1).

[24] Testimony of Congresswoman Shirley Chisholm, Joint Hearing of the House and Senate Judiciary Committees, April 20, 1982.

[25] In deportation proceedings, cases in which asylum claims had been made would be reviewable with respect to other remedies in any event. Therefore, in most of these instances, the maintenance of a petition for review to the Circuit Courts would not create any additional burden.

[Memorandum]

AMERICAN CIVIL LIBERTIES UNION,
Washington Office, April 28, 1983.

To: Interested Persons.

From: ACLU.

Subject: Employer Sanctions in the "Immigration Reform and Control Act" (S. 529) and the Inadequacy of Title VII Protections Against Employment Discrimination.

The Immigration bill as reported by the Senate Judiciary Committee imposes criminal penalties and civil fines on employers who knowingly hire undocumented workers. Employer sanctions have been called the cornerstone of the immigration package; its purpose is to limit the flow of undocumented workers into the United States by eliminating the economic incentive of American jobs. The proposed employer sanctions system includes the following provisions:[1]

S. 529 makes it illegal "to hire, or for consideration to recruit or refer" an unauthorized alien for employment in the United States.

The penalties for violation are a civil penalty of $1,000 per unauthorized worker for the first offense, $2,000 per unauthorized worker for the second offense, and up to $1,000 and six months in prison (per violation) for engaging in a "pattern or practice" violation.

S. 529 also makes it illegal for any employer of four or more persons to fail to comply with a prescribed documentation and identification procedure for each person hired. Violators will be subject to a civil penalty of $500 for each failure to examine the documents required.

An employer may establish an affirmative defense if it has in good faith examined certain documents presented by the person hired and determined that the documents "reasonably appear on their face to be genuine."

The documents which must be examined are: (a) U.S. Passport, (b) Social Security Card, or (c) U.S. Birth Certificate; and (d) alien documentation, identification and telecommunication card, (e) similar fraud-resistant card issued by the Attorney General, (f) driver's license, or (g) similar document with a photograph issued by a state.

This system is to be in effect until the President develops a permanent universal ID card or other worker documentation program within 3 years of the bill's enactment.

The ACLU opposes the employer sanctions provisions of S. 529. While we recognize that legislation which provides for legalization must as a practical matter contain provisions which would deter employers from simply continuing to hire new undocumented workers, we must continue to oppose the specific sanctions procedures of S. 529. We do so on the ground that they

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Footnotes at end of article.

would lead inevitably to discrimination against some Americans and because they would almost certainly lead to an employee identity card with serious civil liberties consequences.[2]

We also believe that the arrangements which have been proposed in the past will simply not work. Those employers who are engaged in the practice of hiring undocumented workers will, we believe, continue to do so. We urge the Senate to consider carefully the evidence as to the effectiveness of this scheme.[3] It is not sufficent to say that sanctions are necessary. A system which will not accomplish its purposes and which at the same time will give rise to discrimination and pose a massive threat to civil liberties is simply unacceptable.

EMPLOYMENT DISCRIMINATION

Imposition of federal sanctions on employers who violate the requirements of such a system could result in a tendency to obviate that risk by discriminating against individuals who speak with an accent or who "look foreign." For example, employers may fear that they would be scrutinized more closely by federal officials if they employed members of national origin minority groups. Thus, a fairly predictable consequence of a work authorization system is that there would be an increase in violations of Title VII of the Civil Rights Act of 1964 (as amended in 1972 and 1978), 42 U.S.C. §2000 *et sec.*, which proscribes employment discrimination on the bases of race, color, religion, sex, and national origin.[4] Because of the demographics of undocumented migration, Hispanics in particular may become a "suspect class" within the scheme of the bill.

Employer sanctions substantially enhance the probability of employer harassment and discrimination against Hispanics. The strength of this federal encouragement would not be counterbalanced by the illusory protections of Title VII against employment discrimination or by EEOC enforcement efforts.

INADEQUACY OF TITLE VII PROTECTION

Title VII is premised not only upon congressional findings of extensive past discrimination in the workplace but also upon the likelihood that employers would continue their discriminatory practices unless deterred by a vigorously enforced federal law against discrimination. Although Title VII is purported to provide broad protection to Hispanics among others, the fact of the matter is that it does not. This is particularly true with regard to Hispanics in view of Title VII's employer exemptions, employment practice exceptions, and standards of proof necessary to prove a violation:

Employer Exemptions.—Title VII exempts from its coverage—and hence from its prohibitions against discrimination—both small employers and seasonal employers:

Employers of 14 or fewer employees are specifically exempted from Title VII.[5]

In fact, an employer must employ 15 or more employees during 20 or more calendar weeks in each year in order to be covered by Title VII.[6]

The obvious effect of this latter requirement is to provide an exemption from Title VII for those employers who hire hundreds of workers but only on a seasonal basis.

Employment Practice Exceptions.—Not all discriminatory practices are made unlawful by Title VII:

A statutory exception allows discrimination on grounds of national origin where national origin characteristics constitute a "bona fide occupation qualification" reasonably necessary to the operation of the business.[7]

Another exception allows the use of practices with a discriminatory effect so long as the practice has a relationship to job performance or is supported by a business necessity.[8]

The combined impact of these two exceptions has resulted, for example, in federal courts of appeals decisions uniformly upholding as lawful employer rules requiring employees to speak English on the job,[9] rules which have an undeniably severe disportionate impact on Hispanic workers.

Standards of proof.—Even in those instances where Hispanics survive the foregoing exemptions and exceptions, their protection in individual cases of disparate treatment discrimination is severely limited:

Not only must such individual discriminatees prove that the discrimination against them was intentional,[10] but a prima facie case of such intentional discrimination may be automatically rebutted when an employer "articulates"—not proves but merely articulates—any "legitimate" reason for the discriminatory treatment.[11]

Under these standards of proof, very few discriminatees are able to obtain any protection from Title VII.

EFFECTIVE ENFORCEMENT OF TITLE VII DOES NOT EXIST

EEOC administrative enforcement is inadequate to address the problem of increased employment discrimination resulting from employer sanctions. The EEOC, which has never been granted "cease-and-desist" enforcement powers by Congress, is directed administratively to eliminate unlawful discrimination only through "informal methods of conference, conciliation, and persuasion."[12] Since these informal methods have no enforcement teeth whatsoever, it is not surprising that the EEOC provides virtually no administrative remedies for employment discrimination.

Private litigation is an unrealistic option for persons most likely affected by employment discrimination under sanctions.—Civil rights litigation can be cost prohibitive for the individual; there is a relative unavailability of plaintiffs' lawyers to litigate difficult employment discrimination questions. The end result is that private litigation is generally not brought. Cutbacks in the budget of the Legal Services Corporation, coupled with congressional restrictions on the representation of aliens, will make far greater difficulty in pursuing remedies.

ID/EMPLOYEE VERIFICATION

The proposed employee verification system, with its likely future development of a "secure verification" card or databank, poses significant risks to civil liberties. Blanket verification of worker eligibility is an integral component of the employer sanctions scheme of S. 529.

Because employment relationships under a work eligibility system would entail the collection of personal data by the government with potential expansion of the type of data requested and purposes for which they are used, objections based on the fundamental constitutional rights or privacy, liberty, and association may arise. These rights, jeopardized in this context, find their locus primarily in the First and Ninth Amendments.

We believe that there is a substantial risk that State and local law enforcement agencies and private entities would require presentation of a work eligibility card for identification and other purposes. This risk is increased by the general concept that a wallet-sized card would be used rather than some type of document too large and cumbersome to conveniently carry at all times. A sanction applicable to a request to see the card for purposes other than employment would likely not be effective due to the probable enforcement priority it would receive.[13]

As the Privacy Protection Study Commission noted in its landmark study, *Personal Privacy in an Information Society* (1977).[14]

Actual or potential information abuses are much more likely to result from continuing growth in the government's appetite for information about individuals and in the use of that information for growing numbers and types of purposes. *The real danger is the gradual erosion of individual liberties through the automation, integration, and interconnection of many small, separate recordkeeping systems, each of which alone may seem innocuous, even benevolent, and wholly justifiable.* Dramatic developments in computer and communications technology, which both facilitate record-keeping functions previously performed manually and provide the impetus and means to devise new ones, can only exacerbate this problem.

ALTERNATIVES

We urge the Senate to examine alternatives to the employer sanctions provisions of S. 529.

A new approach which we believe merits attention would focus on those employers who engage in a pattern and practice of hiring undocumented workers. Under this approach, it would be unlawful for employers intentionally to hire undocumented workers, but there would be no general requirement for the government to develop—and employers to inspect—a new secure form of identification. Rather, enforcement would center on firms found to engage in a pattern and practice of intentionally hiring undocumented workers. Any employer cited for such violations would then be required to report any new hiring to the government. Responsibility for enforcing the law would not rest with the INS but rather the officials having experience in enforcing employment laws. This unit would also be charged with insuring that enforcement of the law did not result in unlawful discrimination.

This approach would have the virtue of focusing the immigration enforcement effort on large employers with a clearly established record of employing and exploiting undocumented workers. It would thus eliminate the incentive for all employers to "play it safe" by discriminating against "foreign-looking" workers, and it would encourage large employers to comply with fair labor standards laws in order to avoid being targeted for close scrutiny as a suspected exploiter of undocumented workers.

An amendment containing provisions of this alternative proposal will be introduced when S. 529 comes to the Senate floor.

FOOTNOTES

[1] Title 1—Control of Illegal Immigration; Part A—Employment (S. 529); 98th Congress, 1st Session (Calendar No. 98), pp. 104-118.

[2] United States Civil Rights Commission, *The Tarnished Golden Door* (September 1980).

[3] General Accounting Office, *Information On the Enforcement of Laws Regarding Employment of Aliens in Selected Countries*, GAO/GGO-82-86 (August 31, 1982), at 2 (European laws are "not an effective deterrent to stemming illegal employment. . .").

[4] Memorandum to Joan Loeff, Chair, Task Force on Work Eligibility, Selected Commission on Immigration and Refugee Policy; From James P. Turner, Acting Asst. Atty. Gen., Civil Rights Division, U.S. Department of Justice; Re: *Work Authorization/National Identity System* at 2 (Oct. 20, 1980).

[5] Section 701(b) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e(b).

[6] *Id.*

[7] Section 703(e) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(e).

[8] *See, e.g., Dothard* v. *Rawlinson*, 433 U.S. 321 (1977); *Albermarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975); *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971).

[9] *Garcia* v. *Gloor*, 618 F. 2d 264 (5th Cir. 1980), *cert. denied*, 499 U.S. 1113 (1981); *see also, Garcia* v. *Rush-Presbyterian-St. Luke's Medical Center*, 660 F. 2d 1217 (7th Cir. 1981) *cf., Vasquez* v. *McCallen Bag and Supply Co.*, 660 F. 2d 686 (5th Cir. 1981).

[10] *Furnco Construction Corp.* v. *Waters*, 438 U.S. 567 (1978); *Int'l Bhd, Teamsters* v. *United States*, 431 U.S. 324, 335 n. 15 (1977).

[11] *Texas Dept. of Community Affairs* v. *Burdine*, 450 U.S. 248 (1981).

[12] Section 706(b) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(6).

[13] Same as footnote 4.

[14] Privacy Protection Study Commission, *Personal Privacy in an Informational Society* (1977), p. 617 (emphasis in original). This Commission was established by Congress and submitted its report to the President.

TITLE I—CONTROL OF ILLEGAL IMMIGRATION

PART A—EMPLOYMENT

CONTROL OF UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 101. (a)(1) Chapter 8 of title II is amended by inserting after section 274 (8 U.S.C. 1324) the following new section:

"UNLAWFUL EMPLOYMENT OF ALIENS

"SEC. 274A. (a)(1) It is unlawful for a person or other entity after the date of the enactment of this section to hire for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in paragrah (4)) with respect to such employment.

"(2) It is unlawful for a person or other entity who, after hiring an alien for employment subsequent to the date of enactment of this Act and in accordance with paragraph (1), continues to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

"(3) A person or entity that established that it has complied in good faith with the record-keeping requirements of subsection IX-A-1 with respect to the hiring of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring.

"(4) As used in this section, the term unauthorized alien means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General. As used in this section "knowing" means . . .

I. Declaration of Policy.

To enforce requirement not to hire undocumented workers.

To insure that discrimination does not occur as a result of the requirement not to hire undocumented workers.

II. Creation of a new enforcement unit with the Department of Justice.

Five-person board appointed by President, two from minority party.

General Counsel appointed by President with investigative staff.

ALJs'.

III. Function of unit is to prevent "unfair practices." Defined as:

Hiring undocumented workers.

Discriminating as an effect of requirement not to hire undocumented workers.

IV. Unit and its agents shall have hearing and investigatory power necessary and proper for exercise of its functions.

V. Any person who alleges that he or she was subject to discrimination in violation of this section or that he or she is injured by the employers hiring of undocumented workers may file a charge or a charge may be filed on his or her behalf or on behalf of a class. INS may file a charge.

VI. The General Counsel may on its own initiative file a complaint. Upon receiving a charge the General Counsel shall investigate and determine within 30 days whether to file a complaint. If the GC determines not to file a complaint or fails to act within 30 days the person making the charge may file a complaint.

VII. Upon the filing of a complaint by the GC or the person a hearing shall be conducted by an ALJ. Person filing a charge shall be a full party at hearing and subsequent appeals.

VIII. Decision of ALJ shall be subject to APA, appeal to Board and then appeal to Court of Appeals.

IX. The ALJs, subject to Board review, shall have the authority to impose the following sanctions:

A. Upon a first finding of an "unfair practice" the Board shall—

1. direct the employer to implement a procedure, described in board regulations, to verify that the individual to be employed and all other applicants for the position filed within 30 days of the hiring are eligible to be employed under the provisions of this section (Hawkins Amendment).

2. direct the employer to cease and desist from the unfair practices.

3. upon a finding of discrimination direct the employer to compensate any individual discriminated against in violation of this section (same sanctions available as in Title VII).

4. upon a finding of discrimination fine the employer not more than $——.

5. award attorneys fees to the prevailing party.

B. Upon a finding of a second, and each subsequent violation, prior to a party being relieved of the record-keeping requirements, in addition to the penalties for a first violation:

1. Upon a finding of hiring of undocumented workers a fine of no more than $—— for the second violation and of no more than $—— for each subsequent violation.

2. Upon a finding of discrimination a fine of no more than $—— for a second violation and a fine of no more than $——for each subsequent violation. After a first finding there shall be a presumption that any discrimination is an effect of the requirement not to hire undocumented workers.

X. Multiple concurrent violations count as one violation; different subdivisions of a firm count as separate entities (see S. 529, p. 9, lines 7-18).

XI. The Board shall refer to the Attorney General any case in which it has made three or more findings and in which it finds evidence of a criminal conspiracy to violate 42 USC 1985.

XII. The General Counsel shall require other employers to maintain the records required by subsection IX-A-2 if it determines that (1) there is a substantial likelihood that a significant number of unauthorized aliens have or will seek employment with that employer; (2) that one or more unauthorized aliens are or were employed; or (3) that there is a substantial likelihood that unauthorized aliens will be hired for employment in violation of this chapter. The unit shall issue regulations subject to comment and review specifying the specific circumstances under which it will require record keepings under this section. An order requiring an employer to maintain records under this subsection shall be subject to appeal to an act and the Board but shall be in effect when issued until and unless withdrawn or reversed. An employer required by this section to maintain records may at any time petition the unit to remove the requirement.

XIII. An employer who is found to have engaged in one unfair practice may petition the board to be relieved of the record-keeping requirements any time after 2 years after the finding. An employer found to have engaged in more than one unfair practice may petition the board to be relieved of the record-keeping requirement any time after 5 years of the last finding.

XIV. If the Board finds a prima facie case of discrimination but it is unable to determine that it resulted from the requirements for not hiring undocumented workers it shall refer the matter to the EEOC. In all other cases submission of a complaint by an individual shall preclude filing a complaint based on the same alleged act of discrimination before the EEOC.

XV. Authorize such funds as are necessary.

U.S. GENERAL ACCOUNTING OFFICE,
Washington, D.C.

Hon. ALAN K. SIMPSON,
Chairman, Subcommittee on Immigration and Refugee Policy, Committee on the Judiciary, U.S. Senate.

DEAR MR. CHAIRMAN: Your July 6, 1981, letter requested that we identify countries that have laws prohibiting employers from hiring illegal aliens, how such laws are enforced, and any problems these countries encounter in enforcing their laws. As agreed with your office, to obtain the information we developed a questionnaire which was sent to 28 countries and Hong Kong (see app. XXIII). In addition, we visited four of these countries—Canada, the Federal Republic of Germany, France, and Switzerland—to gather more detailed information.

We received questionnaire responses from 19 countries and Hong Kong. Because the topics contained in the questionnaire had varying applicability to the countries surveyed, their responses varied in completeness. For example, Iceland responded that practically none of the questions applied to it; whereas, several countries provided comprehensive responses to every question. Still others responded to questions on some of the topics, but did not respond to other topics. Nine countries did not provide questionnaire responses in time to include them in this report. However, we will forward them to you if we receive them.

We have summarized each country's response under the five major topics in the questionnaire—guest workers, national identification document, employer responsibilities, illegal alien workers, and law enforcement (see app. I through XX). Also, we have not summarized the countries responses by topic in this letter since they are diverse and not amenable to such a presentation. However, because of your specific in-

terest in Canada, the Federal Republic of Germany, France, and Switzerland, we obtained more detailed information on those countries and highlighted it below. Our observations are based on responses to our questionnaire and discussions with officials in the four countries.

OVERVIEW

In most of the countries, the governments have been increasingly concerned with alien workers, especially illegal ones. Growing unemployment and increasing numbers of aliens have heightened the public's sensitivity to matters involving aliens and have induced governmental actions to control alien workers. Although each country had laws penalizing employers of illegal aliens, such laws were not an effective deterrent to stemming illegal employment for primarily two reasons. First, employers either were able to evade responsibility for illegal employment or, once apprehended, were penalized too little to deter such acts. Second, the laws generally were not being effectively enforced because of strict legal constraints on investigations, noncommunication between government agencies, lack of enforcement resolve, and lack of personnel.

In France and Germany new laws went into effect on January 1, 1982, to increase the effectiveness of their employer sanctions. And in Switzerland, a public referendum later this year will decide whether to implement new immigration legislation.

Canada

Between 32,000 and 40,000 authorized foreign workers can be found in Canada at any one time compared to an estimated 500,000 to 1,000,000 illegal aliens, most of whom work. Whereas guest workers generally have to apply for and receive work authorization before coming to Canada, illegal aliens generally enter as valid visitors or students and then violate their entry conditions.

Canada does not have a national identification document system, but all workers are required to have a Social Insurance number card (similar to the United States' Social Security card). Before hiring workers, employers are required to inspect prospective employees' cards. Guest workers are issued Social Insurance number cards beginning with the number nine. In order to work, anyone possessing a card beginning with the number nine also needs a valid employment authorization which has been issued by an immigration officer. Through various schemes, however, many aliens circumvent the system by obtaining fraudulent cards or presenting legal cards that belong to someone else. In other instances, some employers knowingly hire illegal workers, pay them lower wages, and avoid paying required taxes and employee benefits.

Canadian law enforcement officials opined that the laws penalizing employers of illegal aliens have not reduced the size of the illegal worker problem for several reasons. First, enforcing employer sanctions has not been an enforcement priority, although it is becoming more so. Second, employers of illegal workers are seldom charged with an offense. Often, employers who violate the law are not familiar with the law and their legal responsibilities. Because Canada's law requires violations to be "knowingly" made, enforcement personnel see their role as educating first time violators. Last, employers prosecuted and convicted have not been severely penalized. Small penalties have had little deterrent value.

Federal Republic of Germany

Of the approximately 4.7 million aliens residing in West Germany, 2 million are included in its workforce of 23 million. Since 1977, the alien population has grown substantially despite a 1973 work recruitment ban that stopped the flow of aliens to West Germany. Severe and growing unemployment has focused greater public and governmental attention on the alien population's integration into German society and culture and on illegal alien employment. Although there is not an official estimate, between 200,000 and 500,000 illegal aliens are believed to be in West Germany.

To prevent illegal alien hirings, German employers are responsible for making certain that alien employees possess the proper work permits. Employers are also required to keep various employee records, among which are an employee register listing employees' names; dates hired; and, if applicable, work authorization data; and copies of alien employees' work permits and tax cards. Employees are required to obtain tax cards from the Tax Office and give them to their employers. Illegal workers would not be able to obtain a legitimate tax card.

Sanctions against employers of illegal aliens have not effectively deterred illegal hirings. Some employers have been able to circumvent the law against illegal hirings by leasing workers. Other employers who have been caught with workers illegally hired are administratively fined. However, in cases where employers have appealed, the courts have generally reduced the fines significantly, thus negating the fines' deterrent effect.

Problems in enforcing the sanctions have also contributed to their reduced effectiveness. Legal constraints have hampered the police's ability to enter workplaces suspected of employing illegal aliens. Moreover, personnel shortages have inhibited greater enforcement efforts. Federal enforcement is quite limited, and the burden of enforcement has traditionally fallen on the local police. Further, a reluctance by various Federal agencies to share information on possible wrongdoers has inhibited enforcement. Several of the problems noted above, however, have been addressed in a new law which went into effect January 1, 1982.

France

Like West Germany, France has a severe and growing unemployment problem which has focused increased attention on its alien population and illegal alien employment. Approximately 4.1 million of France's 53.8 million population are aliens and approximately 1.7 million aliens are included in France's total labor force of over 21 million. Also, like West Germany, France does not have an official estimate of the number of illegal alien residents, but unofficial estimates place their number between 150,000 and 350,000.

France's new socialist Government has taken a benevolent approach toward illegal aliens. It views illegal alien workers as exploited victims who deserve fair treatment. Thus, in September 1981, France instituted a program offering illegal alien workers an opportunity to regularize (legalize) their status.

Employers are responsible for assuring that alien employees are legal workers and are treated in compliance with applicable work laws. Within 24 hours of employing aliens, employers are required to record on a special register maintained in their office data contained on the employees' work and residency permits. These registers are occasionally inspected by labor inspectors during the course of their work. Employers who violate the laws governing alien workers are subject to fines and imprisonment. On January 1, 1982, a new law was enacted which increased the penalties that can be judicially applied to employers of illegal alien workers.

Employer sanctions are applied both administratively and judicially. Each employer administratively fined is also referred to the Federal prosecutors for possible separate criminal action. Labor Ministry officials believe the judicial sanctions have not been an effective deterrent because judges have levied light penalties on convicted employers. Furthermore, other agencies with the authority to sanction employers cannot because they are not notified when the violations are discovered. The new law enacted on January 1, 1982, in addition to increasing the penalties that can be judicially applied, provides the Labor Ministry with an additional sanction it can take against employers—confiscation of their tools and equipment.

Switzerland

In the early 1970's, Switzerland determined that its alien population, then about 18 percent of its total population, was too large and set upon a course to progressively reduce it. Currently, aliens comprise about 15 percent of Switzerland's total population, and the Government has implemented a new policy to maintain control over the size of the alien population. This policy calls for a balanced ratio between the Swiss population and the alien population. To maintain this balance, the Government establishes the number of residence permits to be issued each year by monitoring changes in the alien population.

Unlike France and West Germany, Switzerland does not have an unemployment problem. As of January 1982, only 10,000 workers, or about 0.2 percent of the Swiss workforce, were unemployed. Despite its almost full employment economy, the Swiss public is concerned about alien issues. In 1981, the Swiss Parliament accepted a new aliens law which would, among other things, confer on aliens certain residence and employment rights. However, public objection has forced the law to a public referendum to be decided later this year. Although official Government estimates of the number of illegal aliens have not been made, unofficially, illegal aliens are believed to number less than 50,000.

Before they can hire an alien, employers are required by law to ensure that the worker is authorized to work. Specifically, employers must inspect the alien's identification papers or verify the alien's legal status with the Cantonal (State) Alien Police. Also, employers must notify the community registration office where the employee is registered whenever a guest worker leaves or loses his/her job.

Swiss law, does not penalize employers for hiring illegal alien workers. Rather, the law penalizes individuals, including employers, who facilitate an illegal's residence in Switzerland. Each Canton is responsible for administering the aliens law. As a result, enforcement varies. However, the judicial penalties levied on employers were generally considered light. New legislation to be considered by public referendum includes penalties for employing illegal alien workers.

OTHER MATTERS

Our discussions with government officials and labor representatives brought to our attention other common issues that are rele-

vant to the situation in the United States and worthy of note. These issues involve seasonal workers, amnesty, and asylum.

Seasonal worker programs

With the exception of West Germany, each country had a seasonal worker program. These programs usually provided workers to meet agricultural needs, although in Switzerland many seasonal workers were also needed for the resort, hotel, and construction industries.

Generally, the seasonal workers complied with their entry conditions and did not pose problems for the countries employing them. Interestingly, Switzerland offers seasonal workers the opportunity to become annual residents if they meet certain conditions. About 7,000 seasonal workers take advantage of this opportunity yearly.

Amnesty

Both Canada and France have had programs to give illegal aliens an opportunity to obtain legal status. In 1973, Canada offered general amnesty to all illegal aliens and nonimmigrants, and in January 1982 France completed its general amnesty program for illegal alien workers. Both countries have had other amnesty programs which were less comprehensive than the two noted above.

During both countries' major amnesty efforts, the number of illegal aliens seeking amnesty was below expectations. Before the Canadian amnesty was implemented, speculation was that as many as 200,000 aliens might apply. However, only approximately 36,000 aliens were granted landed immigrant status (permanent residence) through the general amnesty program. Of these, about 20,000 had been in Canada illegally. Canadian officials believed that some of the 20,000 illegal aliens granted amnesty had previously left Canada for the United States but returned to take advantage of the offer.

In France, initial estimates of the number of aliens who would apply for regularization were as high as 300,000. Once the program was underway, expectations were revised, and, with 1 month remaining, it was believed that 100,000 alien workers would apply. As of January 14, 1982, the day before the program's deadline, approximately 80,000 illegal alien workers had applied for regularization. Of those applying, 30,000 could not produce a contract from their employers, one of the program's requirements. To rule on these applications, a special committee was established.

Asylum

In all four countries visited, officials complained about the number of aliens who requested political asylum. Such claims, although generally considered frivolous, require each country to process and investigate each request as though it were bona fide. As a result, the number of requests has overwhelmed the normal asylum investigative and deliberative mechanisms.

While each case is being considered, requestors are entitled to all benefits offered by the host country, such as financial and housing assistance, welfare eligibility, and work permits. Generally, when a case is decided against an alien, the alien appeals the decision. By appealing each decision that goes against them until all appeals are exhausted, requestors can take advantage of the system for 2 years and often longer.

Increasingly, aliens apprehended as illegal workers claim that they will be persecuted by their native governments if forced to return. By requesting asylum, they have found a way to forestall their expulsions. To counteract this tactic, all four of the countries were seeking ways to streamline or shortcut the normal asylum process for those believed to be economic refugees.

We plan no further distribution of this report until 30 days from its issue date, unless you publicly announce its contents earlier. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

WILLIAM J. ANDERSON,
Director.

[Memorandum]

AMERICAN CIVIL LIBERTIES UNION,
Washington Office, February 25, 1983.

To: Senate Judiciary Committee.
From: American Civil Liberties Union.
Re Civil Liberties and the Undocumented Alien: The Case for Legalization.

"The existence of a large illegal migrant population within our borders violates the basic concept that we are a nation under law and this cannot be tolerated. The costs to society of permitting a large group of persons to live in an illegal status are enormous. Society is harmed every time an undocumented alien is afraid to testify as a witness in a legal proceeding—which occurs even when the alien is the victim—to report an illness that may contribute a public health hazard or disclose a violation of U.S. labor laws."[1]

The plight of the undocumented/illegal alien poses one of the most difficult dilemmas in the debate over immigration reform. Variously estimated at between 3.5 and 6 million persons, and growing at an annual rate of one-quarter to one-half million new individuals,[2] the existence of a large and expanding "shadow class" of persons outside the law presents major contradictions for a democratic society. In practical terms, the solution to the problem will involve significant economic and political considerations. Moreover, it will also involve an important rights and liberties dimension.

The inability of the undocumented alien to avail himself of the law's protections for fear that its punishments will also be felt in the form of swift deportation from the United States, has created a class of persons for whom basic civil liberties and civil rights have little meaning. Yet, because of their seamless involvement in critical economic and social aspects of American life, the exclusion of undocumented aliens from the body politic also has a corrosive impact on rights and liberties of citizens and permanent resident aliens; immediate examples come to mind within the criminal justice system, labor-business relationships, public education and public health areas. The resolution of the dilemma of the undocumented alien has become one of the major civil liberties issues of our time.

The problem of illegal migration to the United States is complex. The Select Commission on Immigration and Refugee Policy characterized the problem as the single most pressing issue it faced during its deliberations. For the undocumented alien, the benefits of migration to the United States usually distill into basic and compelling considerations: opportunities for employment, family reunification, exercise of individual freedoms not permitted at home, and for some, escape from political persecution. The United States remains a magnet for both economic and political refugees, an historical fact dating back to the founding of the country.

In seeking a solution to the present undocumented alien problem, policy-makers have concluded that only three realistic options exist. Diego C. Asencio, Secretary for Consular Affairs, Department of State, presented the considerations most bluntly: [3]

"Careful analysis shows that there are three, and only three possible courses of action to deal with those who are already here: (1) ignore the situation allowing illegals to remain in their current status because of inadequate enforcement of present law while their numbers grow; (2) massively round up and deport those here illegally; and (3) devise a procedure through which to legalize those who have established themselves in the United States."

The first option would prove destructive in the long-term; the second option would prove wholly unacceptable on civil liberties grounds. As the Select Commission noted, attempts at massive deportation would be destructive of domestic liberties, costly, likely to be challenged, and in the end, ineffective.

The last time in United States history when such a massive deportation effort occurred was in the mid-1950s when the Immigration and Naturalization Service (INS) expelled or deported more than one million aliens. This was done at tremendous costs in terms of both money and personnel. More importantly, it violated the civil liberties and rights of many Mexican Americans who were rounded up illegally for forcible reparation to Mexico. Such an effort would not be tolerated today.

Hence, legalization—accompanied by a more effective enforcement mechanism—is the only viable solution for the undocumented alien population. Legalization of the undocumented is not an "amnesty" as is often implied. The thrust of the proposal is guided by principles supporting the rule of law, not "forgivensess" of the illegal alien.

Through a legalization program, the government seeks:

To eliminate the illegal subclass now present in the United States, a situation which results in the exploitation of this segment of society and the depression of U.S. wages and working conditions.

Qualified aliens would be able to contribute more to U.S. society once they come into the open. Most illegal aliens are hardworking, productive individuals who already pay taxes and contribute their labor to this country. Any adverse impact of their presence in the economy has already been absorbed;

To concentrate the limited enforcement resources of the Immigration and Naturalization Service on new illegal entry or visa abuse;

Legalization would enable the INS to target its enforcement resources on new flows of illegal aliens, and avoid devoting limited investigative resources to cases which involve aliens who claim equities under the law; and

To allow dependent employers to continue to use this labor force lawfully.[4]

Legalizing the undocumented alien advances the protection of civil liberties and civil rights.

Civil liberties interests can be found in at least two elements of the supporting rationale for a broad legalization program. One major interest involves the broad concept of equality before the law. Another interest involves the right to freedom of belief, expres-

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Footnotes at end of article.

sion and association in the context of labor-business relationships.

AFFIRMATIVE CIVIL LIBERTIES INTEREST IN PROMOTING EQUITABLE ACCESS TO PUBLIC BENEFITS FOR UNDOCUMENTED ALIENS

The right of aliens to receive various kinds of public benefits is in flux. For aliens who are "lawfully admitted for permanent residence," the trend is clearly, although not absolutely, to strike down the barriers against their right to receive government benefits at the state level. The primary vehicle for this effort has been the Equal Protection Clause of the Fourteenth Amendment. In *Sugarman* v. *Dougall*, 413 U.S. 634 (1973), the Supreme Court invalidated on equal protection grounds a New York law restricting lawful resident alien participation in certain benefit programs. But, in *Graham* v. *Richardson*, 403 U.S. 365 (1972), the Court upheld similar restrictions on federal programs. The Court reasoned that because the Constitution grants the Congress plenary authority in immigration matters, it enjoys greater latitude than the states in regulating the presence of resident aliens.

For aliens who are in the United States illegally, the statutes and policies are mixed. The right to certain governmental benefits—for example, police and fire protection—seems axiomatic with the constitutional protection of life, liberty and property. So too would the right of an indigent alien to receive life-saving benefits such as emergency hospitalization and medical treatment, generally provided by local governments. In recent decisions the Court has further extended the protections of the Equal Protection Clause by requiring access to publicly financed education for the children of illegal aliens, *Plyer* v. *Doe*, 457 U.S. ——, 50 U.S.L.W. 4650 (June 15, 1983. In *Plyer* the Court made clear that undocumented aliens are "persons" within the meaning of the Fourteenth Amendment:

Appellants argue at the outset that undocumented aliens, because of their immigration status, are not "persons within the jurisdiction" of the State of Texas, and that they therefore have no right to the equal protection of Texas law. We reject this argument. Whatever his status under the immigration laws, an alien is surely a "person" in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as "persons" guaranteed due process of law by the Fifth and Fourteenth Amendments. *Shaughnessy* v. *Mezei*, 345 U.S. 206, 212 (1953); *Wong Wing* v. *United States*, 163 U.S. 228, 238 (1896); *Yick Wo* v. *Hopkins*, 118 U.S. 356, 369 (1886). Indeed, we have clearly held that the Fifth Amendment protects aliens whose presence in this country is unlawful from invidious discrimination by the Federal Government. *Mathews* v. *Diaz*, 426 U.S. 67, 77 (1976).

The analysis extending state benefits to a resident alien or undocumented alien population has so far generally not been followed by the Congress. Thus, Congress has restricted or otherwise regulated the access of undocumented aliens to various public benefits sponsored by the federal government, including food stamps (see, Food Stamp Act Amendments of 1980, 7 U.S.C. Sec. 2015(f) and 7 CFR Sec. 273.4); indigent legal services representation (see, Continuing Resolution H.J. Res. 599, Oct. 1, 1982); school lunches (Omnibus Budget Reconciliation Act of 1981, P.L. 97-34, Sec. 803); and Aid For Dependent Children (AFDC) programs (Social Security Act, Sec. 402(a), 42 U.S.C. Sec. 602(a) (33), as amended by the Omnibus Budget Reconciliation Act, P.L. 97-34, Sec. 2320).

These restrictions reflect a congressional intent to restrict social benefits to persons who are citizens or who entered the country legally. The only implication one may draw from these restrictions is that the Congress believes that undocumented aliens contribute little in taxes to support the general economy and/or is a drain on services disproportionate to their contribution.

The evidence from studies prepared for the Select Commission refutes both suppositions. This research suggests that there is generally low use of social services by undocumented aliens for reasons such as those previously mentioned, as well as fear of deportation if the alien applies for the program. Moreover, these same studies suggest that payment of Federal and/or state taxes by undocumented aliens "may more than offset the cost of providing health care and other social services."[5] The denial of benefits necessary to the basic sustenance of life of some persons, while comparable benefits are afforded by government to others, has constitutional significance insofar as the requirements of equal protection and due process are concerned.

AFFIRMATIVE CIVIL LIBERTIES INTEREST IN RESOLVING EFFECTS OF UNDOCUMENTED ALIENS ON THE LABOR MARKET

The impact of undocumented migration on the labor market is of major importance in (1) the displacement of U.S. workers, (2) depression of wages and working standards, and (3) curtailment of the enforcement of fair labor standards legislation.

Protected aspects of freedom of association such as the right of employees to organize and bargain collectively and the right to strike over disputes concerning terms or conditions of employment are profoundly affected by a large, exploitable sub-group in the work force. Surely the rights of legal workers are affected when the undocumented status of fellow workers and their fear of deportation, inhibit the excercise of otherwise protected rights.

What are the consequences of this denial of rights? While not all undocumented aliens experience abuse, most experts agree that serious problems exist. An undocumented alien who testified at a Select Commission hearing described his experience:

"They say that because we do not have U.S. papers we are not entitled to protection by the U.S. Constitution. Because of this we are often paid low wages and are forced to live and work in subhuman conditions. In Florida we work carrying 100 pound bags up ladders that are sometimes 20 feet high. If we fall from a ladder or are otherwise injured on the job we rarely receive workmen's compensation. Many undocumented workers in Florida live in small house trailers that accommodate more than 20 workers, and often pay high rent for such living space"[6]

Difficult conditions, however, are also found in many urban settings. A labor leader at another Commission hearing described conditions in the New York garment industry:

"During the last year our organizers have located over 500 small, nonunion garment shops in the Bronx, the second smallest borough of New York City. Additionally they found over 200 small shops in Manhattan, and they estimate that there are several hundred more in Brooklyn and Queens. Conditions in these shops vary somewhat, but in virtually all of them, workers are paid poorly, and the work environment is far from humane. Minimum hourly wages and nonexistent. . . . Homework, the scourge of our industry 70 to 80 years ago, has returned with a vengeance. . . . Basic health and safety standards are completely neglected in the new sweatshops."[7]

The differential in wages between the home countries of most undocumented/illegal aliens and the United States may make these aliens less concerned than their citizen counterparts about the actual level of their U.S. wages. The potential threat of apprehension and deportation may also make undocumented/illegal workers more willing to work for lower wages. At the Select Commission hearing in Los Angeles, a representative of the International Ladies Garment Workers Union (ILGWU) told of instances where employers, whom he cited specifically, used the Immigration Service to intimidate workers:

Daisy of California: A supervisor spreads a rumor of a possible INS raid. Out of a work force of 130, only six remain working. Several days later, company announces a pay reduction and erosion of benefits.

High Tide: A strike occurs. INS arrives and 17 pickets are apprehended, detained and, by evening, deported.

California Sample: One hour before another federal agency, the National Labor Relations Board, is to conduct an election, INS van parks near dock within full view of employees as company spokesman speaks of impending INS raid.

Hollander Manufacturing: Three days after an election in which the company lost, INS raids the plant picking up all union supporters. Retaliation or coincidence? When questioned, INS produces a letter on company stationery requesting the raid.[8]

Although it should again be noted that not all employers of undocumented/illegal aliens are guilty of such practices, abuses of working conditions and wages do exist.[9]

RECOMMENDATIONS AND CONCLUSION

The ACLU views the enactment of a legalization scheme as one of the most urgent tasks facing the Congress. We believe that such a program must be consistent with the following principles:

1. All aliens who have continuously resided in the United States since January 1, 1982 should be eligible for the legalization program;

2. all aliens eligible for legalization should be granted permanent resident status and the temporary resident provisions of the bill should be deleted;

3. all legalized aliens granted permanent resident status should be granted the full rights and privileges accorded permanent resident aliens under current law;

4. state and local governments should be provided impact aid, pursuant to an appropriate formula, to assure that the legalization program does not unfairly burden state and local taxpayers in certain areas of the country; and

5. that persons eligible for the program be granted one year from the beginning of the program to apply to legalize their status.

We are prepared to work with the Congress for the speedy enactment of legalization which embodies these principles.

The long-term consequences of a growing undocumented alien population seem clear:

Institutionalization of a double standard of due process and equal protection for a growing alien population, with concomitant litigation growing out of that contradiction;

Growing disrespect for the legal system generally, and a specific lack of regard for

an immigration law which penalizes those who obey it and wait their turn to enter the United States;

Displacement of U.S. workers, whether actual or perceived, would become stronger among those most directly affected—the young, relatively unskilled racial minority populations—exacerbating ethnic tensions and employer discrimination; and

Dilution of the entitlement to government benefits and to voting representation for communities in which large numbers of the undocumented may reside, but where their numbers cannot be counted for purposes of determining a community's "fair share" of these benefits.

For all of these reasons, fair and effective measures should be adopted to curtail the settlement of new persons in this class and to alleviate the existing backlog of undocumented aliens. Given the limited number of viable options available for resolving the backlog, it is in the national interest and consistent with civil liberties objectives to support a broad legalization proposal as a crucial element of immigration reform.

FOOTNOTES

[1] *Legalization of Illegal Aliens*, 1981: Hearings before the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary, 97th Cong., 2nd sess. p. 7 (statement of Doris M. Meissner, acting Commissioner, Immigration and Naturalization Service, Department of Justice, October 29, 1981).

[2] "The number of illegal aliens already in the country is unknown. The Select Commission on Immigration and Refugee Policy uses the figure of 3.5 to 6 million as the best guess of 1978." U.S. Congress, Senate, *Report of the Committee on the Judiciary, U.S. Senate on S. 2222*, S. Rept. -485, 97th Congress, 2nd Sess., 1982. p. 4.

[3] *Legalization of Illegal Aliens*, 1981: Hearings before the Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary, 97th Congress, 2nd Sess. p. 17 (Statement of Diego C. Asencio; assistant secretary for Consumer Affairs, Department of State, October 29, 1981).

[4] U.S. Congress, Senate, *Report of The Committee on the Judiciary, U.S. Senate on S. 222*, S. Rept. 485, 97th Congress, 2nd Sess., 1982, p. 19 (citation refers to underlined passages).

[5] Fred Arnold, "Providing Medical Services to Undocumented Immigration: Costs and Public Policy," International Migration Review 13 p. 711 (Winter 1979).

[6] Anonymous undocumented/illegal alien, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Miami, December 4, 1979.

[7] Jay Masur, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, New York, New York, January 21, 1980.

[8] Phil Russo, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Los Angeles, February 5, 1980.

[9] Forbes, Susan, "The Half-Open Door: Illegal Migration to the United States" in *U.S. Immigration Policy and the National Interest*, Staff Report of the Select Commission on Immigration and Refugee Policy, April 30, 1981 pp. 540-551.

See also, Fred Arnold, "Providing Medical Services to Undocumented Immigration: Costs and Public Policy," International Migration Review 13 (Winter 1979).

Mr. BIDEN. Will the Senator yield?

Mr. KENNEDY. Yes, I yield.

Mr. BIDEN. Mr. President, I shall not take much of the time of the Senate.

My colleagues on the Judiciary Committee, Senator SIMPSON, chairman of the Immigration Subcommittee and Senator KENNEDY, ranking member of that subcommittee, are to be congratulated on the agreement they have reached on this amendment. I strongly support the right to judicial review they have proposed.

This legislation makes substantial improvements in current law—including legalizing thousands of persons who have lived and worked in this country for years, deterring employers from hiring illegal aliens, setting controls over legal immigration, and streamlining immigration procedures.

The changes this bill makes in the right to appeal was, I believe, an attempt to further the goals of streamlining procedures and reducing backlogs. This amendment furthers that goal while also insuring that, in every case, individuals seeking admission to this country receive fair consideration and that their rights as established by this legislation are fully protected.

Mr. President, I should like to do something I seldom do: I wish to publicly compliment the staff of Senator SIMPSON and Senator KENNEDY. I did not think this could be worked out when this all started. They are the three easiest people I have ever worked with. I think if we all had staffs like that, we would do very, very well.

Mr. KENNEDY. Mr. President, I certainly join with the Senator in that.

Mr. LEVIN. Will the Senator yield?

Mr. KENNEDY. Yes.

Mr. LEVIN. Mr. President, first, let me commend my friends from Wyoming and Massachusetts for what they have accomplished. We have preserved the principle of judicial review of asylum cases. We presently have judicial review of asylum cases. The Senator from Massachusetts has indicated there are many cases of individuals who have obtained protection from court who would not have obtained that protection but for this provision. We have cases on record which are very dramatic cases of people coming to this country, seeking asylum, being turned down administratively, then obtaining court review and success, even though there was no constitutional issue involved.

I do commend my friends from Wyoming and Massachusetts for the protection for asylum cases which we are now going to provide. It is a good compromise and with the adoption of this amendment, I withdraw my own amendment that provides for judicial review in asylum cases. It will no longer be necessary and we shall be able to save the Senate the half-hour which we do not have any more, anyway.

Mr. KENNEDY. Mr. President, I am prepared to yield back the remainder of my time.

Mr. SIMPSON. Mr. President, I regret that I missed some of the last remarks of the Senator from Michigan. I do understand now that his amendment will be withdrawn, the amendment that was proposed. The Senator from Massachusetts is ready to relinquish the remainder of his time.

Mr. KENNEDY. Yes, Mr. President.

Mr. SIMPSON. I just conclude, Mr. President, by saying that those of us who have agreed that the present system is overwhelmed, I think, should feel confident that this amendment corrects those problems. We will not have those problems. We will not have 3,500 asylum cases a month. We reduced the process that is there now and that was the intent of all concerned because of the misuse of the present system.

I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question now is on agreeing to the amendment as modified.

The amendment (No. 1210), as modified, was agreed to.

Mr. KENNEDY. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The amendment by the Senator from Michigan (Mr. LEVIN) has been withdrawn.

The question is on agreeing to the committee amendment as amended.

Mr. SIMPSON. Mr. President, have the yeas and nays been asked for? Is that the committee amendment?

The PRESIDING OFFICER. The committee amendment as amended.

Mr. SIMPSON. That is correct.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment as amended.

The committee amendment, as amended, was agreed to.

Mr. SIMPSON. Mr. President, the Chair says the committee amendment as amended. What is he referring to? Is that with regard to the past amendment or is he back to the original committee amendment when we began discussion of this measure? The yeas and nays have been asked for on the original, on passage of the measure, however you describe it.

The PRESIDING OFFICER. The Chair advises the distinguished Senator from Wyoming that the committee amendment, as amended, had to be agreed to before passage which has yet to be acted upon.

Mr. SIMPSON. Yes, Mr. President.

The PRESIDING OFFICER. Is there any further debate before passage?

Mrs. HAWKINS. I would ask a question of the Senator from Wyoming, Mr. President. During the Mariel boatlift, numerous convicted felons arrived in the United States. Many of them were apprehended and incarcerated in the United States. Is it the intention,

in the legalization provisions of this bill, for such individuals to qualify for legalization in that their crimes were committed in Cuba and not the United States, or are these individuals excludable under section 212 of the INA?

Mr. SIMPSON. That is a very good question. Individuals who committed crimes in Cuba which would have prevented them from immigrating legally to this country by virtue of section 212 of the INA are also excludable from taking part in the legalization provisions of S. 529.

Mrs. HAWKINS. I appreciate the clear response to my concerns as, in Florida, we are experiencing the phenomenon of having to let some of our jail population out of prison due to overcrowding. I am concerned that these individuals could unjustly receive the benefits of the legalization provisions because their crimes were committed in Cuba as opposed to the United States.

Mr. SIMPSON. I understand the Senator's concerns, as Florida has been confronted with the brunt of the Mariel boatlift and I can assure her that this legislation is not intended to legalize hardened criminals, regardless of where they committed their crime.

Mrs. HAWKINS. Mr. President. I thank the Senator for clarifying this matter.

Mr. BIDEN. Mr. President, with regard to section 123(a)(2), my understanding is that the language in that section is intended to make clear that it establishes the sole basis for reviewing final orders of deportation or exclusion. There is no intention to overturn any cases providing for judicial review, other than final orders, in matters of pattern and practice when that is appropriate or in the following cases:

Haitian Refugee Center v. *Smith*, 676 F.2d 1023 (5th Cir 1983).

Louis v. *Nelson*, No. 82-5772 (11th Cir., dec Apr. 12, 1983).

Orantes-Hernandez v. *Smith*, 541 F Supp. 351 C.D. Ca. 1982.

Is my understanding correct?

Mr. SIMPSON. Yes, Mr. President. The reference to section 279 of the act and to section 1331 of title 28 is simply to make clear that they do not provide a basis for district court review of final orders.

Mr. PRESSLER. Mr. President, I rise today to commend Senator SIMPSON for his diligent efforts on this important legislation. I am especially pleased that the nonimmigrant visa waiver provisions that we addressed in last year's bill have remained intact. The goal of this provision is to facilitate international travel by waiving the visa requirement for foreign travelers to the United States from "low risk" countries which require foreign visitors to have a visa in addition to a passport. The burdensome application process foreign visitors now face as a result of present law discourages travel and reduces foreign trade income from travel and tourism.

As chairman of the Subcommittee on Business, Trade, and Tourism, I worked closely with my distinguished colleague from Wyoming to insure this provision was included in last year's bill. Coming from a State like South Dakota, where tourism is our second largest industry, I am keenly aware of how important our foreign travel and tourism markets are. There is much work to be done in developing this market. I am currently working on a number of ways to increase foreign travel and tourism trade in South Dakota and throughout the entire United States. Visa waiver is a good start.

Again, I commend Senator SIMPSON for his hard work in this area. There is, however, one section of this provision that I would like to clarify with the chairman.

Mr. President, I should like to engage the Senator in a colloquy with regard to visa waiver requirements for aliens.

I ask the chairman, section 213 of S. 529 includes a provision which would require aliens entering the United States under the visa waiver program to have "a round-trip, nonrefundable, nontransferable, open-dated transportation ticket." Was it the intent of the committee to prevent travelers with return reservation, which would require a dated ticket, from entering the country under the visa waiver guidelines?

Mr. SIMPSON. Mr. President, it was never the intent of the committee to exclude travelers with return reservations from qualifying for the waived visa privileges under the provisions contained in S. 529. The committee simply meant to guarantee the return passage of the alien regardless of his date of return.

Mr. PRESSLER. It appears that section 213, paragraph 4(A) requires carriers to indemnify the United States against any costs for transporting the alien out of the United States whether he is refused admission or unlawfully overstays the 90-day maximum period under the visa waiver agreement. In effect, does this provision not accomplish the goal of the committee and if so, would it be appropriate to delete the term "open-dated" ticket?

Mr. SIMPSON. To eliminate confusion on the part of the alien, travel agent, or transportation company it appears that a technical amendment to delete the term "open-dated" ticket would not alter the intent of the overall provision, which is to be sure that return transportation is made available to the alien without cost to the United States. I would agree to the change.

Mr. GOLDWATER. Mr. President, if the Senator from Wyoming would give me his attention, I would like to pose a question relative to section 211(b)(1) of the Immigration bill which deals with the length of certification for H-2 agricultural workers. As the Senator knows, the section provides:

. . . an alien may not be admitted to the United States as a nonimmigrant under Section 101(a)(15)(H)(iii)(a) for an aggregate period of more than eight months in any calendar year, except in the case of agricultural labor or services which the Secretary of Labor, before the date of enactment of the Immigration Reform and Control Act of 1983, has recognized require a longer period, which may exceed one year.

Now, the Arizona citrus industry has a season that virtually lasts year round. Some Arizona employers currently use the existing H-2 program. Our employers have routinely been certified by the Department of Labor for periods longer than 8 months, but less than 1 year, in the citrus area.

Is it the Senator's understanding that, under the grandfather provision, section 211(b)(1), the Arizona citrus industry, and any other industry like it, with a history of prior certification of longer than 8 months, but less than a year, would continue to be certified for periods exceeding 8 months?

Mr. SIMPSON. Mr. President, the Senator from Arizona is correct. It is my understanding from the Department of Labor that the citrus industry in Arizona would be certified for more than 8 months, as stated in the "grandfather clause" in the bill. The sheep-raising industry is the only industry for which H-2 workers are certified for multiyear periods, but others may be certified for more than 8 months.

I ask unanimous consent that various technical amendments be printed in the RECORD as if they had been read in full.

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

LIST OF TECHNICAL AMENDMENTS

1. Visa Waiver:

a. Permit countries to be included who have an average refusal rate of 2 percent over 2 years rather than 2 percent for last year. (Still limited to eight countries—broadens the scope somewhat—still go off program if rise above 2.5 percent.)

b. Include "health" as an exclusionary ground in connection with visa waiver.

2. Change section reference in Migrant and Seasonal Agricultural Protection Act.

3. Permit AG to lease space for two years in connection with legalization program outside normal procurement channels.

4. Permit AG to set documentation for persons who do not have standard documentation (birth certificate, social security card) called for under the Act. (Applies to refugees, asylees, asylee applicants.)

5. Conforming amendments making changes in section references in bill.

6. Require statistically valid sampling in case of reporting requirements.

7. Clarify language on two year student requirement.

8. Expand injunctive relief after 2nd violation.

9. To provide for a report on the agricultural labor transition program.

On page 181, line 22 delete all words after the word "unless" through page 183, line 3 and insert in lieu thereof the following:

"(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(ii) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(C) For each fiscal year (within the pilot program period) after the period specified in subparagraph (B)—

"(i) in the case of a country which was a pilot country in the previous fiscal year, a country may not be designated as a pilot country unless the sum of—

"(I) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

"(II) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2.0 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year, or

"(ii) in the case of another country, the country may not be designated as a pilot country unless—

"(I) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(II) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year."

On page 180, line 2 insert the word "health" immediately after the word "welfare".

On Page 115, line 20, delete 1856(b) and insert in lieu thereof 1851(b).

Page 192, after line 18, insert the following paragraph:

"(4) Notwithstanding the Federal Property and Administrative Services Act of 1949, 63 U.S.C. 377, as amended, the Attorney General is hereby authorized to expend from the appropriation provided for the administration and enforcement of the act, such amounts as may be necessary for the leasing or acquisition of real property in the fulfilment of this section. This authority shall end two years from enactment."

On page 192, line 19, delete "(4)" and insert "(5)" in lieu thereof.

On page 106, line 11 delete everything after the word "or" through the word "subclause" in line 14 and insert in lieu thereof "where no such documentation is available."

On page 162, line 8 insert "or (4)" immediately after "(3)".

On page 162, line 13 insert "or 203(b)(4)" immediately after "203(b)(2)".

On page 162, line 16 insert "or (4)" immediately after "(2)".

On page 210, line 22 immediately after the comma, insert the following: "compiled and validated in accordance with sound statistical practice."

On page 211 delete lines 6 and 7 and insert in lieu thereof the following: "The initial report shall be submitted not later than two years after the date of the enactment of the Act and three additional reports be submitted every two years thereafter."

Page 178, beginning on line 2, strike out "or, with respect" and all that follows through "him" on line 7.

Page 178, line 17, before the period insert the following: ", except that such amendments shall not apply to aliens who as of the date of the enactment of this Act meet the qualifications for a waiver of the two-year foreign residence requirement under paragraph (A) of section 212(e) of the Immigration and Nationality Act (as amended by section (a) of this section)."

On page 111, on line 16, delete "(2) Whenever the Attorney General" through the end of the page and insert in lieu thereof:

"(2) Whenever the Attorney General (i) has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of subsection (a); or (ii) within an 18 month period issues to a person or entity a second notice of a violation of subsection (a) and the two notices charge violations involving a total of five or more individuals, the Attorney General may bring a civil action in the appropriate district court of the United States requesting such equitable relief, including a temporary or permanent injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary. In the case of a person or entity composed of district, physically separate subdivisions each of which provides separately for its own hiring, recruiting or referral for employment, each such subdivision shall be considered a separate person or entity if such hiring, recruiting or referral for employment is not under the direct control of another subdivision or any entity or office exercising final management authority over such subdivisions."

On page 209, line 5 immediately before the word "temporary" insert the following: "agricultural labor transition program and the".

On page 210 delete lines three and four and insert in lieu thereof the following:

"The report on the temporary worker program shall be submitted not later than two years after the date of the enactment of this Act and the report on the agricultural labor transition program each year for three years beginning a year after the date of the enactment of the Act."

Mr. LEVIN. Mr. President, could the Senator from Wyoming clarify for my benefit how an employer can take advantage of the affirmative defense afforded him under the bill? Does the bill intend to place the burden of proof of lack of good faith compliance with the verification procedure on the Government once the employer has verified eligibility according to the provisions?

Mr. SIMPSON. Yes, I would be pleased to explain the verification procedures, Mr. President. First, the employer is required to use the verification system contained in the bill by examining documents the prospective employee provides to verify his work eligibility. Once the employer has examined the documents, he and the prospective employee each sign a statement that the required documents have been examined. Then the employer retains the signed forms for 5 years or until 1 year after the employment ends. If he does this in good faith, the employer has an affirmative defense against a charge of "knowingly" hiring an illegal alien. I wish to emphasize that the user of the system will not be responsible for the genuineness of the documents, only that such documents reasonably appear on their face to be genuine. Compliance with this procedure by the employer shall give rise to a presumption of good faith.

If the Government does not believe the employer has complied with the statute in good faith and the employer has complied with the statute's procedure, then the burden of proof is upon the Government to show lack of good faith compliance.

Mr. LEVIN. I thank the Senator. I am pleased that the burden of proof does not shift to the employer if he follows the procedures set forth in the bill.

AGRICULTURAL ASSOCIATIONS

Mr. WILSON. Mr. President, I have two points to raise regarding our understanding of the DeConcini/Wilson amendment. First, under section 211(b)(3) of S. 529, which adds to section 214(c) of the Immigration and Nationality Act a new paragraph (3)(A)(iii), petitions for applications for labor certification "may be filed by an association representing agricultural producers who use agricultural labor or services." The association may not file the petitions on behalf of agricultural producers who have not in the past relied upon undocumented alien labor nor will the filing of the petition by the association relieve the individual employers of any liability under Federal law. Do you agree with our understanding and intent that this provision is equally applicable to the transition program established under the DeConcini/Wilson amendment?

Mr. SIMPSON. Yes; that is my understanding.

TRANSITION PROGRAM

Mr. WILSON. Mr. President, I have a question which I believe the Senator from Wyoming may help clarify with regard to the agricultural labor transition program. Section 214(f)(2) provides that an agricultural employer seeking to employ transitional workers under this program must—

(2) provide to the satisfaction of the Attorney General a numerical count of the numbers of seasonal agricultural workers employed during the immediately preceding 12 month period by said employer.

Is it the Senator's understanding that employers will be expected to provide the Attorney General with an accurate count of the number of these workers employed during the time period indicated?

Mr. SIMPSON. Yes; that is my understanding.

Mr. WILSON. Is it the Senator's further understanding that unless countervailing information exists with regard to the accuracy of these numbers, that the employer's count would satisfy the Attorney General and thus the provisions of section 214?

Mr. SIMPSON. Yes; the Senator is correct. My understanding is that employers will be expected to provide the Attorney General with an accurate count of the number of these workers employed during the previous year. If, countervailing information does exist with regard to the accuracy of that count, the Attorney General may check other available information to determine the reasonableness of the request.

Mr. WILSON. I thank the Senator for his assistance in clarifying this matter.

Mr. WARNER. Mr. President, today, we are giving final consideration to the Immigration Reform and Control Act of 1983. We have arrived at the best consensus possible that will provide vigorous enforcement of our immigration laws.

Senator SIMPSON can be proud of his efforts. Without his long and tireless work this legislation could not have been fashioned.

We have placed a cap on immigration and have endeavored to bring order to the immigration process by dealing with the illegal alien problem and many others.

Yesterday Senator BAUCUS and I, with the cooperation of the managers, Senator SIMPSON and Senator KENNEDY, were able to delete the mandatory provision in the bill to charge entry fees to all aliens crossing our borders.

Hearings will be held later to see if certain fees can be established without causing undue delay or hardship to the millions of tourists that visit our Nation.

But perhaps the most important aspect of this legislation deals with stronger enforcement of our laws.

This bill will increase the border and other enforcement processes. We have provided for felony penalties—up to $5,000 fine or 5 years imprisonment or both—for activities involving the use, manufacture, or sale of counterfeit or altered identification documents.

The bill also creates a new criminal offense for bringing an alien to the United States knowing, or in reckless disregard of the fact that the alien had not received prior official authorization to enter our country.

We have also agreed that resources for border patrol and other enforcement activities should be increased. This will give the Immigration Service the funding authority needed to do their job.

All the new programs in this legislation will not enable our Nation to maintain a just, equitable immigration policy unless we enforce these programs. Our citizens deserve strong enforcement, and I pray we will continue to back the Immigration Service each year in the future as we authorize and appropriate the resources necessary.

Mr. President, let me again thank the committee for their efforts and urge my colleagues to support this legislation, both now and after it becomes law.

Mrs. HAWKINS. Mr. President, I rise today in support of the Immigration Reform and Control Act of 1983, and I want to compliment Senator SIMPSON, the chairman of the Senate Subcommittee on Immigration and Refugee Policy, for his unwavering leadership on this important issue. Senator SIMPSON has studied this issue for years and has made it his own. He began the project as a member of Carter's Presidential Commission, and spent countless hours in the previous Congress fine tuning and perfecting the legislation before us today. It is a major piece of work.

Mr. President, over the past several years, our Nation has lost control of its borders. We have been inundated with illegal entrants and aliens. Our laws are ignored or openly flouted. Our enforcement agencies have been unable to thwart these people. Clearly, new resources and new legislation are needed if we are going to give immigration enforcement agencies the tools they need to do the job.

No one is more aware than the people of Florida of the inadequacy of our current laws to deal with the immigration crisis. In 1980, over a period of only 6 months, over 150,000 undocumented Cubans poured onto Florida's shores. And since that time, a steady stream of Haitians and others have entered this country illegally. I receive regular reports from the Coast Guard in Miami of the interdiction of Haitian vessels filled with people lured by boat captains hoping to elude our enforcement agents and work in the United States. This is an outrageous situation that demands firm and immediate action. I support Senator SIMPSON's legislation because it is a step in the right direction. There are, however, a number of aspects of this bill that cause me concern.

First, the amnesty provisions seem a less-than-perfect solution to the problem. Amnesty appears to me a very shortsighted way of dealing with our immigration problems. I am concerned that it will work against the purpose of this bill, and actually result in increased illegal immigration. By granting amnesty, we are in effect promising that if an alien can manage to hide out until enough more illegal aliens arrive, then another amnesty will be granted. It perpetuates a vicious circle. It implies that if the United States once ignored its immigration laws and welcomed illegal aliens into its society, then it will do so again. Unfortunately, this has been the pattern in other countries that have granted amnesty in the past. I do recognize that many of the people who have been living in this country illegally for many years have developed deep and abiding roots in American communities—and have, in a sense, become Americans. For that reason I am sympathetic to allowing them to remain in the United States. But my fears are that the amnesty provision will send the wrong message to others. And result in even greater numbers of illegal aliens entering the United States.

My other concerns over this legislation center on what I believe are two glaring omissions. The first has to do with immigration emergency powers and the second with local reimbursement.

It is critical that special powers be granted to the President in times of immigration emergencies. I have spoken frequently since joining the Senate of the devastating impact that the Mariel Boatlift had on my State. Undocumented Cubans poured into Florida. Tent cities were hastily constructed under the shadow of highway overpasses. Thousands of the would-be immigrants were perfunctorily screened in an effort to distinguish legitimate refugees from criminals, the mentally ill, and other undesirables that Castro chose to be dumped on the United States.

South Florida is still recovering from the shock. The effect on crime is typical. In most cases, crime increases in proportion to increases in the population. The increases in the Dade County crime rate, however, have far outstripped the population increase. In the year following the Mariel Boatlift, Dade County's population increased by roughly 10 percent, but the increase in serious crimes rose by 23 percent. Prior to the boatlift, the crime rate in Dade County had actually decreased. I believe that this under-

scores one essential purpose of emergency powers. It is to shield the people from the impact of a sudden and massive influx of undocumented aliens.

I know that the issue of emergency immigration powers is a sensitive subject. However, I believe that the President does need additional authority in order to cope adequately with future immigration emergencies. If we do not act promptly, I believe that the 1984 elections could delay rational discussion and adoption of a reasonable solution to the problem.

Providing immigration emergency powers to the President would not reverse our country's policy of accepting persecuted people from all over the world. I believe that the United States should continue to welcome those who fear death or imprisonment because of their political or religious views. Florida had been a haven for Cubans and other Latin Americans who have fled tyranny and persecution. I am proud of that. Florida has become home to brave refugees, and they in turn have made significant contributions to the prosperity and culture of our State. I am committed to strong enforcement of effective immigration laws, but we must continue to welcome those who are eligible to enter our country as political asylees.

There is another issue that is crucial to protecting our communities from the affects of illegal immigration. It is the issue of reimbursing State and local governments for the cost of the amnesty provision contained in this bill. It is estimated that amnesty will cost literally billions of dollars. Under the details of the amnesty proposal, much of the cost of this provision will fall on local taxpayers. I believe that this is arbitrary and unfair. As a result, I support efforts to require the Federal Government to bear the welfare costs of granting amnesty. I believe that if the Federal Government makes a law that will result in tremendous safety net costs, then it is only fair for the Federal Government to bear those costs.

In addition, I support requiring that the Federal Government pick up the cost of detaining illegal aliens. In Dade County alone, the annual criminal justice costs of detaining illegal aliens is in excess of $6 million. This is a staggering burden on a county government.

Foreign policy is the sole responsibility of the Federal Government. State and local governments do not have access to the necessary diplomatic tools or military hardware to conduct affairs of state—nor should they. This means that when the Federal Government fails to prevent huge numbers of illegal aliens from entering the United States, the Federal Government must bear the responsibility for that failure. That includes financial responsibility. It is only fair to State and local governments.

I am pleased that this immigration bill again includes the much-needed expedited asylum hearings process as well as employer sanctions. Those who think that Florida is no longer the target of illegal immigrants could not be more wrong. The Immigration and Naturalization Service has estimated that as many as 2,000 persons are smuggled into south Florida each month. Haitians, Dominicans, Colombians, and even Bangladeshi continue to land in large numbers on Florida's shores. Mexicans are also being smuggled in through north Florida. Clearly, there is a need to determine swiftly which aliens are eligible to remain in the United States and which are not. Then, those who are not, should be returned to their point of origin as soon as possible.

Employer sanctions are also a critical part of this legislation, especially if amnesty is granted. As I mentioned earlier, I have serious reservations about the amnesty program. But if there must be an amnesty program, then there must also be employer sanctions. Employer sanctions are the only effective means of eliminating the incentive that brings so many illegal aliens to our shores, relatively high paying jobs. Unless this incentive is removed illegal aliens and professional smugglers will continued to take advantage of our extensive borders and shorelines, not to mention our generosity, to violate our immigration laws.

Mr. President, I commend Senator SIMPSON again and compliment his able staff for such impressive efforts and to reiterate my support of the legislation. Any good bill can be perfected. But I do not want to make the perfect the enemy of the good. So, in the final analysis, we must not delay passage of this vital bill.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. SIMPSON. I yield 1 minute to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I wish to take a moment to identify the budget impacts of S. 529, the Immigration Reform and Control Act of 1983.

First of all I should like to commend the committee chairman and the committee and subcommittee members for their work in this piece of legislation. The Nation's immigration problems are in urgent need of attention and this legislation represents a truly genuine effort to solve the current problems. However, this bill is not without costs.

Let me just outline the costs of this bill as estimated by the Congressional Budget Office (CBO). First, the bill directly authorizes to be appropriated $10 million for recruiting domestic temporary workers and $200 million for all other provisions of the bill. Second, although the bill does not directly authorize additional appropriations, CBO estimates S. 529 will require further appropriations of $40 million in fiscal year 1984. In addition, CBO estimates that approximately $700 million in fiscal year 1986 will be necessary to fund the secure identification system required by the bill.

Third, CBO estimates that the legalization of unauthorized aliens which makes them eligible to receive AFDC, SSI, medicaid, and food stamp benefits will add $50 million in outlays to the cost of those entitlement programs in fiscal year 1984, growing to $275 million in fiscal year 1988.

Fourth, the bill authorizes such sums as may be necessary for fiscal year 1984 and each of the next 5 years to provide block grant assistance to States. CBO estimates the block grant program will cost $30 million in fiscal year 1984, rising to $380 million in fiscal year 1988, or $1.5 billion over 5 years.

Fifth, CBO estimates that the bill indirectly authorizes $35 million in fiscal year 1983. These costs would fall on the Immigration and Naturalization Service and the Department of Labor as part of the startup cost of the bill. The chairman of the subcommittee has assured me that this estimate is highly unlikely and there is little possibility of a draw on the budget this fiscal year.

Finally, the bill is expected to generate $190 million in revenues in fiscal year 1984 from the collection of fees from aliens using U.S. border and immigration facilities. Total revenues are expected to be $380 million between fiscal year 1984 and fiscal year 1988.

Mr. President, the total cost to the Federal Government resulting from the enactment of S. 259 will be $0.3 billion in fiscal year 1984, rising to $1.3 billion in fiscal year 1987, or $4.5 billion over 5 years. However, this estimate is very uncertain. Very little is known about either the numbers of unauthorized aliens in the United States or their characteristics.

The first concurrent resolution on the budget for fiscal year 1984 assumes $1.2 billion in funding increases over the next 5 years to accommodate the passage of S. 529. However, an additional $1.5 billion has been provided for general Federal law enforcement programs. It is up to the Appropriations Committee to allocate this money.

This leaves a substantial difference between the costs of the bill and the amounts assumed in the fiscal year 1984 first concurrent resolution on the budget. In reality, this bill is a budget buster. If this bill is enacted the pend-

ing budget resolution will have to be revised upward to reflect the additional costs. I intend to vote against the bill both for budgetary reasons and for other policy reasons which I am outlining in a separate statement.

Mr. President, I ask unanimous consent that a copy of the CBO cost estimate on S. 529 and a letter from the chairman of the Immigration Subcommittee be made part of the record immediately following my statement.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., April 21, 1983.

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

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 529, the Immigration Reform and Control Act of 1983, as ordered reported by the Senate Committee on the Judiciary, April 19, 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 529.

2. Bill title: Immigration Reform and Control Act of 1983.

3. Bill status: As ordered reported by the Senate Committee on the Judiciary, April 19, 1983.

4. Bill purpose: S. 529 makes some major revisions and reforms to the Immigration and Nationality Act. Title I focuses on the control of illegal immigration. Part A establishes new guidelines for the employment of immigrants, and directs the President to implement a secure system to determine employment eligibility in the United States within three years of the date of enactment. Part B expresses the intent of Congress to increase the level of border patrol and other enforcement activities, makes it unlawful to transport any unauthorized alien into the United States, and allows the Attorney General to impose fees on aliens which reflect the cost of their use of the border facilities. Part C establishes a United States Immigration Board and an immigration law judge system to hear and decide cases involving alien exclusion, deportation, suspension of deportation, asylum, and civil penalties. Part C also amends the existing law governing alien asylum in the United States. Part D changes the law concerning adjustment of nonimmigrants to immigrant status, while part E deals with deportation proceedings.

Title II reforms existing law regarding legal immigration. Part A establishes new numerical limitations and performance guidelines, revises the Department of Labor's labor certification system, and amends the immigration laws regarding G-4 special immigrants. Part B amends those provisions of the Immigration Act relating to nonimmigrant workers (H-2 workers), amends the procedures for obtaining approval of H-2 petitions, and allows the Secretary of Labor to charge fees to recover the cost of processing applications for certification. The bill provides a permanent authorization of $10 million for recruiting domestic workers for temporary labor, and for monitoring the terms and conditions under which such nonimmigrants and domestic workers are employed. Part B also establishes a pilot program of visa waivers for certain visitors.

Title III of the bill relates to the legalization of unauthorized aliens already in the country. This section empowers the Attorney General to adjust, at his discretion, the status of unauthorized aliens to that of lawfully admitted aliens eligible for permanent residence if they apply, meet certain conditions, can establish that they illegally entered the United States prior to January 1, 1977, and have been residing here continuously since then. Those unauthorized aliens who have illegally entered the United States prior to January 1, 1980, including certain Cuban and Haitian entrants, may have their status adjusted to being lawfully admitted for temporary residence. Title III also empowers the Attorney General to adjust the status of aliens lawfully admitted for temporary residence to permanent residence under certain conditions. In addition, it limits federal program benefits for which the unauthorized aliens granted permanent and temporary residence are eligible and authorizes block grants to states for fiscal years 1984 through 1989 to assist in meeting the costs of providing public assistance to legalized aliens. Further, the bill requires the Attorney General to prescribe a fee of at least $100 for each application for resident status filed by an alien, to be used to cover administrative expenses associated with the applications.

Title IV requires the President and the United States Comptroller to submit a number of reports to Congressional committees within set periods of time.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987	1988
Direct spending provisions:						
Required budget authority:						
Function 550				4	27	62
Function 600		−3	−10	−18	5	20
Estimated outlays:						
Function 550				15	55	90
Function 600		50	115	145	180	185
Amounts subject to appropriation action:						
Estimated authorization level:						
Function 600		30	185	440	495	410
Function 750	35	210	155	395	875	555
Estimated outlays:						
Function 600		30	185	440	495	410
Function 750	32	190	160	370	827	590
Total spending:						
Estimated authorization level/required budget authority	35	237	330	821	1,402	1,047
Estimated outlays	32	270	460	970	1,557	1,275
Estimated revenues	15	190	45	45	50	50
Net budget impact:						
Estimated net increase to the deficit	17	80	415	925	1,507	1,225

BASIS OF ESTIMATE

The bill authorizes fiscal year 1984 appropriations of $10 million for recruiting domestic temporary workers and $200 million for all other provisions of the bill. For the purpose of this estimate, CBO assumes that the full amounts authorized or estimated to be required will be appropriated. This bill would also result in additional future federal liabilities through an extension of an existing entitlement and would require subsequent appropriation action to provide the necessary budget authority.

The table below shows the estimated budget authority and outlays required to perform the tasks required by the bill that fall under function 750 (Administration of Justice).

ESTIMATED BUDGET IMPACT—FUNCTION 750

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987	1988
Secure identification system:						
Estimated authorization level				250	700	400
Estimated outlays				225	655	430
Other costs:						
Estimated authorization level	35	210	155	145	175	155
Estimated outlays	32	190	160	145	172	160
Total estimated authorization level	35	210	155	395	875	555
Total estimated outlays	32	190	160	370	827	590

The cost of the secure identification system is dependent on the nature of the system selected. Two of the major proposals have been offered by the Department of Labor and the Social Security Administration. Both systems would provide employers with a secure, immediate means of verifying the eligibility of all jobs applicants and would provide the government with a means of enforcing employer sanctions. The system envisioned by the Department of Labor's Employment and Training Administration would be based in the 2,600 U.S. Employment Service field offices. The Social Security Administration's system would involve reissuing new, tamper-proof social security cards to all card holders. Assuming that the Administration will take three years to implement a secure identification system, outlays for such a system would be approximately $0.2 billion in 1986, $0.7 billion in 1987, and $0.4 billion in 1988.

Based on information provided by the Immigration and Naturalization Service (INS), CBO estimates that enforcing the employer sanctions provision would require an additional 550 workyears plus first-year startup costs. This would allow the INS to investigate 10,000 employer worksites annually, to detain 16,000 individuals, and to handle any additional workload generated by worksite investigations and apprehensions. The total cost of this provision is estimated to be approximately $40 million per year, beginning in 1984. In addition, the Department of Labor will assist in enforcing employer sanctions, which will require an additional $4 million in fiscal year 1984, increasing to approximately $5 million in fiscal year 1988.

Most of the remaining costs that fall under fuction 750 result from increased INS enforcement of border control laws, the expenditures associated with processing applications for permanent and temporary residency, and the requirement that the federal government assist employers in locating domestic workers for jobs that would otherwise be performed by temporary nonimmigrant laborers (H-2 workers). The cost to the INS of increasing border patrols is estimated to be about $85 million in 1984, and $70-80 million per year thereafter. INS expenditures associated with the legalization provisions of the act would result in additional outlays of about $80 million in 1984, falling to $16 million by 1988. This decline results from the fact that residency applications will be filed only in the first and fourth years following enactment. The bill authorizes $10 million a year for locating domestic workers to perform tasks that

would otherwise be performed by temporary foreign workers.

The bill requires the Attorney General, in consultation with the Secretary of State, to impose fees on aliens entering the United States at border facilities to recover the cost of their use of the facilities. Based on information provided by the INS, CBO estimates that an average of 200 million aliens will enter the United States by land, sea, or air in each of the next five years, at a total cost to the INS of $40 million a year at 1983 prices. The INS would be able to recover this cost by imposing a fee of $0.20 per entry in 1983, with small upward adjustments in subsequent years to reflect inflation. This fee would be classified as a revenue to the federal government.

The bill also requires the Attorney General to collect a fee of at least $100 for each application submitted by an alien for permanent or temporary residency under the legalization provisions of Title III. Assuming that 1.5 million aliens choose to apply for legal residency and that the fee is $100, CBO estimates that the government would receive revenues totaling $150 million in 1984. Estimated revenues are summarized in the following table.

ESTIMATED REVENUES

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987	1988
Entry fee	15	40	45	45	50	50
Residency application fee		150				
Total revenues	15	190	45	45	50	50

Title III ("Legalization") would have a major impact on federal outlays in functions 550 and 600. First, the provisions that legalize unauthorized aliens would entitle the aliens to receive benefits after three to six years from a number of federal assistance programs. Such programs as Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Medicaid, and Food Stamps now require recipients to be citizens or permanent residents. In addition, in other programs, such as Disability Insurance (DI), many legalized aliens who would not have collected benefits would now be expected to do so. The provisions of the bill preclude aliens granted permanent resident status from receiving any program of federal financial assistance based on "financial need," Medicaid, and Food Stamps for a period of three years; aliens granted temporary resident status would be precluded from the receipt of these programs for a period of six years. Hence, increased federal outlays for these programs would not occur until fiscal year 1987.

Second, Title III provides an authorization for the appropriation of such sums as may be necessary in fiscal years 1984 through 1989 to provide block grants to states for costs of public assistance to eligible legalized aliens. Aliens granted permanent resident status are eligible for three years; aliens granted temporary resident status are eligible for six years if they are later granted permanent resident status or until they are terminated (at the end of three and one-half years).

Added program outlays as a result of legalizing unauthorized aliens under Title III of the bill are shown in the table below. These added outlays are estimated to be $80 million, $300 million, $600 million, $730 million, and $685 million in fiscal years 1984 through 1988, respectively.

ESTIMATED BUDGET IMPACT—FUNCTIONS 550 AND 600

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987	1988
AFDC (function 600):						
Required budget authority					20	35
Estimated outlays					20	35
Food stamps (function 600):						
Estimated authorization level					15	30
Estimated outlays					15	30
SSI (function 600):						
Required budget authority					10	15
Estimated outlays					10	15
Unemployment compensation (function 600):						
Required budget authority						
Estimated outlays			20	50	55	45
Disability insurance (function 600):						
Required budget authority		−3	−10	−18	−25	−30
Estimated outlays		50	95	95	95	90
Medicaid (function 550):						
Required budget authority					25	60
Estimated outlays					25	60
Medicare (function 550):						
Required budget authority				4	2	2
Estimated outlays				15	30	30
Block grants to States (function 600):						
Estimated authorization level		30	185	440	480	380
Estimated outlays		30	185	440	480	380
Subtotal, direct spending provisions:						
Required budget authority		−3	−10	−14	32	82
Estimated outlays		50	115	160	235	275
Subtotal, amounts subject to appropriation action:						
Estimated authorization level		30	185	440	495	410
Estimated outlays		30	185	440	495	410
Total, functions 550 and 600:						
Estimated authorization level/required budget authority		27	175	426	527	492
Estimated outlays		80	300	600	730	685

This estimate is very uncertain. First, it includes estimated authorization levels for the block grants to states that are large enough to cover the full estimated costs to states for assistance to the legalized aliens. Less than the full costs, however, may be appropriated. Second, very little is known about either the numbers of unauthorized aliens in the United States or their characteristics.

It has been generally accepted that there were 3 to 6 million unauthorized aliens in the United States in the late 1970's. Some have suggested that there has been a net inflow of such aliens into the United States in the last few years, raising the number of aliens above 3 to 6 million. However, recent studies by the Census Bureau of the numbers of illegal aliens counted in the 1980 Census indicate that the 3 to 6 million range may be too high. Hence, the CBO estimate uses the midpoint of the original 3 to 6 million range: 4.5 million illegal aliens. Of these aliens, it is assumed based on Immigration and Naturalization Service studies that 11 percent have resided continuously in the United States since January 1, 1977, qualifying for permanent residence, and that 23 percent have resided continuously in the United States since January 1, 1980, qualifying for temporary residence. Further, the CBO estimate assumes that 60 percent of the potentially eligible aliens would apply for legalization and be granted resident status. The resulting numbers of illegal aliens who would be granted permanent residence immediately total 300,000 and the numbers granted temporary residence total 620,000.

At the time these aliens are granted resident status, the legislation requires that they be employed. Over time, however, this group of aliens could be expected to resemble the United States population as to recipiency of income support programs. By 1987 and 1988, we have assumed that recipiency rates for AFDC, SSI, Food Stamps, and Medicaid would resemble those of the United States population for similar age, sex, ethnic origin, and income groupings.

The remaining discussion provides details for the estimates in each individual program shown in the preceding table. In AFDC, added outlays do not occur until 1987, as discussed earlier. The cost estimate assumes that 52 percent of the aliens given permanent resident status are married men and women. This percentage is based on demographic data on illegal aliens, which show about 79 percent to be adults and the majority to be young and male, and on marital rates in the United States. Of the married men and women, 4.5 percent of those not of Spanish origin and 17.0 percent of those of Spanish origin are estimated to receive AFDC. These rates of AFDC recipiency are those which currently exist in the program. Each adult recipient, and the recipient's family in some cases, is estimated to receive an average of $1,545 in federal AFDC benefits in fiscal year 1987.

As with AFDC, added Food Stamp outlays do not occur until 1987. The estimate of increased Food Stamp program costs that would result from enactment of this bill assumes that about 15 percent of aliens lawfully admitted for permanent residence participate in the program during any month. This rate of participation is about 60 percent greater than that of the general population. Aliens admitted for permanent residence are likely to have relatively low incomes and would be expected to participate in the Food Stamp program at a somewhat higher rate than the remainder of the population. The national average benefit level is estimated to be $52 per person per month during fiscal year 1988.

In SSI, added program outlays would also begin in fiscal year 1987. The CBO cost estimate is based on a recipiency rate of 0.90 percent for the aged and 0.94 percent for the blind and disabled. The recipiency rate for the aged is based on Census data which show 1.80 percent of illegal aliens to be aged, an assumed income eligibility of 100 percent, and a participation rate for the eligible of 50 percent. The recipiency rate for the blind and disabled is based on the current recipiency rate for the United States population. Annual benefits per recipient are estimated to be $1,834 for the aged and $2,924 for the disabled in fiscal year 1987.

The estimated cost of unemployment compensation outlays associated with the bill is made by applying assumed unemployment rates of 9.5 percent, 8.7 percent, 8.0 percent, 7.6 percent, and 7.1 percent for fiscal years 1984 through 1988, respectively, to the estimated adult alien population. These rates are slightly lower than those used to estimate the CBO baseline, because it is assumed that the alien population is less prone to both cyclical and frictional unemployment. According to information from the Justice Department, the bill's prohibition of aliens from receipt of federal financial assistance would not apply to unemployment benefits. It is assumed that the newly approved residents would receive a somewhat lower average weekly benefit amount than the general population because they are most likely working in relatively low-paying jobs.

In the DI program, it is assumed that only one-half of the aliens would become eligible for DI in the 1984 to 1988 period. Several factors contribute to this assumption. First, it is probable that many would not have worked for the required number of calendar quarters needed to receive benefits (20 out of the last 40). Second, others may have im-

proper Social Security numbers, while some might be presently collecting benefits. Thus, an estimated 450,000 to 500,000 aliens would qualify for DI benefits by the end of 1985. Assuming a disability incidence rate paralleling the current group of eligibles, approximately 14,000 new disabled worker recipients would begin receiving benefits by the start of fiscal year 1985. Average family benefits per recipient are estimated to be $7,100 in fiscal year 1984.

The estimate for the costs of the Medicaid program assumes that beginning in 1987 residents could qualify for the program using the same standards and regulations as the rest of the United States' population. Thus, those residents who qualify for AFDC or SSI would also be eligible for Medicaid benefits. In addition, residents who are medically needy could also receive Medicaid benefits. The estimate assumes that the ratio of categorically needy individuals to medically needy individuals is equal to the current United States ratio. The estimate also assumes that the average Medicaid benefit for these recipients would equal the United States average for AFDC and SSI recipients. The estimate for the block grants to states assumes the appropriation of funds to cover all state costs. As noted earlier, less than the full amounts may be appropriated. The cost estimate assumes that cash and medical benefits currently available at the state and local government level would be provided to the legalized aliens. For cash benefits, it is assumed that 1.3 percent of the aliens would qualify for state and local general assistance programs to persons without children. In addition, those persons eligible for AFDC and SSI, but precluded from receiving benefits by this bill, are assumed to receive general assistance (GA), except for aliens living in states like Florida with limited GA programs. Monthly GA benefits in fiscal year 1984 are estimated to be $148 per person. For medical benefits, it is assumed that the GA population would receive benefits that resemble those currently received by the GA and the medically indigent population in the United States.

In addition to the effects of legalization on federal outlays, there are potential effects on federal revenues. On the one hand, federal revenues would increase if some of the aliens who are not having income taxes withheld from their wages at present were to have taxes withheld as a result of the legislation. On the other hand, federal revenues would decrease if some of the aliens who are having income taxes withheld are entitled to tax refunds they do not claim but which they would claim if the bill were enacted. Given the uncertainties concerning characteristics of illegal aliens, and rough estimates showing the two effects above to be approximately offsetting, CBO shows no effect of the bill on federal revenues.

6. Estimated cost to State and local governments: By legalizing certain unauthorized aliens currently residing in the U.S., this bill could have sizable effects on state and local government budgets. Unauthorized aliens are not eligible for welfare programs that are partially- or fully-funded by states and localities. When legalized, these aliens would be eligible for such programs. To offset these costs, the bill would authorize for fiscal years 1984 to 1989 such sums as are necessary to provide block grants to states for programs of public assistance to eligible legalized aliens. The estimated net impact on state and local expenditures is shown in the following table.

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987	1988
AFDC, SSI, GA, medicaid					45	90
Cuban and Haitian entrants		−15	−25	−25	−25	−25
Total estimated State and local outlays		−15	−25	−25	20	65

In addition, if the provisions of the bill that provide for employer sanctions and other means of reducing the flow of unauthorized aliens into the U.S. are effective, there would be some associated savings to state and local governments. For example, there would be fewer alien children to educate. The CBO cost estimate does not include such savings, given the uncertainties concerning flows of unauthorized aliens into the U.S. and the potential effectiveness of the bill's sanction provisions.

Basis of estimate: Costs to states and localities for providing public assistance to the legalized aliens are shown only for fiscal years 1987 and 1988. For fiscal years 1984 to 1988, the bill authorizes block grants to states for public assistance costs for six years for aliens originally granted temporary resident status and for three years for aliens originally granted permanent resident status. These grants thus cover all of the legalized aliens through fiscal year 1986 and in fiscal years 1987 and 1988 all but those aliens who had permanent resident status for more than three years.

For purposes of this estimate, it was assumed that funds for the grants for states' public assistance costs during 1984-1988 would be appropriated in full. If less than the full amount was appropriated, states and localities would have added budgetary costs during these years. On the other hand, if the full amount was appropriated, states and localities might experience some budgetary savings to the extent that some of the unauthorized aliens are illegally receiving public assistance at present or to the extent that the grants cover free health care presently being provided to the aliens in public hospitals. Such potential savings are not shown in the cost estimate because of lack of information.

In fiscal years 1987 and 1988, states and localities would have added AFDC, SSI, GA, and Medicaid costs as a result of legalizing the unauthorized aliens, as shown in the table above. Beginning in 1987, the aliens in permanent resident status for more than three years would become eligible for federal public assistance programs for which they could qualify. States share in the funding of these programs. In AFDC and Medicaid, the states' matching rates are about 46 percent. In SSI, which is a fully federally-funded program, the states at their option supplement federal benefits. The state and local government cost estimate is based on the federal cost estimate described earlier, applying existing state match rates and supplement levels. In addition, for purposes of the estimate it is assumed that some of the permanent resident aliens would receive state-funded general assistance.

In fiscal years 1984-1988, states would have reduced expenditures to the extent that the block grant covers state public assistance costs for Cuban and Haitian entrants. The states' shares of such costs are presently paid for from state funds. The CBO estimate of the block grant includes $15 million in 1984 and $25 million in each year thereafter to cover public assistance costs of the Cuban and Haitian entrants, which become savings to the state and local governments.

7. Estimate comparison: No cost estimate is available from the Administration for the entire bill but one is available for the legalization provisions. These costs as estimated by the Administration are shown below.

[By fiscal year, in millions of dollars]

1983	.....
1984	225
1985	405
1986	430
1987	520
1988	665

The Administration's estimated costs are higher than CBO's for a number of reasons. First, the Administration uses an estimate of 6.25 million illegal aliens rather than CBO's assumed 4.5 million. Second, the Administration assumes that 70 percent of the aliens will apply for and be converted to permanent or temporary resident status rather than CBO's assumed 60 percent. As a result, the Administration estimates 1,667,000 legalized aliens while CBO estimates 920,000. Third, the Administration assumes higher participation rates than does CBO in several of the income support programs (primarily Food Stamps and GA).

The Administration's estimate for the legalization provisions does not include costs for unemployment compensation or Medicare, as does CBO's.

8. Previous CBO estimate: None.

9. Estimate prepared by: Janice Peskin (226-2835), Charles Essick (226-2860), Hinda Ripps Chaikind, Stephen Chaikind, Malcolm Curtis, Carmela Pena, Richard Hendrix, Kelly Lukins, John Navratil (226-2820), and Kathleen O'Connell (226-2693).

10. Estimate approved by: Robert A. Sunshine (for James L. Blum, Assistant Director for Budget Analysis).

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., May 13, 1983.

Hon. PETE DOMENICI,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DOMENICI: This is written with respect to the estimate of the 1983 budget authorization ($35 million) and outlays set forth on page 58 and following of the U.S. Senate Report of the Committee on the Judiciary on S. 529 (Report No. 98-62). This estimate is highly unlikely and there is little possibility of a draw on the budget this fiscal year.

Most sincerely,

ALAN K. SIMPSON.

Mr. DOMENICI. Mr. President, for some time now it has been clear that the American people want immigration reform. According to a Roper poll taken last summer, 91 percent of all Americans want an all-out effort to stop illegal immigration and 80 percent want legal immigration reduced.

Unlimited immigration was a need, and a glory, of the underdeveloped American past. Yet no one believes America can still support it. We all agree that something needs to be done. T. H. White aptly described America's immigration situation:

One starts with the obvious: That the United States has lost one of the cardinal attributes of sovereignty—it no longer controls its own borders. Its immigration laws

are flouted by aliens and citizens alike, as no system of laws has been flouted since prohibition. And the impending transformation of our nation, its culture, and its ethnic heritage could become one of the central debates of the politics of the 1980's.

While there is a consensus that the 1952 immigration law needs reform, history and emotion add a complicating dimension. We are all descendants of immigrants. Americans have always been of two minds about immigration, the desire to close the golden door or at least hire a doorkeeper contradicts the Statue of Liberty's proud exhortation, "give me your tired, your poor * * *." The immigration problem is a dilemma because it involves a number of very complex social, economic, and practical issues.

There are competing interests, all of them worthy. I compliment the Senator from Wyoming. His assignment was tough. He has been extremely conscientious in discharging that responsibility. The bill before us is the product of extensive study by the President's Select Commission on Immigration and Refugee Policy, the Immigration Subcommittee, and the Judiciary Committee. The bill is also the product of substantial compromise.

I recognize that the legislative process is an exercise in compromise. The more competing interests involved regarding a piece of legislation the more compromises result. Language is changed, provisions are deleted. In the case of the immigration bill, the compromises have left us with a bill that I do not think can work.

The bill calls for choking off further illegal immigration. It depends on employer sanctions and a "secure system of worker eligibility." I honestly do not see how the understaffed and beleaguered INS can enforce employer sanctions in addition to its other duties. S. 529 is another mandate without providing the necessary enforcing manpower.

The employer sanctions would have the effect of switching the policing of illegal immigration enforcement from the border to the job market. This could be a pretext for discrimination.

I do not know whether we can devise a satisfatory worker eligibility system that does not result in discrimination against Hispanics and other minorities. The existing identification documents are not adequate. The stories about "immigration kits" consisting of forged identification documents are true. You can buy a social security card for less than $5. The present system is not secure.

The bill relies on a secure system of worker identification but does not set forth the particulars. I do not feel comfortable voting for an unknown system to be devised later. I am very concerned that this bill not result in discrimination. I want to make that very clear.

Being realistic, I do not think INS can properly screen millions of applicants for amnesty. Because the bill provides for a two-tier system it would require two eligibility determinations and from practical administrative standpoint I think this system is unworkable.

Even though I support the DeConcini transition rule amendment, I am not sure the H-2 program, even as streamlined in the bill, will work for the short harvest seasons in my State and throughout the West. Our employment patterns and farming practices are different from the East. Perhaps the streamlined H-2 program is an adequate, temporary labor program on the east coast, but it will not work for the New Mexico farmers. The system they have now works well for their needs, yet the bill ignores this existing underground stream of migrant workers. It is hard to change employment habits and I think that for Congress to require a change it should offer a system that gets the job done in a timely fashion. Therefore, I feel we must propose a temporary worker program that acknowledges and meets the farmer's needs.

Properly drafted and implemented the guest worker program has the potential to be a valuable foreign policy tool as well as necessary immigration policy. I do not feel that any unilateral guest worker program is sufficient. Both Mexico and the United States must work in tandem to make the program mutually beneficial to both countries. I believe that for such a program to be effective it must be more than a tacit understanding with Mexico. I could support a guest worker program that includes a formal agreement with the Republic of Mexico. That agreement must recognize the U.S. guest worker program as making a significant contribution to Mexico's economy. The agreement would also formalize Mexico's commitment and obligation to help control the flow of illegal aliens into the United States. Both countries would be receiving a valuable benefit. I think that such a guest worker program would be good foreign policy as well as good immigration policy.

This component is missing from this bill and would be a major change in Mexico's policy. Presently, the Mexican Government does not play a role in policing the Mexico-United States border. We need to explore ways to change this policy.

Another matter that we must face with realism is that we are not going to keep the illegal aliens from coming. The issue is economic. As long as we have poverty in high proportions in the world the illegal aliens are going to come. They will come in spite of employer sanctions. They will come regardless of employee indentification systems.

A job in the United States means surviving or not surviving economically. To put the problem in perspective, consider these facts. The population of the world will pass the 6 billion mark by the year 2000; 90 percent of the babies will be born in poor, underdeveloped countries. Thousands of aliens will enter the United States if economic conditions in Latin America and elsewhere continue to worsen. The number of illegals has doubled this year because of Mexico's economic problems. An American dollar bought 45 Mexican pesos on April 1, 1982. Today a dollar buys 149 pesos. People are desperate for work and a decent life.

The issue is geographic. The United States has a 2,000 mile United States-Mexico border with only 350 border patrol officers on duty at any one time. Our neighbor, Mexico, has one of the world's fastest growing populations and, at the present time, one of the world's slowest economies. One recent estimate is that between 15 and 20 percent of Mexico's adult population has emigrated illegally and is working in the United States. Our neighbor, Mexico, has one of the highest birth rates in the world. Today, Mexico has 70 million people and based on the U.N. 1980 medium variant projection, its population will grow to 116 million by the year 2000 and 174 million by 2025. Its unemployment rate fluctuates around 50 percent. The incentive to come to the United States is obvious. The tide of job-seeking Mexicans is estimated at 1 million annually and shows no sign of ebbing.

Illegal immigration is not going to disappear because of this bill. Clearly, the problem promises to get worse in the future. Any control of the Mexican border will depend on some kind of cooperation with Mexico. This is a missing element in S. 529, but I feel it is an essential element in our immigration policy.

Hardly anything tugs at the conscience more severly than the relentless problem of illegal immigrants. The dilemma is whether this country can protect the resources of its own citizens while exercising humanity toward such a crowd of less fortunate neighbors. It is a very serious problem, however, I am highly skeptical that this bill offers an acceptable answer. For the above reasons I am voting against the bill.

Mr. SIMPSON. Mr. President, I will make my closing remarks. I believe we are at the point where closing remarks are appropriate, and I will not take but 2 or 3 minutes.

The debate has been conducted over 2½ years in the Senate. I have very much appreciated the assistance of Senator KENNEDY. There have been some situations where he and I had some serious disagreement. We made

every attempt to receive and to hear all points of view.

The important thing to be expressed is that the core, the very guts of the bill, is very much there. That is, we are here to control illegal immigration, and we do that through employer sanctions, some kind of verifier, and legalization.

We have also taken the opportunity to review legal immigration and restructure the adjudication system because the present one certainly has broken down.

I hope that we have performed the task in a way which is not discriminatory, fully conscious of the attitude and the feelings of the Hispanic community and their fears. We have provided for reports from the President and GAO, hearings on those reports, increased funding for the Equal Employment Opportunity Commission. I think it is good bill, a fair bill, not a nativist, not racist, not mean. I am proud of it, and I hope the Senate will indicate that also.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, the Senate owes a great deal to the chairman of the Immigration Subcommittee and the floor manager of this bill, the Senator from Wyoming (Mr. SIMPSON).

We are facing an extremely important public policy issue. I do not think there has been a Senator, at least in the time I have been in the Senate, who has devoted more time and developed a better understanding and command of this public policy question than the Senator from Wyoming—an issue of enormous complication that involves some of our most basic and fundamental values—reunification of families, problems with refugees, economic conditions in our country, and the major area of agricultural workers.

This has been an enormously complicated and controversial issue.

As the Senator has pointed out, there have been areas of strong difference between members of the committee and also during the course of this debate on the floor. But we have always had the complete attention as well as the understanding and the patience of the Senator from Wyoming. As one who has had the opportunity to work with him, I am grateful for this. I think I speak for all Members on our side of the aisle when I say that both the debate and consideration of amendments has been given the attention the authors felt they should have.

The issue of immigration is one that I have followed for some years. I feel that we have made some useful and important improvements in this bill as it has moved forward.

We have made some important changes in the bill which I find strengthen it. That was done in the committee and also on the floor of this Chamber.

However, when the roll is called, Mr. President, I reluctantly intend to vote no because I do believe that we have not addressed what I consider to be three critical issues in the legislation.

One is the question of employer sanctions, and giving some greater assurance to individuals who will be most affected by the implementation of those employer sanctions that the Senate and House of Representatives would be prepared to go on record after a 5-year period as to whether those employer sanctions were being used in a discriminatory way, and vote them up or down.

I believe that assurance is enormously important. It is a matter of great concern to many Americans. I know the chairman of the committee believes that there are sufficient protections in the bill now to insure that these employer sanctions will not be used in a discriminatory way. We have a respectful point of difference on this issue. But I think it is so important and fundamental, I must express my reservations.

Second, Mr. President, in accepting new enforcement and employer sanctions, we have failed to move the process of legalization up to the time when we are implementing the employer sanctions. If we are saying now that we are going on a new departure to use the employer sanctions and new enforcement tools, I think equity and fairness say that we should move the legalization cutoff up to a more reasonable period of time. Two years was the period of time that I think should have been given in order to deal with the majority of undocumented aliens in our country. Only about a third of all the undocumented aliens will be affected by the legalization program contained in this legislation. So I do not think we have come to grips with that particular issue in an effective ways.

The final concern I have is over the changes that we have made in the preference system. The preference system puts a priority on family reunification, and we have altered that process in an unfortunate way, which I feel is quite unrelated to the central issue of controlling undocumented aliens. I find that troublesome.

Mr. President, America's immigrant tradition is one of our greatest national assets and one of the greatest strengths of the American character. And I worry that, in too many provisions, this bill compromises this heritage in unacceptable ways.

There is still time for these serious defects to be removed. I look forward to working with the House of Representatives as it moves a companion bill forward, and to resolving these critical issues in the House-Senate conference. Congress has a responsibility to do a better and fairer job if immigration reform is to be worthy of the name.

In conclusion, Mr. President, I want to stress again that I have enjoyed the opportunity to work with the chairman of the Immigration Subcommittee. I respect the positions he has taken. We do have a difference on several matters, but I do want to give him the assurance that as we go to the conference I will continue to work with him in every possible way to strengthen this legislation. Historically, in the final result, he may be correct or I may be, but I am not at this time prepared to vote for this legislation for these reasons.

I, too, want to join in what Senator BIDEN said in commending the staffs of all the Members who have been interested in this matter.

I know that Senator SIMPSON will want to mention the great work that has been done by the chief counsel of the subcommittee, Dick Day, and the other members of his staff. They have served not just the majority; they have been equally accessible to those of us in the minority and those of us who have had differing views.

I express my great appreciation to them. This is complex and detailed legislation, and they have been tireless in their work and in their help.

I also thank my own staff. Jerry Tinker has been a member of the Judiciary Committee staff for some 13 years and has worked in the areas of refugees and immigration reform and has been of great help and assistance to me.

Mr. THURMOND. Mr. President, I support this immigration bill. It is legislation which is essential to control illegal aliens in this country. I hope the Senate will see fit to pass it promptly, so that it can be sent to the House for consideration. We passed a similar bill last year, but it got to the House rather late, and no action was taken by the House.

I take this opportunity to especially commend Senator AL SIMPSON for the magnificent way in which he has handled this bill on the floor of the Senate. He handled it last year and this year in a very skillful and professional manner, and he deserves the commendation of the entire Senate. I cannot recall a piece of legislation in recent years that has been handled in a more professional way than this has been handled by Senator SIMPSON.

I also commend another member of the Judiciary Committee, Senator KENNEDY, for his interest in this legislation. Although his philosophy is somewhat different from mine in some respects, as mine is more in accord with that of Senator SIMPSON, Senator KENNEDY deserves to be commended

for bringing out the different angles of this legislation. I feel that he has made a contribution to this cause.

I also should like to especially commend Dick Day, the counsel for the Subcommittee on Immigration. He has done a fine job. Jerry Tinker, working with Senator KENNEDY, has also done a fine job, and both of them deserve to be commended.

I hope the Senate will pass this measure promptly, by a large majority, to indicate to the House that it is vital and important. It is essential that we pass it and do it as quickly as we can.

AMENDMENT NO 1283

Mr. SIMPSON. Mr. President, I ask unanimous consent that various technical amendments be in order, and I ask unanimous consent that they be agreed to.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Wyoming (Mr. SIMPSON) proposes technical amendments numbered 1283.

The amendments are as follows:

(Purpose: To permit visa waiver for countries with average refusal rate of 2 percent)

On page 181, line 22 delete all words after the word "unless" through page 183, line 3 and insert in lieu thereof the following:

"(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(ii) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(C) For each fiscal year (within the pilot program period) after the period specified in subparagraph (B)—

"(i) in the case of a country which was a pilot country in the previous fiscal year, a country may not be designated as a pilot country unless the sum of—

"(I) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

"(II) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2.0 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year, or

"(ii) in the case of another country, the country may not be designated as a pilot country unless—

"(I) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(II) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year."

On page 180, line 2 insert the word "health" immediately after the word "welfare".

(Purpose: Technical amendment to reflect the correct section in "Migrant and Seasonal Agricultural Worker Protection Act")

On Page 115, line 20, delete "1856(b)" and insert in lieu thereof "1851(b)".

(Purpose: Permit Attorney General to acquire temporary space for legalization program)

Page 192, after line 18, insert the following paragraph:

"(4) Notwithstanding the Federal Property and Administrative Services Act of 1949, 63 U.S.C. 377, as amended, the Attorney General is hereby authorized to expend from the appropriation provided for the administration and enforcement of the act, such amounts as may be necessary for the leasing or acquisition of real property in the fulfillment of this section. This authority shall end two years from enactment."

On page 192, line 19, delete "(4)" and insert "(5)" in lieu thereof.

(Purpose: Permit Attorney General to set documentation when none is available for identification)

On page 106, line 11 delete everything after the word "or" through the word "subclause" in line 14 and insert in lieu thereof "where no such documentation is available."

(Purpose: Technical amendments designed to conform sections of the existing law to changes being made in the bill)

On page 162, line 8 insert "or (4)" immediately after "(3)".

On page 162, line 13 insert "or 203(b)(4)" immediately after "203(b)(2)".

On page 162, line 16 insert "or (4)" immediately after "(2)".

(Purpose: To provide for additional reports on legalized aliens)

On page 210, line 22 immediately after the comma, insert the following: "compiled and validated in accordance with sound statistical practice,"

On page 211 delete lines 6 and 7 and insert in lieu thereof the following: "The initial report shall be submitted not later than two years after the date of the enactment of the Act and three additional reports be submitted every two years thereafter."

(Purpose: To clarify language with respect to student adjustment of status)

Page 178, beginning on line 2, strike out "or, with respect" and all that follows through "him" on line 7.

Page 178, line 17, before the period insert the following: ", except that such amendments shall not apply to aliens who as of the date of the enactment of this Act meet the qualifications for a waiver of the two-year foreign residence requirement under paragraph (A) of section 212(e) of the Immigration and Nationality Act (as amended by section (a) of this section)".

On page 111, on line 16, delete "(2) Whenever the Attorney General" through the end of the page and insert in lieu thereof:

"(2) Whenever the Attorney General (i) has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of subsection (a); or (ii) within an 18 month period issues to a person or entity a second notice of a violation of subsection (a) and the two notices charge violations involving a total of five or more individuals, the Attorney General may bring a civil action in the appropriate district court of the United States requesting such equitable relief, including a temporary or permanent injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary. In the case of a person or entity composed of distinct physically separate subdivisions each of which provides separately for its own hiring, recruiting or referral for employment, each such subdivision shall be considered a separate person or entity if such hiring, recruiting or referral for employment is not under the direct control of another subdivision or any entity or office exercising final management authority over such subdivisions."

(Purpose: To provide for a report on the agricultural labor transition program)

On page 209, line 5 immediately before the word "temporary" insert the following: "agricultural labor transition program and the".

On page 210 delete lines three and four and insert in lieu thereof the following:

"The report on the temporary worker program shall be submitted not later than two years after the date of the enactment of this Act and the report on the agricultural labor transition program each year for three years beginning a year after the date of the enactment of the Act."

The PRESIDING OFFICER. Without objection, the amendments are agreed to.

Mr. SIMPSON. Mr. President, I ask for the yeas and nays on final passage.

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

The yeas and nays were ordered.

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

Mr. SIMPSON. I yield.

Mr. WILSON. I thank the Senator from Wyoming.

Mr. President, along with his other admirers, I join in a deserved tribute to the Senator from Wyoming. He has brought this very difficult legislation to the floor with enormous skill, with magnificent legislative craftsmanship. He has done so with good humor, with remarkable courtesy.

Having said that, I am going to vote "no" on this measure, with great reluctance. I urge my colleagues to recognize that we will not dispose, with this legislation, of the difficult problem of illegal immigration. That is because it is based on a false premise. It is based upon employer sanctions and the false assumption that illegal immigration will be stopped simply because those who otherwise would wish to

come to this country will not do so if they feel they cannot gain employment here.

Mr. President, the evidence is all to the contrary. In our own Nation, we have seen migration from the Frost Belt to the Sun Belt, in great numbers, by people who did not think they were going to find employment in their new homes. Yet, they came, simply because they thought they would find a better quality of life.

The same is true with respect to those who will cross the border from the Republic of Mexico into the United States.

Mr. President, the pending question is the final passage of S. 529, the Immigration Reform and Control Act, sponsored by Senator SIMPSON and Congressman MAZZOLI. This legislation has attracted deserved attention. It is certainly one of the most important bills the Senate will consider in this session.

Illegal immigration is a problem of massive and increasing dimensions. It is enormously complex. It is singularly unpleasant in many of its aspects.

That is why the Congress historically has dealt with this subject with understandable and obvious reluctance and with long intervals separating efforts to do so.

And that is why his colleagues have turned to the Senator from Wyoming with completely understandable admiration and gratitude for the leadership with which he has attacked this difficult and unpleasant subject. It is the hope of many in this Chamber who voted for his legislation last fall and who will vote for it again this afternoon, that the Simpson-Mazzoli legislation will for some years to come dispose of the many thorny and unsettling problems involved in illegal immigration of the tidal dimensions which the United States has been encountering. I devoutly wish that they were right in that hope. But I am convinced that their hope is a fond hope, because this legislation will not dispose of those problems. Instead, they will shortly be back before us, having grown larger and more acute in the interval.

I am convinced that this legislation is almost doomed to fail in its express intention of staunching the massive flow of illegal immigrants in the United States. It will fail because the device relied upon to staunch the flow of illegal immigrants into the country is based upon a false assumption and, therefore, will not work.

The Simpson-Mazzoli Act seeks to stop illegal immigration by denying to illegal immigrants the opportunity for employment in the United States. The bill would do so by imposing criminal penalties and by fining employers who knowingly hire illegal immigrants. These penalties, or employer sanctions as they are called, are the linchpin of this legislation. The fundamental premise of the bill is that employers, if threatened with employer sanctions, will not knowingly hire illegal immigrants, and that illegal immigrants, knowing that they will not be hired, will therefore, no longer cross illegally into the United States.

The failure in this logic is that it assumes that illegal immigrants will not come illegally without the certain prospect of employment here. That simply is not true. Rather, illegal immigrants will continue to come to the United States in growing numbers—even without the prospect of employment here—for the same reason that hundreds of thousands of U.S. citizens have legally migrated to the high growth areas of the American Sun Belt even when Sun Belt communities were suffering higher than national unemployment. Econometric studies quite specifically found in the early 1970's that almost 60 percent of those migrating to southern California during the period measured came even though they did not expect to find employment in their new places of residence. They came instead because they expected that life there would be of a higher quality than that in the places they were leaving, even should they find themselves continuing to be jobless in their new location. And as they came and continue to come for precisely that reason from other parts of the United States, so do residents of Mexico come to the United States in far greater numbers, seeking a better quality of life even without the prospect of employment.

This finding is entirely consistent, Mr. President, with the finding by the General Accounting Office that in the approximately 20 foreign nations and 11 American States that have sought to impose employer sanctions, there has been almost a uniform failure of such sanctions to effectively deter illegal immigration.

And what evidence is offered by the proponents of this legislation to demonstrate that employer sanctions will deter illegal immigration? They first dismiss the study of the General Accounting Office, saying that employer sanctions failed in those 20 States included because they were not enforced. The proponents argue that where they have been enforced, employer sanctions have worked.

Where do they work? Where are they enforced? The proponents cite France and West Germany. At the very least, their optimism is premature. The legislation which they contend is being enforced is brand new and did not take effect until after the first of this year. There simply has not yet been sufficient experience upon which to base a meaningful evaluation.

Where else have employer sanctions worked?

The proponents cite Hong Kong. Two factors so clearly distinguish the Hong Kong experience from anything we can reasonably expect as to make comparison highly suspect if not valueless.

First, Hong Kong is an island, a relatively small island. Hong Kong authorities do not face anything remotely like the challenge we face as to how to police an 1,800-mile-long land border. Second, Hong Kong has devoted far greater resources proportionately to policing its borders than the United States has devoted or can. Specifically, Hong Kong police have checked the identification documents of three quarters of a million people in a 4-month period; have inspected employee records in 40,000 workplaces; have devoted 1,000 members of the army and police and another 600 marine police officers to continual patrol of the island's borders and surrounding waters. Finding those measures insufficient, Hong Kong authorities have announced plans to reregister all residents and to issue new identification cards at a cost of $60 million.

This is the success story upon which proponents of employer sanctions rely. I respectfully suggest that were the United States to proportionately replicate Hong Kong's exertions, we would risk imposing not just employer sanctions but the atmosphere of a police state of unbearable costs both in money and in increased tensions.

And even were the United States to engage in such unwise exertions, it is by no means clear they would be successful.

I will not repeat what so many of my colleagues and I have already have expressed with respect to the discrimination that we fear will result from employer sanctions, other than to say that I believe the small business community in the border States and elsewhere who say that they simply will not submit to the risk of penalty by hiring someone who may be an illegal immigrant. The bitter irony of this legislation is that in the name of protecting American jobs, it will cause defensive discrimination against American citizens who look or sound foreign by small businessmen and women who feel they cannot afford having to defend against Federal prosecution. This is especially true outside agricultural areas where urban employers will have the choice between American citizens who look and sound foreign and those who do not.

In addition to the burdens and perils which employer sanctions entail for Hispanic Americans and other U.S. citizens who look or sound foreign, for small business employers, and for growers and consumers of American produce, especially perishable commodities, employer sanctions simply cannot be expected to stop the massive

illegal immigration across America's 1,800-mile-long land border with the Republic of Mexico.

Well, then, ask the proponents of the employer sanctions, what do you propose instead? It is not just a fair question. It is the inescapable question. And the answer lies first in recognizing the disparate conditions of economic opportunity which exist on the two sides of the United States-Mexico border, and second in addressing the differences in condition. Admitting that it is far easier stated than accomplished, the United States must make an offer which Mexico cannot refuse—in exchange for a serious effort by Mexican officials to restrain illegal entry into the United States on the Mexican side of the border. It is in the United States interest to improve the economic condition and strength of the Republic of Mexico. The costs of doing so will not begin to equal the costs of our failing to do so. And by failing to address the economic conditions and qualities of life in Mexico, we fail to significantly address the economic and political stability of our neighbor or the subject of illegal immigration from Mexico into the United States.

That approach, Mr. President does not involve a quick or simple solution. It must be supplemented by other measures. But it does promise a real solution rather than the illusion of one.

With the greatest admiration and respect for the good faith, good humor, the dedication, and magnificent legislative craftsmanship that has been offered by my good friend, the Senator from Wyoming, I am compelled reluctantly to observe that this legislation will not achieve its purposes. Once again, the Congress of the United States, in passing it, will have legislated good intentions that do not solve real problems. We cannot long afford to do that, Mr. President. We have not disposed of the problem of illegal immigration. We must do so very soon.

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

Mr. KENNEDY. I yield.

Mr. HUDDLESTON. Mr. President, I should like to express my support for the immigration control and reform bill, S. 529. I believe that this is one of the most important pieces of legislation that will be brought before this Congress, and it is imperative that we act on it. Without this legislation, the United States will continue to experience an uncontrolled migration across our borders that is not in our best interest.

Since 1975, I have been urging Congress to pass immigration control legislation that would maintain our historic generosity while establishing enforceable limits. In 1981, I introduced a comprehensive immigration control bill, S. 776, which would have accomplished this goal. Many of the concepts and solutions in that bill found their way into S. 2222, which the Senate passed overwhelmingly last year. Although S. 2222 died in the House, it is now back before us in the form of S. 529, which we will vote on today.

The members of the Immigration Subcommittee and its distinguished chairman, Senator SIMPSON, are to be commended for the time and effort they have put into producing this workable piece of legislation. The chairman is deserving of special praise. Without his leadership and persistence, I do not believe that we would be this close to success on an immigration control bill. Even though we differ on some of the solutions, I believe he has created a bill which is both fair and effective. The American people owe a great debt of gratitude to Senator SIMPSON for bringing to bear his determination and wisdom on this crucial issue.

The most important feature of this bill is its solution to the illegal alien problem. At present, there are at least 10 million illegal aliens in the United States, and that number is steadily increasing. At this time, there is, for all practical purposes, no border between Mexico and the United States. Massive numbers of people illegally cross this border daily, and as foreign political and economic problems increase, so too, do the numbers of illegals entering the United States.

Most of these people come here for one thing—jobs. And, they have found the jobs in almost every industry we have. At one time we could have accommodated this huge pool of labor, but that day has passed, and it will not come again. The United States is now faced with massive large scale unemployment due to our changing economic structure, and the arrival of massive numbers of illegal alien workers is intensifying the problem. A few years ago, full employment in this country meant an unemployment rate of 3 to 4 percent. The President's new economic report, issued a few months ago, now defines full employment at a level of 6 to 7 percent unemployment. In other words, we are told that we must accept 3 million more unemployed Americans each year as normal. However, I do not accept this as "normal" especially when we can reduce the level of unemployment by reducing illegal immigration. It is a question of whom we are more concerned about, U.S. workers or foreign workers.

The bill makes other needed changes which will create a more effective immigration system. However, there is one particular change which I believe does not go far enough. S. 529 creates a partial ceiling for general immigrants, but I believe it should create a total ceiling. We have learned from experience that many more immigrants want to come into this country than we can reasonably be expected to accept. We have also learned from experience that there are many special interest groups who are actively working to secure admission of particular immigrants whom they have a special concern about. What this produces is a constant demand for unlimited admissions that may have no relationship to the best interests of the Nation. In other words, our system is one which determines the demand and then adjusts the supply of visas to accomodate that demand. A system which would be more logical and more fair is one which would establish a generous, but total, immigration ceiling based on the Nation's best interest, and then distributing visas in a way which takes care of the most deserving first.

As long as we have an open-ended immigration system that does not set a comprehensive ceiling, we will never have complete control over immigration. Instead, the system will continue to be manipulated by special interests. Nor will we have a fair system because only those groups that have the most political clout will be taken care of, while others who may be more deserving are ignored.

I urge my colleagues to support S. 529 without weakening amendments.

KENNEDY AMENDMENT NO. 1210, AS MODIFIED

Mr. SIMPSON. Mr. President, I ask unanimous consent that the technical amendment on page 3, line 6, of the Kennedy adjudication amendment be made by the Secretary of the Senate in the engrossment of the bill.

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

The technical amendment is as follows:

(E) by striking out "the Service" in paragraph (3) and inserting in lieu thereof "In case of judicial review of an order of deportation, the Service"; and

(F) by inserting "exclusion or" before "deportation" in paragraph (4);

● Mr. HART. Mr. President, for the second time in less than a year, the Senate has debated legislation that seeks to reform this country's immigration policies. Undoubtedly, we all have felt the heat of public opinion. For every major poll conducted during the last few years has confirmed that a substantial majority of the American people support immigration reform. And with strong justification. Our immigration laws have not kept pace with a changing world. Consequently, we owe a debt of gratitude to my good friends, the distinguished Senators from Wyoming (Mr. SIMPSON) and Massachusetts (Mr. KENNEDY) for the insights they have brought to this debate and their efforts in addressing this very difficult issue.

Historically, the Congress has attempted to review and reform our im-

migration laws sporadically, and often piecemeal. Mostly, it has avoided the issue altogether. Yet, for the first time in perhaps three decades, we have before us a bill—the Immigration Reform and Control Act of 1983 (S. 529)—that will radically alter U.S. immigration policy.

Mr. President, today the Senate can only vote up or down on the bill before it. But I fear that many of those who will support this bill will do so with unrealistic expectations. If this body passes S. 529 with the hope that it will solve all the immigration problems facing this country, so that we can walk away and never worry about them again, we will be sadly disappointed. For this bill addresses on a short-term basis complex problems that require long-term solutions.

We cannot treat immigration policy as solely a domestic issue. For immigration into the United States—both lawful and unlawful—is the product of more than our domestic policies. It stems from many external forces, some of which we can control more effectively than others. And all of which lie beyond the scope of this bill.

Traditionally, the United States has addressed the problem of unlawful immigration with conventional approaches—screening and preventing the entry of unauthorized persons at our borders. Few, if any, would suggest this approach has been entirely successful. This bill, while it enhances our enforcement efforts, also adopts a new policy: Reducing the incentives for persons to enter this country unlawfully. It seeks to remove the most attractive incentive—available jobs—by imposing fines upon employers who hire unauthorized aliens. Although many of us may question whether this particular approach will work, this bill for the first time recognizes we could better address the problem of unlawful immigration not just by more effective patroling of our borders but also by removing the underlying incentives.

But removing the domestic incentives for unlawful immigration will only carry us so far. We must also address the foreign incentives that cause persons to leave their homes and unlawfully enter into the United States. Clearly, so long as the quality of life here outweighs the hazards of the journey and the misery and injustice of life in their native homelands, persons will continue to come into this country, with or without proper documentation. And with every human rights violation, every collapse of a foreign government, every installment of a radical regime, every increase in the rate of inflation or unemployment in a neighboring country, the pressure on our borders and our immigration policies mounts.

Mr. President, these foreign incentives are as much a driving force behind migration flows as the domestic incentive of job opportunities. Yet, we have heard virtually no discussion of these other factors. Thus, as the Senator from Massachusetts so aptly noted, we have considered this bill as if refugee and immigration flows occur only within our borders. We have considered the immigration issue as if it were in a vacuum.

One need only look at current events in Latin America and the Caribbean—the part of the world that most directly contributes to unlawful immigration into this country—to understand why we must take our consideration of immigration out of this vacuum and place it in its proper, global context.

Mr. President, I particularly fear this body has not adequately taken into account the relationship between our immigration problems and the problems facing Mexico. While we debate whether to adopt these reforms, Mexico is suffering from its greatest economic crisis in 50 years. Consider that in Mexico:

Over half the work force is unemployed.

Inflation has jumped in 1 year from 25 percent to almost 100 percent.

The population exceeds 71 million, with an annual growth rate of 3 percent.

Less than 10 percent of the population controls 50 percent of the wealth.

The combined public and private debt exceeds $90 billion.

Unquestionably, Mexico finds itself at a critical crossroads. The Mexican Government faces the greatest economic challenges of its history. It is not my intention today to place the blame for this problem. The slump in oil prices, actions of international bankers, and the dealings of Mexican bankers, businessmen, and politicians all have contributed one way or another to Mexico's economic tragedy.

Let me state the obvious implications of this crisis. In a land already characterized by bleak economic prospects, skyrocketing inflation and unemployment will force Mexico's ambitious and capable workers to look for work where they have always done so—in the United States.

Absent an impenetrable wall, nothing we can do domestically will completely discourage or prevent this growing pressure for migration. The provisions of this bill do nothing to alleviate this flood at its source.

The Haitian refugees detained in U.S. camps offer a vivid example. These people cannot possibly think they have entered the golden door of economic and social opportunity, yet they continue to cross dangerous open seas to reach our shores. What causes this continuous flow of refugees which brings with it so much pain and suffering? It is clear that they prefer even the meager existence offered in these camps to a life where the government systematically denies social and economic opportunity.

These Haitian refugees continue to come to America because in their country:

The national per capita income is $260, the lowest in the Western Hemisphere;

Half the national wealth is in the hands of 5 percent of the population;

The government spends only $1 per person annually on education, while spending $18 per person annually on internal security;

Repression has been a sad fact of life since the Duvalier family began its brutal tradition in 1957.

As with Mexico, there is a direct link between the problem of unlawful immigration into the United States and the economic and political situation in Haiti. Should this body decide to focus on the equally important foreign causes of immigration, it must begin by realizing our tacit support of the corruption and repression of the Duvalier regime in Haiti means the continued migration of the "boat people."

Finally, Mr. President, the most glaring example of the link between this country's immigration and foreign policies is the violent situation in El Salvador. I find a sad irony in this country's involvement in El Salvador, on the one hand, and the omission in this debate on immigration policy of any consideration of the foreign forces causing migration and refugee flow. Clearly, the migration of Salvadoran refugees is an extension of U.S. Central American policy.

According to U.S. Ambassador Hinton, since 1980, over 34,000 people have been killed in El Salvador as a direct result of the civil war. This violence has decimated the population of that country and created a nation of refugees. Many Salvadorans flee their country with legitimate fear of persecution, and perhaps even more have been driven away by the random violence and destruction. The combined effect is staggering.

An estimated 500,000 Salvadorans are currently living in the United States (lawfully and unlawfully) as refugees of their war-torn country.

Another estimated 250,000 are living in camps on church grounds in El Salvador.

An additional 350,000 refugees are thought to be harbored in neighboring Central American countries.

Approximately one-fifth of the entire Salvadoran population lives as displaced refugees.

It should hardly surprise anyone, then, that last year alone, over 18,000 Salvadorans asked for asylum in the United States.

Mr. President, while this is not the place for an in-depth analysis of the history of our Central American policy, I want to make a number of

points that I consider particularly relevant to any discussion of our immigration policy.

First, along with the traditional ties that link Central America with the United States—trade, security, and humanitarian concerns—we find an additional link in the direct effect this region has on our immigration policies. Any comprehensive discussion of the immigration issue must recognize that more than any other region of the world, our Central American neighbors play a primary role in supporting our efforts to control the flow of immigration to the United States. And only with their cooperation and assistance will our efforts succeed.

Second, our past policies in Central America have been severely flawed. We must correct them if we hope to ease the pressures of migration and refugee flow from this region. Quite simply, this country's Central American policy has lacked imagination, commitment, and constancy. In the past, our efforts have been marked by sporadic attempts to maintain the status quo, with little regard for the implication of that policy on human rights and freedoms. Following these attempts to introduce stability into the region, we have, by and large, neglected any long-term effort to promote economic development and social justice in Central America.

Third, the far-reaching effects of this narrowly conceived Central American policy stretch far beyond the immigration issue. They also have helped to create and perpetuate an ironically perverse impression of the United States in the eyes of the people of Central America. With the exception of Costa Rica, which even now must keep the United States at arm's length to avoid criticism from its neighbors, the popular image of the United States in Central America is that of an insensitive giant enforcing its will upon its southern neighbors.

It is clear from the growing national debate on our Central American policy that this region is of key strategic interest to the United States. But it is also clear, that military approaches alone cannot succeed. Without support for democratic institutions, social justice, and economic development, all of our security assistance to that region will bear little fruit.

The problems in this region are not solely the product of economic and political cycles. They also result from structural flaws running to the very core of Central American society. It is tragic that our Government's current emissaries to Central America are guns, helicopters, and other military instruments. How many of these people associate the United States with medical supplies, teachers, and tractors? The principles for which this country stand—equality, opposition to oppression, social justice, human rights, and economic opportunity—are not the ones that distinguish us in Central America.

Finally, this country must make a commitment to the long-term health and prosperity of Central America. Everyone in this body recognizes our security interests in this region. I call upon this body to formulate policies which reflect this strategic importance as well as traditional American values.

Mr. President, we have made such a commitment before. Over 20 years ago, the United States embarked on an Alliance for Progress. At the time of its enactment, the differences between life in the United States and life in Latin America were stark. With a per capita GNP one-ninth our own, life expectancy less than two-thirds of our own, infant mortality nearly four times our own, over half the people illiterate, soaring unemployment and inflation, and more than half the wealth owned by 2 percent of the population, this country had to decide not so much whether to act, but simply where to begin.

It is difficult to point to the exact reasons why this noble plan embodied by the Alliance for Progress did not achieve the sweeping successes it promised. Although grounded in good intentions and humanitarian zeal, this policy suffered from a lack of long-term vision and commitment to the development of Latin America.

Our own failures then should teach us today how to fashion more realistic and feasible policies for assisting in the development of Central America. Land reform in the Alliance for Progress was not widespread. Population growth more than paced gains in welfare. And probably most importantly, we learned that the United States cannot simply write a check for development and leave the region to foster its own growth. We learned that using the bulk of our economic assistance to finance another country's trade deficit is unwise. Instead, we should target our foreign assistance to specific income-yielding projects and their attendant support services. Unfortunately, development does not occur overnight. It requires the developing country and the United States to look into the future and maintain our commitments.

Several of my colleagues, as well as many other policy makers, have called for the enactment of a developmental assistance plan for Central America on the scale of a Marshall plan. I have long felt that this idea has strong merit and I am glad there is a growing consensus favoring such an effort.

A plan for developing Central America that is equal in scale and vision to the Marshall plan is especially timely, given the current state of affairs in this region. I support this measure and will work to see that, along with economic development, we foster in Central America the traditional American values of human rights and freedoms. The entire Western Hemisphere will profit from the stability such a plan would provide.●

● Mr. LEVIN. I cast my vote in favor of S. 529, the Immigration Reform and Control Act, despite several reservations. The bill improves several of the deficiencies in the legislation the Senate passed last year.

For example, Senator HATFIELD's amendment, which was adopted by the Senate, assures that the Congress will consider any new identifications system proposed by the President. I think this is a major improvement in the bill.

Also, the judicial review provisions assuring the rights of those who seek asylum in our country is a valuable addition to this bill. It shows that the United States is seriously committed to the humanitarian goal of protecting those who legitimately fear persecution.

I am concerned, however, about the inflexibility of the legalization provisions, the cutoff date for legalization, which should be later, and the lack of protections for those who might be discriminated against because of the enactment of this legislation.

I look to the other Chamber to correct these deficiencies and hope the bill reported out by conference between the two Chambers will reflect a more compassionate immigration policy.●

● Mr. HATFIELD. Mr. President, I will not consume a great deal of the Senate's time today with an iteration of the compelling reasons why major immigration reform legislation is necessary. Many of my able colleagues have already made these points, and when the Senate deliberated the problems associated with U.S. immigration policy during the last Congress, I rose on several occasions to make clear my perspective on the immigration reform dilemma facing this body.

I will support final passage of S. 529. The economic pressures facing citizens of countries in proximity to our borders are continuing to mount. Present immigrating policies and practices are woefully inadequate in addressing the actual or potential problems that exist. Like the comprehensive package of legislation that was recently adopted by Congress with respect to social security, the pending immigration bill contains elements which do not entirely comport to my philosophies. Portions of this bill, such as those which touch upon personal privacy and worker identification cast too broad a net. Conversely, there are components of this bill, particularly those pertaining to guest workers, which do not go far enough in addressing the real life anxieties of individuals keenly affect-

ed by immigration policies and procedures, such as agricultural bodies.

However, we all have had adequate and fair hearings on these diverse issues. My colleague from Wyoming, Senator SIMPSON, has accommodated all of us with an attentive ear, and to the extent practicable, has incorporated our suggestions into the bill. This does not mean that S. 529 bears my mark of unequivocal approval, for as I stated moments ago, there are provisions which I would draft quite differently.

But, Mr. President, it does mean that this bill represents the broadest possible bipartisan effort in immigration reform that this body has passed in many decades. There are approximately 6 million undocumented aliens in this country. It is impractical and unwise to suggest that these aliens should be rounded up and banished from this country. In parts of this Nation, such an attempt by the Federal Government would precipitate a civil war, and would subject legal residents of Hispanic or Indochinese appearance to appalling invasions of privacy and to potential deprivations of liberty and property. For that reason, I support the legalization provision in this bill. We simply have no other viable alternative. And Mr. President, I believe the cutoff dates of 1977 and 1980 are fair and do not reward the recent unlawful immigrants.

Mr. President, the second major proposal embodied in this bill concerns sanctions against employers who hire illegal aliens. I support this provision as well. We have tried penalizing the worker. We have tried to patrol the border. All of these efforts were designed to mitigate the magnetic pull which employment opportunities present to workers in economically distressed countries. None of these efforts has worked. It makes imminent sense to penalize those employers who knowingly hire illegal aliens. Now that we have drawn the lines and have distinguished between those aliens who are legally within the country and those who are not, we must have in place a mechanism which prevents the employment of unlawful aliens. I believe employer sanctions are the answer, and I believe their implementation is essential. Employers of less than four employees have no additional paperwork obligations, and therefore the majority of employers in this country are exempt from the bill's verification procedures. These employers are not exempt from the provisions which forbid the hiring of an illegal alien, and well they should not be.

Mr. President, my final concern touches upon the precious rights and liberties which attend life in America. Because of the short-term pressure to identify the unlawful residents of this country, it has been suggested that there be a national identification card. Indeed, the bill requires the President to implement within 3 years a secure system of identification. Of course, one can hear protests from all corners of Congress that this does not mean national identification cards. What does it mean, then? Shall we use secret passwords, or shall we all bear a stamp of citizenship? Let me remind my colleagues that when the social security card was first adopted, it was argued that its use was strictly an accounting one and that there need not be concern of the card becoming anything other than an accounting tool.

Mr. President, today the social security card is used for draft registration purposes, for college identification cards, for check cashing, for driver's licenses, and for a whole panoply of purposes. In fact, new born babies are getting social security numbers before they even cut teeth, much less secure employment and pay FICA taxes.

For that reason, I offered an amendment which would require the President to submit to Congress any proposal that attempts to implement a national identification card. Mr. President, there certainly is no consensus among our citizens that a national identification card is desirable, nor is there in Congress. Further, I do not believe the issue of whether our Government should develop a national identification card to keep track of everyone seeking work should be left to the President alone to decide.

After negotiating with Senators SIMPSON, KENNEDY, and GRASSLEY, an agreement was reached on the precise wording of my amendment. I am grateful to those principals for their valuable input and spirit of cooperation. I feel it is important that the Senate speak with one voice on this issue, and with the language of this amendment now in section 274A of the bill, I am confident the conferees can fully represent this body's disapprobation of any movement toward a national identification card.

I would be remiss if I did not acknowledge the courageous work of Senators SIMPSON and KENNEDY in bringing this bill to the point of final passage. They, along with their diligent staff members, have labored in silent agony over each provision in this bill, and have gained my respect and that of the multitudes of individuals who have followed this legislation for several years.●

● Mr. HART. Mr. President, as much as I would like to support this immigration bill, I cannot. I wanted very much to vote for it, but in the final analysis, I cannot support a measure which does not provide adequate safeguards against the infringement upon the rights of American citizens.

Mr. President, this bill offers a number of positive reforms of our current immigration law. Visa waivers for foreign tourists from selected countries will not only cut operating costs, but also boost tourism and reciprocate similar policies long since enacted by these other countries. The immigration ceilings of this bill are reasonable, they take account of the special relationship we share with our contiguous neighbors. Further, they reflect traditional American generosity.

Finally, although neither as comprehensive nor as straightforward as many would have liked, the legalization program is a step in the right direction toward eliminating an exploited subclass in this country.

Mr. President, I wish I could say the same for the employer sanctions provisions, the centerpiece of this bill. This body was given an opportunity to close the door to employment discrimination resulting from employer sanctions, but the Senate defeated the amendment Senator LEVIN and I offered. It is a sad irony that this bill, although it is supposed to protect Americans by alleviating migration pressures, will create a new form of discrimination.

In opposing this bill, I want no one in this body to misconstrue my position to mean I advocate open borders. Any reasonable person will admit to the magnitude of current immigration pressures. I want very much to control this flow and see a reasonable and orderly passage across our border. I would hope that those who support this bill will not write off my objections simply as the pursuance of perfection. This would be unfair for I have earnestly worked with my colleagues to formulate a fair and reasonable bill, and it is my desire for this end, and my desire to maintain the integrity of this body, which keeps me from supporting this measure.

Mr. President, I ask that a letter written to me by Mr. Tony Bonilla, national president of the League of United Latin American Citizens (LULAC) and Mr. Arnoldo S. Torres, LULAC executive director, be inserted in the RECORD at this point. I have had the pleasure of working with this fine organization, which is the country's oldest and largest Hispanic organization, once again on immigration reform. I believe their letter effectively represents the opinions of the Hispanic community regarding their disappointment and concern with S. 529 and its impact on the fastest growing population group in this country. In addition, these concerns are not fostered on the belief that nothing be done to reform U.S. immigration policy but rather that such efforts be based on the full scope of the facts and not result in the unfair treatment of Hispanics and other groups.

The letter follows:

LEAGUE OF UNITED
LATIN AMERICAN CITIZENS,
Washington, D.C., May 17, 1983.

Hon. GARY HART,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: On behalf of the League of United Latin American Citizens (LULAC), this country's oldest and largest Hispanic organization, we would like to express to you once again our sincere gratitude for your continued efforts to raise the legitimate concerns of Hispanics, as well as to question the practicality and consequences of S. 529, the Immigration Control and Reform Act of 1983. Unfortunately, the debate of last year in Congress, and the Senate hearings held this year, provided no new insight for improving this legislation.

The League has been intricately involved in the debate surrounding immigration reform legislation. Our involvement and interest are based on our concern that good and sound public policy be enacted, and that this legislation not result in major difficulties for the Hispanic community. We are extremely disturbed that Congress, in its concern to address population movements to the U.S., is eager to pass any legislation regardless of its lack of effectiveness and consequences. Clearly, this is not the manner in which our country's founding fathers envisioned Congress conducting the business of this great nation. It appears that in debating immigration reform, the Senate has chosen to side with the argument that "something is better than nothing."

Unfortunately, that something—S. 529 fails to put in place a foundation for dealing with the underlying reasons why people in record numbers are attempting to come to the U.S. The proponents of this legislation contend that we must regain control of our borders and that we must stop the hiring of undocumented workers. These are reasonable and proper objectives which we support conceptually. However, to assume that by attempting to accomplish these concerns, we are effectively going to stop or decrease the human flow to our shores, is failing to be realistic and choosing to be simplistic.

Furthermore, Congress has chosen to ignore an honest and thorough reform of U.S. immigration policy by failing to improve the workings of the Immigration and Naturalization Service (INS) and develop better systems of cooperation between the INS and the Department of State. Congress has failed to address why we as a government are more apt to accept persons fleeing communism, and systematically reject persons fleeing right-wing oppressive regimes which we are supporting. Rather, the Senate has stated in passing this legislation last year that something must be done, and if problems arise we will address them later. This action was and will be taken again today regardless of the failure to address the above concerns and regardless of the obvious shortcomings of this bill.

As advocates of the Hispanic community who have spoken to various members of the Senate and their staff, we are genuinely surprised at the lack of understanding most persons have of this bill's impact, and the lack of interest in recognizing its serious and far-reaching complexities. This should be of concern to all for if the problems of immigration are as great and as significant to our country's self-interest as some contend, then one would have thought the preparation and completion of this bill would clearly reflect such interest. It appears that the Senate believes that the issue of population movements to the U.S. has only taken place in the last decade, and that S. 529 can readily remedy the causes for this recent movement.

The U.S. has a history of encouraging and stimulating flows of willing cheap labor from Mexico. In fact, the U.S. Congress on three previous occasions has enacted legislation establishing temporary guestworker programs to address the insatiable appetites of America's agricultural industry. This government-sanctioned program has conveyed the message to Mexican nations that U.S. employers were more than willing to accept them for their labor, and has evolved into a relationship between the two countries in which this population movement was acceptable and of benefit to both U.S. growers and consumers prospered due to cheap labor costs, as well as our economy, while Mexico has been provided what some refer to as a "safety valve."

As this relationship developed and became a practice, it was joined, in the last two decades, by major population movements as a result of the socio-political conditions in underdeveloped and developing countries. These new movements had been long in their development. They are the product of many decades of poverty, injustice, neglect, and poor government. In the Western Hemisphere, these conditions are strongly associated with U.S. foreign policy in this region. Our policy has long been to support any government i.e., friendly to us regardless of the inequities and abuse such government has foisted on its people.

After decades of such treatment, after decades and generations of continued poverty and injustice, people in these countries have sought socio-political and economic refuge in our country. Most recently, El Salvador, Nicaragua, Guatemala, Haiti, and Cuba have been and are confronted with major population movements to the U.S. Problems in these countries reflect the shortcomings of foreign U.S. policy and the results of our Hispanic neglect, ignorance, and self-serving attitude by which we have treated the Caribbean and Latin America as a backyard.

These movements have and will continue to increase as these countries become poorer, and as long as U.S. foreign policy creates an environment of socio-political instability and economic stagnation. It is foolish to presume that S. 529 will make any reasonable impact on this situation. Unless we address these problems the claim that this bill is immigration reform and will stem the flow of undocumented people, is irresponsible and untrue. Rather, Hispanics in this country will be made to feel the pains of poorly constructed legislation due to our physical and linguistic characteristics.

We do not advocate that nothing be done, nor do we advocate perfect legislation. We do, however, suggest that the American public be properly informed of the complexities of this issue of our involvement in creating situations which now pose serious policy concerns and of the fact that there is no quick-fix legislation which can provide immediate relief. Also, we would encourage that we first reform the workings of the INS and the Department of State, that we overhaul the Immigration and Nationality Act and that we set in place a mechanism which will allow us to properly examine the impact of U.S. foreign policy on immigration and ways of establishing working relationships with countries who are sending their people to ours. Lastly, we would urge that we seriously assess the extent to which, and reasons why, U.S. citizens may be displaced by undocumented workers and why they are not willing to accept certain type of employment.

This approach does not provide the political benefits of claiming that legislation was passed which will stem the flow of undocumented people. S. 529 in essence will not accomplish this, but it will create an environment in which Hispanics are the scapegoats and will be made to suffer under burdens of discrimination. Furthermore, S. 529 distracts from the public's view the impact that Reaganomics has had on the economy of this country, and exploits the desperate emotions of U.S. citizens impacted by this economic policy. Perhaps most disturbing, is that S. 529 fails to be honest with the American public by ignoring reality and the limitations it has on improving the situation of population movements which have taken decades to develop and harden.

We, the League of United Latin American Citizens (LULAC), urge that sound realistic public policy be enacted by Congress, not window dressing, politically convenient legislation. S. 529 is not immigration reform, it is not a compromise, nor is it honest. It is a desperate attempt to address a major issue which requires more patience, honesty, intelligence and pragmatism. We hope Congress does not settle for "something better than nothing," there are other more realistic approaches which will have a more long-range effect and provide fair treatment to all.

Again, we acknowledge your efforts to bring reason and creativity to this issue and are appreciative of your understanding of our communities' concerns.

Respectfully,

TONY BONILLA,
LULAC National President.
ARNOLDO S. TORRES,
LULAC National Executive Director.●

Mr. PERCY. Mr. President, I will vote for final passage of S. 529, the Immigration Reform and Control Act of 1983. This bill represents a compassionate and reasonable approach to the serious problems of illegal immigration and the need to set some limit on legal immigration. S. 529 is the product of a bipartisan effort with a solid foundation laid by the findings of the Select Commission on Immigration and Refugee Policy, months of congressional effort, and the work of the administration's task force.

Most important, S. 529 takes the first major step in providing a solution to the problem of illegal immigration. The number of illegal immigrants residing in the United States is estimated at 3.5 to 6 million. Some experts have estimated a net growth of 500,000 new undocumented aliens per year.

Existing law has not been able to stem this flow. The major reason aliens come to this country illegally is the prospect of employment. It is not now against the law for an employer to hire knowingly an alien who is here illegally. S. 529 removes this incentive by prohibiting such employment and requiring employers to verify the identity and eligibility of all potential employees.

S. 529 requires the President to develop a secure worker verification system that cannot be easily counterfeited. This system is necessary to make the prohibitions against employment of illegal aliens enforceable. It will protect employers from inadvertantly hiring an illegal alien. At the same time, it will provide a method for identifying an employer who intentionally violates the law.

The verification system will also protect American workers from discriminatory hiring practices by placing the same documentary requirements on everyone. Prohibitions against hiring illegal aliens, together with an effective worker verification system, will go to the source of our illegal immigration problem and for the first time give us a method for controlling it.

I opposed efforts which, in my judgment, would have rendered ineffective the key reform measure of this bill: Employer penalties for those who knowingly hire undocumented aliens. All independent, comprehensive studies of the illegal immigration problem, including those by the previous two administrations, the present administration, and the Select Commission on Immigration and Refugee Policy, have concluded that adequate enforcement of our immigration laws cannot be achieved by direct enforcement alone. S. 529 takes the very necessary step of prohibiting the knowing employment of undocumented aliens and imposes penalties for violation of the law. I am convinced that this provision is key to the solution of the illegal immigration problem.

The second major component of S. 529 will give permanent resident status to aliens who arrived here before January 1, 1977, and temporary resident status to those who arrived after that date, but before January 1, 1980. Temporary residents will be able to adjust to permanent resident status 3 years from the date of enactment of this bill if they satisfy a requirement of minimum English language competence or are enrolled in a program to acquire such competence. Federally funded public assistance will not be available to either those in the 3-year temporary status or, for 3 years, to those receiving permanent legal status.

I support the legalization provisions of S. 529 as a necessary part of this reform measure. Legalization has three major goals. The first is to avoid the wasteful use of the Immigration and Naturalization Service's (INS) limited enforcement resources by attempting to locate and deport those who have come to this country illegally. The second is to allow currently economically dependent employers to continue lawfully hiring from this pool of labor. And the third, and most important, is to eliminate the illegal subclass of persons now present in our society. The costs to society of permitting a large group of persons to live in illegal, second-class status are enormous. And mass deportations are not reasonable or realistic both for legal and humanitarian reasons.

I opposed an amendment to strike the legalization program from the bill for these reasons.

The third major component of the bill addresses reform of our legal immigration system by setting an overall ceiling, including immediate relatives of U.S. citizens, of 425,000 per year, although immediate relatives continue to be exempt from numerical limitations. The number available for other family reunification preference categories would be determined by subtracting the number of immediate relatives admitted in the prior year from the cap of 350,000, the total for family reunification. A cap of 75,000 is placed on independent preference categories for a total of 425,000.

TEMPORARY AGRICULTURAL WORKERS IN WEST VIRGINIA

Mr. BYRD. Mr. President, section 211 of the Immigration Reform and Control Act of 1983 deals with temporary, nonimmigrant foreign workers—the so-called H-2 program. The operation of the H-2 program has a direct effect on the economy of the eastern panhandle of West Virginia. The apple crop in the panhandle is harvested in large part by H-2 workers.

The H-2 program is complex and cumbersome. Each year, agricultural employers who wish to supplement their domestic labor force with temporary foreign workers at harvest time must be certified by the Department of Labor as eligible to use such workers. The certification process requires several months to complete each year. The employer must make an exhaustive search for domestic workers to fill his harvest needs before the Department of Labor will consider allowing the employer to bring in H-2 workers. The employer must prove to the Labor Department that there is not a sufficient number of qualified domestic workers available to perform the needed work before H-2 workers can be brought into the United States.

Year after year, the fruitgrowers from the eastern panhandle of my State have come to me and to other members of West Virginia's congressional delegation to seek assistance in dealing with the H-2 program. The program is designed to be difficult to work with, so that domestic workers are protected from the unlimited importation of cheap foreign labor.

The history of the West Virginia apple harvest for the past few years suggests to me that the H-2 program is not being used by growers to displace domestic workers. For each of the past few years, there has been a shortage of domestic workers available to growers in the eastern panhandle of West Virginia at the beginning of the apple harvest.

In 1982, the shortage was especially acute. On the opening day of the harvest, September 13, 1982, growers needed 270 workers to pick apples. Only 27 workers reported that day to be assigned to help various growers. No more than 10 of the 27 workers who appeared on opening day stayed on the job for more than 1 week.

In the meantime, Tri-County Growers, Inc.—a firm in Martinsburg, W. Va., that helps find workers for many of the eastern panhandle's orchardists—was frantically trying to fill the labor shortfall with H-2 workers. The Department of Labor did not inform Tri-County Growers that it would allow the firm to bring in H-2 workers until September 10, a scant 3 days before the start of the harvest. Most of the H-2 workers did not arrive in West Virginia until September 20-21. The harvest had been underway for an entire week, and West Virginia growers estimated that as many as 25,000 bushels of apples were lost each day during that first week due to the insufficient number of workers.

While the 1982 West Virginia apple harvest proved to be the most difficult in recent memory because of the requirements of the H-2 program, similar problems have affected the harvest for each of the past few years. In order to provide some relief to the growers without reducing the valid protection of domestic workers, I offered an amendment to section 211 of S. 2222, the 1982 version of the immigration legislation, during the Judiciary Committee's markup of that measure. My amendment modifies the finding that the Secretary of Labor must make before growers are allowed to bring temporary foreign workers into this country.

The Judiciary Committee adopted my amendment by a rollcall vote of 10 to 5. An effort to delete my amendment on the Senate floor was defeated by a vote of 28 to 62. Unfortunately, the House of Representatives did not complete action on an immigration bill last year, so the improvement made by the Senate in the H-2 program was not enacted.

Section 211(b)(2)(A) of the pending bill, S. 529, contains the language of my amendment. It changes the scope of the finding that must be made by the Secretary of Labor before H-2 workers may be brought into the United States. Under current law, the Secretary must certify that there are not sufficient qualified workers in the United States to perform the labor for which H-2 workers are being requested. That finding forced West Virginia growers to conduct a nationwide search for workers, most of whom would not appear at harvest time.

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Section 211(b)(2)(A) requires the Secretary of Labor to certify that there are not sufficient workers who are able, willing, qualified, and who will be available at the time and at the place needed to perform the labor for which H-2 workers are being requested. The new requirement makes it clear that a nationwide search for workers need not be conducted by growers who seek certification under the H-2 program.

West Virginia growers are eager to hire local workers, but an able, willing, and qualified local work force has not been available. Some local workers stay on the job for only 1 or 2 days, and the harvest lasts for more than 1 month. If a full work crew is not fielded every day during the harvest, a substantial portion of the perishable apple crop can be lost.

The language of section 211 in S. 529 removes an unfair burden from growers in West Virginia and other States who may use relatively small numbers of H-2 workers in agriculture. I am pleased that the language of my amendment to section 211 has been retained in the bill.

I want to express my deep appreciation to the distinguished chairman of the Immigration Subcommittee, Senator ALAN SIMPSON, for his diligent, tireless, and painstaking efforts with respect to this legislation. The subject matter is as complicated as any that the Senate considers, and he has shown a remarkable talent for balancing the diverse interests involved with this bill. He has been very helpful and considerate of special problems connected with the West Virginia fruitgrowers, and I thank him very much for his cooperation and understanding.

I also thank the distinguished ranking member of the subcommittee, Senator TED KENNEDY. He has been equally tireless in his efforts to see this important legislation through to passage in the Senate. He has demonstrated an encyclopedic knowledge of immigration law during consideration of S. 529, and his counsel has been of great help to me.

I thank both Senators for their efficient management of this very difficult legislation.

Mr. CRANSTON. Mr. President, the distinguished senior Senator from Oregon (Mr. HATFIELD), with his usual skill and eloquence, earlier took pains to point out the need for careful attention to the details of this very complex legislation.

I, too, have been urging that from the beginning of this debate.

The Senator from Oregon pointed out that this bill does not create a national identification card system.

And, I agree that it does not. Nor did I suggest earlier that it did.

But I see in the process that is created by this bill a danger that the steps which are taken here will lead inexorably to a national identification card, and I for one believe the time to stop that process is at the beginning.

● Mr. HELMS. Mr. President, in granting amnesty to millions of illegal aliens, the Senate has raised the flag of surrender on getting control of America's borders. Amnesty says to foreign nationals, "Break our laws, come into the U.S. illegally, and then we'll throw up our hands and look the other way." That is not law and order but, instead, legalized chaos.

We must recognize that immigration policy is national security policy. When we lose control of our borders, we jeopardize the national security of the United States. The Senate, I am convinced, will rue the day it ever gave up on stopping illegal immigration by going with across-the-board amnesty.

The Senate also made a major blunder in forcing the States to provide free public schooling and welfare benefits to illegal immigrants. In effect, the Federal Government first surrenders on stopping illegal immigration by granting amnesty, and then tells the States to pick up the tab. This is plainly a foolish immigration policy.

For these reasons as well as others, I will oppose final passage of the immigration bill.●

● Mr. MOYNIHAN. Mr. President, I would like to commend the Senator from Wyoming (Mr. SIMPSON), as well as the Senator from Massachusetts (Mr. KENNEDY), for their courage and their most extraordinary efforts in successfully coming to grips with what is indeed a highly complex and difficult problem.

Immigration reform is long overdue. The 3 to 6 million illegal aliens in the country today stand as irrefutable testimony that our immigration laws are clearly inadequate. But there can be no denying the contributions that immigrants have made to our Nation, and as a Senator from New York I can particularly appreciate these contributions.

Nathan Glazer and I wrote in "Beyond the Melting Pot" that New York, after all, is a merchant metropolis with an extraordinarily heterogeneous population, composed of immigrants and their descendants. The first shipload of settlers sent out by the Dutch was made up largely of French-speaking Protestants. British, Germans, Finns, Jews, Swedes, Africans, Italians, and Irish, among others, followed, beginning a stream that has never yet stopped. These immigrant groups have made, and continue to make, New York a cultural and financial center. So, too, with America as a whole.

Surely, we must never back down from our commitment to legal immigration. Our goal should be immigration reformed, not immigration curtailment.

After extensive study, the Select Commission on Immigration and Refugee Policy identified two elements that are essential to immigration reform. The Commission found that, given their extraordinary numbers, it would be impossible to find and prosecute those illegal aliens who are already here. As a result, the Commission proposed to legalize these aliens. Since the promise of a job is the primary motivation for most illegal immigration, the Commission also proposed to deter future illegal immigration by making it a crime to hire an undocumented alien.

Today I will vote for S. 529. I do so with the realization that a number of unsuccessful amendments that I supported would have strengthened the bill's provisions. I will continue to work for the enactment of these changes. However, because S. 529 goes a long way toward implementing to two main proposals of the Select Commission, and includes a number of other provisions that I am happy to see included in the bill, I cast my vote in favor of this measure.

Finally, permit me to add my sincere hope that we in Congress will fulfill the commitments made in this legislation, by providing the resources and guidance necessary to implement these important and vital changes. The preeminent nation of immigrants deserves an immigration policy that is both just and effective. If we are to achieve our primary objective—fair and equitable reform of our immigration laws—we must retain our firm resolve to carry out the intent of this bill.●

Mr. STEVENS. Mr. President, this will be the last vote tonight. We expect to attempt to proceed with S. 66 following disposition of this measure.

The PRESIDING OFFICER. Is all time yielded back?

Mr. KENNEDY. I yield back the remainder of my time.

Mr. SIMPSON. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

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

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. INOUYE. Mr. President, on this vote I have a pair with the Senator from Arizona (Mr. DECONCINI). If he were present and voting, he would vote "nay." If I were at liberty to vote, I

would vote "yea." Therefore, I withhold my vote.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER) is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arizona (Mr. DECONCINI), the Senator from Colorado (Mr. HART), the Senator from Alabama (Mr. HEFLIN), and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

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

The result was announced—yeas 76, nays 18, as follows:

[Rollcall Vote No. 101 Leg.]

YEAS—76

Abdnor	Gorton	Nunn
Andrews	Grassley	Packwood
Baucus	Hatfield	Pell
Bentsen	Hawkins	Percy
Biden	Hecht	Pressler
Boren	Heinz	Proxmire
Boschwitz	Huddleston	Pryor
Bradley	Jackson	Quayle
Bumpers	Jepsen	Randolph
Burdick	Johnston	Roth
Byrd	Kassebaum	Rudman
Chafee	Kasten	Sarbanes
Chiles	Lautenberg	Sasser
Cochran	Laxalt	Simpson
D'Amato	Leahy	Specter
Danforth	Levin	Stafford
Denton	Long	Stennis
Dixon	Lugar	Stevens
Dodd	Mathias	Thurmond
Dole	Matsunaga	Trible
Durenberger	Mattingly	Tsongas
Eagleton	Melcher	Wallop
Exon	Metzenbaum	Warner
Ford	Moynihan	Weicker
Glenn	Murkowski	
Goldwater	Nickles	

NAYS—18

Armstrong	Garn	Mitchell
Bingaman	Hatch	Riegle
Cohen	Helms	Symms
Cranston	Humphrey	Tower
Domenici	Kennedy	Wilson
East	McClure	Zorinsky

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

INOUYE, for.

NOT VOTING—5

Baker	Hart	Hollings
DeConcini	Heflin	

So the bill (S. 529), as amended, was passed.

S. 529

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

SHORT TITLE; REFERENCES IN ACT

SECTION 1. (a) This Act may be cited as the "Immigration Reform and Control Act of 1983".

(b) Except as otherwise specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to, or repeal of, a provision, the reference shall be deemed to be made to the Immigration and Nationality Act.

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TITLE I—CONTROL OF ILLEGAL IMMIGRATION

PART A—EMPLOYMENT

CONTROL OF UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 101. (a)(1) Chapter 8 of title II is amended by inserting after section 274 (8 U.S.C. 1324) the following new section:

"UNLAWFUL EMPLOYMENT OF ALIENS

"SEC. 274A. (a)(1) It is unlawful for a person or other entity after the date of the enactment of this section—

"(A) to hire, or for consideration to recruit or refer, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in paragraph (4)) with respect to such employment, or

"(B) to hire for employment in the United States an individual without complying with the requirements of subsection (b).

Subparagraph (B) shall not apply to a person or entity which employs three or fewer employees.

"(2) It is unlawful for a person or other entity who, after hiring an alien for employment subsequent to the date of the enactment of this Act and in accordance with paragraph (1), continues to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

"(3) A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

"(4) As used in this section, the term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General.

"(b) Except as provided in subsection (c), the requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, that—

"(1) the person or entity must attest, under penalty of perjury and on a form established by the Attorney General by regulation, that he has verified that the individual is eligible to be employed (or recruited or referred for employment) in accordance with subsection (a)(1)(A) by examining the individual's—

"(A) United States passport, or

"(B)(i) social security account number card (issued by the Social Security Administration under section 205(c)(2)(B) of the Social Security Act and in such secure form, if any, as the Administrator of Social Security has made available) or certificate of birth in the United States or United States consular report of birth or, in the case of an individual without a social security card or a certificate of birth in the United States or a United States consular report of birth, a passport of a foreign country or where no such documentation is available, any other identification acceptable to the Attorney General, and

"(ii)(I) alien documentation, identification, and telecommunication card, or similar fraud-resistant card issued by the Attorney General to aliens, or other identification issued by the Attorney General to aliens who establish eligibility for employment,

"(II) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds sufficient for purposes of this section, or

"(III) in the case of individuals under sixteen years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in subclause (II), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification;

"(2) the individual must attest, under penalty of perjury and on the form established by the Attorney General for purposes of paragraph (1), that the individual is a citizen or national of the United States, an

alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment; and

"(3) after completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service or of the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending on the later of five years after such date or, in the case of the hiring of the individual, one year after the date the individual's employment is terminated.

A person or entity has complied with paragraph (1) with respect to examination of a document if the document reasonably appears on its face to be genuine. Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

"(c)(1) Except as provided in paragraph (3), within three years after the date of the enactment of this section, the President shall implement such changes in or additions to the requirements of subsection (b) as may be necessary to establish a secure system to determine employment eligibility in the United States, which system shall conform to the requirements of paragraph (2).

"(2) Such system shall be designed in a manner so that—

"(A) the system will reliably determine that a person with the identity claimed by an employee or prospective employee is eligible to work, and that the employee or prospective employee is not claiming the identity of another individual;

"(B) if the system requires an examination by an employer of any document, such document must be in a form which is resistant to counterfeiting and tampering;

"(C) personal information utilized by the system is available to Government agencies, employers, and other persons only to the extent necessary for the purpose of verifying that the individual is not an unauthorized alien;

"(D) the system will protect the privacy and security of personal information and identifiers utilized in the system including recommendations to the Congress for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system;

"(E) a verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld for any reason other than that the employee or prospective employee is an unauthorized alien;

"(F) the system shall not be used for law enforcement purposes (other than for enforcement of this section or section 1546 of title 18, United States Code);

"(G) if the system requires individuals to present a card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this section (or enforcement of section 1546 of title 18, United States Code) nor to be carried on one's person; and

"(H) the President shall examine existing Federal and State identification systems, or the systems referred to in subsection (b) of this section, to determine suitability for use with the permanent system authorized to be developed by this section.

"(3)(A) Before the President implements any change in or addition to the requirements of subsection (b) which would require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, he shall prepare and transmit to the committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report setting forth his proposal to implement such a change or addtion. No such change or addition may be implemented if, within thirty calendar days after receiving such report, the Congress adopts a concurrent resolution stating in substance that it objects to the implementation of such change or addition.

"(4)(A) Any such concurrent resolution shall be considered in the Senate in accordance with paragraph (5).

"(B) For the purpose of expediting the consideration and adoption of concurrent resolutions under paragraph (3), a motion to proceed to the consideration of any such concurrent resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

"(5)(A) For purposes of paragraph (3), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated.

"(B) Subparagraphs (C) and (D) of this subsection are enacted—

"(i) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of concurrent resolutions referred to in paragraph (3), and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

"(ii) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner and to the case of any other rule of the Senate.

"(C)(i) If the committee of the Senate to which has been referred a resolution relating to a certification has not reported such resolution at the end of ten calendar days after its introduction, not counting any day which is excluded under subparagraph (A), it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same certification which has been referred to the committee, except that no motion to discharge shall be in order after the committee has reported a resolution with respect to the same certification.

"(ii) A motion to discharge under clause (i) may be made only by a Senator favoring the resolution, is privileged, and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution, the time to be divided equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(D)(i) A motion in the Senate to proceed to the consideration of a resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(ii) Debate in the Senate on a resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(iii) Debate in the Senate on any debatable motion or appeal in connection with a resolution shall be limited to not more than one hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. such leaders, or either of them, may, from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

"(iv) A motion in the Senate to further limit debate on a resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommit, a resolution is in order in the Senate.

"(d)(1)(A) In the case of a person or entity which violates paragraph (1)(A) or (2) of subsection (a) and which—

"(i) has not previously been determined (after opportunity for a hearing under paragraph (4)(A)) to have violated either such paragraph, the person or entity shall be subject to a civil penalty of $1,000 for each unauthorized alien with respect to which the violation occurred, or

"(ii) has previously been determined (after opportunity for a hearing under paragraph (4)(A)) to have violated either such paragraph, the person or entity shall be subject to a civil penalty of $2,000 for each unauthorized alien with respect to which the violation occurred.

In counting the number of previous determinations of violations for purposes of determing whether clause (i) or (ii) applies, determinations of more than one violation in the course of a single proceeding or adjudication shall be considered as a single determination. In the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for its own hiring, recruiting, or referral for employment, each such subdivision shall be considered a separate person or entity if such hiring, recruiting, or referral for employment is not under the direct control of another subdivision or any entity or office exercising final management authority over such subdivisions.

"(B) In the case of a person or entity which has engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the person or entity shall be fined not more than $1,000, imprisoned not more than six months, or both, for each violation.

"(2) Whenever the Attorney General (i) has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of subsection (a); or (ii)

within an eighteen-month period issues to a person or entity a second notice of violation of subsection (a) and the two notices charge violations involving a total of five or more individuals, the Attorney General may bring a civil action in the appropriate district court of the United States requesting such equitable relief, including a temporary or permanent injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary. In the case of a person or entity composed of distinct physically separate subdivisions each of which provides separately for its own hiring, recruiting or referral for employment, each such subdivision shall be considered a separate person or entity if such hiring, recruiting or referral for employment is not under the direct control of another subdivision or any entity or office exercising final management authority over such subdivisions.

"(3) A person or entity which violates subsection (a)(1)(B) shall be subject to a civil penalty of $500 for each individual with respect to which such violation occurred.

"(4)(A) Before assessing a civil penalty under this subsection against a person or entity, the Attorney General shall provide the person or entity with notice and the opportunity to request a hearing respecting the violation. Any hearing so requested shall be conducted before an immigration officer designated by the Attorney General.

"(B) If the person or entity against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the Attorney General shall file a suit to collect the amount in any appropriate district court of the United States. In any such suit or in any other suit seeking to review the Attorney General's determination, the suit shall be determined solely upon the administrative record upon which the civil penalty was assessed and the Attorney General's findings of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

"(e) In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

"(f) The provisions of this section preempt any State or local law imposing civil or criminal sanctions upon those who employ, or refer or recruit for employment, unauthorized aliens.

"(g) The President shall monitor the implementation of this section (including the effectiveness of the verification system described in subsection (b) and the status of the development and implementation of the secure verification system described in subsection (c)) and the impact of this section on employment in the United States of aliens and of citizens and nationals of the United States on the illegal entry of aliens into the United States, and on the failure of aliens who have legally entered the United States to remain in legal status.".

(2)(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(B)(i) Where the Attorney General has reason to believe that a person or entity may have violated subsection (a) of section 274A of the Immigration and Nationality Act during the six-month period beginning on the first day of the first month beginning after the date of the enactment of this Act, the Attorney General shall notify such person or entity of such belief and shall not conduct any proceeding, nor impose any penalty, under such section on the basis of such alleged violation or violations.

(ii) Where the Attorney General has reason to believe that a person or entity may have violated subsection (a) of section 274A of the Immigration and Nationality Act during the subsequent six-month period, the Attorney General shall, in the first instance of such a violation (or violations) occurring during such period, provide a warning to the person or entity that such a violation or violations may have occurred and shall not conduct any proceeding, nor impose any penalty, under such section on the basis of such alleged violation or violations.

(C) During the year beginning on the date of the enactment of this Act, the Attorney General, in cooperation with the Secretaries of Commerce, Labor, and Agriculture and the Administrator of the Small Business Administration, shall disseminate forms and information to employers, employment agencies, and organizations representing employees and provide for public education respecting the requirements of section 274A of the Immigration and Nationality Act.

(b) The table of contents is amended by inserting after the item relating to section 274 the following new item:

"Sec. 274A. Unlawful employment of aliens.".

(c)(1) The Migrant and Seasonal Agricultural Worker Protection Act (Public Law 97-470) is amended—

(A) by striking out "101(a)(15)(H)(ii)" in paragraphs (8)(B) and (10)(B) of section 3 (29 U.S.C. 1802) and inserting in lieu thereof "101(a)(15)(H)(ii)(a)";

(B) in section 103(a) (29 U.S.C. 1813(a))—

(i) by striking out "or" as the end of paragraph (4),

(ii) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; or", and

(iii) by adding at the end the following new paragraph:

"(6) has been found to have violated paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act.";

(C) by striking out section 106 (29 U.S.C. 1816) and the corresponding item in the table of contents; and

(D) by striking out "section 106" in section 501(b) (29 U.S.C. 1851(b)) and by inserting in lieu thereof "paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act".

(2) The amendments made by paragraph (1) shall apply to the employment, recruitment, referral, or utilization of the services of an individual occurring on or after the first day of the seventh month beginning after the date of the enactment of this Act.

(d) Nothing in this section shall be construed to restrict the authority of the Equal Employment Opportunity Commission to investigate allegations, in writing and under oath of affirmation, of unlawful employment practices, as provided in section 2000e—5 of title 42, the United States Code, or any other authority provided therein.

FRAUD AND MISUSE OF CERTAIN DOCUMENTS

SEC. 102. (a) Section 1546 of title 18, United States Code, is amended—

(1) by amending the heading to read as follows:

§ 1546. Fraud and misuse of visas, permits, and other documents";

(2) by striking out "or other document required for entry into the United States" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States",

(3) by striking out "or document" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States",

(4) by striking out "$2,000" and inserting in lieu thereof "$5,000",

(5) by inserting "(a)" before "Whoever" the first place it appears, and

(6) by adding at the end the following new subsection:

"(b) Whoever without authority of the issuing agency and with unlawful intent—

"(1) photographs, prints, or in any manner makes or executes any engraving, photograph, print, or impression in the likeness of—

"(A) any document presented to satisfy a requirement of the Immigration and Nationality Act or regulations issued thereunder, or

"(B) any document presented to obtain a required document described in subparagraph (A), including any document presented to establish eligibility for adjustment of status under subsection (a) or (b) of section 245A of the Immigration and Nationality Act;

"(2) sells, transfers, distributes, presents, or uses, or possesses with the intent to sell, transfer, distribute, present, or use, an engraving, photograph, print, or impression in the likeness of a document described in subparagraph (A) or (B) of paragraph (1);

"(3) alters any document described in subparagraph (A) or (B) of paragraph (1) relating to another person; or

"(4) sells, transfers, distributes, presents, or uses, or possesses with the intent to sell, transfer, distribute, present, or use, any document described in subparagraph (A) or (B) of paragraph (1) relating to another person, whether or not altered,

shall be fined not to exceed $5,000 or imprisoned not more than five years, or both.".

(b) The item relating to section 1546 in the table of sections of chapter 75 of such title is amended to read as follows:

"1546. Fraud and misuse of visas, permits, and other documents.".

PART B—ENFORCEMENT

IMMIGRATION AND NATURALIZATION SERVICE ENFORCEMENT ACTIVITIES

SEC. 111. (a) It is the sense of the Congress that an essential element of the program of immigration control and reform established by this Act is an increase in border patrol and other enforcement activities of the Immigration and Naturalization Service in order to prevent and deter the illegal entry of aliens into the United States.

(b) In order to do this in the most effective and efficient manner, it is the intent of the Congress to provide, through the annual authorization of appropriations process for the Department of Justice, for a controlled and closely monitored increase in the level of the border patrol and of other appropriate enforcement activities of the Immigration and Naturalization Service to achieve an effective level of control of illegal immigration.

UNLAWFUL TRANSPORTATION OF ALIENS TO THE UNITED STATES

SEC. 112. Section 274 (8 U.S.C. 1324) is amended to read as follows:

"SEC. 274. (a) Any person who, knowingly or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each transaction constituting a violation of this subsection, regardless of the number of aliens involved, be guilty of a misdemeanor and upon conviction shall be punished by a mandatory fine of $2,500, the imposition of which shall not be suspended by the court, and, in the court's discretion, may be punished by an additional fine of not more than $2,500 for each such alien in respect to whom any violation of this paragraph occurs or by imprisonment for a term not exceeding one year, or both.

"(b) Whoever, under subsection (a), commits—

"(1) a second offense,

"(2) an offense done for the purpose of commercial advantage or private financial gain,

"(3) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration official, or

(4) an offense during which the offender or the alien with the knowledge of the offender makes any false or misleading statement or engages in any act or conduct intended to mislead any officer, agent, or employee of the United States,

shall be guilty of a felony and upon conviction shall be punished by a fine not exceeding $10,000 or by imprisonment for a term not exceeding five years; or both, for each alien in respect to whom any violation of this subsection occurs.

"(c) Any person who—

"(1) knowingly or having reason to know that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioners, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien,

"(2) knowingly or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law, or

"(3) knowingly or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection such alien in any place, including any building or any means of transportation,

shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine not exceeding $10,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs. For the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring.

"(d)(1) Any conveyance, including any vessel, vehicle, or aircraft, which has been, is being, or is intended to be used in the commission of a violation of subsection (a), (b), or (c) shall be seized and subject to forfeiture, except that—

"(A) no conveyance used by any person as a common carrier shall be forfeited under the provisions of this section if the offense occurs when the conveyance is being used in the business as a common carrier unless the owner, operator, or other person in charge of the conveyance at the time of the offense was a consenting party or privy to the illegal act; and

"(B) no conveyance shall be forfeited under the provisions of this section if the offense occurred while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any State.

"(2) Any conveyance subject to seizure under this section may be seized without a warrant if there is probable cause to believe the conveyance has been, is being, or is intended to be used in a violation of subsection (a), (b), or (c) and circumstances exist where a warrant is not constitutionally required.

"(3) All provisions of the customs laws relating to—

"(A) the seizure, summary and judicial forfeiture, and condemnation of property,

"(B) the disposition of such property or the proceeds from the sale thereof,

"(C) the remission or mitigation of such forfeiture, and

"(D) the compromise of claims and the award of compensation to informers in respect of such forfeitures,

shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section insofar as applicable and not inconsistent with the provisions of this section, except that duties imposed on customs officers or other persons regarding the seizure and forfeiture of property under the customs laws may be performed with respect to seizure and forfeitures carried out under the provisions of this section by such officers or persons authorized for that purpose by the Attorney General.

"(4) Whenever a conveyance is forfeited under this section the Attorney General may—

"(A) retain the conveyance for official use;

"(B) sell the conveyance, in which case the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs;

"(C) require that the General Services Administration, or the Federal Maritime Commission if appropriate under section 484 (i) of title 40, United States Code, take custody of the conveyance and remove it for disposition in accordance with law; or

"(D) dispose of the conveyance in accordance with the terms and conditions of any petition of remission or mitigation of forfeiture granted by the Attorney General.

"(5) In all suits or actions brought for the forfeiture of any conveyance seized under this section, where the conveyance is claimed by any person, the burden of proof shall lie upon such claimant, except that probable cause shall be first shown for the institution of such suit or action, to be judged of by the court. In determining whether probable cause exists, any of the following items of evidence shall be prima facie evidence of the presumption that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

"(A) Records of any judicial or administrative proceeding in which that alien's status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law;

"(B) Official records of the Service or of the Department of State showing that the alien had not received prior authorization to come to, enter, or reside in the United States or had come to, entered, or remained in the United States in violation of law; and

"(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien's status, that such alien had not received prior authorization to come to, enter, or reside in the United States or had come to, entered, or remained in the United States in violation of law.

"(6) Any officer or employee of the Service designated by the Attorney General, either individually or as a member of a class, and all other Federal officers whose duty it is to enforce criminal laws and those State officers whose duty it is to enforce criminal laws and who have been specifically designated by the Attorney General shall have authority to make any arrest for a violation of any provision of this section.".

UNLAWFUL ENTRY INTO THE UNITED STATES

SEC. 113. Section 275 (8 U.S.C. 1325) is amended by inserting "or attempts to enter" after "enters".

BORDER PATROL

SEC. 114. There are authorized to be appropriated to an immigration emergency revolving fund, to be established in the Treasury, $35,000,000, to be used to provide for an increase in border patrol or other enforcement activities of the Service and for reimbursement of State and localities in providing assistance as requested by the Attorney General in meeting an immigration emergency, except that no amounts may be withdrawn from such funds with respect to an emergency unless the President has determined that the immigration emergency exists and has certified such fact to the Judiciary Committees of the House of Representatives and of the Senate.

EXECUTION OF WARRANT

SEC. 115. Section 287 of the Immigration and Nationality Act (8 U.S.C. 1357) is amended by adding at the end thereof the following:

"(d) Notwithstanding any other provision of this section, other than paragraph (3) subsection (a), an officer or employee of the Service may not enter onto the premises of a farm or other agricultural operation without a properly executed warrant.".

PART C—ADJUDICATION PROCEDURES AND ASYLUM

INSPECTION AND EXCLUSION

SEC. 121. (a) Section 235(a) (8 U.S.C. 1225(a)) is amended by striking out "arriving at ports" in the second sentence and inserting in lieu thereof "entering at ports or at the land borders".

(b) Section 235(b) (8 U.S.C. 1225(b)) is amended—

(1) by striking out the first sentence and inserting in lieu thereof the following:

"(b)(1) If an examining immigration officer at the port of arrival determines that an alien does not have the documentation required to obtain entry into the United States, does not have any reasonable basis for legal entry into the United States, and has not applied for asylum under section 208, such alien shall not be admissible and shall be excluded from entry into the United States without further inquiry or hearing.

"(2) If an examining immigration officer at a port of entry or land border of the United States determines that an alien (other than an alien crewman and except as otherwise provided in subsection (c) of this section and in section 273(d)) is otherwise not clearly and beyond a doubt entitled to land, such alien shall be detained for a hearing on exclusion of the alien to be held before an immigration judge.",

(2) by designating the sentence beginning "The decision" as paragraph (3), and

(3) by adding at the end the following new paragraphs:

"(4) The Attorney General shall establish procedures, after consultation with the Judiciary Committees of the Congress, which assure that aliens are not excluded under paragraph (1) without an inquiry into their reasons for unlawfully seeking entry into the United States.

"(5) In the case of an alien who would be excluded from entry under paragraph (1) but for an application for asylum under section 208, the exclusion hearing with respect to such entry shall be limited to the issues raised by the asylum application.".

(c) Section 236(a) (8 U.S.C. 1226(a)), as amended by section 126 of this Act, is further amended by inserting after the second sentence the following new sentence: "To the extent practicable, the hearing shall be conducted in a nonadversarial, informal manner, except that the applicant is entitled to be assisted by counsel (in accordance with section 292), to present evidence, and to examine and cross-examine witnesses.".

(d) Section 237 (8 U.S.C. 1227) is amended—

(1) by striking out "arrived in" in the first sentence of subsection (a)(1) and inserting in lieu thereof "entered";

(2) by striking out "arrived" in the second sentence of subsection (a)(1) and inserting in lieu thereof "entered the United States";

(3) by striking out "airport of arrival" in the first sentence of subsection (b) and inserting in lieu thereof "port of entry";

(4) by striking out "port of arrival" in the second sentence of subsection (b) and inserting in lieu thereof "port of entry";

(5) by striking out "arrived in" in the first sentence of subsection (c) and inserting in lieu thereof "entered"; and

(6) by striking out "arrived in" in subsection (e) and inserting in lieu thereof "entered".

UNITED STATES IMMIGRATION BOARD AND ESTABLISHMENT OF IMMIGRATION JUDGE SYSTEM

SEC. 122. (a) Title I is amended by adding at the end the following new section:

"UNITED STATES IMMIGRATION BOARD; USE OF IMMIGRATION JUDGES

"SEC. 107. (a)(1) There is established in the Department of Justice a United States Immigration Board (hereafter in this section referred to as the 'Board') composed of a Chairman and eight other members appointed by the Attorney General.

"(2) The term of office of the Chairman and all other members of the Board shall be six years, except that—

"(A) of the members first appointed under this subsection, three shall be appointed for a term of two years, three shall be appointed for a term of four years, and three shall be appointed for a term of six years,

"(B) a member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term, and

"(C) a member may serve after the expiration of his term until his successor has taken office.

"(3) The Attorney General may remove a member of the Board only for neglect of duty or malfeasance in office.

"(4) Members of the Board (other than the Chairman) are entitled to receive compensation at the rate now or hereafter provided for grade GS-17 of the General Schedule, under section 5332 of title 5, United States Code. The Chairman is entitled to receive compensation at the rate now or hereafter provided for grade GS-18 of the General Schedule, under section 5332 of title 5, United States Code.

"(5) The Chairman shall be responsible on behalf of the Board for the administrative operations of the Board and shall promulgate rules of practice and procedure for the Board and immigration judges.

"(b)(1) The Board shall hear and determine appeals from—

"(A) final decisions of immigration judges under this Act, other than a determination granting voluntary departure under section 244(e) within a period of at least thirty days if the sole ground of appeal is that a greater period of departure time should have been fixed;

"(B) decisions on applications for the exercise of the discretionary authority contained in section 212(c) or section 212(d)(3)(B);

"(C) decisions involving the imposition of administrative fines and penalties, including mitigation thereof;

"(D)(i) decisions on petitions filed in accordance with section 204, other than petitions to accord preference status under paragraph (1) or (2) of section 203(b) or petitions on behalf of a child described in section 101(b)(1)(F), and (ii) decisions on requests for revalidation and decisions revoking approval of such petitions under section 205;

"(E) determinations relating to bond, parole, or detention of an alien under sections 242(a) and 242(c); and

"(F) such other decisions or determinations arising under this Act as the Attorney General may by regulation prescribe.

"(2) Three members of the Board constitute a quorum of the Board, except that the Chairman (or any member of the Board designated by the Chairman) is empowered to decide nondispositive motions.

"(3) The Board shall act in panels of three or more members or en banc (as designated by the Chairman in accordance with the rules of the Board). A final decision of such a panel shall be considered to be a final decision of the Board.

"(4) The Board shall review the decision of an immigration judge based solely upon the administrative record upon which the decision is based, and the findings of fact in the judge's order, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

"(5) A final decision of the Board shall be binding on all immigration judges, immigration officers, and consular officers under this Act unless and until otherwise modified or reversed by a court of the United States or by the Attorney General under subparagraph (B)".

"(c)(1) The Attorney General shall, in accordance with procedures and regulations governing appointment and, except as provided in this paragraph, compensation in the competitive service—

"(A) appoint immigration judges;

"(B) set the rule of compensation for such judges at a rate not to exceed the rate now or hereafter prescribed for grade GS-16 of the General Schedule, under section 5332 of title 5, United States Code; and

"(C) designate one such judge to serve as chief immigration judge, who shall be entitled to compensation at the rate now or hereafter prescribed for grade GS-17 of such General Schedule.

"(2) In accordance with the rules established by the Board, the chief immigration judge—

"(A) shall have responsibility for the administrative activities affecting immigration judges, and

"(B) may designate any immigration judge in active service to hear and decide any cases described in paragraph (3).

"(3) Immigration judges shall hear and decide—

"(A) exclusion cases under sections 236 and 360(c),

"(B) deportation and suspension of deportation cases under sections 242, 243, and 244,

"(C) rescission of adjustment of status cases under section 246,

"(D) with respect to judges designated to hear such cases, applications for asylum under section 208, and

"(E) such other cases as the Attorney General may provide by regulation.

An immigration judge may not hear or decide the case of an alien excluded from entry under section 235(b)(1).

"(4) In considering and deciding cases coming before them, immigration judges may administer oaths and receive evidence, shall determine all applications for discretionary relief which may properly be raised in the proceedings, and shall exercise such discretion conferred upon the Attorney General by law as the Attorney General may specify for the just and equitable disposition of cases coming before such judges.".

(2) The table of contents is amended by inserting immediately after the item relating to section 106 the following new item:

"Sec. 107. United States Immigration Board; use of immigration judges.".

(3) Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraph:

"(43) The term 'immigration judge' means such a judge appointed under section 107.".

(4) Section 101(b) (8 U.S.C. 1101(b)) is amended by striking out paragraph (4) and redesignating paragraph (5) as paragraph (4).

(b) The first sentence of section 236(b) (8 U.S.C. 1226(b)) is amended by striking out "From a decision" and all that follows through "Attorney General" and inserting in lieu thereof the following: "Within fifteen days after the date of a decision of an immigration judge excluding or admitting an alien, the alien or the immigration officer in charge at the port where the hearing is held, respectively, may file an appeal of the decision with the United States Immigration Board in accordance with rules established by the Chairman of the Board".

(c) Section 242(b)(4) (8 U.S.C. 1252(b)(4)) is amended by striking out "reasonable, substantial, and probative" and inserting in lieu thereof "substantial".

(d) Section 242 (8 U.S.C. 1252) is amended by adding at the end the following new subsection:

"(i) Except as otherwise provided in section 291, in any deportation proceeding under this Act the burden of proof shall be upon the Attorney General to establish deportability by a preponderance of the evidence.".

JUDICIAL REVIEW

SEC. 123. (a) Subsection (a) of section 106 (8 U.S.C. 1105a) is amended—

(1)(A) in the matter before paragraph (1), by striking out "The procedure" and all that follows through "any prior Act" and inserting in lieu thereof the following: "Notwithstanding section 279 of this Act, section 1331 of title 28, United States Code, or any other provision of law (except as provided under subsection (b)), the procedures prescribed by and all the provisions of chapter 158 of title 28, United States Code, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of exclusion or deportation (including determinations respecting asylum encompassed within such orders and regardless of whether or not the alien is in custody and not including exclusions effected without a hearing pursuant to section 235(b)(1)(B)) made against aliens within (or seeking entry into) the United States";

(B) in paragraph (1), by striking out "not later than six months" and all that follows through "whichever is the later" and inserting in lieu thereof "by the alien involved or the Service not later than 45 days from the date of the final order";

(C) inserting ", in the case of review sought by an individual petitioner," in paragraph (2) after "in whole or in part, or";

(D) by inserting "in the case of review sought by an individual petitioner," in paragraph (3) after "(3)"; and

(E) by striking out "The Service" in paragraph (3) and inserting in lieu thereof "In case of judicial review of an order of deportation, the Service"; and

(F) by inserting "exclusion or" before "deportation" in paragraph (4);

(2) by striking out "Attorney General's findings of fact" in paragraphs (4) and (6) and inserting in lieu thereof "findings of fact in the order",

(3) by striking out "(4) except as provided in" in paragraph (4) and inserting in lieu thereof "(4)(A) except as provided in subparagraph (B) and in",

(4) by striking out "reasonable, substantial, and probative" in paragraph (4) and inserting in lieu thereof "substantial",

(5) by adding at the end of paragraph (4) the following new subparagraph:

"(B) to the extent that an order relates to a determination on an application for asylum, the court shall only have jurisdiction to review (i) whether the jurisdiction of the immigration judge or the United States Immigration Board was properly exercised, (ii) whether the asylum determination was made in accordance with applicable laws and regulations, (iii) the constitutionality of the laws and regulations pursuant to which the determination was made, and (iv) whether the decision was arbitrary or capricious;",

(6) in paragraph (7)—

(A) by inserting "or exclusion" after "deportation" each place it appears,

(B) by striking out "subsection (c) of section 242 of this Act" and inserting in lieu thereof "section 235(b) or 242(c)", and

(C) by striking out "a deportation order;" and inserting in lieu thereof "an exclusion or deportation order; and ",

(7) by striking out "; and" at the end of paragraph (8) and inserting in lieu thereof a period, and

(8) by striking out paragraph (9).

(b) Subsection (b) of such section is amended to read as follows:

"(b)(1) Nothing in this section shall be construed as limiting the right of habeas corpus under the Constitution of the United States.

"(2) Notwithstanding any other provision of law, no court of the United States shall have jurisdiction to review determinations of immigration judges or of the United States Immigration Board respecting the reopening or reconsideration of exclusion or deportation proceedings or asylum determinations outside of such proceedings, the reopening of an application for asylum because of changed circumstances, the Attorney General's denial of a stay of execution of an exclusion or deportation order, or the exclusion of an alien from the United States under section 235(b)(1).".

(c) Subsection (c) of such section is amended by striking out "deportation or of exclusion" and inserting in lieu thereof "an immigration judge".

(d) The section heading for section 106 is amended to read as follows:

"JUDICIAL REVIEW OF ORDERS OF DEPORTATION, EXCLUSION, AND ASYLUM".

(e) In the case of a final order of deportation entered before the date of the enactment of this Act, a petition for review with respect to that order may in no case be filed under section 106(a)(1) of the Immigration and Nationality Act later than the earlier of (1) forty-five days after the date of the enactment of this Act, or (2) of the date (if any) such petition was required to be filed under the law in existence before the date of the enactment of this Act.

(f) Section 279 (8 U.S.C. 1329) is amended—

(1) by striking out "The district courts" and inserting in lieu thereof "(a) Except as otherwise provided under section 106, the district courts"; and

(2) by adding at the end thereof the following new subsection:

"(b) An action for judicial review of any administrative action arising under this Act, or regulations issued pursuant to this Act, other than a final order of exclusion or deportation as provided in section 106(a) of this Act, may not be filed later than thirty days after the date of the final administrative action or from the effective date of this section, whichever is later.".

ASYLUM

SEC. 124. (a)(1) Subsection (a) of section 208 (8 U.S.C. 1158) is amended to read as follows:

"(a)(1)(A) Except as provided in subparagraph (B), any alien physically present in the United States or at a land border or port of entry may apply for asylum in accordance with this section.

"(B)(i) An alien against whom exclusion or deportation proceedings have been instituted may not file a notice of intention to apply for asylum more than fourteen days, nor perfect such application for asylum more than thirty-five days, after the date of the service of the notice instituting such proceedings unless the alien can make a clear showing, to the satisfaction of the immigration judge conducting the proceeding, that changed circumstances in the country of the alien's nationality (or, in the case of an alien having no nationality, the country of the alien's last habitual residence), between the date of notice instituting the proceeding and the date of application for asylum, have resulted in a change in the alien's eligibility for asylum.

"(ii) An alien who has previously applied for asylum and had such application denied may not again apply for asylum unless the alien can make a clear showing that changed circumstances in the country of the alien's nationality (or, in the case of the alien having no nationality, the country of the alien's last habitual residence), between the date of the previous denial of asylum and the date of the subsequent application for asylum, have resulted in a change in the alien's eligibility for asylum.

"(2) Applications for asylum shall be considered before immigration judges who are specially designated by the United States Immigration Board as having special training in international relations and international law. The Attorney General shall provide special training in international relations and international law for individuals who served as special inquiry officers before the date of enactment of the Immigration Reform and Control Act of 1983 in order to qualify such individuals to hear applications under this section.

"(3)(A)(i) Upon the filing of an application for asylum, the immigration judge, at the earliest practicable time and after consultation with the attorney for the Government and the applicant, shall set the application for hearing on a day certain or list it for trial on a weekly or other short-term hearing calendar, so as to assure a speedy hearing.

"(ii) The hearing on the asylum application shall commence on the earliest practicable date after the date the application has been filed. The holding of an asylum hearing shall not delay the holding of any exclusion or deportation proceeding.

"(iii) In the case of an alien who has filed an application for asylum and who has been continuously detained pursuant to section 235 or 242 since the date the application was filed, if a hearing on the application is not held on a timely basis under clause (ii) or a decision on the application rendered on a timely basis under subparagraph (B), and if actions or inaction by the applicant have not resulted in unreasonable delay in the proceedings, the Attorney General shall provide for the release of the alien subject to such reasonable conditions as the Attorney General may establish to assure the presence of the alien at any appropriate proceedings, unless the Attorney General has reason to believe that the release of the alien would pose a danger to any other person or to the community, that the alien meets a condition described in one of the subparagraphs of section 243(h)(2), or that the alien is subject to temporary exclusion under section 235(c).

"(B) A hearing on the asylum application shall be closed to the public, unless the applicant requests that it be open to the public. To the extent practicable, the hearing shall be conducted in a nonadversarial, informal manner, except that the applicant is entitled to be assisted by counsel (in accordance with section 292), to present evidence, and to examine and cross-examine witnesses. A complete verbation record of the proceedings and of all testimony and

evidence produced at the hearing shall be kept. The determination of the immigration judge shall be based only on the evidence produced at the hearing. The immigration judge shall render a determination on the application not later than ninety days after the date of completion of the hearing.

(C)(i) The Secretary of State shall on a continuing basis make available information on human rights in all countries to the Attorney General and to immigration judges who hear applications under this section. The immigration judges shall use such information, if available without delay to the proceedings, as general guidelines in making the asylum determination.

"(ii) The Attorney General shall provide notice to the Secretary of State whenever an application for asylum is filed under this section. The Secretary of State may submit comments to the immigration judge on such application, but the immigration judge shall not delay the proceeding in order to receive such comments.

"(D) Upon the filing of a notice of appeal the decision of an immigration judge to the United States Immigration Board under section 107(b), the Attorney General and the Board shall provide that a transcript of the hearing is made available as soon as practicable.

"(E) The Attorney General shall allocate sufficient resources so as to assure that applications for asylum are heard and determined on a timely basis under this paragraph.

"(4) The Attorney General may, in his discretion, grant an alien asylum only if the immigration judge determines that the alien (A) is a refugee within the meaning of section 101(a)(42)(A), and (B) does not meet a condition described in one of the subparagraphs of section 243(h)(2).

"(5) The burden of proof shall be upon the alien applying for asylum to establish the alien's eligibility for asylum.

"(6) After making a determination on an application for asylum under this section, an immigration judge may not reopen the proceeding at the request of the applicant except upon a clear showing that, since the date of such determination, changed circumstances in the country of the alien's nationality (or, in the case of an alien having no nationality, the country of the alien's last habitual residence) have resulted in a change in the alien's eligibility for asylum.".

(2) Subsection (b) of such section is amended by inserting "(1)" after "determines that the alien" and by inserting before the period at the end the following: ", or (2) meets a condition described in one of the subparagraphs of section 243(h)(2).".

(3) Such section is further amended by adding at the end the following new subsection:

"(d) The procedures set forth in this section shall be the sole and exclusive procedure for determining asylum.".

(b) Section 243(h) (8 U.S.C. 1253(h)) is amended by adding at the end the following new paragraph:

"(3) An application for relief under this subsection shall be considered to be an application for asylum under section 208 and shall be considered in accordance with the procedures set forth in that section.".

(c) Section 222(f) (8 U.S.C. 1202(f)) is redesignated as "SEC. 222. (f)(1)."

(d) Section 222(f) (8 U.S.C. 1202(f)) is amended by adding a new subsections (f) (2) and (3) to read as follows:

"(2) The records or any document of the Department of Justice, the Department of State, or any other Government agency, or foreign government, pertaining to the issuance or denial of any application for asylum, refugee status, withholding of deportation under sections 207, 208, and 243(h) of this Act, or any other application arising under a claim of persecution on account of race, religion, political opinion, nationality, or membership in a particular social group, shall be confidential and exempt from disclosure and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States. In the discretion of the Attorney General or the Secretary of State, as the case may be, certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interests of the ends of justice in a case pending before the court.

"(3) The provisions of paragraph (2) of this section shall not be applicable to the person who is the subject of such application for asylum, refugee status, withholding of deportation, or any other application arising under a claim of persecution on account of race, religion, political opinion, nationality or membership in a particular social group: *Provided, however,* That this subsection shall not limit the authority of any agency to withhold information pursuant to the Freedom of Information Act.".

EFFECTIVE DATES AND TRANSITION

SEC. 125. (a)(1) Except as otherwise provided in this section, the amendments made by this part take effect on the date of the enactment of this Act.

(2)(A) Except as provided in subparagraph (B), the amendments made by this part (other than those made by sections 121(a), 123(a)(2), 123(a)(5), 123(a)(9), and 124(b)) shall not apply to—

(i) any exclusion or deportation proceeding (or administrative or judicial review thereof) which was initiated before the hearing transition date (designated under subsection (c)(1)(A)), or

(ii) to any application for asylum filed before the asylum transition date (designated under subsection (c)(1)(B)).

In the case of such proceedings and such applications initiated before such dates which continue after such dates, the United States Immigration Board shall provide that immigration judges may assume and perform such functions of special inquiry officers as may be appropriate and consistent with their duties as immigration judges.

(B) Paragraphs (1)(B), (3), (4), and (6) of section 208(a) and section 208(b) of the Immigration and Nationality Act (as amended by section 124(a) of this part) shall apply to applications for asylum made after the date of the enactment of this Act, except that—

(i) in the case of an alien against whom exclusion or deportation proceedings have been instituted as of the date of the enactment of this Act, the restriction of paragraph (1)(B)(i) of section 208(a) of the Immigration and Nationality Act (as so amended) shall apply to asylum applications made more than fourteen days after the date of the enactment of this Act (rather than the date of the service of the notice of such exclusion or deportation proceeding), and

(ii) references in the last sentence of paragraph (3) and in paragraph (6) of such section to an immigration judge shall be deemed (before the asylum transition date) to be a reference to a special inquiry officer conducting the asylum hearing.

(3) The amendments made by section 121(b) shall apply to deportation proceedings pending on or commenced after the date of the enactment of this Act.

(b)(1) The Attorney General shall appoint the Chairman and other members of the United States Immigration Board (hereafter in this section referred to as the "Board") not later than forty-five days after the date of the enactment of this Act.

(2) The Chairman, in consultation with the Attorney General, shall designate a date, not later than forty-five days after the Chairman and a majority of the members of the Board are appointed, on which the Board shall assume the present functions of the Board of Immigration Appeals (under existing rules and regulations).

(3)(A) The Chairman shall provide promptly for establishment of interim final rules of practice and procedure which will apply to the Board (when not acting as the Board of Immigration Appeals under paragraph (2)) and immigration judges under the Immigration and Nationality Act, after the hearing transition date or asylum transition date, designated under subsection (c)(1), as the case may be.

(B) Not later than sixty days after the date such interim final rules are established, the Attorney General shall appoint at least ten immigration judges who are qualified to be designated to hear asylum cases under section 208 of the Immigration and Nationality Act. The Board shall provide for such special training of these immigration judges as it deems appropriate.

(c)(1) In order to provide for the orderly transfer of proceedings from the existing special inquiry system to the immigration judge system, the Board, in consultation with the Attorney General, shall designate—

(A) a "hearing transition date", to be not later than forty-five days after the date interim final rules of practice and procedure are established under subsection (b)(3)(A), and

(B) an "asylum transition date", after the establishment of interim final rules of practice and procedure respecting applications for asylum and after the appointment and designation of immigration judges under subsection (b)(3)(B).

(2) During the period before the hearing transition date or the asylum transition date (in the case of asylum hearings), any proceeding or hearing under the Immigration and Nationality Act which may be conducted by a special inquiry officer may be conducted by an individual appointed and qualified as an immigration judge in accordance with all the rules and procedures otherwise applicable to a special inquiry officer's conduct of such proceeding or hearing.

(d) Individuals acting as special inquiry officers on the date of the enactment of this Act and on the hearing transition date may (without regard to other provisions of law) assume the duties of an acting immigration judge after such transition date during the period ending two years after the date of the enactment of this Act. If such individuals remain in such capacity through the end of such period and have not been appointed to the United States Immigration Board or as immigration judges, then they shall be deemed, for purposes of continuing employment in the Department of Justice, to have been employed by the Department as special inquiry officers during such period.

(e)(1) The enactment of this part shall not result in any loss of rights or powers, inter-

ruption of jurisdiction, or prejudice to matters pending in the Board of Immigration Appeals or before special inquiry officers on the day before this Act takes effects.

(2) Under rules established by the Chairman of the United States Immigration Board, with respect to exclusion and deportation cases pending as of the hearing transition date and applications for asylum pending as of the asylum transition date, the United States Immigration Board shall be deemed to be a continuation of the Board of Immigration Appeals and immigration judges shall be deemed to be a continuation of special inquiry officers for the purposes of effectuating the continuation of all existing powers, rights, and jurisdiction.

(f) The Attorney General shall provide that in the case of members of the Board of Immigration Appeals who—

(1) have served for a period of at least three years,

(2) are not appointed as members of the United States Immigration Board or as immigration judges, and

(3) continue to be employed by the Attorney General after the date of functions of the Board of Immigration Appeals are assumed by the United States Immigration Board,

there shall be no reduction in grade or compensation for one year after the date of termination of the individual's membership on the Board of Immigration Appeals.

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 126. (a) The first sentence of section 234 (8 U.S.C. 1124) is amended by striking out "special inquiry officers" and inserting in lieu thereof "immigration judges".

(b)(1) Subsection (a) of section 235 (8 U.S.C. 1225) is amended—

(A) by striking out "special inquiry officers" in the first sentence and inserting in lieu thereof "immigration judges",

(B) by striking out ", including special inquiry officers," in the fourth sentence and inserting in lieu thereof "and any immigration judge",

(C) by striking out ", including special inquiry officers," in the sixth sentence,

(D) by striking out "and special inquiry officers" in the sixth sentence and inserting in lieu thereof "and immigration judges", and

(E) by striking out "special inquiry officer" each place it appears in the seventh sentence and inserting in lieu thereof "immigration judge".

(2) Subsection (b) of such section is amended by striking out "a special inquiry officer for further inquiry" in the second sentence and inserting in lieu thereof "an immigration judge for an exclusion hearing".

(3) Subsection (c) of such section is amended—

(A) by striking out "or to the special inquiry officer during the examination before either of such officers" in the first sentence and inserting in lieu thereof "during the examination or an immigration judge during an exclusion hearing",

(B) by striking out "no further inquiry by a special inquiry officer" in the first sentence and inserting in lieu thereof "no further examination or exclusion hearing",

(C) by striking out "inquiry or further inquiry" in the first sentence and inserting in lieu thereof "examination or hearing",

(D) by striking out "any inquiry or further inquiry by a special inquiry officer" in the second sentence and inserting in lieu thereof "any examination or hearing" and

(E) by striking out "an inquiry before a special inquiry officer" in the third sentence and inserting in lieu thereof "an exclusion hearing before an immigration judge".

(c)(1) Sections 106(a)(2), 236, and 242(b) (8 U.S.C. 1105a(a)(2), 1126, 1252(b)) are each amended by striking out "A" and "a" each place either appears before "special inquiry officer" and inserting in lieu thereof "An" and "an", respectively.

(d)(1) Sections 106(a)(2) and 236 (8 U.S.C. 1105a(a)(2), 1226) are each amended by striking out "special inquiry officer" and inserting in lieu thereof "immigration judge" each place it appears.

(2) Subsection (a) of section 236 (8 U.S.C. 1226) is amended—

(A) by amending the first sentence to read as follows: "An immigration judge shall conduct proceedings under this section.",

(B) by striking out "for further inquiry" in the second sentence and inserting in lieu thereof "for an exclusion hearing",

(C) by striking out "at the inquiry" in the third sentence and inserting in lieu thereof "at the hearing",

(D) by striking out the fourth sentence,

(E) by striking out "regulations as the Attorney General shall prescribe" in the fifth sentence and inserting in lieu thereof "rules as the Chairman of the United States Immigration Board shall establish",

(F) by striking out "inquiry" in the sixth sentence and inserting in lieu thereof "hearing", and

(G) by striking out "inquiry" in the seventh sentence and inserting in lieu thereof "hearing".

(3) Subsection (b) of such section is amended by striking out "Attorney General" in the first and fourth sentences and inserting in lieu thereof "United States Immigration Board" and by striking out the third sentence.

(4) Subsection (c) of such section is amended by striking out "to the Attorney General".

(e) Section 242(b) (8 U.S.C. 1252(b)) is amended—

(1) by striking out "special inquiry officer" each place it appears in the first, second, third, and seventh sentences and inserting in lieu thereof "immigration judge",

(2) by striking out "shall administer oaths" and all that follows through "Attorney General," in the first sentence,

(3) by striking out "Attorney General shall prescribe" in the second sentence and inserting in lieu thereof "Chairman of the United States Immigration Board shall establish",

(4) by striking out "In any case" and all that follows through "an additional immigration officer" in the fourth sentence and inserting in lieu thereof "An immigration officer" and by striking out "in such case such additional immigration officer" in that sentence,

(5) by striking out the fifth and sixth sentences,

(6) by striking out "such regulations" and all that follows through "shall prescribe" in the seventh sentence and inserting in lieu thereof "rules as are established by the Chairman of the United States Immigration Board",

(7) by striking out "Such regulations" in the eighth sentence and inserting in lieu thereof "Such rules", and

(8) by striking out "Attorney General shall be final" in the tenth sentence and inserting in lieu thereof "immigration judge shall be final unless reversed on appeal".

(f) The last sentence of section 273(d) (8 U.S.C. 1323(d)) is amended by striking out "special inquiry officers" and inserting in lieu thereof "immigration judges".

(g) Section 292 (8 U.S.C. 1362) is amended to read as follows:

"SEC. 292. In any proceeding or hearing before an immigration judge and in any appeal before the United States Immigration Board from any such proceeding, the person concerned shall have the privilege of being represented (at no expense to the Government and at no unreasonable delay) by such counsel, authorized to practice in such proceedings, as he shall choose.".

(h) Section 360(c) (8 U.S.C. 1503(c)) is amended—

(1) by inserting "(and appeals thereof)" in the first sentence after the word "proceedings", and

(2) by striking out the second sentence.

(i) Any reference in section 203(h) of the Immigration and Nationality Act, as in effect before March 17, 1980, to a special inquiry officer shall be deemed to be a reference also to an immigration judge under section 101(a)(43) of such Act.

PART D—ADJUSTMENT OF STATUS

LIMITATIONS ON ADJUSTMENT OF NONIMMIGRANTS TO IMMIGRANT STATUS BY VISA ABUSERS

SEC. 131. (a) Section 245(c)(2) (8 U.S.C. 1255(c)(2)) is amended by striking out "hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status" and inserting in lieu thereof "has failed to maintain continuously a legal status since entry into the United States".

(b) The amendment made by subsection (a) shall apply to applications for adjustment of status filed before, on, or after the date of the enactment of this Act.

PART E—DEPORTATION PROCEEDINGS

BURDEN OF PROOF

SEC. 141. Section 291 (8 U.S.C. 1361) is amended in the third sentence by inserting "to identify himself correctly by name and nationality and" after "such person".

TITLE II—REFORM OF LEGAL IMMIGRATION

PART A—IMMIGRANTS

NUMERICAL LIMITATIONS

SEC. 201. (a) Subsection (a) of section 201 (8 U.S.C. 1151) is amended to read as follows:

"(a) Exclusive of special immigrants defined in section 101(a)(27), immigrants born to permanent resident aliens during a temporary visit abroad, immediate relatives specified in subsection (b) of this section, immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative, aliens who are admitted or granted asylum under section 207 or 208, aliens provided records of permanent residence under section 214(d), and aliens whose status is adjusted to permanent resident status under section 245A, aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—

"(1) family reunification immigrants described in section 203(a) and immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(a), in a number not to exceed in any fiscal year the number equal to (A) three hundred and fifty thousand, minus (B) the sum of (i) the number of immediate relatives specified in subsection (b) of this section who in the previous

fiscal year were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence, (ii) the number of immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative, (iii) the number of immigrants born to permanent resident aliens during a temporary visit abroad, and (iv) the number of aliens who in the previous fiscal year were provided records of permanent residence under section 214(d), plus (C) the difference (if any) between the maximum number of visas which may be issued under paragraph (2) during the prior fiscal year and the number of visas issued under that paragraph during that year, and not to exceed in any of the first three quarters of any fiscal year 27 per centum of the numerical limitation for all of such fiscal year, and

"(2) independent immigrants described in section 203(b) and immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b), in a number not to exceed in any fiscal year the number of equal to (A) seventy-five thousand, minus (B) the number of special immigrants (other than those described in section 101(a)(27(A)) who in the previous fiscal year were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permenant residence, plus (C) the difference (if any) between the maximum number of visas which may be issued under paragraph (1) during the prior fiscal year and the number of visas issued under that paragraph during that year, and not to exceed in any of the first three quarters of any fiscal year 27 per centum of the numerical limitation for all of such fiscal year.".

(b) Section 202(a) (8 U.S.C. 1152(a)) is amended—

(1) by striking out "(a) No person" and inserting in lieu thereof "(a)(1) Except as specifically provided in paragraph (2) of this subsection and in section 101(a)(27), 201(b), 203, and 214(d), no person",

(2) by striking out ", except as specifically" and all that follows up to the period at the end, and

(3) by adding at the end the following new paragraph:

"(2)(A) Except as provided in subparagraph (B), the total number of natives of any single foreign state who are issued immigrant visas or may otherwise acquire the status of an alien lawfully admitted for permanent residence under subsections (a) and (b) of section 203 or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under subsection (a) or (b) of section 203 shall not exceed in any fiscal year—

"(i) twenty thousand, in the case of any foreign state other than a foreign state contiguous to the United States, or

"(ii) forty thousand (or the number determined under subparagraph (C)), in the case of any foreign state contiguous to the United States.

"(B) If in a fiscal year the total number of immediate relatives specified in section 201(b), immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative, aliens provided records of permanent residence under section 214(d), and special immigrants defined in section 101(a)(27) (other than those described in subparagraph (A) thereof) who were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence who are natives of a particular foreign state exceeded twenty thousand, then the numerical limitation applicable to that state in the following fiscal year under subparagraph (A) shall be reduced by the amount of such excess.

"(C) If in any fiscal year the number of aliens chargeable to a contiguous foreign state who are issued immigrant visas or otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence is less than forty thousand, then in the following fiscal year the number to be used in clause (ii) of subparagraph (A) for the other contiguous foreign state shall be forty thousand plus the amount of the difference.".

PREFERENCE AND NONPREFERENCE ALLOCATION SYSTEMS

SEC. 202. (a)(1) Section 203 (8 U.S.C. 1153) is amended—

(A) by redesignating subsections (b) through (e) as subsections (e) through (h), respectively, and

(B) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) PREFERENCE ALLOCATION FOR FAMILY REUNIFICATION IMMIGRANTS.—Aliens subject to the numerical limitation specified in section 201(a)(1) for family reunification immigrants shall be allotted visas as follows:

"(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 15 per centum of such numerical limitation, plus any visas not required for the class specified in paragraph (4).

"(2) SPOUSES AND CHILDREN OF PERMANENT RESIDENT ALIENS.—Qualified immigrants who are the spouses or children of an alien lawfully admitted for permanent residence or who (A) as of May 27, 1982, had received approval of a petition made on their behalf for preference status by reason of the relationship described in this paragraph as in effect on such date, and (B) continue to qualify under the terms of the Act as in effect on such date shall be allocated visas in a number not to exceed 65 per centum of such numerical limitation, plus any visas not required for the class specified in paragraph (1).

"(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas in a number not to exceed 10 per centum of such numerical limitation, plus any visas not required for the classes specified in paragraphs (1) and (2).

"(4) UNMARRIED BROTHERS AND SISTERS OF CITIZENS AND PREVIOUS FIFTH PREFERENCE.—

"(A) qualified immigrants who are the unmarried brothers or sisters of citizens of the United States, if such citizens are at least twenty-one years of age, and

"(B) qualified immigrants who (i) as of the date of enactment of the Immigration Reform and Control Act of 1983 had received approval of a petition made on their behalf for preference status by reason of the relationship described in paragraph (5) of section 203(a) of this Act as in effect on the day before such date, and (ii) continue to qualify under the terms of this Act as in effect on the day before such date.

shall be allocated visas in a number not to exceed 10 per centum of such numerical limitation, plus any visas not required for the classes specified in paragraphs (1) through (3).".

"(b) PREFERENCE AND NONPREFERENCE ALLOCATION FOR INDEPENDENT IMMIGRANTS.—Aliens subject to the numerical limitation specified in section 201(a)(2) for independent immigrants shall be allocated visas as follows:

"(1) ALIENS WHO ARE MEMBERS OF THE PROFESSIONS HOLDING DOCTORAL DEGREES OR ALIENS OF EXCEPTIONAL ABILITY.—Qualified immigrants who are members of the professions holding doctoral degrees (or the equivalent degree) or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States, shall be allocated visas. The Attorney General may, when he deems it to be in the national interest, waive the requirement of the preceding sentence that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States. In determining under this paragraph whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability.

"(2) SKILLED WORKERS.—Qualified immigrants who are capable of performing skilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States, shall be allocated any visas not required for the classes specified in paragraph (1).

"(3) NONPREFERENCE ALIENS.—Visas authorized in any fiscal year under section 201(a)(2), less those required for issuance to the classes specified in paragraphs (1) and (2), shall be made available to other qualified immigrants in the chronological order in which they qualify. No immigrant visa shall be issued under this paragraph to an adopted child or prospective adopted child of a United States citizen or lawfully resident alien unless (A) a valid home study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by that State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States, and (B) the child has been irrevocably released for immigration and adoption. No natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act. No immigrant visa shall otherwise be issued under this paragraph to an unmarried child under the age of sixteen except a child who is accompanying or following to join his natural parent.

An immigrant visa shall not be issued to an immigrant under paragraph (1), (2), or (3) until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14). The provisions of sections 212(d)(11) shall apply with respect to any alien petitioning to be classified as a preference immigrant under paragraph (1).

"(c) GUIDE FOR ALLOCATION BETWEEN PREFERENCE SYSTEMS.—Where it is determined that the maximum number of visas will be

made available under section 202(a)(2) to natives of any single foreign state (defined in section 202(b) or any dependent area (defined in section 202(c)) in any fiscal year, in determining whether to provide for visas to such natives under the preference system described in subsection (a) or that described in subsection (b), visa numbers with respect to natives of that state shall be allocated (to the extent practicable and otherwise consistent with this section) in a manner so that the ratio of—

"(1) the sum of (A) the number of family reunification immigrants described in subsection (a), and (B) the number of immediate relatives specified in section 201(b), immigrants born to permanent residents during a temporary visit abroad, immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative or under section 203(a), and aliens provided records of permanent residence under section 214(d), who are natives of such state and who are issued immigrant visas or otherwise acquire the status of aliens lawfully admitted to the United States for permanent residence in that fiscal year, to

"(2) the sum of (A) the number of independent immigrants described in subsection (b), and (B) the number of special immigrants defined in section 101(a)(27) (other than those described in subparagraph (A) thereof) and immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b), who are natives of such state and who are issued immigrant visas or otherwise acquire the status of aliens lawfully admitted to the United States for permanent residence in that fiscal year, is equal to 4.65 to 1.

"(d)(1) A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a) or (b), be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, his spouse or parent.

"(2) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.".

(2) Subsection (e) of such section, as so redesignated, is amended—

(A) by inserting "or under subsection (b)" after "subsection (a)" the first place it appears, and

(B) by striking out "subsection (a)" the second place it appears and inserting in lieu thereof "the respective subsection".

(b) Section 202 (8 U.S.C. 1152) is amended by striking out subsection (e), section 204 (8 U.S.C. 1154) is amended by striking out subsection (f), and section 245(b) (8 U.S.C. 1255(b)) is amended by striking out "202(e) or".

(c)(1)(A) Subsection (f) of section 203 (8 U.S.C. 1153), as redesignated by subsection (a)(1), is amended by striking out "paragraphs (1) through (6) of subsection (a)" and inserting in lieu thereof "subsection (a) or pursuant to paragraphs (1) through (3) of subsection (b)".

(B) Subsection (g) of such section, as so redesignated, is amended by striking out "paragraphs (1) through (6) of subsection (a)" and inserting in lieu thereof "subsection (a) or paragraphs (1) through (3) of subsection (b)" each place it appears.

(2)(A) Subsection (a) of section 204 (8 U.S.C. 1154) is amended—

(i) by striking out "paragraph (1), (4), or (5) of section 203(a)" and inserting in lieu thereof "paragraph (1), or (3) or (4) of section 203(a)",

(ii) by striking out "section 203(a)(3)" and inserting in lieu thereof "paragraph (1) of section 203(b)", and

(iii) by striking out "203(a)(6)" and inserting in lieu thereof "203(b)(2) or 203(b)(3)".

(B) Subsection (b) of such section is amended by striking out "section 203(a) (3) or (6)" and inserting in lieu thereof "paragraph (1), (2) or (3) of section 203(b)".

(d) Section 241(a)(9) (8 U.S.C. 1251(a)(9)) is amended—

(1) by inserting "(A)" after "(9)", and

(2) by striking out the semicolon at the end thereof and inserting in lieu thereof ", or", and

(3) by adding at the end thereof the following new subparagraph:

"(B) was admitted as an independent immigrant end of the one-year period following the date of entry failed to invest substantial capital in an enterprise in the United States as required in such paragraph or, having made such investment, has failed without good cause to maintain such an investment for a period of at least one year after the date of such entry or after the date such substantial investment was made, which ever date was later;".

LABOR CERTIFICATION

SEC. 203. (a) Paragraph (14) of section 212(a) (8 U.S.C. 1182(a)) is amended by striking out "(A)" and all that follows through the end and inserting in lieu thereof the following: "(A) there are not sufficient qualified worker (or equally qualified workers in the case of aliens (i) who are members of the teaching profession or who have exceptional ability in the sciences or arts) available in the United States in the occupations in which the aliens will be employed; (B) sufficient workers in the United States could not within a reasonable period of time be trained for such occupations by (or through funds provided by) potential employers; and (C) the employment of aliens in such occupations will not adversely affect the wages and working conditions of workers in the United States who are similarly employed. In making such determinations the Secretary of Labor may use labor market information without reference to the specific job opportunity for which certification is requested. An alien on behalf of whom a certification is sought must have an offer of employment from an employer in the United States. The exclusion of aliens under this paragraph shall only apply to preference immigrants described in section 203(b) (1) and (2) and to nonpreference immigrants described in section 203(b)(3). Decisions of the Secretary of Labor made pursuant to this paragraph, including the issuance and content of regulations and the use of labor market information under this paragraph, shall be reviewable by an appropriate district court of the United States, but the court shall not set aside such a decision unless there is compelling evidence that the Secretary made such decision in an arbitrary and capricious manner;".

(b) Section 212(d) (8 U.S.C. 1181(d)) is amended by adding at the end the following new paragraph:

"(11) The requirement in paragraph (14) of subsection (a) relating to an offer of employment from an employer in the United States may be waived with respect to any alien seeking to enter the United States as an immigrant under section 203(b)(1), if the Attorney General deems it to be in the national interest.".

G-4 SPECIAL IMMIGRANTS

SEC. 204. (a) Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended by striking out "or" at the end of subparagraph (G), by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "; or", and by adding at the end of the following new subparagraph:

"(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15(N), has resided and been physically present in the United States within seven years of the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and twenty-one years, and (II) applies for admission under this subparagraph no later than his twenty-fifth birthday or six months after the date this subparagraph is enacted, whichever is later;

"(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States within seven years of the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least fifteen years prior to the death of such officer or employee, and (II) applies for admission under this subparagraph no later than six months after the date of such death or six months after the date this subparagraph is enacted, whichever is later;

"(iii) an immigrant who is a retired officer or employee of such an international organization, and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States within seven years of the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least fifteen years prior to the officer or employee's retirement from any such international organization, and (II) applies for admission under this subparagraph (i) on or before December 31, 1992 and (ii) no later than six months after the date of such retirement or six months after the date this subparagraph is enacted, whichever is later; or

"(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family.".

(b) Section 101(a)(15) (8 U.S.C. 1101(a)(15)) is amended by striking out "or" at the end of subparagraph (L), by striking out the period at the end of subparagraph (M) and inserting in lieu thereof "; or ", and by adding at the end the following new paragraph:

"(N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i), but only if and while the alien is a child, or

"(ii) a child of such parent or of an alien accorded the status of a special immigrant under paragraph (27)(I) (ii), (iii), or (iv).".

EFFECTIVE DATES AND TRANSITION

SEC. 205. (a) The amendments made by sections 201, 202, and 203 shall apply to the admission of aliens to the United States on and after October 1, 1984. The amendments made by section 204 shall take effect on the date of the enactment of this Act.

(b)(1) In the case of a petition filed under section 204(a) of the Immigration and Nationality Act before October 1, 1984, such petition shall be deemed, as of such date, to be a petition for the new corresponding preference or nonpreference status (as defined in paragraph (2)), and the priority date for such petition shall remain in effect.

(2) For purposes of paragraph (1), the term "new corresponding preference or nonpreference status" means, in the case of a petition for a—

(A) preference status described in section 203(a)(1) of the Immigration and Nationality Act (as in effect on September 30, 1984), the preference status described in such section as in effect after such date;

(B) preference status described in section 203(a)(2) of such Act (as in effect on September 30, 1984), the preference status described in such section as in effect after such date;

(C) preference status described in section 203(a)(3) of such Act (as in effect on September 30, 1984), the preference status described in both paragraphs (1) and (2) of section 203(b) of such Act as in effect after such date;

(D) preference status described in section 203(a)(4) of such Act (as in effect on September 30, 1984), the preference status described in section 203(a)(3) of such Act as in effect after such date;

(E) preference status described in section 203(a)(5) of such Act (as in effect on September 30, 1984), the preference status described in section 203(a)(4) of such Act as in effect after such date;

(F) preference status described in section 203(a)(6) of such Act (as in effect on September 30, 1984), the preference status described in section 203(b)(2) in the case of skilled labor, or the nonpreference status described in section 203(b)(3), in the case of unskilled labor, of such Act as in effect after such date; and

(G) nonpreference status described in section 203(a)(7) of such Act (as in effect on September 30, 1984), the preference statuses described in paragraph (3) of section 203(b) of such Act (as in effect after such date) in the case of investors or the nonpreference described in section 203(b)(3) of such Act (as in effect after such date) in the case of noninvestors.

(c) When an immigrant, in possession of an unexpired immigrant visa issued before October 1, 1984, makes application for admission, his admissibility under paragraphs (20) and (21) of section 212(a) shall be determined under the provisions of law in effect on the date of the issuance of such visa.

PART B—NONIMMIGRANTS

H-2 WORKERS

SEC. 211. (a) Paragraph (15)(H) of section 101(a) (8 U.S.C. 1101(a)) is amended by striking out "to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country" in clause (ii) and inserting in lieu thereof "(a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations, of a temporary or seasonal nature, or (b) to perform other temporary or labor".

(b) Section 214 (8 U.S.C. 1184) is amended—

(1) by adding at the end of subsection (a) the following new sentences: "An alien may not be admitted to the United States as a nonimmigrant under section 101(a)(15)(H)(ii)(a) for an aggregate period of more than eight months in any calendar year, except in the case of agricultural labor or services which the Secretary of Labor, before the date of the enactment of the Immigration Reform and Control Act of 1983, has recognized require a longer period, which may exceed one year. An alien who was admitted to the United States as a nonimmigrant under section 101(a)(15)(H)(ii) during the preceding five-year period may not be admitted under that provision if the alien violated the terms of any such previous admission. The Attorney General shall provide for such procedures for the entry and exit of nonimmigrants described in section 101(a)(15)(H)(ii) as may be necessary to carry out this section.",

(2) by inserting "(1)" after "(c)" in subsection (c),

(3) by adding at the end of subsection (c) the following new paragraphs:

"(2)(A) A petition to import an alien as a nonimmigrant under section 101(a)(15)(H)(ii) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

"(i) there are not sufficient workers who are able, willing, qualified, and who will be available at the time and at the place needed to perform the labor or services involved in the petition, and

"(ii) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States who are similarly employed.

The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

"(B) The Secretary of Labor may not issue a certification under subparagraphs (A) if—

"(i) there is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification; or

"(ii) the employer, during the previous two years, employed nonimmigrant aliens admitted to the United States under section 101(a)(15)(H)(ii) and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer during that period substantially violated an essential term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers or has not paid a penalty (or penalties) for such violations which may be assessed by the Secretary of Labor, except that no employer may be denied certification for more than one year for any such violation.

"(3)(A) In the case of an application for a labor certification under section 101(a)(15)(H)(ii)(a)—

"(i) the Secretary of Labor may not require that such an application for labor certification be filed more than eighty days before the first date the employer requires the labor or services of the alien;

"(ii) such application shall be considered to have met the requirements of paragraph (2) unless the Secretary of Labor, within seven days of the filing of such application, notifies the employer filing such application whether such application meets such requirements and, if not, states the reasons therefor and provides an opportunity of the prompt resubmission of a modified application;

"(iii) the Secretary of Labor shall make, not less than twenty days before the date such labor or services are first required to be performed, the certification described in paragraphs (2)(A) (i) and (ii) if an employer has complied with the criteria for certification, including the recruitment of eligible individuals as prescribed by the Secretary, and the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have agreed to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary and who are otherwise available, except that the terms of such labor certification shall remain effective only if the employer continues to accept for employment, until the date the aliens depart for work with the employer, qualified eligible individuals who apply to the employer or are referred to the employer; and

"(iv) the petition, or the application for a certification, may be filed by an association representing agricultural producers who use agricultural labor or services. The filing of such a petition or application on a member's behalf does not relieve the member of any liability for representations made in such petition or application unless the association is the sole employer of all alien agricultural labor or services, in which case only the association shall be liable for representations made in such petition or application.

"(B) The Secretary of Labor shall provide for an expedited procedure for the review of a denial of certification under paragraph (2) in the case of a nonimmigrant described in section 101(a)(15)(H)(ii)(a), or at the applicant's request, a de novo administrative hearing.

"(C) The Secretary of Labor shall expeditiously make a new determination on the request for certification in the case of a nonimmigrant described in section 101(a)(15)(H)(ii)(a) if qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified eligible individuals. If the employer asserts that any eligible individuals who have been referred are not qualified, the burden of proof is on the employer to establish that the individuals referred are not qualified because of employment-related reasons.

"(D) For purposes of this paragraph, the term 'eligible individual' means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(a)(4)) with respect to that employment.

"(4) The Secretary of Labor, in consultation with the Attorney General and the Secretary of Agriculture, shall annually report to the Congress on the certifications provided under this subsection, the impact of aliens admitted pursuant to such certifications on labor conditions in the United States, and on compliance of employers and nonimmigrants with the terms and conditions of such nonimmigrants' admission to the United States.

"(5) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1984, $10,000,000 for the purposes (A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in section 101(a)(15)(H)(ii), and (B) of monitoring terms and conditions under which such nonimmigrants (and do-

mestic workers employed by the same employers) are employed in the United States. The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this subsection.", and

(4) by adding at the end the following new subsection:

"(e) The provisions of subsections (a) and (c) of this section preempt any State or local law regulating admissibility of nonimmigrant workers.".

(c) The amendments made by this section apply to petitions and applications filed under section 214(c) of the Immigration and Nationality Act on or after the first day of the sixth month beginning after the date of the enactment of this Act.

(d) The Attorney General in consultation with the Secretary of Labor and, in connection with agricultural labor or services, the Secretary of Agriculture, shall approve all regulations to be issued implementing the amendments made by this section. Notwithstanding any other provisions of law, final regulations implementing the amendments made by this section shall be issued, on an interim or other basis, not later than the first day of the sixth month beginning after the date of the enactment of this Act.

STUDENTS

SEC. 212. (a) Section 212(e) (8 U.S.C. 1182(e)) is amended—

(1) by inserting "(1)" after "No person",

(2) by inserting after "training," the following: "or (2) admitted under section 101(a)(15) (F) or (M) or acquiring such status after admission,", and

(3) by striking out "clause (iii)" in the second proviso and inserting in lieu thereof "clause (1)(iii) or clause (2)", and

(4) by striking out the period and inserting in lieu thereof the following: ": *And provided further,* That the Attorney General may, if he determines it to be in the public interest, waive such two-year foreign residence requirement—

"(A) in the case of an alien admitted on or before September 30, 1989, under section 101(a)(15)(F), (i) who is applying for a visa as an immigrant described in section 202(b)(1) and who has obtained his degree from a college or university in the United States, and who has been offered a position as a faculty member or academic researcher in the field in which he obtained his degree by a United States college or university, or (ii) who has obtained a degree in a natural science, mathematics, computer science, or an engineering field from a college or university in the United States, who is applying for a visa as an immigrant described in section 202(b) (1) or (2), and who has been offered a research, business, or technical position by a United States employer in the field in which he obtained such degree, or (iii) who has obtained an advanced degree in business or economics from a college or university in the United States, who has exceptional ability in business or economics, who is applying for a visa as an immigrant described in section 202(b) (1) or (2), and who has been offered a research, business or technical position by a United States employer which is in the field in which he obtained such degree and which requires such exceptional ability, or

"(B) in the case of an alien admitted under section 101(a)(15)(F) who has obtained a degree in a natural science, computer science, or in a field of engineering or business, who is applying for a visa as a nonimmigrant described in section 101(a)(15)(H)(iii), and who will receive no more than four years of training by a United States firm, corporation, or other legal entity, which training will enable such alien to return to the country of his nationality or last residence and be employed there as a manager by the same firm, corporation, or other legal entity, or a branch, subsidiary, or affiliate thereof.

Thirty days after the end of each fiscal year, the Attorney General shall prepare and transmit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report setting forth the number of aliens who applied for, and the number of aliens who were granted, waivers of the two-year foreign residence requirement pursuant to subclause (A) of the preceding proviso during the preceding fiscal year. The Attorney General and the Secretary of State jointly shall conduct a study on the impact of the waivers made pursuant to subclause (A) of the preceding proviso on the professional or technical labor requirements of foreign countries and jointly shall prepare and transmit not later than the close of the fiscal year 1986 to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report setting forth the findings of such study.".

(b) Section 245(c) (8 U.S.C. 1255(c)) is amended by striking out "or" before "(3)" and by inserting before the period at the end the following: ", or (4) an alien (other than an immediate relative specified in section 201(b) or an alien who has received a waiver of the two-year foreign residence requirement of section 212(e) who entered the United States classified as a nonimmigrant under subparagraph (F) or (M) of section 101(a)(15) or who was admitted as a nonimmigrant visitor without a visa under section 212(l).".

(c)(1) The amendments made by subsection (a) apply to aliens admitted to the United States after the date of the enactment of this Act.

(2) The amendments made by subsection (b) apply to aliens without regard to the date the aliens enter the United States, except that such amendments shall not apply to aliens who as of the date of the enactment of this Act meet the qualifications for a waiver of the two-year foreign residence requirement under paragraph (A) of section 212(e) of the Immigration and Nationality Act (as amended by section (a) of this section).

VISA WAIVER FOR CERTAIN VISITORS

SEC. 213. (a) Section 212 (8 U.S.C. 1182) is amended by adding at the end thereof the following new subsection:

"(l)(1) The Attorney General and the Secretary of State are authorized to establish a pilot program (hereafter in this subsection referred to as the 'program') under which the requirement of paragraph (26)(B) of subsection (a) may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this subsection, in the case of an alien who—

"(A) is applying for admission during the pilot program period (as defined in paragraph (5)) as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding ninety days;

"(B) is a national of a country which—

"(i) extends (or agrees to extend) reciprocal privileges to citizens and nationals of the United States, and

"(ii) is designated as a pilot country under paragraph (3);

"(C) before such admission completes such immigration form as the Attorney General shall establish under paragraph (2)(C) and executes a waiver of review and appeal described in paragraph (2)(D);

"(D) has a round-trip, nonrefundable, nontransferable, open-dated transportation ticket which—

"(i) is issued by a carrier which has entered into an agreement described in paragraph (4), and

"(ii) guarantees transport of the alien out of the United States at the end of the alien's visit; and

"(E) has been determined not to represent a threat to the welfare, health, safety, or security of the United States;

except that no such alien may be admitted without a visa pursuant to this subsection if the alien failed to comply with the conditions of any previous admission as a nonimmigrant.

"(2)(A) The program may not be put into operation until the end of the thirty-day period beginning on the date that the Attorney General submits to the Congress a certification that the screening and monitoring system described in subparagraph (B) is operational and that the form described in subparagraph (C) has been produced.

"(B) The Attorney General in cooperation with the Secretary of State shall develop and establish an automated data arrival and departure control system to screen and monitor the arrival into and departure from the United States of nonimmigrant visitors receiving a visa waiver under the program.

"(C) The Attorney General shall develop a form for use under the program. Such form shall be consistent and compatible with the control system developed under subparagraph (B). Such form shall provide for, among other items—

"(i) a summary description of the conditions for excluding nonimmigrant visitors from the United States under subsection (a) and this subsection.

"(ii) a description of the conditions of entry with a waiver under this subsection, including the limitation of such entry to ninety days and the consequences of failure to abide by such conditions, and

"(iii) questions for the alien to answer concerning any previous denial of the alien's application for a visa.

"(D) An alien may not be provided a waiver under this subsection unless the alien has waived any right (i) to review or appeal under the Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States or (ii) to contest, other than on the basis of an applicant for asylum, any action for deportation against the alien.

"(3)(A) The Attorney General and the Secretary of State acting jointly may designate up to eight countries as pilot countries for purposes of this subsection.

"(B) For the period beginning after the thirty-day period described in paragraph (2)(A) and ending on the last day of the first fiscal year which begins after such thirty-day period, a country may not be designated as a pilot country unless—

"(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0 percentum of

the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(ii) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percentum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(C) For each fiscal year (within the pilot program period) after the period specified in subparagraph (B)—

"(i) in the case of a country which was a pilot country in the previous fiscal year, a country may not be designated as a pilot country unless the sum of—

"(I) the total of the number of nationals of that country who were excluded from admission or withdrew, their application for admission during such previous fiscal year as a nonimmigrant visitor, and

"(II) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2.0 per centum of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year, or

"(ii) in the case of another country, the country may not be designated as a pilot country unless—

"(I) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(II) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(4) The agreement referred to in paragraph (1)(D)(i) is an agreement between a carrier and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under this subsection—

"(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the ninety-day period described in paragraph (1)(A)(i), and

"(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under this subsection.

The Attorney General may terminate such an agreement with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.

"(5) For purposes of this subsection, the term 'pilot program period' means the period beginning at the end of the thirty-day period referred to in paragraph (2)(A) and ending on the last day of the third fiscal year which begins after such thirty-day period.".

(b) Section 214(a) (8 U.S.C. 1184(a)) is amended by adding at the end the following new sentence: "No alien admitted to the United States without a visa pursuant to section 212(l) may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.".

(c) Section 248 (8 U.S.C. 1258) is amended by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and" and by adding at the end thereof the following new paragraph:

"(4) an alien admitted as a nonimmigrant visitor without a visa under section 212(l).".

AGRICULTURAL LABOR TRANSITION PROGRAM

SEC. 214. (a) The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall promulgate rules and regulations for the implementation of an agricultural labor transition program. The program shall be effective on the first day of the sixth month beginning after the date of enactment of this Act and shall last three years from the effective date.

(b) During the first year of the transition program, an agricultural employer, except as provided in (c), (d), and (e) below, may, as provided by regulation, employ up to 100 per centum of his seasonal agricultural worker need with transitional workers. During the second and third years of the program the employer may employ up to 67 per centum and 33 per centum respectively, of his seasonal agricultural worker needs with transitional workers.

(c) Nothing in this section shall permit transitional workers to replace available United States workers or legal foreign workers admitted under the Immigration and Nationality Act.

(d) All workers employed under the provisions of this section shall be fully protected by all Federal and State laws and regulations governing the employment of United States migrant and seasonal agricultural workers.

(e)(1) An undocumented alien in the United States shall be eligible to be a transitional worker under the provisions of this section if the person is employed or has been employed as a seasonal agricultural worker in the United States for at least 90 days during a period of time after January 1, 1980.

(2) An undocumented worker shall not be eligible to be a transitional worker and may not be registered under this section if the person is deportable for any reason other than those described in section 241(a) (2) and (9), or on the basis, under section 241(a)(1), of being excludable at the time of entry under paragraph (19), (20), or (26) of section 212(a). Only persons employed as transitional workers and registered as such by the Attorney General during the first year of the program shall be eligible during the second and third years.

(f) To employ transitional workers under the provisions of this section, an agricultural employer must—

(1) notify the Attorney General of said employer's intention to participate in the transition program within twelve months from the effective date of this Act section, and

(2) provide to the satisfaction of the Attorney General a numerical count of the numbers of seasonal agricultural workers employed during the immediately preceding twelve month period by said employer.

(g) After an employer begins participation in the agricultural labor transition program the employer shall provide, upon request, to the Attorney General a numerical count of the number of transitional workers employed and the total number of seasonal agricultural workers employed by said employer.

(h) Any eligible employer under the transition program who employs nonimmigrant alien agricultural workers under the provisions of section 101(a)(15)(H)(ii)(a) shall provide wages and working conditions as required by section 214(c)(2)(A)(ii) to all similarly employed workers of that employer.

(i) Agreement by an alien to be a transitional worker would not preclude that alien from eligibility under the legislation provisions of title III.

(j) The Attorney General may require by regulation, as a condition of participation by an employer in the transition program, the payment of a fee to recover the reasonable costs of processing registrations under the transition program.

TITLE III—LEGALIZATION

LEGALIZATION

SEC. 301. (a) Chapter 5 of title II is amended by inserting after section 245 (8 U.S.C. 1255) the following new section:

"ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1980, TO THAT OF PERSON ADMITTED FOR TEMPORARY OR PERMANENT RESIDENCE

"SEC. 245A. (a) The Attorney General may, in his discretion and under such regulations as he shall prescribe, adjust the status of an alien to that of an alien lawfully admitted for permanent residence if—

"(1) the alien applies for such adjustment during the twelve-month period beginning on a date 90 days after the date of enactment of this section, or, in the case of an alien who is the subject of an order to show cause issued under section 242, not later than 30 days after the date of issuance of such order,

"(2)(A) the alien (other than an alien who entered as a nonimmigrant) establishes that he entered the United States prior to January 1, 1977, and has resided continuously in the United States in an unlawful status from January 1, 1977, through the date of enactment of the Immigration Reform and Control Act of 1983, or

"(B) the alien entered the United States as a nonimmigrant before January 1, 1977, the alien's period of authorized stay as a nonimmigrant expired before January 1, 1977, through the passage of time or the alien's unlawful status was known to the Government as of January 1, 1977, and the alien has resided continuously in the United States in an unlawful status from January 1, 1977, through the date of enactment of the Immigration Reform and Control Act of 1983, and

"(C) if the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof.

"(3) the alien was physically present in the United States since the date of enactment of the Immigration Reform and Control Act of 1983; and

"(4) the alien—

"(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2),

"(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States, and

"(C) has not assisted in the persecution of any person or persons on account of race,

religion, nationality, membership in a particular social group, or political opinion.

"(b)(1) The Attorney General may, in his discretion and under such regulations as he shall prescribe, adjust the status of an alien to that of an alien lawfully admitted for temporary residence if—

"(A) the alien applies for such adjustment during the twelve-month period beginning on a date 90 days after the date of enactment of this section, or, in the case of an alien who is the subject of an order to show cause issued under section 242, not later than 30 days after the date of issuance of such order;

"(B)(i)(I) the alien (other than an alien who entered as a nonimmigrant) establishes that he entered the United States prior to January 1, 1980, and has resided continuously in the United States in an unlawful status from January 1, 1980, through the date of enactment of the Immigration Reform and Control Act of 1983; or

"(II) the alien entered the United States as a nonimmigrant before January 1, 1980, the alien's period of authorized stay as a nonimmigrant expired before January 1, 1980, through the passage of time or the alien's unlawful status was known to the Government as of January 1, 1980, and the alien has resided continuously in the United States in an unlawful status from January 1, 1980, through the date of enactment of the Immigration Reform and Control Act of 1983; and

"(III) if the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof; or

"(ii) the alien is—

"(I) a national of Cuba who arrived in the United States and presented himself for inspection after April 20, 1980, and before January 1, 1981, and who is still physically present in the United States;

"(II) a national of Haiti who on December 31, 1980, was the subject of exclusion or deportation proceedings under section 236 or section 242 of the Immigration and Nationality Act, including a national of Haiti who on that date was under an order of exclusion and deportation or under an order of deportation which had not yet been executed;

"(III) a national of Haiti who was paroled into the United States under section 212(d)(5) of such Act or was granted voluntary departure before December 31, 1980, and was physically present in the United States on tht date; or

"(IV) a national of Cuba or Haiti who on December 31, 1980, had an application for asylum pending with the Immigration and Naturalization Service;

"(C) the alien was physically present in the United States since the date of enactment of the Immigration Reform and Control Act of 1983; and

"(D) the alien—

"(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2),

"(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States, and

"(iii) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(2) During the period an alien is in the lawful temporary resident status granted under paragraph(1)—

"(A) the Attorney General shall permit the alien to return to the United States after such brief and casual trips abroad, in accordance with subsection (d)(3), as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (3), and

"(B) the Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an 'employment authorized' endorsement or other appropriate work permit.

"(3) The Attorney General, in his discretion and under such regulations as he may prescribe, may adjust the status of any alien provided lawful temporary resident status under paragraph (1) to that of an alien lawfully admitted for permanent residence if the alien—

"(A) applies for such adjustment during the six-month period beginning with the first day of the thirty-seventh month that begins after the date the alien was granted such temporary resident status;

"(B) establishes that he has continuously resided in the United States since the date the alien was granted such temporary resident status;

"(C)(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2), and

"(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States; and

"(D) can demonstrate that he either (i) meets the requirement of paragraph (1) of section 312 (relating to minimal understanding of ordinary English), or (ii) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English.

"(4) The Attorney General shall provide for termination of temporary resident status granted an alien under this subsection—

"(A) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States, or

"(B) at the end of the forty-second month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (3) and such application has not been denied.

"(c)(1) The Attorney General shall provide that applications for adjustment of status under subsection (a) and subsection (b)(1) may be filed with the Attorney General or with any qualified organization or State or local government which the Attorney General may designate if such organization or government agrees to transmit any such application to him. No qualified organization or such government may make a determination required by this section to be made by the Attorney General.

"(2) The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not be applicable in the determination of an alien's admissibility under subsections (a)(3)(A), (b)(1)(C)(i), (b)(3)(C)(i), and (b)(4)(A)(i), and the Attorney General, in making such determination with respect to a particular alien, may waive any other provision of such section other than paragraph (9), (10), (23) (except for so much of such paragraph as relates to a single offense of simple possession of thirty grams or less of marihuana), (27), (28), (29), or (33), for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(3) During the six-month period beginning on the date of the enactment of this section, the Attorney General, in cooperation with qualified organizations and governments designated under paragraph (1) and the Secretary of Labor, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.

"(4) Notwithstanding the Federal Property and Administrative Services Act of 1949 (63 U.S.C. 377), as amended, the Attorney General is hereby authorized to expend from the appropriation provided for the administration and enforcement of the Act, such amounts as may be necessary for the leasing or acquisition of real property in the fulfilment of this section. This authority shall end two years from enactment.

"(5) The Attorney General shall prescribe a fee of $100 or more to be paid by each alien who files an application for adjustment of status under subsection (a) or subsection (b)(1). The Attorney General shall deposit payments received under the preceding sentence in a separate account and amounts in such account shall be available, without fiscal year limitation, only to cover administrative expenses incurred in connection with the review of applications filed under this section.

"(d)(1) For purposes of subsection (a), an alien shall be considered to have resided continuously in the United States, if, during the period between January 1, 1977, and the date of enactment of the Immigration Reform and Control Act of 1983, such alien—

"(A) had not been outside the United States for any one period of time in excess of 30 days;

"(B) had not been outside the United States for an aggregate period of time in excess of 180 days; and

"(C) meets the requirements of paragraph (4).

"(2) For purposes of subsection (b)(1), an alien shall be considered to have resided continuously in the United States, if, during the period between January 1, 1980 (or in the case of an alien described by subparagraph (B)(ii) of such subsection, January 1, 1981), and the date of enactment of the Immigration Reform and Control Act of 1983, such alien—

"(A) had not been outside the United States for any one period of time in excess of 30 days;

"(B) had not been outside the United States for an aggregate period of time—

"(i) in the case of an alien described by subsection (b)(1)(B)(i), in excess of 90 days; or

"(ii) in the case of an alien described by subsection (b)(1)(B)(ii), in excess of 60 days; and

"(C) meets the requirements of paragraph (4).

"(3) For purposes of subsection (b)(3), an alien shall be considered to have resided continuously in the United States, if, during the period between the date of adjustment to temporary resident status and the date of filing an application under paragraph (3) of such subsection, such alien—

"(A) had not been outside the United States for any one period of time in excess of 30 days;

"(B) had not been outside the United States for any aggregate period of time in excess of 90 days; and

"(C) meets the requirements of paragraph (4).

"(4)(A) For purposes of subsection (a), (b)(1), or (b)(3), an alien shall not be considered to have resided continuously in the United States, if, during the period of time referred to in paragraph (1), (2), or (3) of this subsection, whichever is applicable, such alien was outside the United States as a result of a departure under an order of deportation.

"(B) Any period of time during which an alien is outside the United States pursuant to the advance parole procedures of the Service shall not be considered as part of the period of time during which an alien is outside the United States for purposes of this subsection.

"(5)(A) Each individual who applies for adjustment of status under subsection (a), (b)(1), or (b)(3) shall submit with his application such documents as are necessary to establish that such alien has employment in the United States, together with independent corroboration of the information contained in such documents, except that if the Attorney General determines that such proof of employment is inapplicable, the Attorney General may accept other documents which support the individual's application for adjustment of status, together with independent corroboration of the information contained in such documents.

"(B) Any document of Federal, State, or local government submitted pursuant to subparagraph (A) shall be in the form of a certified copy. A duly attested declaration under penalty of perjury by such individual's employer, who is a United States citizen, of continuous residency by an individual applying for adjustment of status under this section shall constitute only a rebuttable presumption of physical presence for purposes of this section.

"(e)(1) During the period an alien is in lawful temporary resident status granted under subsection (b)(1) and during the three-year period beginning on the date an alien is granted lawful permanent resident status under subsection (a) or (b)(3), and notwithstanding any other provision of law—

"(A) except as provided in paragraph (2), the alien is not eligible for—

"(i) any program of financial assistance funished under Federal law (whether through grant, loan, guarantee, or otherwise on the basis of financial need, as such programs are idenified by the Attorney General in consulation with other appropriate heads of the various departments and agences of Government,

"(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and

"(iii) assistance under the Food Stamp Act of 1977, and

"(B) a State or political subdivision therein may provide that the alien is not eligible for the programs of financial or medical assistance furnished under the law of that State or political subdivision.

"(2)(A) Paragraph (1) shall not apply to an alien described in subsection (b)(1)(B)(ii) (relating to certain Cuban and Haitian entrants).

"(B) For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

"(f) The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and the Senate and with qualified organizations and governments designated pursuant to subsection (c)(1), shall prescribe regulations as may be necessary to carry out the provisions of this section. Such regulations may be prescribed to take effect on an interim basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

"(g)(1) No decision or determination made by the Attorney General under this section may be reviewed by any court of the United States or of any State.

"(2) No alien denied adjustment of status under this section may raise a claim to such adjustment in any proceeding of the United States or any State involving the status of such alien, including any proceeding of deportation or exclusion under this Act.

"(3) No denial of adjustment of status under subsection (a) or subsection (b) based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

"(h) Notwithstanding any other provision of law, the retired or retainer pay of a member or former member of the Armed Forces of the United States or the annuity of a retired employee of the Federal Government shall not be reduced while such individual is temporarily employed by the Service for a period of not to exceed fifteen months to perform duties in connection with the adjustment of status of aliens under this section.

"(i) The Attorney General in his sole discretion may waive the requirements of subsection (d)(1)(A) or (d)(2)(A) in cases which would result in exceptional and extreme hardship to the alien or to his spouse, parent, or child. The decision to grant or deny such a waiver shall not be reviewable in any court or administrative proceeding in the United States.".

(b) The table of contents for chapter 5 of title II is amended by inserting after the item relating to section 245 the following new item:

"Sec. 245A. Adjustment of status of certain entrants before January 1, 1980, to that of person admitted for temporary or permanent residence.".

(c)(1) Public Law 89-732 (approved November 2, 1966) is repealed.

(2) The repeal made by paragraph (1) shall not apply to a native or citizen of Cuba who has been inspected and admitted or paroled into the United States before April 21, 1980.

STATE LEGALIZATION IMPACT-ASSISTANCE BLOCK GRANTS

SEC. 302. (a) There are authorized to be appropriated for grants (and related Federal administrative costs) to carry out this section such sums as may be necessary for fiscal year 1984 and for each of the five succeeding fiscal years.

(b)(1) From the sums appropriated under subsection (a) for a fiscal year (less the amount reserved for Federal administrative costs), the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall allot to each State (as defined in subsection (i)(1)) meeting the requirements of subsection (d) an amount determined in accordance with a formula, established by the Secretary, which takes into account—

(A)(i) the number of eligible legalized aliens (as defined in subsection (i)(2)) residing in the State in that fiscal year,

(ii) the ratio of the number of eligible legalized aliens in the State to the total number of residents of that State and to the total number of such aliens in all the States in that fiscal year, and

(iii) the amount of expenditures the State is likely to incur in that fiscal year in providing assistance for eligible legalized aliens under programs of public assistance (as defined in subsection (i)(3)), and

(B) such other factors as the Secretary deems appropriate to provide for an equitable distribution of such sums.

(2) In determining the number of eligible legalized aliens for purposes of subclauses (i) and (ii) of paragraph (1)(A), the Secretary may estimate such number on the basis of such data as he may deem appropriate.

(3) For each fiscal year the Secretary shall make payments, as provided by section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), to each State from its allotment under paragraph (1). Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which is was made.

(c) A State may use amounts paid to it under subsection (b)(2) for the purpose of providing assistance with respect to eligible legalized aliens under programs of public assistance, but only to the extent such assistance is otherwise available under such programs to citizens residing in the State.

(d) In order to receive an allotment for a fiscal year under subsection (b), a State must prepare and transmit to the Secretary—

(1) a report describing the intended use of payments the State is to receive under this section for the fiscal year, including (A) a description of those programs of public assistance and localities of the State identified by the State as needing assistance from grants under this section, and (B) criteria for and administrative methods of disbursing funds received under this section, and

(2) a statement of assurances that certifies that (A) funds allotted to the State under this section will only be used to carry out the purposes described in subsection (c), (B) the State will provide a fair method (as determined by the State) for allocating funds allotted to the State under this section among the programs and localities identified under paragraph (1)(A), and (C) fiscal control and fund accounting procedures will be established that are adequate to meet the requirements incorporated by subsections (e) through (f). The State shall promptly revise the report referred to in paragraph (1) to reflect substantial changes in its intended use of the funds allotted the State under this section. Such report (for fiscal years after fiscal year 1984), and any revisions proposed thereto, shall be made public within the State in such manner as to facilitate review of and comments from interested persons and local governments on the intended use and distribution of funds for the fiscal year.

(e)(1)(A) Each State shall prepare and submit to the Secretary annual reports on its activities under this section. In order properly to evaluate and to compare the performance of different States assisted under this section and to assure the proper expenditure of funds under this section, such reports shall be in such form and contain such information as the Secretary de-

termines (after consultation with the States and the Comptroller General) to be necessary (i) to secure an accurate description of those activities, (ii) to secure a complete record of the purposes for which funds were spent, of the recipients of such funds, and of the progress made toward achieving the purposes of this section, and (iii) to determine the extent to which funds were expended consistent with the State's description and statement transmitted under subsection (d). Copies of the report shall be provided, upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

(B) The Secretary shall annually report to the Congress on activities funded under subsection (b) and shall provide for transmittal of a copy of such report to each State.

(2)(A) Each State shall, not less often than once every two years, audit its expenditures from amounts received under this section. Such State audits shall be conducted by an entity independent of the State agency administering a program funded under this section in accordance with the Comptroller General's standards for auditing governmental organizations, programs, activities, and functions and generally accepted auditing standards. Within 30 days following the completion of each audit report, the State shall submit a copy of that audit report to the Secretary.

(B) Each State shall repay to the United States amounts found by the Secretary, after notice and opportunity for a hearing to the State, not to have been expended in accordance with this section, and, if such repayment is not made, the Secretary may offset such amounts against the amount of any allotment to which the State is or may become entitled under this section or may otherwise recover such amounts.

(C) The Secretary may, after notice and opportunity for a hearing, withhold payment of funds to any State which is not using its allotment under this section in accordance with this section. The Secretary may withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

(3) The State shall make copies of the reports and audits required by this subsection available for public inspection within the State.

(4)(A) For the purpose of evaluating and reviewing the block grant established under this section, the Secretary and the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents that are related to such block grant, and that are in the possession, custody, or control of States, political subdivisions thereof, or any of their grantees.

(B) In conjunction with an evaluation or review under subparagraph (A), no State or political subdivision thereof (or grantee of either) shall be required to create or prepare new records to comply with subparagraph (A).

(f) Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payment may be made by a State from funds allotted to the State under this section, or

(2) having knowledge of the occurrence of any event affecting his initial or continued right to any such payment conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such payment is authorized,

shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(g)(1)(A) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under title IX of the Education Amendments of 1972, or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964, programs and activities funded in whole or in part with funds made available under this section are considered to be programs and activities receiving Federal financial assistance.

(B) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this section.

(2) Whenever the Secretary finds that a State, or an entity that has received a payment from an allotment to a State under subsection (b), has failed to comply with a provision of law referred to in paragraph (1)(A), with paragraph (1)(B), or with an applicable regulation (including one prescribed to carry out paragraph (1)(B)), he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed sixty days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted,

(B) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, or section 504 of the Rehabilitation Act of 1973, as may be applicable, or

(C) take such other action as may be provided by law.

(3) When a matter is referred to the Attorney General pursuant to paragraph (2)(A), or whenever he has reason to believe that the entity is engaged in a pattern or practice in violation of a provision of law referred to in paragraph (1)(A) or in violation of paragraph (1)(B), the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(h) In establishing regulations and guidelines to carry out this section, the Secretary shall consult with representatives of State and local governments.

(i) For purposes of this section:

(1) The term "State" has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(36)).

(2) The term "eligible legalized alien" means—

(A) an alien who has been granted permanent resident status under section 245A(a) of the Immigration and Nationality Act, but only until the end of the three-year period beginning on the date the alien was granted such status; and

(B) an alien who has been granted temporary resident status under section 245A(b)(1) of such Act, but only until—

(i) such temporary resident status is terminated or

(ii) if the alien has been subsequently granted permanent resident status under section 245A(b)(2) of such Act, until the end of the three-year period beginning on the date such permanent resident status was granted,

whichever is later.

(3) The term "program of public assistance" means State or local programs which provide for cash, medical, or other assistance (as defined by the Secretary) designed to meet the basic subsistence or health needs of individuals or required in the interest of public health.

TITLE IV—GENERAL PROVISIONS

REPORTS TO CONGRESS

SEC. 401. The President shall submit the following reports to the Committees on the Judiciary of the Senate and of the House of Representatives:

(a) Reports on the implementation of section 274A of the Immigration and Nationality Act (relating to unlawful employment of aliens), which shall include—

(1) an analysis of the adequacy of the verification procedure set forth in subsection (b) of that section;

(2) the status of the development and implementation of a more secure verification system as provided in subsection (c) of that section; and

(3) the impact of that section on—

(A) the employment, wages, and working conditions of United States workers,

(B) the number of aliens entering the United States illegally,

(C) the violation of terms and conditions of nonimmigrant visas by foreign visitors,

(D) discrimination against citizen and permanent resident alien members of minority groups, and

(E) the paperwork and recordkeeping burden on United States employers.

Reports concerning the matters described in paragraphs (1), (2), and subparagraphs (A), (B), and (C) of paragraph (3) shall be submitted every six months beginning six months after the date of the enactment of this Act. Reports concerning the matters described in subparagraphs (D) and (E) of paragraph (3) shall be submitted three times: the first not later than eighteen months after the date of enactment of this Act, the second not later than thirty-six months after the date of enactment of this Act, and the third not later than fifty-four months after the date of enactment of this Act.

(b) A comprehensive report on the general legal admissions under the Immigration and Nationality Act, which shall include—

(1) the number and classifications of aliens admitted as immediate relatives under family reunification preferences, independent or occupational preferences and other permanent residents, refugees, asylees, parolees and a reasonable estimate of the number of aliens who entered the United States without visas or who became deportable under section 241; and

(2) the impact, including reasonable projections and future estimates, of the admission or parole of such aliens on the foreign policy, economy, environmental quality, resources and population growth rate of the United States and the employment of citizens and aliens in the United States.

This report shall be submitted not later than three years after the date of the enactment of this Act, and every three years thereafter.

(c) A report on the implementation of the agricultural labor transition program and the temporary worker program (popularly known as the "H-2" program), which shall include—

(1) the impact of the program on the labor needs of the United States agricultural employers and on the wages and working conditions of United States agricultural workers,

(2) the development of regulations with respect to the program,

(3) recommendations for modifications of the program, including—

(A) improving the timeliness of decisions regarding admission of temporary foreign workers under the program,

(B) removing any economic disincentives to hiring United States citizens or permanent resident aliens for jobs for which temporary foreign workers have been requested, and

(C) improving cooperation among government agencies, employers, employer associations, workers, unions, and other worker associations to end the dependence of any industry on a constant supply of temporary foreign workers.

The report on the temporary worker program shall be submitted not later than two years after the date of the enactment of this Act and the report on the agricultural labor transition program each year for three years beginning a year after the date of the enactment of the Act.

(d) A report on the pilot program established under section 212(l) of the Immigration and Nationality Act, added by section 213(a) of this Act (popularly known as the "visa waiver program"), which shall include—

(1) an evaluation of the program, including its impact on the control of alien visitors to the United States, consular operations in the countries designated under section 212(l)(3)(A) of the Immigration and Nationality Act, and the impact of the program on the United States tourism industry, and

(2) recommendations on the extension of the program and the expansion of the number of countries which may be designated under such section.

The report shall be submitted not later than two years after the commencement of the program.

(e) A report on the population whose status is legalized under the legalization program established under section 301 of this Act, compiled and validated in accordance with sound statistical practice, which shall include—

(1) geographical origins and manner of entry of these aliens into the United States,

(2) their demographic characteristics,

(3) their patterns of employment,

(4) their participation in social service programs, and

(5) a general profile and characteristics of the population legalized under the program.

The initial report shall be submitted not later than two years after the date of the enactment of the Act and three additional reports be submitted every two years thereafter.

(f) Three years after the date of enactment of this Act, the Secretary of Labor, after consulting with the Attorney General, and with representatives of domestic employers and representative domestic employees, and domestic institutions of higher learning, shall submit to the Congress and the President a report, to be accompanied by his recommendations for changes in current law and regulations, concerning the Nation's need for qualified immigrants identified in paragraphs (1) and (2) of subsection (b) of this section who have acquired professional or technical skills that may be in critical demand in the United States. Another such report shall be submitted five years after the date of enactment of this Act.

ENFORCEMENT OF THE IMMIGRATION LAWS OF THE UNITED STATES

SEC. 402. It is the sense of the Congress that—

(1) the immigration laws of the United States should be enforced vigorously and uniformly; and

(2) in the enforcement of such laws, the Attorney General should take due and deliberate actions necessary to safeguard the constitutional rights, personal safety, and human dignity of United States citizens and aliens.

REIMBURSE STATES FOR INCARCERATING ILLEGAL ALIENS

SEC. 403. (a) The Attorney General shall reimburse a State for the costs incurred by such State for the imprisonment of any alien who is convicted of a felony by such State.

(b) An alien referred to in subsection (a) is any alien, as defined in section 101(a)(3) of the Immigration and Nationality Act, other than—

(1) an alien who was issued an immigrant visa or who otherwise acquired the status of an alien lawfully admitted for permanent residence, and who was subject to the numerical limitations contained in section 207(a) of the Immigration and Nationality Act (other than an alien accorded the status of a temporary or permanent resident under section 245A of such Act);

(2) an alien who is an immediate relative within the meaning of section 201(b) of such Act; and

(3) an alien who is a nonimmigrant within the meaning of subparagraphs (A) or (G) of section 101(a)(15).

(c) There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

(d) This amendment shall become effective on October 1, 1983.

REPORT BY THE COMPTROLLER GENERAL

SEC. 404. Beginning one year after the date of enactment of this section, and at intervals of one year thereafter for a period of five years after such date, the Comptroller General of the United States shall prepare and transmit to the Committee on the Judiciary and the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary and the Committee on Labor and Human Resources of the Senate a report describing the results of a comprehensive review of the implementation and enforcement of the provisions contained in the amendment made by section 101(a) of this Act during the preceding twelve-month period, for the purpose of determining if—

(1) such provisions have been carried out satisfactorily;

(2) a pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment; and

(3) an unnecessary regulatory burden has been created for employers hiring such workers.

Such committees shall hold public hearings on the contents of each such report and shall submit their findings and recommendations for remedial action, if necessary, to their respective Houses of Congress not later than 60 days after the date of receipt of any such report.

AUTHORIZATION OF APPROPRIATIONS

SEC. 405. (a) Section 404 (8 U.S.C. 1101, note) is amended to read as follows:

"SEC. 404. There are authorized to be appropriated for the fiscal year 1984, $200,000,000 to carry out the provisions of this Act other than section 214(c)(5) of chapter 2 of title IV.".

(b) There are authorized to be appropriated, in addition to such sums as may be available for such purposes, such sums as may be necessary to the Department of Labor for enforcement activities of the Wage and Hour Division and the Office of Federal Contract Compliance Programs within the Employment Standards Administration of the Department and to the Equal Employment Opportunity Commission for its enforcement activities in connection with the enforcement of section 274A of the Immigration and Nationality Act.

OFFICIAL LANGUAGE

SEC. 406. It is the sense of the Congress that—

(1) the English language is the official language of the United States, and

(2) no language other than the English language is recognized as the official language of the United States.

WEST VIRGINIA FRUITGROWERS

SEC. 407. It is the sense of the Senate that, inasmuch as the Department of Labor promulgated a final rule on January 4, 1983, at 20 CFR Part 655, described as Labor Certification Process for the Temporary Employment of Aliens in the United States in Agriculture; Adverse Effect Wage Rate; and this rule increased the Adverse Effect Wage Rate for West Virginia by 17.2 percent; and

Inasmuch as the 17.2 per centum increase in the Adverse Effect Wage Rate for West Virginia is nearly seven times greater than the increase made for other states affected by the rulemaking; and

Inasmuch as the increase in the Adverse Effect Wage Rate will cause a substantial portion of the West Virginia apple crop to be uncompetitive in the marketplace, and the resulting economic damage to a significant number of apple growers in West Virginia is likely to be severe; and

Inasmuch as the Department of Labor should consider the formal objections of the State of West Virginia, the State of Maryland, and the United States Department of Agriculture to its rulemaking;

The Senate declares that the Department of Labor should reexamine its January 4, 1983, rulemaking at 20 CFR Part 655, affecting the Adverse Effect Wage Rate applied to West Virginia fruitgrowers, with the purpose of seeking a fair and reasonable adjustment to that rate.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1284

(Purpose: To provide applicants for asylum, refugee status, and withholding of deportation with access to their case files)

Mr. SIMPSON. Mr. President, I ask unanimous consent that Senator LEAHY's technical amendment be en-

grossed in the bill by the Secretary of the Senate.

The PRESIDING OFFICER. The Chair will advise the Senator, any Senators, that when amendments are presented they have to be delivered to the desk. Will the Senator please send the amendment to the desk?

The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming (Mr. SIMPSON), on behalf of Mr. LEAHY, proposes an amendment numbered 1284.

The amendment is as follows:

On page 138, after line 14, insert the following new subsection:

"(3) The provisions of paragraph (2) of this section shall not be applicable to the person who is the subject of such application for asylum, refugee status, withholding of deportation, or any other application arising under a claim of persecution on account of race, religion, political opinion, nationality, or membership in a particular social group, provided however, that this subsection shall not limit the authority of any agency to withhold information pursuant to the Freedom of Information Act.

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

Mr. LEAHY. One of the sections of the bill that is of concern to me is the proposed amendment to section 1202(f), which shields from the reach of the Freedom of Information Act any records or documents pertaining to asylum or refugee status. I should add that my concern reflects a much wider reservation about bills passed over the years limiting the application of the FOIA under section (b)(3) of that act. If each agency promotes special exception legislation, in time the main function of the FOIA could be weakened.

I understand that access to individual asylum or refugee files ought to be limited to the applicant. I believe my amendment adequately deals with that situation. But I think that information not contained in applicant files and which does not identify individual applicants should be available to the public. I think that the public needs this information to judge how well the State and Justice Departments are fulfilling their statutory responsibilities. Without knowledge about current problems and practices, I doubt that the public would be in a good position to evaluate the bill before us today. I would like to ask whether the public would still have access to information not contained in applicant files after the adoption of S. 529.

Mr. SIMPSON. The language in section 1202(f)(2) speaks to the "records or any document * * * pertaining to the issuance or denial of any applications for asylum, refugee status * * *" and the other enumerated applications. Only the records of any particular application would be covered by this language.

Mr. LEAHY. Therefore, documents not contained in applicant files would continue to be made available to the public, subject to existing FOIA protections, for example, in the areas of national security, law enforcement, or personal privacy.

Mr. SIMPSON. That is correct.

I think it is important to clarify two points that I feel confident everyone will agree with. First, only applicants will get to see their personal case files, and not third parties. Second, an applicant will not have access to anyone else's case file, even if the other person's application is based on the same course of events and the same basic facts.

Mr. LEAHY. That is my understanding precisely.

Senator KENNEDY, I know that you have been keenly interested in protecting the rights and privacy of individual applicants. Do you concur in the understanding which Senator SIMPSON and I have stated concerning this important language in the bill.

Mr. KENNEDY. That certainly is my understanding.

Mr. LEAHY. Thank you very much for that very useful clarification.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make clerical and technical corrections in the engrossment of S. 529.

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

Mr. STEVENS. Mr. President, I think the Senate should be aware that this bill has been before the Senate for 5 days. It consumed almost 24 hours actual time of the Senate during these 5 days. We have had 15 rollcall votes on amendments that have been presented. Actually, there were a total of 29 amendments considered, 17 of them have been agreed to, 10 rejected, and 2 withdrawn. It has been a most complicated bill. Both managers of the bill have distinguished themselves as Members of this body and will be remembered for the way in which they have handled a very difficult piece of legislation.

I do want to commend my good friend from Wyoming (Mr. SIMPSON) for his demonstrated ability on the floor during the consideration of this bill. The RECORD should reflect the very fine working relationship that existed on this measure between the Senator from Wyoming (Mr. SIMPSON) and the Senator from Massachusetts (Mr. KENNEDY). It has made it possible for the Senate to consider this bill without rancor and without any real serious disagreement, in fact, although there has been much substantive debate before us in these 5 days.

So I do congratulate my good friend.

Mr. SIMPSON. Mr. President, If I may take 2 minutes for some very brief remarks.

I wish to say that I appreciate the comments of my colleagues. That is part of the gratification of this peculiar line of work we have chosen for ourselves. We do not have time to savor in victory or anguish in defeat around this place, and that is good.

I am extremely proud to have been part of this reform legislation. It has been a real privilege to work with TED KENNEDY. We do disagree, but have a high mutual regard for each other. I appreciate the long work he has done for some 17 years.

Certainly I would have been hard pressed to process the bill without the good help of the majority leader and the minority leader. I wish to personally thank Senator BAKER and Senator BYRD and extend to them my deepest appreciation. They have cleared a path for me with this legislation time and again.

The good Senator from Alaska TED STEVENS, in his spirited way, has also participated in assisting in that, and I appreciate it.

My good friend from South Carolina, STROM THURMOND, has continually given me excellent counsel and advice and support.

Senator GRASSLEY has been a long-time ally in the cause.

Mr. President, let me thank the fine minority staff, Jerry Tinker and Arthur Briskman; and Ally Milder of Senator GRASSLEY's staff. And, indeed, Senator GRASSLEY also has been extraordinary in this process. And also to Andy Freeman of Senator MATHIAS' staff for his support.

And, of course, my own staff. A special tribute to Dick Day, the chief counsel and staff director who serves as part of the hemisphere of my brain on this issue of immigration reform, and a long-time friend; to Arnold Leibowitz, who brings his piercing intellect, and academic skill to the attempts at solution; to Betsy Greenwood, a steady, thoughtful attorney learning and growing and being remarkably so, to Carl Hampe, a young political scientist who has brought great energy and skill to us, to Frankey DeGooyer, our private bills clerk whose experience and insight is so helpful, to Tina Jones, our hearings clerk, and to our secretarial staff, Ellen Hughes, Karen Ayazi, and Michelle Adams who worked long and hard on this effort. I truly appreciate all the work they have done.

I express my gratitude also to chairman PETER RODINO for processing the measure in the House as quickly as he has. Chairman RODINO is a true pioneer in the field of immigration reform.

And a strong note of appreciation to my sidekick, ROMANO MAZZOLI.

I trust this bill might move to the floor of the House. It has passed the Senate. I hope the House Judiciary Committee can move it expeditiously so we may go to conference as soon as

possible and come out with a sound piece of legislation.

I am very pleased, indeed, at the fine vote. It has been an honor and a privilege and a pleasure to work with my colleagues on this legislation.

Mr. GRASSLEY. Mr. President, I rise to offer my most heartfelt congratulations to my good friend, the junior Senator from Wyoming.

He had labored long and with great patience on this bill. Everyone who discusses it mentions his efforts and the appreciation they feel for him. I have worked closely with him on this bill for more than 2 years, and I can tell you that these accolades for Senator SIMPSON are truly well-deserved.

Immigration is one of the toughest issues Congress has dealt with in recent decades. We have had to counteract the efforts of 30 years of inaction in moving this bill forward. I know of no one who could have handled the sensitive and difficult job in a more evenhanded and courageous manner.

Every person in this country whether citizen, permanent resident, or illegal alien owes Senator SIMPSON a great debt.

In addition, I would like to thank the senior Senator from Massachusetts, Senator KENNEDY, for his patience and steadfast support for representation of those who are most concerned about this bill.

I would also like to express my deep appreciation for the efforts of the senior Senator from South Carolina, chairman of the Judiciary Committee, Senator STROM THURMOND. Without his guiding hand and tremendous support, this reform bill would never have moved as swiftly and as smoothly as it has. He has long been involved in immigration reform and his knowledge and expertise has helped me and other members of the committee to understand the consequences of this legislation. His personal interest in even the smallest details has amazed those who know the demands on his time.

In addition, both the President and the Attorney General have been directly involved in the development and progress of this bill. Their involvement has demonstrated the commitment this administration feels to immigration reform after so many previous administrations have ignored the problem and have been afraid to bite the political bullet.

I would also like to mention one of the unsung heros of the Senate in the immigration area, the senior Senator from Kentucky, Senator DEE HUDDLESTON who through many years of frustration and inaction by this body has kept doggedly working to bring about these important reforms.

Finally, it is important to note the fine staff work of the Immigration and Refugee Policy Subcommittee. Dick Day, Arnold Leibowitz, and Betsy Greenwood have all labored tirelessly to insure every "i" has been dotted and every "t" has been crossed. The expertise of Chip Wood and Donna Alvorado is evidenced throughout the bill and they can be proud of the part they played in the development of this legislation.

Without all of the efforts of these people, we would not now enjoy such a fine product. I hope this overwhelming show of support by the Senate will send a message to the House that now is the time for immigration reform.

ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business during which Senators may speak therein for not to exceed 5 minutes and that the period expire at 6:45 p.m. this evening.

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

SENATE SCHEDULE

Mr. BYRD. Mr. President, will the distinguished acting Republican leader yield?

Mr. STEVENS. I am happy to yield to my good friend from West Virginia.

Mr. BYRD. Mr. President, is the acting Republican leader in a position to state what the program will be for tomorrow and Friday and particularly with reference to the time when the Senate expects to proceed to the consideration of the budget resolution?

Mr. STEVENS. Mr. President, I thank my good friend.

It is the intention of the leadership to proceed to the consideration of the budget resolution at 4 p.m. tomorrow. We are working now on a time agreement with respect to the cable bill, S. 66, which hopefully will be resolved here in a few minutes. Following the period for the transaction of routine morning business just requested, we will have the normal wrapup procedure here tonight. The outcome of this negotiation will determine the request we will make regarding a convening hour on tomorrow.

We intend to dispose of the budget resolution, if possible, tomorrow evening and then we would hope to lay down the MX resolution. The schedule for Friday and Saturday is still subject to negotiation, as I understand it.

It is the intention of the leadership to finish the budget resolution tomorrow and proceed to MX and to hopefully work out an agreement today for the consideration of the cable bill which would not take place until June 13.

Mr. BYRD. I thank the distinguished acting Republican leader.

Mr. RUDMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

(The remarks of Mr. RUDMAN relating to the introduction of legislation are printed under statements on introduced bills and joint resolutions.)

TREATY TO LIMIT ANTISATELLITE WEAPONS

Mr. CRANSTON. Mr. President, this morning the Senate Foreign Relations Committee's Subcommittee on Arms Control and Disarmament held the third in a series of hearings on controlling space weapons. These hearings are very important because they focus public attention on the fact that the Reagan administration proposes to embark on a new, remarkably dangerous, and remarkably expensive phase of the arms race—the weaponization of space. I would like to commend Senator PRESSLER for the leadership he has taken in focusing on this issue.

I am deeply concerned that President Reagan and officials in his administration are intent upon escalating the space race instead of controlling and stopping it. President Reagan in his "Star Wars" speech called for a crash program for space-based ballistic missile defense. His speech demonstrates that he understands neither the technical limitations nor the inherent risks for the United States in proceeding with such a program.

President Reagan has doubled funding for ballistic missile defense (BMD) since he was in office. Last year the Congress rejected his call for yet another increase in ballistic missile defense. I introduced to the fiscal year 1983 Defense authorization bill an amendment to cut $385 million from this program. I was very pleased that the Congress did eventually cut $350 from BMD.

Apparently, the administration does not understand the concerns of Congress because this year the administration again asked for an unjustifiable amount for BMD—almost $900 million—and next year the administration plans to ask for $1½ billion for BMD. I was pleased to note the House Armed Services has already reduced the fiscal year 1984 request by $300 million.

Escalating the arms race in space is not the solution to the problem. Negotiating a mutual and verifiable arms control agreement is. During the course of this morning's hearings, the Union of Concerned Scientists submitted a draft proposal for a treaty limiting antisatellite weapons. I commend the panel of experts who submitted this proposal. This is the kind of creative thinking we need to pull us away from the brink of another arms race disaster. We need to take a positive approach to arms control as opposed to the approach taken by today's administration witnesses, Kenneth Adelman and Fred Ikle, who offered only excuses as to why this administration

has no arms control proposal on the issue.

The Union of Concerned Scientists notes that it is critical for the United States to stop the development of Soviet antisatellite capability. The United States is more dependent on satellites currently than the Soviet Union. It is in our national security interest to stop this capability. We have an opportunity to do so now by negotiating an agreement with the Soviet Union. We must not let this opportunity pass us by. We do not want to face a situation 10 years from now similar to the one we face today with the MIRV—the multiple independent reentry vehicle. More than a decade ago, experts on arms control warned us that development and deployment of the MIRV'd missile would in the long run jeopardize our national security. As the Scowcroft Commission acknowledges, these forecasts are now fact. After we developed and deployed the MIRV'd missile, the Soviets followed suit. It is because of the MIRV'd missile that our land-based ICBM's are perceived to be vulnerable today. If we had had an arms control agreement in place, we would have less reason to worry. The United States can field an antisatellite weapon that will probably be more sophisticated and capable than the Soviets. But what will this get us? Just another ratchet in the arms race.

The model treaty of the Union of Concerned Scientists is not perfect; it is a model. But it deserves consideration. Thus, I ask unanimous consent that the text of the model treaty be inserted in the RECORD at this time, and I urge my colleagues to study it as a useful starting point in how to end this insanity of the escalating nuclear arms race.

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

ANTI-SATELLITE WEAPONS: ARMS CONTROL OR ARMS RACE?

A Report by the Union of Concerned Scientists, Cambridge, Mass.

EXECUTIVE SUMMARY

It is in the long-term security interest of both superpowers to minimize the likelihood of conflict in space. This is especially true of the United states, since, on balance, it is more dependent on space-based systems than is the Soviet Union. Tight constraints on potential threats from Soviet anti-satellite (ASAT) weapons should therefore be a high priority objective of U.S. foreign policy. Such constraints can only be achieved by negotiation, but not by preparations for attacking Soviet satellites.

This document argues that effective constraints on ASAT development and deployment are both highly desirable and achievable by negotiation. An explicitly bilateral treaty text is proposed, so as to focus attention on the issues that such negotiations are likely to encounter. Under this treaty's provision, the signatories could not destroy, damage, render inoperable, or change the flight trajectories of space objects, nor could they test in space, or against space objects, weapons having such capabilities. Compliance with the treaty would be verified by national technical means.

Because the treaty's principal objective is the prevention of flight tests of ASATs, and not their mere possession, an examination of testing procedures and surveillance capabilities shows that the treaty can be adequately verified.

The likely evolution of ASAT technology in the next five to ten years is described under the assumption of no negotiated constraints. It is concluded that the hazards of a totally unconstrained competition in space weaponry are far greater than those posed by whatever tightly constrained evolution of ASAT capability may be possible because of ambiguities in verification. The residual risks can be reduced to acceptable levels by a program for satellite defense at much less cost than the program that would be necessary in the absence of negotiation constraints.

Finally, it is argued that the relative status and potential capabilities of the current U.S. and Soviet ASAT systems make it advantageous for the United States to agree to an immediate joint moratorium on further ASAT space tests, and that the security of the United States would not be in jeopardy should such negotiations fail, or should a treaty be abrogated or circumvented by the Soviet Union.

I. Introduction

Satellites give the United States prompt, precise, and irreplaceable intelligence about Soviet strategic forces. They provide an invaluable view of many other aspects of Soviet military capabilities and activities. In a crisis they would allow each side to watch the movements of the other, and thereby to gauge its objectives and apprehensions. If hostilities were ever to break out between the superpowers, whatever hope there would be for controlling the conflict and bringing it to an early end would largely rest on satellite surveillance, on the command of strategic forces via satellites, and on satellite communications between the adversaries.

But satellites are two-edged swords. They have a beneficial role in arms control, confidence building, and conflict resolution, but their unique ability to see, to hear, and to communicate greatly amplifies the effectiveness of the military forces that they serve. Hence they become exceptionally tempting targets as soon as hostilities are about to begin.

In the 1960s both the U.S. and the Soviet Union fielded systems having anti-satellite (ASAT) capabilities. The United States eventually dismantled its ASAT systems, and adopted the position that its national security would be best served by abstaining from competition in ASAT weaponry. The Soviet Union, on the other hand, continued sporadic testing of a rather primitive device that can attack objects in low earth orbits.

By the latter part of the 1970s the United States altered its approach, though a weapon-free space environment continued to be its goal.[1] The new tactics had both military and diplomatic components: a program to develop a satellite interceptor, and simultaneous negotiations towards a treaty that would ban the testing and deployment of ASAT weapons. These negotiations did not reach fruition in the last administration,[2] and have not been pursued since then.[3] In the interim, both superpowers' ASAT programs have continued apace.[4]

In August 1981 the Soviet Union submitted to the United Nations a draft treaty calling for a "prohibition on the stationing of weapons of any kind in outer space." The United States has not responded to this initiative, nor has it offered any rationale for its failure to respond. If the United States continues to forgo negotiations, it will have a new strategy of ongoing confrontation for protecting its space assets. An era of strenuous competition in space weaponry will have begun, and even if one competitor does, on occasion, enjoy a fleeting advantage, the national security of both rivals will inexorably erode. Any threat to satellites, whether real or potential, will undermine confidence in the ability to deter attack. By the same token, an awareness that satellites are at risk will tend to destabilize a crisis. Even in times of peace, a keen rivalry in the development and testing of ASAT weapons is certain to cause friction, increase suspicions, undermine confidence in the ability to deter attack, and, perhaps, inadvertently spark confrontation. Finally, should ASAT technologies evolve to a level of potential ABM capability, there would be far-reaching and unfortunate implications for strategic stability.

It does not take great powers of prophesy to predict this erosion of security, for the analogy with the history of MIRV technology is both instructive and disturbing. In that case the Soviet Union failed to foresee that the United States would develop MIRVs as a sophisticated response to a primitive ballistic missile defense of Moscow. Neither did the United States anticipate that the strategic benefit that it achieved with MIRVs would eventually boomerang by putting at risk U.S. silo-based missiles. Today, finally, there is a broad consensus that strategic stability and Alliance cohesion would have fared better had the United States abstained from introducing MIRVs. Nevertheless, there is a strange reluctance to recognize that this painful lesson applies directly to current trends in arms competition.

It is in the long-term interest of both superpowers to minimize the likelihood of conflict in space. This is especially true for the United States. Some Soviet satellites do pose a direct threat to certain U.S. military forces, but these threats can be countered without ASAT's. Because the United States is more dependent on space-based systems than the Soviet Union, it is better, on balance, for the U.S. to constrain the potential threat from Soviet ASATs than to prepare to attack Soviet satellites. Such constraints can only be achieved by negotiations that build on the established body of international law represented by the Test Ban Treaty, which forbids nuclear explosions in outer space, the Outer Space Treaty, which bans space-based weapons of mass destruction, and the ABM Treaty, which bans space-based ABM systems and which protects satellites serving as "national means of verification."

Aside from these considerations that arise from a strictly military conception of national security, political factors of considerable weight also provide a strong incentive for negotiations. In the United Nations General Assembly the allies of the United States proposed a resolution requesting the U.N. Committee on Disarmament to "consider as a matter of priority the question of negotiating an effective and verifiable agreement to prohibit anti-satellite sys-

Footnotes at end of article

tems." There is every indication that the Western allies of the United States will, in the U.N. General Assembly, propose that matters move from "considering the question of negotiating" to actual negotiations.

The United States, through its silence on the Soviet proposal, has in effect allowed the Soviet draft treaty to set the agenda for the international discussion of this issue. This is hardly a sound posture for the leader of the Western Alliance and the world's preeminent military and civilian space power. Whether the diplomatic and military objectives of the United States are being furthered by current policy has also been brought into question by resolutions introduced in the Senate and House calling for negotiations and for a moratorium on the flight testing of weapons in space.[5]

We believe that a negotiated ban on using, testing, and stationing anti-satellite weapons in outer space is not only desirable but feasible. To this end, we put forward an explicit treaty text so as to focus attention on issues that such negotiations are likely to encounter. We examine the problem of verifying compliance with the treaty's provisions. We conclude that the hazards of a totally uninhibited competition in space weaponry are far greater than those posed by the tightly constrained evolution of ASAT capability that may be possible because of ambiguities in verification. We show that these residual risks can be reduced to acceptable levels by satellite defense measures (such as decoy satellites, etc.) which would cost much less than the program that would be necessary if there were no negotiated restraints.

Finally, we argue that the relative status and potential capabilities of the current U.S. and Soviet ASAT systems are such that it would be advantageous for the United States to agree to an immediate moratorium on further ASAT space tests, and that the security of the United States would not be in jeopardy should such negotiations fail, or should a treaty be abrogated or circumvented by the Soviet Union.

II. Current U.S. and Soviet space assets and ASAT systems

Negotiations towards restraints on further ASAT development must take into account the existing balance in U.S. and Soviet space assets and military capabilities.

Secure long-range communications are essential to U.S. security, since U.S. forces are spread across the globe. For that reason approximately 70 percent of long-haul military communications now go via satellites; there are no facilities on the earth's surface that provide a satisfactory replacement of this system. The Soviet Union's military forces are mainly on the Eurasian land mass, and can, if necessary, communicate without the help of satellites.

The vulnerability of a satellite to attack is largely determined by the nature of its orbit. These fall into several categories: geosynchronous (GEO) orbits, in which the satellite is stationary above a point on the earth's equator at an altitude of about 22,000 miles; semi-synchronous orbits, with altitudes in the range of 12,000 miles; and low-earth (LEO) orbits, at altitudes of about 1,000 miles. Satellites can also be in highly elliptical orbits that dip as low as several hundred miles and rise as high as geosynchronous. Some U.S. satellites are in orbits that are considerably higher than geosynchronous.

The existing Soviet ASAT interceptor is launched by a ground based SS-9 missile into an orbit close to that of its target. The interceptor then crosses the path of its target after one or two orbital revolutions, whereupon its nonnuclear warhead explodes, and the resultant shrapnel destroys the target satellite.

The highest altitude reached thus far by the Soviet interceptor is reported to be about 1,400 miles. It would appear to be difficult to modify the Soviet system so that it could threaten targets in far higher orbits. The resulting weapon would surely be a cumbersome ASAT. Therefore, the current Soviet system only threatens low-orbit space objects. About a third of all U.S. satellites fall into this category, and their most important national security contributions are photographic and electronic surveillance of the earth's surface. U.S. satellites responsible for early warning, nuclear attack assessment, additional electronic surveillance, and military communications are in very high orbits, and not vulnerable to the current Soviet ASAT.

The U.S. ASAT system is based on quite different principles. The interceptor is the so-called Miniature Homing Vehicle (MHV), which is carried into space on a two-stage rocket that in turn is launched from a high altitude F-15 fighter plane. The MHV is a small cylinder with a diameter of about one foot that seeks its target by a combination of infrared telescopes, a laser gyroscope, and a set of small jets that can alter its trajectory. It destroys by direct impact at very high velocity. In its present form the MHV cannot reach geosynchronous satellites, but this is not of great consequence at this time, because almost all Soviet satellites are in low or highly elliptical orbits. By using a three-stage booster the U.S. system should be able to attack geosynchronous targets.

The Soviet ASAT has been tested some twenty times since 1968, and it is reported that about half of these tests have been successful. Launches of the U.S. interceptor from an F-15 to a point in space are scheduled for later this summer, but tests against space targets are not scheduled until late in 1983 or early 1984.

These facts allow us to draw up a current balance sheet:

The Soviet ASAT system is deemed to be operational by the Department of Defense, whereas the U.S. system is now ready for flight testing.

The Soviet Union has most of its space-based assests in low earth (LEO) orbits, while the U.S. has many of its most important satellites in geosynchronous (GEO) orbits.

The Soviet ASAT can only attack targets in low-earth orbits, and would require a very large booster to carry it up to geosynchronous targets (see Section 4 below). The U.S. interceptor could, with a three-stage booster, reach geosynchronous targets.

The Soviet ASAT, which uses fixed launch sites, is a cumbersome and inflexible system in comparison to the mobile, F-15 based U.S. system.

These comparisons lie behind our contention that the United States risks little if both nations' ASAT development programs were to be suspended at this time, while negotiations take place. If, for one reason or another, the United States would find it necessary to resume its development program, it could look forward to having an operating system within a year or two. The Soviet ASAT system, though it is now deemed to be operational, only poses a rather clumsy threat to a portion of U.S. space systems, and it has little potential for attacking the warning, communication, and navigation satellites on which U.S. strategic forces depend.

In short, if negotiations fail, or arms control in space were to break down, the United States would not find itself in a disadvantageous position.

III. A treaty limiting ASAT weapons

The full text of the treaty put forward here is to be found in the Appendix. Here we shall summarize the goals this treaty sets out to achieve. The differences between our proposal and the 1981 Soviet draft treaty are discussed briefly here, and analyzed more fully in Section 6.

The proposed treaty has three essential ingredients:

The signatories would undertake not to destroy, damage, render inoperable or change the flight trajectories of space objects.[6]

The signatories would undertake not to test in space or against space objects weapons for destroying, damaging, rendering inoperable, or changing the flight trajectories of space objects. Furthermore, the signatories would undertake not to place such weapons in orbit or to station them on celestial bodies or in outer space in any other manner.

Compliance would be verified by national technical means, enhanced by cooperative measures and buttressed by collateral constraints on other space activities to prevent circumvention of the treaty's provisions.

The treaty proposed here formulates restrictions and prohibitions in general terms. Excessive detail in an arms control accord may inadvertently leave loopholes and convey the impression that activities and weapons not explicitly prohibited are therefore permitted. A treaty weighted down with excessive detail may also prove inflexible in coping with new circumstances, and unanticipated technological developments. Our purpose in presenting general treaty provisions here is to provide a focus for discussion of feasible and desirable restrictions on ASAT weapons. In actual bilateral negotitions, the U.S. and the Soviet Union could incorporate more detailed language into the final treaty text that reflects the best advice and wisdom that consultations within each government would provide.

The text put forward here is for a bilateral treaty. However, once agreement between the U.S. and Soviet Union is reached, a multilateral accord open to all nations would be desirable.

We note that our proposal is not the most comprehensive limitation on space weapons possible, for a treaty could also forbid any possession of such weapons, and require that those already constructed be dismantled or destroyed. Such a comprehensive ban is what the United States evidently sought in the negotiations of 1978-1979.

There is much to be said in favor of such a comprehensive ban, but it also poses formidable verification problems that could only be resolved by protracted negotiations. To avert further arms competition in outer space as promptly as possible, a ban on further tests in space of ASAT weapons must take priority, and the proposed treaty addresses itself to this urgent objective. Subsequent negotiations, that face the knotty problems of verifying a more comprehensive ASAT ban, could then be pursued in an atmosphere free of the tensions that would be created by a simultaneous competition in space weaponry.

In contrast to the 1981 Soviet draft treaty, which only speaks of weapons in orbit, the

treaty proposed here does not allow the use or testing of ASAT weapons whether they are ground or space-based. Furthermore, our proposed treaty forbids the sides from destroying any space objects (including one's own), whereas the Soviet draft only forbids attacks on space objects of other states. Indeed, the Soviet draft treaty does not appear to limit further testing or development of the current Soviet or U.S. ASAT systems. In space tests, the Soviet interceptor goes into earth orbit before attacking its target. But it may well be able to attack satellites by direct ascent from the ground, or after only a partial earth orbit, and thus it may elude a ban on weapons "placed in orbit." The U.S. ASAT system uses a direct-ascent interceptor and never goes into earth orbit.

A ban on the use and testing in space of ASAT weapons cannot, by itself, protect satellites. Nevertheless, the ban on testing would provide a severe impediment to the further development of ever more capable ASAT weapons. For the foreseeable future the military and civilian branches of the United States government are likely to remain at least as vitally dependent on satellites as they are already. It is therefore in the long-term security interest of the United States to enhance the survival of its space assets as much as possible, and to achieve this goal with as little friction and cost as it can.

IV. The ASAT threat with and without a treaty

The value of a ban on ASAT space tests is best measured by looking ahead to the variety of ASAT threats that can be expected in the next five to ten years, if there are no further restraints on weapons competition in outer space. In that period the total number of American satellites will increase to about 100, with approximately one-third of these in low earth (LEO) orbits, about one-fifth in semi-synchronous orbits, and about one-third in geosynchronous (GEO) orbits. The others will be in highly-elliptical orbits that may dip as low as several hundred miles but also rise as high as geosynchronous orbits.

If the Soviets are free to continue ASAT development, we may anticipate the following course of space weapons competition. The first Soviet move might be to improve their current interceptor, so that it could reach higher altitudes and defeat potential U.S. satellite defense measures, such as radar jammers, decoys, and evasion. Tests of the current Soviet interceptor up to geosynchronous orbits might be feasible within relatively few years, if the Soviets set themselves to it. This would mean matching the interceptor to a new booster, such as the liquid-fueled PROTON or A-2 rockets used to orbit the Salyut and Soyuz space vehicles. The whole system would require testing against space targets to confirm that it worked, and the long launch preparations needed for such massive boosters would make this a very cumbersome ASAT.

Alternatively, the Soviets could pursue a more promising ASAT development program along one or more of three paths: a more agile miniature ASAT interceptor, such as the U.S. is developing, that could reach all altitudes with smaller boosters; a more exotic orbiting laser ASAT; or space mines. (A space mine is a small satellite that carries an explosive charge and is placed in an orbit so as to follow closely its potential target.) Debate persists over the feasibility and cost of space-based lasers, but there is no question that both sides are vigorously developing them. According to Air Force Chief of Research and Development, Gen. Kelley Burke, the Soviets are believed capable of launching a laser ASAT of limited effectiveness within five years, and a more effective system perhaps in the 1990's. In keeping with their accustomed practice, the Soviets may well develop and deploy a mix of ASAT weapons, each posing a different threat to U.S. satellites: improved ground-based interceptors and lasers for lower orbit attacks, space-based lasers for higher orbits, and space mines for geosynchronous attacks. Along the way, the number of launch sites would be increased, inventories of ready-to-fire ASAT weapons would multiply, and all U.S. satellites would become progressively more vulnerable to attack.

The U.S. has already mapped out its initial moves in this competition. In the beginning, it will incorporate defenses on satellites, and deploy the sophisticated F-15 ASAT MHV interceptor described in section 2. Ground- and air-based lasers would provide additional ASAT capability against low-orbit satellites while helping to solve technical problems in the development of space-based lasers. A "defensive" space-based laser weapon would be the next step—an ASAT deployed to attack Soviet ASATs. At this stage, the scene might recall the battleship competitions of an earlier era, as each side strives for the competitive edge of just a bit more firepower, longer range, thicker armor, larger fleets.

Under such unrestrained ASAT competition, the advantage will almost certainly go to the offense. A duel between a sophisticated ASAT weapon devised for the sole task of killing, and a satellite built for other purposes and only incidentally equipped to defend itself, will always be a mismatch. Moreover, U.S. satellites are designed for lifetimes of 5-10 years, so the defenses they carry with them into space on the day of the launch stand a good chance of being nullified by a rapidly-changing ASAT environment. Soviet satellites have much shorter lifetimes, are therefore more frequently replaced, and could be more readily modified to counter U.S. ASAT developments.

In confrontations in a world filled with ASATs, fear of a preemptive strike will run high, and the very process of unlimbering ASATs for possible use would drive tensions higher. Since attacks on satellites would be a possible opening step in war, even inadvertent events in space may be mistaken as a signal that war has begun. The sheer multiplicity of ASATs would also raise the likelihood of such an inadvertent occurrence. Such events have happened. For example, in 1975 there was concern that U.S. early-warning satellites had been attacked by Soviet infrared lasers; later it was established that these satellites had only observed infrared radiation from a Soviet natural gas pipeline fire.

Were a satisfactory ASAT arms control agreement in force, the future would look quite different. As matters stand now, only a fraction of U.S. satellites are exposed to the rudimentary Soviet ASAT system. Under a general ban on tests of ASAT systems in space, Soviet efforts to improve their current interceptor or to devise a new one should be blunted. Tests or use of lasers or high-powered transmitters to damage satellite sensors or to burn out satellite receivers would be banned. In contrast, under unrestrained ASAT competition, protecting American satellites through hardening, maneuvering, deception, etc., against ever more sophisticated and nimble Soviet ASATs, will become untenable. Exotic laser ASATs may well prove infeasible in the near future, but the Soviets would still be free to duplicate the U.S. miniature ASAT interceptor and threaten American satellites at altitudes. Five to ten years from now, after successive rounds of unrestrained competition, the security of U.S. satellites, and thereby of the United States, will have been seriously impaired, despite greatly increased expenditures. In sum, the contrast between a future with ASAT arms control, and one without, is stark.

A ban on space tests of ASATs could also buttress the arms control achievements of the 1972 ABM Treaty. The ASAT limitations proposed here would not ban any ABM activity already permitted to both sides in the ABM treaty. Thus, an ASAT accord would not be incompatible with the President's recently-announced intention to investigate advanced ABM defenses within the provisions of the ABM agreement. However, by banning all ASAT tests in space, an ASAT treaty would prevent the Soviets from conducting impermissible ABM tests in space under the guise of devising an ASAT system.

It is to be hoped that an initial ban on ASAT tests could soon be augmented by a wider agreement to dismantle ASATs. Until such time as a comprehensive ban on possession of ASAT systems could be negotiated, there would still be a limited Soviet ASAT threat to those U.S. satellites within reach of the current Soviet interceptor. It would be doing arms control a disservice to claim that ASAT arms control alone could protect all space assets. (By the same token, extravagant claims that acquiring ASAT weapons will solve all our problems are equally mistaken.) What ASAT limitations could do is to make the task of protecting satellites less difficult, more reliable, and thus enhance confidence in the survival of satellites vital to U.S. security. ASAT arms control, then, serves American security interests by being an indispensable adjunct to, and not a replacement for, U.S. programs to diversify its satellite functions and harden its satellites against attacks.

Under a general ban on space tests of ASATs, the U.S. would also have to forego tests in space of the ASAT interceptor it is now developing. The U.S. reportedly is set to begin tests of its interceptor in space and against space targets within the year. If an ASAT accord were reached promptly, or if the U.S. offered to improve the prospects for successful negotiations by a voluntary test moratorium, the outcome might be that the U.S. would have no test experience with its ASAT in space, while the Soviets would have conducted some twenty tests over the past fifteen years. But there are compensations that must be weighed. The Soviet's ASAT test program has not been a great success, with the interceptor failing perhaps half the time. The U.S. has already accumulated a body of test and engineering experience just short of tests in space, so it would not be left with a blank slate. Furthermore, unless the U.S. closes off further ASAT testing soon, it risks exposing all its vital satellites to possible improvements in the Soviet ASAT system, improvements that might require years of American effort and billions of dollars to then offset.

In agreeing not use ASATs, the U.S. would also forego one of the stated purposes for buying its ASAT systems: attacking Soviet satellites that can be used to target U.S. military forces. The principal satellites of concern are the Soviet Radar Ocean Recon-

naissance Satellites (RORSATs) and Electronic Ocean Reconnaissance Satellites (EORSATs) that can locate ships at sea. It is important to weigh whether this limitation would significantly compromise American security.

To begin with, giving up ASATs does not mean giving up all means of countering Soviet satellite capability. Nothing in the treaty proposed here would prevent U.S. forces from using other countermeasures to deceive or confuse Soviet satellites, such as decoys, camouflage, electronic countermeasures, etc.

Secondly, ASATs may not in fact provide much protection for U.S. military forces. The Soviets have a variety of sea-based and airborne reconnaissance and targeting systems, so that shooting down Soviet satellites would not eliminate the threat. Any U.S. forces designed to operate along the periphery of the Soviet Union, where U.S. alliance obligations are, must be equipped with an array of countermeasures and defenses in any case. Thirdly, if the Soviets are the ones to initiate hostilities, they will have been able to gather and pass along satellite information needed to target U.S. forces before conflict starts. The U.S. would be inhibited from preemptively shooting down Soviet satellites just on suspicion of Soviet intentions; doing so would certainly provoke hostilities. And for some time after hostilities break out, the Soviets may also be able to launch new satellites to replace those attacked by a U.S. ASAT, so that again U.S. military forces must be prepared to fend for themselves in the face of threatening Soviet satellites.

Finally, U.S. military forces (with the exception of submarines) cannot count indefinitely upon concealment for their survival. They must be prepared sooner or later to withstand the brunt of Soviet forces. a U.S. ASAT system cannot protect an aircraft carrier, once it is discovered, by shooting down Soviet anti-ship missiles or intercepting torpedoes. But the U.S. ASAT program diverts resources and funds from other defense programs vital to our forces. According to the General Accounting Office, the U.S. ASAT program is already slated to cost $3.6 billion; the GAO argues that the cost could well rise to "tens of billions." Even at $3.6 billion, the "opportunity cost" of the ASAT system already equals one Nimitz-class nuclear-powered aircraft carrier. Where such trade-offs are involved, an ASAT system is not an incident option, but potentially a major drain upon overall U.S. military preparedness.

The most important concern for the U.S. is to ensure that its satellites can carry out their tasks, even in crisis or conflict. Using an ASAT to shoot down Soviet satellites would not protect or restore U.S. satellites. It is occasionally argued, as justification for the U.S. ASAT program, that our own ASAT can deter Soviet ASAT attacks by the threat of a tit-for-tat response. Given the greater American dependence upon satellites, the U.S. might in fact only make its situation worse by such tit-for-tat exchange. The best "deterrent" to Soviet ASAT attacks is Soviet awareness that U.S. satellite functions are so well diversified and hardened, and so supplemented by non-satellite systems, that no attack on satellites could succeed in crippling the overall U.S. military capability. An American ASAT system contribute nothing to this "deterrent;" it promises only to divert funds from the countermeasures that would genuinely provide such security.

V. VERIFICATION AND RESIDUAL RISKS

It has been argued that ASAT arms control poses daunting, perhaps even insuperable, verification problems, more so than any other area of arms control. One reason offered for this is that space satellites are so few in number, and their unique capabilities so difficult to duplicate with ground-based alternatives, that even a few ASAT weapons covertly acquired in violation of an agreement could reward the cheater with significant military advantage in a conflict. It is additionally argued that any limitations upon weapons or space programs that would be comprehensive enough to close off such cheating would necessarily be so stringent that they would preclude many civilian uses of outer space. As an illustration, the Soviet Progrez resupply vehicles, used with the Salyut program, obviously have features in common with ASAT interceptors: they can be launched to the vicinity of an orbiting satellite, maneuvered alongside, and brought into contact. Yet banning them, or limiting all such maneuvering space vehicles, in order to prevent them from being configured as ASAT weapons, would impair not only the Salyut program but the U.S. Space Shuttle as well. The problems are multiplied if we also consider the ASAT potential of other weapons not specifically designed as ASATs, such as ground-based ABM interceptor missiles, or nuclear-tipped ICBMs, or exotic directed-energy air defenses.

These arguments point to genuine concerns the U.S. ought to have about the survivability of its satellites. At the same time, these arguments assume that the future is dictated by past errors. In the past, the U.S. coped with limited budgets and high launching costs (hundreds, even thousands of dollars per pound to place objects in orbit) by relying on relatively few, long-lived, equipment-crammed satellites to perform vital military tasks. Little effort was made to incorporate survivability measures or to diversify functions. Because of their design and budgeting constraints, U.S. satellites are even vulnerable to primitive ASAT weapons.

But with or without ASAT arms control, the U.S. cannot go on like this. Nor does it intend to. A Presidental Directive in May 1978 ordered that all future U.S. military satellites be equipped with survivability measures and devices for detecting ASAT attacks. Some satellites probably cannot be protected from attacks at any affordable cost (e.g., large and fragile low-orbit satellites); and some attacks may work against almost any satellite (e.g., nuclear warheads detonated near a satellite). The best approach to reducing the risk is to move to a large number of simpler, easily-replaced satellites that are much more readily confused with decoys. Yet even this technique will succeed only if the Soviets are prevented from developing a cheap, nimble ASAT system capable of promptly attacking great numbers of satellites. It is precisely this sort of development that an ASAT arms control agreement should prevent.

There are several verification tasks that must be tackled under a general ban on ASAT weapons tests and use. The U.S. would have to confirm that the existing Soviet ASAT interceptor was not being tested in space; that no new ASAT weapons were being devised and tested in space or against space targets, including such new exotic ASATs as ground- or air-based lasers that could be aimed at low-orbit satellites; that weapons originally designed and deployed for other missions were not being tested in an ASAT mode; and that nonweapon space vehicles and programs were not posing significant ASAT threats.

The U.S. already has a diverse array of intelligence and space surveillance facilities for keeping track of Soviet activities, and this array is being expanded. NORAD's Space Object Catalogue is constantly being updated to record the identity and current orbits of all space objects (several thousand in all, of which several hundred are active or defunct satellites). NORAD's space tracking radar network has recently been upgraded to provide greater tracking accuracy, and gaps in the network have been closed by installing and improving radars in the Pacific. The GEODSS (Ground-based Electro-Optical Deep Space Surveillance) system, when completed in 1987, will augment ground radars and provide precise, highly-detailed optical and orbital signature data on manmade objects approximately 3,000 miles from earth and beyond. Upgraded radars in the United States, Turkey, and Kwajalein will provide additional tracking of objects in geosynchronous orbits.

Other electronic and optical sensors deployed around and over the Soviet Union add to U.S. ability to detect and classify Soviet missile and space launches. The potential for monitoring activities in outer space from space must also be considered. The recent demonstration of what is possible, in inspecting damaged and missing thermal tiles on the first Space Shuttle flight in April 1981, hints at what might be routinely feasible. On occasion, critiques of space verification capabilities tend to match only current monitoring capacities against future conceivable but nonexistent ASAT weapons, and not surprisingly, come to pessimistic conclusions. More imaginative evaluations should consider what we could now do but have not funded, as well as potential innovations in monitoring capabilities.

The effectiveness of all the monitoring facilities would be enhanced under an arms control agreement by provisions, such as those included in prior accords, prohibiting interference with national technical means of verification and deliberate concealment which impedes verification. Since the Soviets have already agreed in principle that arms control accords may include cooperative measures contributing to the effectiveness of verification by national technical means (in the SALT II Joint Statement of Principles), these too should be exploited to improve confidence in verification.

The U.S. already has long monitoring experience with tests of the current Soviet ASAT interceptor, going back a decade and a half. Covert tests of that weapon would be rather risky for the Soviets. Conceivably the Soviets might try to test their current ASAT covertly in some radically different manner that expanded its capabilities, e.g., on a new booster capable of intercepts significantly higher than its present ceiling. This would not be a "nimble" threat, even in the unlikely event that cheating succeeded. The booster required to loft the Soviet's bulky ASAT up to geosynchronous altitudes would have to be comparable to the large U.S. Saturn 1B or the Soviet PROTON booster, massive rockets with long preparation times, whose launches would be unmistakable.

More likely, if the Soviets hoped to expand their ASAT capability covertly, they would attempt an entirely new weapon, such as a miniature homing ASAT, or a more exotic laser ASAT, or space mines. Until such time as ASATs are banned alto-

gether, neither side would be violating the limitations if they devised such systems on the ground; they would be banned from testing them in space or against space objects.

But the technological challenges in building an effective space-based laser ASAT are formidable, even if unrestricted testing in space were permitted, and doing it all covertly would certainly be a protracted, highly risky task. To prevent the Soviets from testing ASATs in space under the pretense of developing, for instance, a space-based laser anti-aircraft defense system, our draft treaty also bans space weapons for damaging or destroying objects in the atmosphere or on the ground. This prohibition would also reinforce existing limitations on space weapons in the 1967 Outer Space Treaty and the 1972 ABM Treaty.

Ground- or air-based laser ASATs are far easier to construct than space-based lasers, but it is not clear they offer any advantages over current ASATs. Such lasers could impair unprotected satellite sensors at high altitutes, but could only destroy satellites in low orbits. Whether Soviet technology is sufficiently far advanced to make a miniature homing ASAT feasible in the near term is not clear. In all these new ASATs, however, very high accuracies in homing or aiming would be necessary, and these would be difficult to confirm without actual tests against space targets. Such tests can leave a host of telltale signs: launch of the ASAT itself; a large flow of data from the test vehicles that the Soviets would have to transmit; damage to the target that causes it to fragment or tumble; intense heating that can be detected by infrared sensors; and displacement of the target's orbit. While the Soviets were pressing ahead with such innovations, there would, of course, be a parallel expansion and evolution of U.S. monitoring facilities, which would further facilitate detection of cheating.

Space mines placed in orbit near targets and detonated only when conflict begins are another problem. They seem ingeniously simple. The technology could perhaps be fairly primitive, and if the only tests required were triggering the explosive upon command, they could be amply tested on earth. Nevertheless, if covertly deployed, they might give themselves away or pose only a manageable threat. The orbital paths of satellites are not necessarily stable, especially those of satellites in lower orbits that are subject to atmospheric drag, or that maneuver to perform their missions. Space mines dogging along behind such maneuvering satellites would be bound to raise suspicions, and the mine ceases to be such a simple device if it must be equipped with homing and maneuvering capabilities so it can keep track of its potential target or be able to close in rapidly on command. At geosynchronous altitudes, where all orbits are more stable, a space mine skulking near its target could still arouse suspicions, since all legitimate satellites are supposed to be registered (under the 1975 Convention on Registration of Objects Launched into Outer Space) and are to maintain minimum separation distances in geosynchronous orbits. Again, a space mine becomes a complex device if it must pretend to be something benign when far away from its target to avoid suspicions, yet swiftly seek its target upon command.

When it comes to verifying that non-ASAT weapons are not being put to ASAT purposes, again, long U.S. experience at monitoring the characteristic patterns of Soviet ICBM and ABM tests would make it risky for the Soviets to test these weapons in an ASAT mode. Of course, even in the absence of tests, such weapons would still have to be taken into account as an ASAT threat, since the great kill-distance of nuclear explosions in space could compensate for deficiencies in guidance systems or test experience. But it is also true that present ABM interceptors can reach satellites only in the lowest orbits, and any nuclear explosion in space carries a grave risk of escalation, of damage to "friendly" satellites as well as the target, and of uncertain EMP effects upon other military and civilian systems on earth. So, while such residual ASAT threats are less awesome than what unrestricted ASAT competition would produce, they would persist, even if the ability to verify a test ban were perfect. They are a reason for continuing vigorous satellite survivability programs as an adjunct to ASAT arms control.

Some non-weapon space vehicles may also have inherent ASAT capability (e.g., resupply vehicles that can home in on other satellites), and the U.S. would want to verify that such vehicles were not being tested in an ASAT mode. The overlap of non-weapon space technology with ASAT missions should not be exaggerated, however. The continuing high cost of launching anything into space will certainly force designers to optimize space vehicles for their specific non-weapon missions, and the results is not likely to be a very agile or capable ASAT. The Soviet's Progrez resupply vehicle, for instance, is obviously designed to deliver the maximum amount of provisions in few trips. Its takeoff weight, fully loaded, is perhaps three times that of the Soviet's own bulky ASAT, and consequently it uses an enormous booster just to reach altitudes of a few hundred miles. Such jury-rigged ASATs are not very good foundations for a weapon system to "sweep the skies," and making vital U.S. satellite functions survivable against such residual threats should be manageable.

Nevertheless, an ASAT arms control agreement could incorporate collateral constraints on the characteristics and use of non-weapon space technologies. These constraints might include, for instance, limits upon speed of approach in rendezvous maneuvers, or upon power/aperture characteristics of lasers in space. However, it would be premature to propose a long list of such constraints right now, to govern future cases of space technology. The treaty proposed here would accommodate such collateral constraints in several ways. Cases which the sides find of immediate concern could be addressed in treaty negotiations and incorporated as additional articles or perhaps as cooperative measures in test or space-use procedures that aid verification. Limits on future cases involving new technologies would best be addressed on a case-by-case basis in the Standing Consultative Commission, as the specific dimensions of problems and remedies become clear. This approach would raise our confidence that such space vehicles were not being readied as ASATs, while minimizing the impact upon non-weapon space exploration.

A final verification concern is that of "breakout," that is, the possibility that the Soviet Union could assemble a significant ASAT capability by abruptly abrogating the treaty through running a quick set of space tests. At issue here is how close to operational status an ASAT weapon could be brought, if assembled and tested only on the ground or covertly in space as dismantled components (e.g., testing homing sensors for ASAT interceptors on some ostensibly non-weapon space mission). Inconsistencies occasionally crop up in arguments on this matter. On the one hand, it is claimed the Soviets could readily concoct an ASAT system even though space tests were banned; on the other, it is asserted the U.S. could not accept a ban on testing because then it would be unable to confirm that its own ASAT system works. A more balanced viewpoint is in order here.

The U.S. has already conducted enough engineering tests of its own ASAT interceptor to be ready for immediate space tests, so even if a moratorium on tests were agreed upon now, the U.S. would not be without experience. If the ASAT accord banned tests but allowed both sides to keep their present ASAT weapons, then clearly both would have some "breakout" potential. Though the existing Soviet ASAT is a more tractable problem than what unrestrained ASAT competition would bring, this "breakout" potential would be of some concern for the U.S. A combination of reasonable survivability measures, eroding Soviet confidence in their ASAT in the absence of tests, and further negotiations leading toward complete dismantling of ASATs would address our concerns.

"Breakout" using an entirely new ASAT weapon that had been tested only on the ground or covertly—component by component—in space would be quite risky, technically and politically. In ASAT weapons as in modern weaponry in general, capability and complexity are linked—the more capable a weapon is in coping with a variety of combat requirements, the more complicated it is likely to be, and the more in need of tests that simulate actual engagements. Soviet attempts to conduct realistic full-system ASAT tests in space covertly would confront the whole battery of U.S. intelligence sensors. On the other hand, breaking the ASAT system down into component parts for covert testing, in order to minimize the chance of detection, entails a risk that the whole system will not work as well operationally as the parts. The Soviets have clearly experienced gaps between plans and performance in space and weapon systems, and even catastrophic shortcomings. Without tests, the Soviets could not confidently predict how soon a new device could be made to work after "breakout"—if at all. An ASAT test ban could serve U.S. interests by exploiting Soviet uncertainties and fear of detection, while leaving the U.S. free to complicate the Soviet's "breakout" task through a variety of satellite defensive measures.

In sum, there are no obvious reasons why an arms control agreement banning space tests and use of ASAT weapons could not be adequately verifiable. There may be some areas of uncertainty, but not so great as to permit the Soviets to pose a significant unanticipated threat to U.S. security if we take prudent steps towards improving intelligence capabilities and diversifying and protecting vital satellite functions.

VI. COMPARISON WITH THE 1981 SOVIET DRAFT TREATY

There are several important contrasts between the treaty proposed here and the provisions of the Soviet Union's draft treaty placed before the U.N.

The first contrast is in comprehensiveness. Article 1 of the Soviet treaty addresses weapons placed in orbit around the earth.

Strictly speaking, the Soviet formulation does not appear to limit further tests and development of either the Soviet or U.S. ASAT systems. In space tests, the current Soviet interceptor goes into orbit before attacking its target, but it may well be able to attack satellites by direct ascent or after partial orbit. The U.S. ASAT is a direct-ascent interceptor that does not go into orbit. Hence, both seem to elude a ban on weapons "placed in orbit." Ground-based laser ASATs also elude the Soviet formulation. In contrast, the treaty proposed here prohibits all testing of ASAT weapons in space or against objects in space, whether the ASAT weapon is ground- or space-based. This includes tests against one's own space objects, not (as the Soviet text reads) just those of other parties.

In a second contrast, Article 1 of the Soviet draft treaty reads in part, "the parties undertake not to station such weapons in outer space . . ., including on reusable manned space vehicles." Because the U.S. Space Shuttle is the only such vehicle now in use, such specific mention in the Soviet proposal must raise suspicions that the Soviets intend to somehow impair the Shuttle program. This impression was compounded by the fact that the English text of the treaty used by some nations in the U.N. left out the crucial word "on." The draft was therefore understood to include "reusable manned vehicles" among the weapons banned from space. Specific mention of reusable manned vehicles is in fact superfluous and is dropped from our proposed treaty text. Any general obligation not to test or place anti-satellite weapons in space would apply, no matter what launch vehicle happened to be used. The Soviets would be banned from using their current space vehicles, such as Salyut or Progrez, or any future Soviet shuttle, for such purposes. The same constraints would of course apply to the U.S. Space Shuttle.

In a third contrast, Article 3 of the Soviet draft treaty contains a general ban on the use of weapons in outer space. The Soviet version, however, adds a reservation: the satellites of the other side would enjoy protection if they did not violate other restraints in the treaty. Here, and in Article 2 as well, the Soviet draft seems to attempt a general limitation on satellites, rather than upon anti-satellite weapons. Indeed, the Soviet formulation gives an impression of legitimizing attacks upon satellites engaged in certain acts, rather than forbid such attacks.

There are two underlying issues here: first, what rights would one side retain, if the other tested or used an anti-satellite weapon in violation of the treaty; and second, what would the sides be permitted if a third nation tested or used an ASAT weapon in space? On the first point, obviously any violation of ASAT limits by the U.S. or the Soviet Union would be a grave act, and the other side would be justified in exercising rights of withdrawal from the treaty. Such provisions for withdrawal, customary in previous arms control treaties, are adequate to cope with this issue, when buttressed by prudent satellite survivability measures.

The second point underscores the importance of eventually transforming a bilateral ASAT treaty into a multilateral accord. It would be regrettable indeed if some third nation undercut superpower limitations upon space arms competition by launching its own ASAT. Still, a bilateral ASAT treaty between the superpowers should not contain provisions that appear to sanction attacks upon the space objects of third nations. If third parties disrupt the agreement reached by the superpowers, the first recourse for the U.S. and Soviet Union should be consultation as provided for in the attached treaty. The final recourse would be inherent right of withdrawal where extraordinary events jeopardize supreme national interests.

Finally, the introduction of the Soviet draft proposal in the U.N. General Assembly raises the question of whether the best prospect for space arms control is through multilateral or bilateral negotiations. A superpower arms competition in space would certainly be a matter of global concern. Objects circling the earth in outer space can come within a hundred miles or so of every point on the globe, of every nation on earth. Outer space can be used in a host of ways to yield security and prosperity for all nations. It is therefore desirable that any arms control restraints on weapons in outer space be broadly affirmed and respected by all nations.

However, at the moment only the Soviet Union and the U.S. have ASAT programs. Since their accession is indispensable to any meaningful limitations on space weapons, and since their ASAT programs are proceeding apace, it is most important that the superpowers begin direct negotiations, unimpeded by the delays that unavoidably arise in wider multilateral forums.

The best course would therefore be for the U.S. and the Soviet Union to begin direct negotiations on bilateral restraints, keeping in mind the desirability of eventually incorporating their accord into a multilateral treaty appropriate for signature by all nations.

APPENDIX—A TREATY LIMITING ANTI-SATELLITE WEAPONS

PREAMBLE

Article I

Each Party undertakes not to destroy, damage, render inoperable or change the flight trajectory of space objects of other States.

Article II

1. Each Party undertakes not to place in orbit around the earth weapons for destroying, damaging, rendering inoperable, or changing the flight trajectory of space objects, or for damaging objects in the atmosphere or on the ground.

2. Each Party undertakes not to install such weapons on celestial bodies, or station such weapons in outer space in any other manner.

3. Each Party undertakes not to test such weapons in space or against space objects.

Article III

1. For the purpose of providing assurance of compliance with the provisions of this treaty, each Party shall use national technical means of verification at its disposal in a manner consistent with generally recognized principles of international law.

2. Verification by national technical means shall be supplemented, as appropriate, by such cooperative measures for contributing to the effectiveness of verification by national technical means as the Parties shall agree upon in the Standing Consultative Commission.

3. Each Party undertakes not to interfere with the national technical means of verification of the other Party operating in accordance with paragraph 1 of this Article.

4. Each Party undertakes not to use deliberate concealment measures which impede verification by national technical means of compliance with this treaty.

Article IV

1. To promote the objectives and implementation of the provisions of this treaty, the Parties shall use the Standing Consultative Commission, established by the Memorandum of Understanding Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics regarding the Establishment of a Standing Consultative Commission of December 21, 1972.

2. Within the framework of the Standing Consultative Commission, with respect to this treaty, the Parties will:

(a) consider questions concerning compliance with the obligations assumed and related situations which may be considered ambiguous;

(b) provide on a voluntary basis such information as either Party considers necessary to assure confidence in compliance with the obligations assumed;

(c) consider questions involving unintended interference with national technical means of verification, and questions involving unintended impeding of verification by national technical means of compliance with the provisions of this treaty;

(d) consider, as appropriate, cooperative measures contributing to the effectiveness of verification by national technical means;

(e) consider possible changes in the strategic situation which have a bearing on the provisions of this treaty, including the activities of other States;

(f) consider, as appropriate, possible proposals for further increasing the viability of this treaty, including proposals for amendments in accordance with the provisions of this treaty.

Article V

The Parties undertake to begin, promptly after the entry into force of this treaty, active negotiations with the objective of achieving, as soon as possible, agreement on further measures for the limitation and reduction of weapons subject to limitation in Article II of this treaty.

Article VI

In order to ensure the viability and effectiveness of this treaty, each Party undertakes not to circumvent the provisions of this treaty, through any other State or States, in any other manner.

Article VII

Each party undertakes not to assume any international obligation which would conflict with this treaty.

Article VIII

1. Each Party may propose amendments to this treaty.

2. Agreed amendments shall enter into force in accordance with the procedures governing the entry into force of this treaty.

Article IX

This treaty shall be of unlimited duration.

Article X

Each Party shall, in exercising its national sovereignty, have the right to withdraw from this treaty if it decides that extraordinary events related to the subject matter of this treaty have jeopardized its supreme interests. It shall give notice of its decisions to the other Party six months prior to withdrawal from the treaty. Such notice shall include a statement of the extraordinary

events the notifying Party regards as having jeopardized its supreme interests.

Article XI

1. This treaty shall be subject to ratification in accordance with the constitutional procedures of each Party.

2. This treaty shall enter into force on the day of the exchange of instruments of ratification.

Article XII

1. Done in two copies, each in the English and Russian languages, both texts being equally authentic.

2. This treaty shall be registered pursuant to Article 102 of the Charter of the United Nations.

FOOTNOTES

[1] Presidential Directive 37, as summarized in a White House fact sheet dated June 19, 1978.

[2] Robert W. Buchheim, testimony at hearing on "Arms Control and the Militarization of Space" held by the Subcommittee on Arms Control, Oceans International Operations and Environment of the Senate Foreign Relations Committee, September 20, 1982.

[3] Eugene Rostow, testimony at same hearings.

[4] Richard D. DeLauer, testimony at same hearings. Robert S. Cooper, testimony to the Subcommittee on Research and Development of the House Armed Services Committee, March 17, 1983.

Marcia Smith, "Antisatellites," Issue Brief No. IB81123, Science Policy Research Division, Congressional Research Service, Library of Congress, April 6, 1983.

[5] S. Res. 43, introduced by Senator Pressler on February 2, 1983. H.J. Res. 120, introduced by Representative Moakley on February 2, 1983. S.J. Res. 28, introduced by Senator Tsongas on February 3, 1983.

[6] The term "space objects" would correspond to "objects launched into outer space" in the Outer Space Treaty of 1967. Such objects include not only all functioning objects commonly called "satellites," but also all objects on interplanetary flights as well as all man-made pieces of debris. The term does not include nuclear missile warheads on ballistic trajectories, even though these pass through space. Hence, an ASAT treaty along these lines would not alter the rights or obligations of the 1972 ABM Treaty which covers weapons used against ballistic missiles.

PAIEWONSKY'S ADMINISTRATION CREATED NEW MIDDLE CLASS IN THE VIRGIN ISLANDS

● Mr. JOHNSTON. Mr. President, one of our lesser debated—but most sensitive—responsibilities is to legislate for the unrepresented parts of the Nation. Since Congress has full constitutional responsibility for the territories, which have neither voice nor vote in our body, the 3½ million Americans who reside in them are entirely dependent upon our attention.

Members know that I have taken this responsibility seriously. The many significant and legitimate needs of our insular areas are essential to the national as well as the territorial interest. I have dedicated time and effort to meeting them.

As I have done so, I have been privileged to come to know a remarkable leader: Ralph M. Paiewonsky, of the Virgin Islands. Those familiar with the insular areas know that no territory has had a more visionary, able, or productive Governor. Any community would be fortunate to have a citizen as outstanding.

Governor Paiewonsky's careers as a public servant and as a merchant have bettered almost every facet of life in the Virgin Islands. His tenure as chief executive won dramatic improvements in the island's self-government, tourism business, industrial development, housing, educational system, and public infrastructure and services. The achievements continue as a living legacy of his partnership for progress.

The United States is indeed indebted to the father of the modern Virgin Islands. But our appreciation pales beside that of the people whose social, economic, and political growth Governor Paiewonsky so advanced.

No one is more appreciative of Governor Paiewonsky's accomplishments than the man who most helped to achieve them: the Virgin Islands' great legislator, Earle B. Ottley.

A distinguished journalist, Senator Ottley provided history with the best chronicle of the achievements of the Paiewonsky-Ottley years a few months ago. When the legislature of the Virgin Islands awarded the territory's Medal of Honor to Governor Paiewonsky, he wrote a recollection which should be inspirational to all who love those beautiful islands. I ask unanimous consent that it be printed in the RECORD at this point.

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

PAIEWONSKY'S ADMINISTRATION REDUCED POVERTY—CREATED NEW MIDDLE CLASS

(By Senator Earle B. Ottley)

On April 5, 1961, Ralph M. Paiewonsky was sworn into office as the 16th civilian Governor of the United States Virgin Islands. It was an historic occasion for the territory. Paiewonsky became the first native born Virgin Islander to assume this post and the people were soon to benefit from his years of experience and involvement in the social, economic, and political life of these islands.

The growth that occurred from 1961 to 1969 came as a result of the bold and progressive programs proposed, developed and carried out by the Paiewonsky administration. And it was the revenues from this growth that enabled the government to continue to expand its programs for the social, educational and industrial progress of the community.

Paiewonsky offered programs to expand the tourist trade and encourage new industry, and thus create thousands of new jobs in the territory. New hotels were built, factories opened their doors, and government services were dramatically expanded. Harvey Aluminum (now Martin Marietta) and Hess Oil, two industrial giants, transformed St. Croix from a sleepy rural and sugar cane town to a commercial metropolis, with the average wage rate quadrupling almost overnight.

So successful were Paiewonsky's economic development programs that the islands had to appeal to the neighboring islands for temporary workers to meet the need of construction projects and hotels. Hundreds also came to work as maids and other domestic servants in the homes of Virgin Islanders. Tourists came by the thousands, igniting a boom that created many jobs in private industry, and poured substantial revenue into the government's treasury.

For the first time government had the resources to provide varied services to the people, and several new departments were established to handle specific problems. This resulted in the creation of hundreds of good government jobs.

Perhaps the most disturbing condition confronting the average Virgin Islander when Paiewonsky became governor was the housing situation. The Paiewonsky administration immediately recognized that an emergency program in housing was necessary. Through the leadership provided by Governor Paiewonsky the administration laid bold plans for a progressive housing program to be instituted in the islands. In 1962, a Department of Housing and Community Renewal was created and a long range program of land acquisition and home construction began. Within five years more than 8,000 Virgin Islanders had been relocated in new, modern, safe and sanitary dwellings. Private contractors were given incentives to build houses for resale and with federal assistance and bold, innovative local programs, hundreds became home owners for the first time.

Others who were earning handsome salaries took advantage of their new prosperity to buy land and build homes, and suddenly the hillsides overlooking Charlotte Amalie and various small communities in St. Thomas, St. Croix and St. John sprung up overnight, all with new and modern houses.

In the years prior to Paiewonsky's administration, many Virgin Islanders flocked to New York in search of employment opportunities. Paiewonsky reversed the trend creating jobs that encouraged Virgin Islanders to stay at home and induced those abroad to return.

The conditions served as a magnet for thousands of Americans from the mainland who swarmed to the islands, some to live in retirement in the islands' "paradise," and others to establish a variety of small businesses, most of them catering to tourists. Gift shops, restaurants, yacht services, car rental agencies, construction companies and many other service-type businesses were established.

With the same zeal that was applied to the housing program, Governor Paiewonsky's administration began a program of educational expansion and educational excellence. In his first four years in office his administration added 92 classrooms and built 26 facilities. At the same time, the pupil-teacher ratio dropped by two-thirds, and the two principal high schools were for the first time accredited by the Middle States Association for Secondary Schools.

When Paiewonsky took office in 1961, the budget for the entire Department of Education was $441,337. By 1966, his administration was spending $7,882,000 on education. More and more emphasis was placed on education and soon expenditures reflected a per pupil expenditure higher than the average of the fifty States.

The list of achievements made by the Paiewonsky administration in the field of education was probably capped with the establishment of the College of the Virgin Islands in the face of vigorous opposition from some quarters. Because of the Governors personal perseverance and energy, that dream is now a reality. Not only has CVI turned out hundreds of graduates who have become leaders in various fields, but it has

gained the reputation as a cultural center for the entire eastern Caribbean. The Ralph M. Paiewonsky Library was established in January, 1969, as a tribute to Governor Paiewonsky.

The Paiewonsky administration constantly advocated major improvements in airport facilities to provide the opportunity for the continued growth and to be able to compete successfully with other vacation islands in the Caribbean. The Alexander Hamilton Airport in St. Croix, finished in 1962, provided the islands with their first direct jet flight to and from the mainland. The administration's efforts to secure direct jet flights to St. Thomas resulted in Pan American Airways servicing the capital island with one-plane service from New York City.

Ambitious plans were developed to build a new airport in the lagoon section of eastern St. Thomas, instead of proceeding with expansion of Truman airport, and to transform St. Thomas Crown Bay into a cruise ship facility, with more than forty acres set aside for commercial and industrial purposes.

Transfers of former properties of the Virgin Islands Corporation, a federal entity, gave the people of the Virgin Islands ownership and control of facilities that are now being operated by the Virgin Islands Port Authority and the Water and Power Authority.

Many of the achievements of the Paiewonsky administration could not have been accomplished without Federal aid. The Governor's realization that the Virgin Islands could participate in many Federal programs by organizing along lines required by Federal law, is in itself a major accomplishment.

One of the Governor's most fervent hopes was to see the Virgin Islands achieve greater measures of local self-government, including the election of their own Governor. His administration advocated the calling of a Virgin Islands Constitutional Convention, whose delegates were elected by the people. The convention met, framed their recommendations for a new revision of The Organic Act and presented their recommendations to the Executive and Legislative branches of the Federal government. Governor Paiewonsky led a Washington delegation which testified in behalf of an elected governor bill and reapportionment measures at hearings before the House Subcommittee on Territorial and Insular Affairs. Both received favorable consideration and were enacted into law by the Congress of the United States.

All of the economic benefits that the Paiewonsky administration programs provided gave the average Virgin Islander a new dignity, and erased the "poorhouse" label that had been given to the Virgin Islands years before by President Hoover. The sharp rise in living standards created a solid middle class in the islands for the first time.

Governor Paiewonsky left office before he could implement elaborate plans that he had already approved to build two multimillion dollar health centers, one on St. Croix and the other on St. Thomas.

Through all of this the unheralded, behind-the-scenes efforts of hundreds of employees provided the support necessary for success. A cooperative Legislature through its vital work shared with Governor Paiewonsky a great sense of accomplishment.

This record of accomplishments of the administration of Governor Ralph M. Paiewonsky will provide the brightest page in the history of the Virgin Islands.

LATEST AIR FORCE INFORMATION DEMONSTRATES MX IS NOT WORTH THE MONEY

Mr. LEVIN. Mr. President, the Senate soon will begin a debate of almost historical significance for the defense and arms control policies of this Nation. We will consider whether to approve the administration's request to deploy 100 MX missiles in vulnerable, existing Minuteman silos.

This debate also will have major fiscal significance for the American taxpayers, since this proposed MX deployment is expected to cost at least $20.2 billion during the next 6 years.

At that price, our hard-pressed American taxpayers should expect their elected representatives to do the utmost to insure that this Nation is obtaining the maximum military, arms control, and fiscal benefits from the proposed MX deployment.

According to the Air Force information I have just received, the exact opposite will be the case, Mr. President, if the Congress ultimately approves the administration MX plan. I want to share this information with my colleagues, so that they might ponder these cold facts as we begin to debate the future of this latest in a long and sorry litany of fatally flawed MX deployment schemes.

Just yesterday, the Air Force confirmed to me that by 1989, when MX would be fully deployed, only between 1 and 5 percent of our fixed intercontinental ballistic missile (ICBM) silos would survive, and I quote, "a well-executed Soviet first strike attack on existing U.S. silos."

That means that only between one and five MX missiles would survive such an attack, according to the Air Force's own calculations approved by Lt. Gen. Lawrence Skantze, chief of the service's research and development activities, and issued by the Office of the Secretary of the Air Force.

The bottom line of this is that the administration is asking the Congress and the American people to spend $20.2 billion in hard earned tax dollars for just 10 to 50 surviving MX warheads. At the lower number of survivors, that comes to a price tag of more than $2 billion for each surviving MX warhead. At the higher number, the cost is $404 million per surviving MX warhead.

Either cost is an absurd price to pay for such a minimal—if not nonexistent—gain in our strategic nuclear retaliatory and deterrent capabilities. At those prices, we all should go into the MX warhead business.

The money we are being asked to pay for MX could be much better spent to improve our conventional forces in needed categories—such as our Rapid Deployment Force capabilities for airlift, sealift, and desert combat equipment. If we spent the billions we are being asked to pay for MX on other conventional weapons, we could buy at least 500 high performance F-15 fighters or 1,000 extremely capable F-16 fighters or 13 CG-47 AEGIS air defense cruisers or 24 SSN-688 nuclear fast attack submarines or 9,700 Bradley fighting vehicles.

Or those billions could yield more benefits than they will for MX if we did not spend them at all during the next 6 years, when crushing deficits threaten our economy.

We would be stronger militarily, the nuclear threshold would be higher because our conventional combat strength would be greater, and we would be stronger economically without the MX.

Proponents of the MX try to dismiss these hard truths about what we are buying for the billions we are being asked to throw at MX, but the Air Force has provided the evidence. We are buying absolutely nothing, and every Member of the Senate must ask himself or herself how he or she can justify to his or her constituents such a bad bargain.

Proponents will try to explain away this reality that MX silo deployment provides only 10 to 50 surviving warheads by saying, as the Air Force does in its information to me, that the Soviets could not be certain the United States would not launch its missiles during the attack, instead of waiting until the Soviet first strike is over. Thus the number of surviving MX warheads might be higher, is the implication of this claim.

This uncertainty does exist, Mr. President, but it means we are relying on a dangerous, nuclear hair trigger strategy of launch on warning for the survival of our ICBM's.

The second uncertainty the Air Force tries to use to qualify its sad news about MX is in the form of a question: "Can the Soviets confidently attack all legs of (the) triad?" The answer to that, of course, is that they cannot, because the most likely Soviet attack would still fail to destroy as many as 70 percent of our missile submarines and about 30 percent of our bomber force. But that should not change the vulnerability of fixed missile silos, according to past, extensive Air Force testimony.

That uncertainty existed all the years that the Air Force was insisting to Congress that it had to have a survivable MX missile if our deterrent was to be credible. The Air Force cannot have it both ways now; and its own credibility to argue such a point is as low as the now closed window of vulnerability supposedly was open.

The simple fact is that the proposed MX missile deployment just is not worth the money, Mr. President, and

the Air Force's own information proves it.

THE PRESIDENT'S EMBARGO ON ISRAEL'S F-16's

Mr. CRANSTON. Mr. President, President Reagan has still not lifted the embargo on delivery of F-16 aircraft to Israel, despite the fact that the PLO and Syria are building up their forces in and around Lebanon and despite the fact that Israel has agreed to a concurrent withdrawal of all foreign forces from Lebanon. As I make clear in the following letter to the President, which I submit for the RECORD, I have consistently opposed the Reagan administration's unwarranted embargo on F-16 deliveries to Israel. But I think it is especially important that this embargo be lifted immediately, due to current circumstances in the Middle East.

Following is the text of my letter to President Reagan:

U.S. SENATE,
Washington, D.C., May 16, 1983.

Hon. RONALD REAGAN,
The White House
Washington, D.C.

DEAR MR. PRESIDENT, Israel's agreement to withdraw troops from Lebanon offers new promise for peace in the Middle East. However, the hope that the Lebanese can now restore sovereignty over their own territory through the withdrawal of all foreign forces is offset by the fear that PLO and Syrian forces will remain primed for more war.

In recent days, it has become clear that Syrian and PLO leaders will do all in their power to block implementation of a Lebanese peace agreement. The Syrians continue their unprecedented military build-up with massive Soviet assistance. And the PLO is pouring new troops into their Bekaa Valley strongholds.

Under these circumstances, I believe it is irresponsible for your Administration to continue to withhold delivery of the 75 F-16 planes long scheduled for delivery to Israel. I have consistently opposed your embargo on these deliveries. But now with your Secretary of Defense warning against Syrian aggression, it is especially unwise for you to block delivery of F-16's essential for the security and survival of our only stable democratic ally in the Middle East, Israel.

I call on your Administration to release these planes for delivery to Israel immediately.

Sincerely,

ALAN CRANSTON.

BUDGET DEFICITS—WHO'S RESPONSIBLE?

Mr. BYRD. Mr. President, on Tuesday, President Reagan took the occasion of a speech before the National Association of Home Builders to launch a strident and partisan attack on the Congress for its unwillingness to swallow whole the President's discredited budget policies. In that speech, the President rejected any responsibility for Federal deficits that are skyrocketing through the stratosphere and threatening to strangle the still fragile economic recovery in its infancy. Insistent upon a budget whose priorities are not supported by a majority of the Congress or even his fellow Republicans, the President and his aides continue to suggest that they prefer no budget at all to one which does not reflect the President's own unbending commitment to massive defense spending, deep cuts in social programs, and an unfair tax program tilted toward the rich. In short, the President is threatening to take his ball and walk off the field, unless he can get his own way.

The President chose to make his remarks at the very moment that the Republican leadership in the Senate is struggling to patch together a budget compromise that can muster enough votes to pass. The President's policies have already deeply divided his own party. Now, he has lobbed a rhetorical grenade straight at the heart of the effort to achieve a compromise. His comments will make the work of the Republican leadership, striving to devise an acceptable bipartisan budget, even more difficult. It is time for the President to put aside demagoguery and accept responsibility for the consequences of his own policies.

Since assuming office in 1981, President Reagan has presided over the most dramatic surge in deficits in the history of our Nation. In July 1981, prior to enactment of the Reagan economic and budget programs, the Congressional Budget Office forecast that—based on the economic trends and budget policies in place at that time—the Federal Government would accumulate a budget surplus of $212 billion during the 4 years from fiscal year 1982 through fiscal year 1985.

In sharp contrast to that optimistic outlook, in February of this year CBO forecast that rather than building up a surplus, the Federal Government would instead accumulate a record-breaking budget deficit of $716 billion between fiscal year 1982 and 1985. In other words, during the first 2 years of the Reagan administration, a staggering $918 billion of red ink was added to the projected budgets for fiscal year 1982-85, erasing the surplus originally forecast in 1981 and replacing it with a recordbreaking deficit.

This dramatic shift from a projected budget surplus to a projected budget deficit for fiscal year 1982 through 1985 is, to a very large extent, a direct result of the administration's own economic and budgetary policies.

According to CBO, the single largest cause for the disappearance of the large budget surplus it originally forecast in mid-1981 was the Reagan administration's economic policy—its much-heralded program for economic recovery. As a result of an inevitable and massive collision between its excessively tight monetary policy and its highly expansionary fiscal policy, the Reagan economic program has proved to be a dramatic failure. Rather than promoting economic growth, it plunged the American economy into the worst recession since the Great Depression, a downturn from which it has only now begun to recover. The change in the economic outlook caused by the deep Reagan recession added almost $592 billion in deficits to CBO's Federal budget projections for fiscal year 1982 through 1985.

The second largest factor behind the worsening deficits is President Reagan's budget policy, which disastrously combines the largest tax cuts and the biggest defense spending increases in history. Even the Reconciliation Acts of 1981 and 1982, which imposed the deepest cuts in domestic spending ever made, proved insufficient to stem the rising tide of red ink. While nondefense spending for the fiscal years 1982-85 period was slashed $204 billion by those bills, military spending and interest costs on the national debt were raised and taxes reduced by a total of $437 billion, completely overwhelming all other savings. According to the Congressional Budget Office, the net effect of the administration's budget policy in its first 2 years was to add $233 billion in deficits to its budget projections for fiscal year 1982 through fiscal year 1985.

Finally, but to a far lesser degree than the other causes just mentioned, the shift during the last 2 years from a projected surplus to a projected deficit for fiscal years 1982 through 1985 resulted from several technical estimating changes, which added $93 billion in deficits to CBO's budget projections for fiscal years 1982 through 1985.

In brief, the administration's economic and budget policies caused 90 percent, or $825 billion, of the increased red ink projected for fiscal years 1982 through 1985 by the Congressional Budget Office in its February 1983 forecast, while the remaining 10 percent, or $93 billion, was the result of technical estimating changes.

Mr. President, it is indeed ironic that the party which swept into the White House and control of the Senate in 1980, pledging a balanced budget, would bring us the highest deficits in the history of the Republic. Deficits of this magnitude will send interest rates spiraling upward and threaten to abort the fragile economic recovery now underway. It is time that the President and his party face the reality that we cannot continue to allow these hemorrhaging deficits to flow unstaunched without courting economic disaster. It is time to reverse the policies which have brought us to our present circumstances, and to chart a new course that can restore some measure of sanity to fiscal policy.

Instead, the President continues to insist that congressional Democrats want to increase taxes as a way out of our current budget impasse. The President's accusation is a serious and unfortunate distortion of the problems we as a nation face in charting an appropriate fiscal policy for the balance of this decade.

I have yet to hear one Member on this side of the aisle propose a new tax. Many on this side have hoped that the President would heed the advice he received from us in 1981 when we urged him to push for the third year of his tax program only if the budget was under control. The President did not heed our advice then, and the budget is now wildly out of control. We are writing enormous tax cuts in the red ink of the national debt.

At this point in time, we on this side of the aisle who have been urging fiscal prudence must recognize the realities in which we now find ourselves. The President has not and will not change his position on the third year of the tax cut. In anticipation of this third year of the tax cut, many States have raised their taxes. The net result is that it is now legislatively impossible to repeal the third year of the tax cut. Therefore, I suggest that it is time to put that debate behind us and to move, in a last ditch effort at fiscal sanity and tax fairness, to modify the third year of the tax cut in a way that is fair to lower and middle income people, insures that everyone gets a tax cut, but which guarantees that the rich, who have already profited so handsomely under the administration's tax program, not receive a tax cut larger than that enjoyed by the average upper-middle-income family.

As enacted, the Reagan-Kemp-Roth tax program has been grossly unfair to the average American taxpayer. A family of four earning over $100,000 has already received a tax cut of $3,454. A family earning $20,000 has received less than one-tenth of that amount, about $300.

The tremendous inequities contained in the President's tax program would only be made worse if the scheduled final installment of the Reagan tax plan is allowed to go into effect unchanged.

The third year tax cut contained in the President's rate-reduction program would permanently reduce the tax liability of a family of four with an income of $100,000 by a staggering $2,368 a year, or $11,840 over the next 5 years. Based solely on his salary as President of the United States, President Reagan himself would save $4,456 a year, or more than $22,000 over the next 5 years, from the third installment of his tax plan.

By contrast, a family earning $20,000 will get $820 over the next 5 years in lower taxes. That is about $3 a week, enough for a tuna fish sandwich, potato chips and milk at the Senate cafeteria.

The central question now before the Congress is not whether taxes should be raised, but rather whether the American people are best served by continuing to cut taxes for the third year in a row for the wealthiest people in the country at a time when the Federal deficit is skyrocketing out of control.

I recognize that it is not realistic to expect Congress to repeal the third year of the Reagan/Kemp/Roth tax program, given the President's often repeated threat to veto any such legislation. But I continue to hope that the President will listen to reason and heed the call of basic fairness, by agreeing at least to put a cap on the amount of the tax cut which any one taxpayer can receive, so that no one would receive more than his fair share, and so that the rich would no longer receive a windfall tax reduction far in excess of what the ordinary American taxpayer can receive.

If we were to cap the amount of the tax benefit which any taxpayer could receive at $500, we would raise $8.4 billion in revenues in fiscal year 1984 and $28.5 billion over 3 years. That is a lot of money. A $500 cap would become effective for families with an income above about $39,000 in adjusted gross income. Since adjusted gross income is several thousand lower than gross income, this figure understates the income level at which a $500 cap would kick in. At that adjusted gross income, a family of four would receive the full 10-percent cut. Families with incomes below that amount would still receive the full 10 percent, while families with greater incomes would receive $500.

By capping the third year at $500, we will be giving 83 percent of all taxpayers the tax cut they are scheduled to receive. In my own State of West Virginia, a $500 cap will have no effect on approximately 9 out of 10 taxpayers.

However, a $500 cap achieves two important objectives. It raises $8.4 billion in needed revenues, and raises those revenues from these taxpayers who can most afford it, the wealthy. As a consequence, a cap returns some balance of fairness to the Reagan tax program.

Democrats believe that it is time to stop following the inequitable and discredited tax program President Reagan designed. These tax cuts are not fair, and they have not worked to stimulate economic growth.

If we fail to modify the third year tax cut, we have no hope of returning some balance to our fiscal policy.

The costs of this failure will be high: we are virtually guaranteed to see slow economic growth, high-interest rates, high unemployment, and record budget deficits through the balance of this decade.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Banking, Housing, and Urban Affairs.

(The nominations received today are printed in the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 1:19 p.m., a message from the House of Representatives delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 451. An act to validate conveyances of certain lands in the State of California that form part of the right-of-way granted by the United States to the Central Pacific Railway Company; and

H.R. 2785. An act to amend the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act relating to the scientific advisory panel and to extend the authorization for appropriations for such act.

At 5:31 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its clerks, announced that pursuant to the provisions of House Resolution 195, the bill (S. 144) to ensure the continued expansion of international market opportunities in trade, trade in services, and investment for the United States, and for other purposes, is returned to the Senate.

The message also announced that the House has passed the following bills and joint resolutions, in which it requests the concurrence of the Senate:

H.R. 1191. An act to amend the conditions of a grant of certain lands to the town of Olathe, Colorado, and for other purposes;

H.R. 2602. An act to authorize appropriations for the United States International Trade Commission, the United States Customs Service, and the Office of the United State Trade Representative for fiscal year 1984, and for other purposes;

H.R. 2681. An act to make certain amendments to sections 4, 13, 14, 15, and 15B of the Securities Exchange Act of 1934;

H.R. 2936. An act to amend title 38, United States Code, to increase the authorized number of members of the Board of Veterans' Appeals in the Veterans' Administration, and for other purposes;

H.R. 2990. An act to increase the permanent public debt limit, and for other purposes;

H.R. 3034. An act to provide for appointment and education of congressional pages, and for other purposes;

H.J. Res. 226. Joint resolution to designate the week of May 22, 1983, through May 28, 1983, as "National Digestive Diseases Awareness Week"; and

H.J. Res. 265. Joint resolution to provide for the temporary extension of certain insurance programs relating to housing and community development, and for other purposes.

HOUSE BILLS AND JOINT RESOLUTION REFERRED

The following bills and joint resolution were read the first and second times, and referred as indicated:

H.R. 451. An act to validate conveyances of certain lands in the State of California that form part of the right-of-way granted by the United States to the Central Pacific Railway Company; to the Committee on Energy and Natural Resources.

H.R. 1191. An act to amend the conditions of a grant of certain lands to the town of Olathe, Colorado, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2602. An act to authorize appropriations for the United States International Trade Commission, the United States Customs Service, and the Office of the United States Trade Representative for fiscal year 1984, and for other purposes; to the Committee on Finance.

H.R. 2785. An act to amend the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act relating to the scientific advisory panel and to extend the authorization for appropriations for such act; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 2990. An act to increase the permanent public debt limit, and for other purposes; to the Committee on Finance.

H.R. 3034. An act to provide for appointment and education of congressional pages, and for other purposes; to the Committee on Governmental Affairs.

H.J. Res. 226. Joint resolution to designate the week of May 22, 1983, through May 28, 1983, as "National Digestive Diseases Awareness Week"; to the Committee on the Judiciary.

HOUSE JOINT RESOLUTION PLACED ON THE CALENDAR

The following joint resolution was read the first and second times and placed on the calendar by unanimous consent:

House Joint Resolution 265. Joint resolution to provide for the temporary extension of certain insurance programs relating to housing and community development, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PERCY, from the Committee on Foreign Relations, without amendment:

S. 1310. An original bill to provide for increased participation by the United States in the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank (Rept. No. 98-127).

By Mr. D'AMATO, from the Committee on Banking, Housing, and Urban Affairs, without amendment:

S. 1311. An original bill to amend the Securities and Exchange Act of 1934 to authorize appropriations for the Securities and Exchange Commission for fiscal years 1984 through 1985, and for other purposes (Rept. No. 98-128).

By Mr. WEICKER, from the Committee on Small Business, without amendment:

S. 1323. An original bill to amend the Small Business Act and the Small Business Investment Act of 1958, and for other purposes (Rept. No. 98-129).

By Mr. SIMPSON, from the Committee on Veterans Affairs, with amendments:

S. 636: A bill to amend title 38, United States Code, to establish certain procedures for the adjudication of claims for benefits under laws administered by the Veterans' Administration; to apply the provisions of section 553 of title 5, United States Code, to rulemaking procedures of the Veterans' Administration; to provide for judicial review of certain final decisions of the Administrator of Veterans' Affairs; to provide for the payment of reasonable fees to attorneys for rendering legal representation to individuals claiming benefits under laws administered by the Veterans' Administration; and for other purposes (Rept. No. 98-130).

By Mr. GARN, from the Committee on Banking, Housing, and Urban Affairs, with an amendment in the nature of a substitute:

H.R. 2628. An Act to amend title 31, United States Code, to authorize appropriations for the Bureau of the Mint for fiscal year 1984, and for other purposes (Rept. No. 98-131).

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-1065. A communication from the General Counsel of the Department of Defense transmitting a draft of proposed legislation to exempt certain physicians from the requirement of Senate confirmation prior to appointment as medical officers in the Armed Forces; to the Committee on Armed Services.

EC-1066. A communication from the Deputy Director for Legislative Liaison, Secretary of the Air Force, transmitting, pursuant to law, a report on the progress of the Reserve Officers' Training Corps flight instruction program; to the Committee on Armed Services.

EC-1067. A communication from the Chairman of the National Advisory Committee on Oceans and Atmosphere transmitting, pursuant to law, a report on "Marine Transportation in the United States: Constraints and Opportunities"; to the Committee on Commerce, Science, and Transportation.

EC-1068. A communication from the Vice President for Government Affairs, Amtrak, transmitting, pursuant to law, a report on total itemized revenues and expenses of each train operated for January and February 1983; to the Committee on Commerce, Science, and Transportation.

EC-1069. A communication from the Assistant Secretary of Energy for Conservation and Renewable Energy transmitting, pursuant to law, a report on Federal activities and programs in geothermal energy; to the Committee on Energy and Natural Resources.

EC-1070. A communication from the Administrator of the Energy Information Administration transmitting, pursuant to law, a report entitled "1982 Annual Energy Review"; to the Committee on Energy and Natural Resources.

EC-1071. A communication from the Secretary of Energy transmitting notice of a further postponement of the fourth national energy policy plan; to the Committee on Energy and Natural Resources.

EC-1072. A communication from the Chairman of the Nuclear Regulatory Commission transmitting, pursuant to law, a report on the nondisclosure of safeguards information by the Commission for the quarter ending March 31, 1983; to the Committee on Environment and Public Works.

EC-1073. A communication from the Chairman of the U.S. International Trade Commission transmitting a draft of proposed legislation authorizing appropriations for the Commission for fiscal year 1985; to the Committee on Finance.

EC-1074. A communication from the Director of the Office of Management and Budget transmitting a draft of proposed legislation to deny cost-of-living adjustments in Federal retirement and disability programs for a specified time; to the Committee on Governmental Affairs.

EC-1075. A communication from the Chairperson of the District of Columbia Commission on Judicial Disabilities and Tenure transmitting, pursuant to law, the seventh annual report of the Commission covering fiscal year 1982; to the Committee on the Judiciary.

EC-1076. A communication from the Attorney General of the United States transmitting, pursuant to law, the annual report of the Attorney General for fiscal year 1981; to the Committee on the Judiciary.

EC-1077. A communication from the Chairman of the U.S. Commission on Civil Rights transmitting, pursuant to law, a report entitled "Greater Baltimore Commitment: A Study of Urban Minority Economic Development"; to the Committee on the Judiciary.

EC-1078. A communication from the Secretary of Health and Human Services transmitting a draft of proposed legislation to amend the Low-Income Home Energy Assistance Act of 1981 to improve the grant allotment formula, to remove certain burdensome and unnecessary Federal administrative requirements on State programs, and for other purposes; to the Committee on Labor and Human Resources.

EC-1079. A communication from the Secretary of Agriculture transmitting a draft of proposed legislation to amend section 3a of the Cotton Statistics and Estimates Act to provide continuing authority to the Secretary of Agriculture for recovering costs associated with cotton classing services to producers; to the Committee on Agriculture, Nutrition, and Forestry.

EC-1080. A communication from the Deputy Assistant Secretary of Defense (Military Personnel and Force Management) transmitting, pursuant to law, reports for fiscal year 1982 of former military personnel employed by defense contractors and former employees of defense contractors now employed by the Department of Defense; to the Committee on Armed Services.

EC-1081. A communication from the Secretary of Transportation transmitting, pursuant to law, the third annual report on collision avoidance systems; to the Committee on Commerce, Science, and Transportation.

EC-1082. A communication from the Secretary of Energy transmitting, pursuant to law, the second annual revised comprehensive program management plan for wind energy systems; to the Committee on Energy and Natural Resources.

EC-1083. A communication from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the 60-day period to May 13, 1983; to the Committee on Foreign Relations.

EC-1084. A communication from the Chairman of the Council of the District of Columbia transmitting, pursuant to law, copies of District of Columbia Act 5-30, adopted by the council on April 26, 1983; to the Committee on Governmental Affairs.

EC-1085. A communication from the Assistant Secretary of Housing and Urban Development—Administration—transmitting, pursuant to law, a report on a proposed new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-1086. A communication from the Acting Secretary of the Postal Rate Commission transmitting, pursuant to law, a notice of a prehearing technical conference on proposed changes in rates of postage and certain classification provisions for electronic computer originated mail; to the Committee on Governmental Affairs.

EC-1087. A communication from the Director of the Administrative Office of the U.S. Courts transmitting pursuant to law, copies of recent bankruptcy decisions to aid Congress in considering pending bankruptcy legislation; to the Committee on the Judiciary.

EC-1088. A communication from the Secretary of Education, transmitting a draft of proposed legislation to increase the authorization of appropriations levels for certain education programs, and for other purposes; to the Committee on Labor and Human Resources.

EC-1089. A communication from the Secretary of Education transmitting, pursuant to law, final priorities for the training program for special programs staff and leadership personnel; to the Committee on Labor and Human Resources.

EC-1090. A communication from the Secretary of Education transmitting, pursuant to law, a copy of the 1984-85 Pell grant program family contribution schedule; to the Committee on Labor and Human Resources.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. SPECTER (for himself, Mr. HEINZ, Mr. PERCY, Mr. HUDDLESTON and Mr. FORD.

S. 1307. A bill to amend the Internal Revenue Code of 1954 to provide for the establishment of reserves for mining land reclamation and for the deduction of amounts added to such reserves; to the Committee on Finance.

By Mr. SPECTER:

S. 1308. A bill to eliminate the authority of the Federal Communications Commission to regulate the franchise fee which a State, political subdivision, or other governmental entity may impose in connection with any franchise for cable television; to the Committee on Commerce, Science, and Transportation.

By Mr. D'AMATO:

S. 1309. A bill for the relief of the estate of John P. Herrmann; to the Committee on Finance.

By Mr. PERCY, from the Committee on Foreign Relations:

S. 1310. An original bill to provide for increased participation by the United States in the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank; placed on the calendar.

By Mr. D'AMATO, from the Committee on Banking, Housing, and Urban Affairs:

S. 1311. An original bill to amend the Securities and Exchange Act of 1934 to authorize appropriations for the Securities and Exchange Commission for fiscal years 1984 through 1985, and for other purposes; placed on the calendar.

By Mr. LEVIN:

S. 1312. A bill to amend title V of the Housing Act of 1949 to establish a minimum level of guarantee and insurance authority; to the Committee on Banking, Housing, and Urban Affairs.

S. 1313. A bill to amend the Department of Housing and Urban Development Act to establish a minimum level of guarantee and insurance authority; to the Committee on Banking, Housing, and Urban Affairs.

S. 1314. A bill to amend the General Education Provisions Act to preclude the impoundment of loan guarantee or loan insurance authority; to the Committee on Labor and Human Resources.

S. 1315. A bill to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act to require the making of commitments to guarantee loans or insure investments under the authority of such acts in the full amounts provided by law; to the Committee on Foreign Relations.

S. 1316. A bill to preclude the Department of Energy from impounding loan guarantee or loan authority; to the Committee on Energy and Natural Resources.

S. 1317. A bill to require the Secretary of Agriculture to enter into commitments to guarantee or insure authorized loans in the full amount provided by law for such loans; to the Committee on Agriculture, Nutrition, and Forestry.

S. 1318. A bill to amend title 38, United States Code, to preclude certain restrictions on the authority to guarantee or insure certain veterans' loans in the total amount provided by law; to the Committee on Veterans Affairs.

S. 1319. A bill to amend the Public Health Service Act to require the Secretary of Health and Human Services to guarantee or insure loans under such act in the full amount provided by law; to the Committee on Labor and Human Resources.

S. 1320. A bill to insure that commitments under Federal loan guarantee and insurance programs are entered into in the full amount provided by law; to the Committee on Governmental Affairs.

S. 1321. A bill to preclude certain restrictions of loan guarantee and insurance authority under the Indian Financing Act of 1974; to the Select Committee on Indian Affairs.

By Mr. LEVIN:

S. 1322. A bill to provide that loan guarantees in certain programs shall be limited only by the availability of qualified applicants and limitations in appropriation Acts; to the Committee on Commerce, Science, and Transportation.

By Mr. WEICKER, from the Committee on Small Business:

S. 1323. An original bill to amend the Small Business Act and the Small Business Investment Act of 1958, and for other purposes; placed on the calendar.

By Mr. GOLDWATER (for himself and Mr. THURMOND):

S. 1324. A bill to amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency; to the Select Committee on Indian Affairs.

By Mr. McCLURE (for himself, Mr. CRANSTON, Mr. D'AMATO, and Mr. SYMMS):

S. 1325. A bill to amend the Internal Revenue Code of 1954 to provide financial relief to state and local governments by eliminating a requirement that would result in a duplicative mailing each year; to the Committee on Finance.

By Mr. HART (for himself and Mr. CRANSTON):

S. 1326. A bill to amend the Nuclear Non-Proliferation Act of 1978 and otherwise promote the nuclear nonproliferation policies of the United States; to the Committee on Foreign Relations.

By Mr. GOLDWATER (for himself, Mr. GARN, and Mr. JACKSON):

S.J. Res. 103. A joint resolution to provide for the appointment of Jeannine Smith Clark as a citizen regent of the Board of Regents of the Smithsonian Institution; to the Committee on Rules and Administration.

By Mr. GARN (for himself, Mr. HOLLINGS, Mr. INOUYE, Mr. GOLDWATER, Mr. MATTINGLY, Mr. LUGAR, Mr. HUDDLESTON, Mr. THURMOND, Mr. GORTON, Mr. BENTSEN, Mr. BUMPERS, Mr. DOMENICI, Mr. TRIBLE, Mr. ARMSTRONG, Mr. MOYNIHAN, Mr. WALLOP, and Mr. FORD):

S.J. Res. 104. Joint resolution to designate July 20 of each year as "Space Exploration Day"; to the Committee on the Judiciary.

By Mr. RUDMAN (for himself, Mr. NUNN, Mr. WEICKER, Mr. GORTON, Mr. BAUCUS, Mr. BINGAMAN, Mr. BRADLEY, Mr. CHAFEE, Mr. COHEN, Mr. D'AMATO, Mr. EXON, Mr. FORD, Mr. GLENN, Mr. HEINZ, Mr. HUMPHREY, Mr. KENNEDY, Mr. LAUTENBERG, Mr. MATTINGLY, Mr. MELCHER, Mr. METZENBAUM, Mr. PERCY, Mr. PROXMIRE, Mr. QUAYLE, Mr. STAFFORD, Mr. TSONGAS, Mr. WILSON, and Mr. BOSCHWITZ):

S.J. Res. 105. Joint resolution calling upon the Department of Justice and all other appropriate Federal agencies to enforce Federal antitrust laws including the prohibition against vertical price restraints; 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. ABDNOR (for himself and Mr. JEPSEN):

S. Res. 150. Resolution authorizing the printing of additional copies of the joint

committee print entitled "Changing Economics of Agriculture: Challenge and Preparation for the 1980's,"; to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER (for himself, Mr. HEINZ, Mr. PERCY, Mr. HUDDLESTON, and Mr. FORD):

S. 1307. A bill to amend the Internal Revenue Code of 1954 to provide for the establishment of reserves for mining land reclamation and for the deduction of amounts added to such reserves; to the Committee on Finance.

By Mr. SPECTER:

S. 1308. A bill to eliminate the authority of the Federal Communications Commission to regulate the franchise fee which a State, political subdivision, or other governmental entity may impose in connection with any franchise for cable television; to the Committee on Commerce, Science, and Transportation.

(The remarks of Mr. SPECTER on this legislation appear earlier in today's RECORD.)

By Mr. D'AMATO:

S. 1309. A bill for the relief of the estate of John P. Herrmann; to the Committee on Finance.

JOHN P. HERRMANN ESTATE

● Mr. D'AMATO. Mr. President, I rise today to introduce a bill for the relief of five educational and charitable organizations in the Buffalo Diocese: Canisus College; D'Youville College; St. Francis Home of Williamsville, N.Y.; Our Lady of Victory Homes of Charity; and the German Roman Catholic Orphan Home of Buffalo.

These institutions received the remainder of Mr. John D. Herrmann's trust after the death of the original beneficiary, Mrs. Mildred E. Freund. Mr. Herrmann died in early 1973 and estate tax of $131,981 was paid on December 5, 1973. No charitable deduction was claimed because the interest from the trust did not qualify as an annuity under the Internal Revenue Code.

On November 7, 1975, the Surrogate Court of Erie County issued a decree bringing the trust into compliance with the annuity provisions of the Internal Revenue Code. This entitled the original beneficiary, Mrs. Freund, to a refund of $71,493.

Mrs. Freund died in October 1980. At that time, the charities became aware that the claim for a refund was never filed. However, the deadline for filing expired in 1978.

This bill, Mr. President, will extend the deadline for filing the $71,493 refund to such time as the institutions can collect. The charities have been penalized by the error of the trust's administrator. These institutions provide essential services to the city of Buffalo. Without their work, the quality of life in Buffalo would suffer.

For no fault of their own, the charities have lost a substantial sum of money that could be used to assist in their mission of benefiting the Buffalo community. This relief is especially needed in this age of cutbacks in Federal funding. These fine institutions need our help so that they may better help the people of Buffalo.●

By Mr. LEVIN:

S. 1312. A bill to amend title V of the Housing Act of 1949 to establish a minimum level of guarantee and insurance authority; to the Committee on Banking, Housing, and Urban Affairs.

S. 1313. A bill to amend the Department of Housing and Urban Development Act to establish a minimum level of guarantee and insurance authority; to the Committee on Banking, Housing, and Urban Affairs.

S. 1314. A bill to amend the General Education Provisions Act to preclude the impoundment of loan guarantee or loan insurance authority; to the Committee on Labor and Human Resources.

S. 1315. A bill to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act to require the making of commitments to guarantee loans or insure investments under the authority of such acts in the full amounts provided by law; to the Committee on Foreign Relations.

S. 1316. A bill to preclude the Department of Energy from impounding loan guarantee or loan authority; to the Committee on Energy and Natural Resources.

S. 1317. A bill to require the Secretary of Agriculture to enter into commitments to guarantee or insure authorized loans in the full amount provided by law for such loans; to the Committee on Agriculture, Nutrition, and Forestry.

S. 1318. A bill to amend title 38, United States Code, to preclude certain restrictions on the authority to guarantee or insure certain veterans' loans in the total amount provided by law; to the Committee on Veterans' Affairs.

S. 1319. A bill to amend the Public Health Service Act to require the Secretary of Health and Human Services to guarantee or insure loans under such act in the full amount provided by law; to the Committee on Labor and Human Resources.

S. 1320. A bill to ensure that commitments under Federal loan guarantee and insurance programs are entered into in the full amount provided by law; to the Committee on Governmental Affairs.

S. 1321. A bill to preclude certain restriction of loan guarantee and loan insurance authority under the Indian Financing Act of 1974; to the Select Committee on Indian Affairs.

S. 1322. A bill to provide that loan guarantees in certain programs shall be limited only by the availability of qualified applicants and limitations in appropriation acts; to the Committee on Commerce, Science, and Transportation.

LEGISLATION RELATING TO LOAN GUARANTEE AUTHORITY

● Mr. LEVIN. Mr. President, today I am introducing a number of bills to prohibit the executive branch from unilaterally reducing loan guarantee authority provided by Congress.

These bills should not be necessary, but regrettably they are. They are necessary because, in an increasing number of areas, Congress policy decisions enacted into law have been unilaterally altered by the executive branch. Unless we act vigorously to insist on the execution of congressionally enacted policies, those policies may not be implemented as Congress intended.

These situations present a critical institutional issue in this democracy of ours. At stake is the basic constitutional role of Congress as lawmakers elected by the people vis-a-vis the executive branch as executors of those laws.

It is in this context that I am proposing these bills, to insure that the congressionally enacted levels of loan guarantee authority are utilized in the full amounts to qualified applicants.

Through the authorization and appropriations process, Congress establishes the appropriate level of loan guarantee authority during a fiscal year. The President is free to reject this decision through the exercise of his veto power. But once the level of loan guarantee authority for the various programs is enacted into law, Congress and the American people have every reason to expect that the full amount of such authority will be available for commitment to qualified applicants. And absent a statutory scheme for modification of this level, the executive branch is not free—and under our system of government cannot be free—to ignore a congressional mandate, or modify it unilaterally to conform to its own notion of what is appropriate economic or social policy. However, this has not always been the case.

In November 1981, the Reagan administration announced a $20.3 billion reduction in congressionally enacted loan guarantee authority for fiscal year 1982. This reduction was made without formal notice to Congress by unelected bureaucrats in OMB. The reduction affected a number of guarantee programs administered by several agencies and departments, including the Government National Mortgage Association, the Export-Import Bank, the Rural Electrification Administration, and several Small Business Administration loan programs.

In response to this reduction, Congress approved section 136 of the third continuing resolution for fiscal 1982, Public Law 97-92. That section required the head of each department and agency to enter into commitments to guarantee loans to qualified applicants in the full amounts provided by law. Congress adopted a similar requirement in the first continuing resolution of fiscal 1983, Public Law 97-276. But this requirement expires at the end of fiscal year 1983 and there is nothing to prevent this administration, or any future administration, from again unilaterally reducing the congressionally approved level of loan guarantee authority.

The package of bills I am introducing today are similar to the requirement contained in Public Law 97-276. The bills would amend the basic statutes which establish the loan guarantee programs currently in operation throughout the Government to require that those Federal agencies and departments which have loan guarantee authority make such guarantee commitments to qualified applicants in the full amounts provided by law.

Those bills do not require that agencies and departments guarantee the total amounts requested by any particular applicant. Rather, they require that where an agency has loan guarantee authority available for commitment that it make such commitments so long as there are qualified applicants seeking that commitment.

Mr. President, it is my firm belief that no administration should be able to arbitrarily and unilaterally alter the level of loan guarantee authority provided by law. Certainly, such an action should not go unchallenged. As Members of this Congress, we cannot and should not allow it to happen again. These bills are designed to do that.●

By Mr. GOLDWATER (for himself and Mr. THURMOND):

S. 1324. A bill to amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency; to the Select Committee on Intelligence.

INTELLIGENCE INFORMATION ACT OF 1983

● Mr. GOLDWATER. Mr. President, today, I introduce the Intelligence Information Act of 1983. The chairman of the Judiciary Committee, Senator STROM THURMOND, cosponsors this legislation with me.

This legislation seeks to add a new title VII to the National Security Act of 1947 so that the major operational components of the Central Intelligence Agency (CIA) will be relieved of the burden of searching and reviewing sensitive operational files in response to certain requests for information under the Freedom of Information Act. This will serve in turn to allow these components to more effectively devote their resources to the gathering of the vital intelligence our Government needs in order to make informed decisions in areas of foreign policy and national defense.

It is important to know that this legislation does not frustrate the essential purposes of the FOIA. Requesters will continue to have access to CIA files containing the intelligence product, and to information on policy questions and debates on these policies. Additionally, access to files for individual U.S. citizens and permanent resident aliens who seek information on themselves will not be affected by this bill.

Mr President, it has been 8 years since the FOIA has been amended, and during those 8 years, the CIA has worked hard to comply with the act. However, experience has shown that it is impossible to respond to requests for information within the specified time limits. The search through numerous compartmented file systems is time consuming. For security reasons, all CIA files are compartmented and intelligence personnel have access only to that information which they need to know for their work.

This problem is compounded because this review of operational files can only be done by experienced operations officers, whose time should be devoted more fully to operational matters. FOIA presently requires the Agency to search and review files even when it is evident from the nature of the request that no information can be released for reasons of national security.

What has been the result of this burdensome process? Very little information, if any, is released from operational files when the request seeks information concerning the sources and methods used to collect intelligence. Even then the released information is usually fragmented.

The fear of disclosure due to this mandatory search and review of sensitive files and the possibility that some court may order the release of information which could reveal a source's identity or a liaison relationship, costs this Nation untold valuable intelligence information. It is only these most sensitive operational files which this bill would exempt from search and review.

I urge my colleagues to take time to study this legislation carefully. Any person who does will see that the American public can only stand to benefit by this bill. By exempting from long and burdensome searches and reviews those operational files from which very little information has ever been released, the processing of all other requests can be completed much sooner. The public will receive that information which is releasable under the Freedom of Information and Privacy Acts in a far more efficient and satisfying manner. The wait for a response from the CIA now takes anywhere from 2 to 3 years. This kind of situation benefits no one.

In short, this bill relieves the CIA of certain time consuming search and review requirements. By so doing, it provides the FOIA requestor speedier responses for those areas which should be subject to public scrutiny. At the same time, it will enable the Agency to take a number of experienced personnel out of the business of reviewing files and permit them to get back to intelligence work.

It is my intention to hold hearings on this bill in the Senate Select Committee on Intelligence in the very near future. I hope my colleagues on that committee and throughout the Senate will agree with me that this is a balanced and reasonable approach to achieve needed relief for the CIA without diminishing the value of the Freedom of Information or Privacy Acts.●

By Mr. McCLURE (for himself, Mr. CRANSTON, Mr. D'AMATO, and Mr. SYMMS):

S. 1325. A bill to amend the Internal Revenue Code of 1954 to provide financial relief to State and local governments by eliminating a requirement that would result in a duplicative mailing each year; to the Committee on Finance.

STATE REFUND NOTICE EQUITY ACT OF 1983

● Mr. McCLURE. Mr. President, I rise today with several distinguished colleagues on both sides of the aisle to introduce an important piece of legislation designed to save our already financially strapped State budgets millions of dollars in needless postage and administrative expenses.

Included in the Tax Equity and Fiscal Responsibility Act is a provision that requires State and local governments to furnish each recipient of a State or local income tax refund with a written statement showing the amount of refund paid during the previous year. This statement, which must be mailed during the month of January, must also include a notice indicating to the taxpayer their responsibility to report the refund to the Federal Government.

Prior to the enactment of TEFRA, refunds, credits, or the offset of State or local income taxes that were deducted in a prior year were includible in gross income for Federal income tax purposes and you were required to pay taxes on that amount. Payment of taxes on this income has always been required. I can certainly agree with the intent of this law and I am sure that it will be useful mechanism in the lawful collection of taxes. However, I cannot agree with the specifics of the provision requiring that States furnish this information to the taxpayer

during January. This will necessitate financially strapped States to separately mail this information during January instead of including it with the return when it is mailed.

The National Association of Tax Administrators estimates that the total cost to the States of this separate mailing could total as much as $80 to $100 million annually! This figure is made of primarily of the extra postage costs. The majority of the States reported that these added costs could not be financed from existing appropriations. This means that additional funding must be provided or that States must make necessary cuts in other areas to provide the necessary financing. Unfortunately, these extra funds that will be necessary to comply could more have appropriately been used in other ways to produce desperately needed revenue to the States. As it stands now, no revenue for the States will be produced.

The legislation I am introducing today will allow States to notify recipients any time before January 31 of the year following the payment of the refund. This will allow States to include this notice when refund checks are made or any other time mailings are made. The bill also allows an additional 1 year before the provision is implemented to give States the necessary time to gear up for this new requirement.

It is easy to see that the intent of this section of TEFRA is preserved while at the same time alleviating an unnecessary cost to the States.

I urge all of my colleagues to cosponsor this important measure and I ask unanimous consent that the bill be reprinted in the RECORD.

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

S. 1325

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) paragraph (b) of section 6050E of the Internal Revenue Code of 1954 (relating to State and local tax refunds) is amended—

(1) by striking out "during January" and inserting in lieu thereof "not later than January 31", and

(2) by adding at the end thereof the following new sentence: "No written statement need be furnished under this paragraph with respect to any refunds, credits, or offsets that were made before January 1, 1983."

(b) The amendments made by this Act shall take effect upon enactment.●

● Mr. D'AMATO. Mr. President, I rise in support of the legislation introduced by my distinguished colleague from Idaho, Mr. MCCLURE. I am proud to be an original cosponsor of this important piece of legislation.

In 1982, when the Tax Equity and Fiscal Responsibility Act (TEFRA) was enacted, it was not congressional intent to pass the burden of reducing the Federal budget deficit onto the States. However, an unexpected result of TEFRA was a needless penalty on State government that has no corresponding benefit to the Federal Treasury.

Mr. President, I am referring to section 313 of TEFRA. This section requires that States notify recipients in the month of January that State tax refunds may be subject to Federal income tax. Section 313 not only requires notification, but forces the States to make notification only during the month of January in the year following payment of the refund. Consequently, States will have to make two separate mailings: One enclosing the refund, and another complying with section 313.

Mr. President, this is not an esoteric fact. Real costs will be absorbed by State government. At a time when the recession has depleted State revenues and the Federal Government is reducing grants, it is unconscionable to increase needlessly the costs incurred by States. Of course, these added costs must be absorbed by either raising taxes or reducing spending on existing services. I see no reason to allow this situation to persist for longer than is necessary.

The legislation introduced by my friend from Idaho is straightforward and will eliminate the problem. Quite simply, it will allow States to notify refund recipients any time before January 31 of the year following receipt of the refund. This will give States the opportunity to have one mailing, included with the refund check, and substantially reduce overhead. Currently, State resources have to be reallocated to accomplish the second mailing. In the end, funds are shifted away from collection of taxes, thus reducing revenues.

In New York State, the added costs amount to $1.2 million. Passage of this legislation will reduce the State's postage and personnel expenses by two-thirds, to $312,000. This is a vital savings because of the limited resources available to the comptroller's office. Nationally, the burden will be reduced by approximately $13 million.

During debate last year on TEFRA, the Senate adopted an amendment to section 313 in similar form to the bill introduced today. At that time, I was proud to be a cosponsor of the amendment. Unfortunately, the House-Senate conferees deleted the amendment to section 313. State government now bears the burden of the conferees omission.

The bill introduced today will eliminate an onerous penalty absorbed by the States. We can remove this burden by swift adoption of this legislation. No corresponding loss of Federal revenues will be incurred by amending section 313. I urge my colleagues on both sides of the aisle to support this effort to reduce unnecessary costs imposed upon the States.●

By Mr. HART (for himself and Mr. CRANSTON):

S. 1326. A bill to amend the Nuclear Nonproliferation Act of 1978 and otherwise promote the nuclear nonproliferation policies of the United States; to the Committee on Foreign Relations.

NUCLEAR EXPLOSIVES CONTROL ACT OF 1983

● Mr. HART. Mr. President, today is the ninth anniversary of India's so-called peaceful nuclear explosion—an event that shocked the world into fully realizing the ease with which nuclear weapons can spread.

It is fitting we have chosen this day to introduce the Nuclear Explosives Control Act of 1983, a major new initiative to curb the further spread—or proliferation—of nuclear weapons. For, as Senator CRANSTON, Members of the House, and I said in a letter to President Reagan today, "The proliferation of these weapons poses a grave danger, rivaling that of the arms race between the superpowers."

We are deeply concerned that this administration, with its inconsistent and lax policies, has undermined the U.S. historic leadership role in trying to stop nuclear proliferation.

This administration apparently has decided it can manage a proliferated world. We want to prevent one.

Let me briefly describe the threat we face. Today, there exist 44 metric tons of separated plutonium in nuclear power programs throughout the free world. With only 15 pounds needed to build a crude atomic bomb, that is enough for 6,500 bombs of the size that destroyed Nagasaki. That is what we have already produced.

Now look at the year 2000. Based on industry projections, if the free world pursues plutonium as a nuclear power fuel, we could have 600 tons of separated plutonium, enough for 88,000 nuclear weapons—more than in the current arsenals of both superpowers.

It is a short step from a fanatic threatening to blow up the Washington Monument to a terrorist group smuggling a crude atomic bomb into a major city in the trunk of a car. Thousands of lives would hang in the balance. That is the ultimate nightmare.

The administration repeatedly professes its concern for our national security. But nothing could more seriously jeopardize our security than a world in which every nation has the bomb. Look at the Middle East, for example. Over 40 percent of the Western World's oil comes from that region. Yet it is perhaps the most unstable part of the world. Major wars every few years. Twenty-two coups during the past three decades. Ten assassinations of heads of states. The chances for future conflict are great.

Several of the countries in that region have shown a keen interest in obtaining nuclear weapons. Should that happen, no amount of money spent on our Rapid Deployment Force can protect our security and that of our allies from a nuclear threat.

We take this action today to make absolutely clear to President Reagan that these threats are intolerable. Again, if I may read from our letter to the President, "Today, the deepest aspiration of all Americans is to reduce the horrifying dangers of nuclear conflict. Our citizens, who already fear that your administration has turned its back on serious nuclear arms control negotiations, are coming to recognize that your administration also has turned away from what always has been a resolute bipartisan commitment to halt the spread of these arms to additional nations."

We must take swift and decisive action to discourage and sharply restrict commerce in nuclear explosive materials and to provide incentives for other nations to forego the use of plutonium.

This grim specter is not inevitable. If the United States reasserts its historic leadership in trying to curb the spread of nuclear weapons—with strong diplomatic efforts abroad, and a consistent but strict nuclear export policy at home—we can still prevent a world with nuclear weapons for everyone. But we must act now.

Mr. President, we are concerned that this administration's nuclear nonproliferation policy actually serves to accelerate, rather than inhibit, the spread of technology, equipment, and materials that can be used to build nuclear weapons. Policies announced and action taken over the past 2 years have reversed the bipartisan approach to combating nuclear weapons proliferation developed under the Ford and Carter administrations and embodied in the Nuclear Non-Proliferation Act of 1978.

The most dramatic and dangerous departure from past policy is the Reagan administration's active promotion of plutonium as a civilian fuel. By actively promoting commercial development of breeder reactors and reprocessing plants at home and abroad, it has paved the way for an industrial process that will produce, by the ton, plutonium that can be used, by the pound, to make atomic bombs.

Although this policy may respond to certain industrial interests, it is contrary to the best interests of the nuclear industry and it jeopardizes the public interest. Unless the Congress takes immediate steps to reverse this policy, the United States will begin to export the very technologies and materials that can be turned into weapons of mass destruction and used against us.

Mr. President, I urge my colleagues to recognize that the global spread of nuclear weapons poses a grave danger to the United States and to the entire world. Individually, many of us have expressed our concerns about the administration's lack of accomplishment in bringing the arms race under control. In addition, we are not at all reassured by President Reagan's recent statement that "* * * we're pretty well on our way to, if not entirely eliminating nuclear proliferation, holding it down to where a country might have a weapon or two, but they're not going to have enough to threaten the world."

In fact, as was shown with small nuclear devices used at Hiroshima and Nagasaki, just one bomb can wreak devastation and destruction and result in an enormous loss of life. A weapon of that size would likely kill the entire 10 million population of Metroplitan New York.

As the number of nations possessing nuclear weapons grow, so does the likelihood that nuclear weapons will be used—possibly in a regional conflict that could engulf the superpowers and result in world nuclear war. The policies of the administration directly and significantly contribute to the perilous process of proliferation.

It is unreasonable to expect that a nation, once having acquired "a weapon or two", will not proceed to develop a substantial arsenal, along with the means for delivering those weapons, or that other nations, especially regional rivals, will not soon follow suit or that such weapons will not be used or fall into the hands of unscrupulous terrorist groups.

If the administration continues to act as if proliferation is inevitable, of course it will be.

Mr. President, I am especially concerned that the administration is sending the wrong signals to nations that are now testing the depth of the U.S. resolve to combat the spread of nuclear weapons. For example:

India, which used U.S.-supplied heavy water to produce the plutonium for its nuclear explosion in 1974, will continue to receive uranium fuel for its U.S.-supplied power reactors from the French, thanks to the intervention of the Reagan administration. The Commerce and Energy Departments are proceeding with transfers of key nuclear components to India. And all of this assistance occurs without our getting any assurances from India that the plutonium produced, thanks to this assistance, will remain subject to international safeguards.

Pakistan is receiving $3.2 billion in U.S. military and economic assistance, in spite of reports that it is using unsafeguarded enrichment and reprocessing facilities to produce uranium and plutonium for nuclear weapons.

South Africa, which continues to operate an unsafeguarded enrichment plant built with U.S. assistance, is receiving nuclear fuel from France and powerful computers from the United States—all of it arranged with the consent of the administration.

Argentina and Brazil, which are building unsafeguarded reprocessing plants, are receiving assistance from Europe and the United States, again arranged by the administration.

And the reprocessing of plutonium from U.S.-supplied fuel proceeds in Europe and Japan with the consent of the administration, thereby introducing into commerce an equivalent of thousands of nuclear bombs. The danger that such material will be stolen and used by terrorists increases with each day that this reprocessing continues.

In a July 16, 1981, policy statement on nonproliferation, the Reagan administration announced some laudatory objectives: "* * * the need to prevent the spread of nuclear explosives to additional countries * * * to inhibit the transfer of sensitive nuclear material, equipment, and technology * * * requiring—international—safeguards on all nuclear activities in a nonnuclear-weapon state as a condition for any significant new nuclear supply commitment."

The policy was rendered self-contradictory and self-defeating, however, by the further declaration that the administration would "not inhibit or set back civil reprocessing and breeder reactor development abroad in nations with advanced nuclear power programs where it does not constitute a proliferation risk."

The Reagan administration's policy also advocates improving regional and global stability in order to reduce "motivations that can drive countries toward nuclear explosives."

But while conflict resolution should be an important objective in U.S. foreign policy, it is no substitute over the long run for preventing the introduction of nuclear explosive materials into international commerce. The cause of regional and global stability is best served by keeping nuclear bomb materials out of as many nations as possible.

Mr. President, in my judgment, the administration's policy has had precisely the opposite effect. It has hastened the proliferation of nuclear weapons by:

First, actively promoting U.S. exports of the enrichment and reprocessing technologies needed to produce weapons-usable uranium and plutonium. This constitutes a complete reversal of the policy and practice of the U.S. Government from the birth of the nuclear age until President Reagan took office.

Second, approving foreign reprocessing of plutonium from U.S.-origin spent fuel, despite the fact that the IAEA has publicly declared that the international safeguards system is incapable of providing timely warning of a diversion of this material from civilian to weapons purposes.

Third, offering no incentives for other countries to forgo the use of plutonium fuel and, in fact, encouraging plutonium use abroad by means of our own domestic example of championing commerical development of breeder reactors and reprocessing plants.

Fourth, exploiting loopholes in the Nuclear Nonproliferation Act by approving export of nuclear and dual-use items to nations that refuse to accept international safeguards on all their nuclear activities. These nations, which refuse to ratify the Nuclear Nonproliferation Treaty and are most suspected to developing nuclear weapons, include Argentina, Brazil, India, Pakistan, and South Africa.

In those instances where the act strictly forbids certain nuclear exports to such countries, the administration has found other nations, less committed to nonproliferation, to serve as alternative suppliers of these items.

Fifth, continuing to export highly enriched uranium, an atom bomb material, for use in research reactors while cutting back on U.S. programs to develop alternative low-enriched fuels not suitable for weapons in these reactors.

Sixth, eliminating restrictions on economic and military assistance to Pakistan's obvious nuclear weapons program, and failing to make clear that development of a nuclear weapon by any country will result in a cutoff of all forms of assistance to that country.

To the often heard argument that restrictions on nuclear commerce are useless because if we don't sell dangerous materials, equipment, others will: The argument ignores the effectiveness of previous administration's nonproliferation efforts to halt the sale of reprocessing technology from France to Pakistan and Germany to Brazil.

The efforts of past administrations to oppose such transfers were successful until President Reagan introduced his new policy to have the United States set an example of exportation rather than restraint.

Mr. President, this legislation strengthens the earlier Nonproliferation Act by:

First, banning U.S. exports of enrichment and reprocessing technology.

Second, establishing a moratorium on foreign reprocessing of plutonium from U.S.-origin spent fuel, other than for limited research and development and demonstration facilities for which commitments have already been made.

Use of this plutonium in large commercial powerplants—breeders or otherwise—would be prohibited. Reprocessing of plutonium from U.S.-origin spent fuel for other than R&D purposes could not proceed until Congress determined that effective international safeguards will be applied and that effective sanctions exist against violations.

Third, requiring the United States to offer—as an incentive for other nations to forgo plutonium—uranium enrichment services at a discounted price for the production of low enriched uranium—unsuitable for weapons—fuel.

As a further inducement, the United States would offer assistance in the management of unreprocessed spent fuel, in developing alternative sources of energy, and in providing existing nuclear powerplants with improved nuclear fuel to increase reactor efficiency. This assistance would stretch out the supply of nonweapons usable uranium and reduce inventories of plutonium left as a byproduct in spent nuclear fuel.

Fourth, closing loopholes in the Nuclear Nonproliferation Act by requiring uniform, strict criteria to govern export actions of all Federal agencies. At present, only the Nuclear Regulatory Commission is required to halt exports to nations that refuse to accept international safeguards on all their activities; under the new law, the Energy and Commerce Departments would be under the same restrictions.

This would prevent nuclear and dual-use items from being exported to nations suspected of developing nuclear weapons. This provision also would prevent U.S. companies from using foreign affiliates to engage in nuclear trade with countries with which the American companies are barred from trading.

In addition, the Defense Department would, for the first time, be required to approve from the national security standpoint, nuclear exports approved by other Federal agencies.

Fifth, barring U.S. exports of highly enriched uranium as soon as foreign research reactors can use alternative fuels unsuitable for nuclear weapons. This provision also would accelerate the U.S. program for developing such alternative fuels.

Sixth, strengthening sanctions to require an automatic cutoff of all nuclear and other assistance to nations that explode nuclear devices.

The legislation introduced today would redirect U.S. nuclear policy away from the path of proliferation and onto a course of prudence and sanity.

I urge you to support the legislation and the sound policy it embodies.

Mr. President, I ask unanimous consent that our letter to the President, a summary of the bill, a section-by-section analysis, the text of the bill, and two briefs prepared by the Congressional Research Service appear in the RECORD at this point.

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

S. 1326

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Nuclear Explosives Control Act of 1983".

FINDINGS

SEC. 2. The Congress finds and declares that—

(1) the spread of highly enriched uranium and separated plutonium, or the direct capability to manufacture or otherwise acquire such materials, poses a grave threat to the security interests of the United States and to continued international progress toward world peace and development;

(2) effective safeguards do not now exist for highly enriched uranium and separated plutonium and the facilities for their production and use;

(3) in view of declining orders for nuclear power plants and a slowing in the growth of demand for electrical energy, existing uranium resources and enrichment capacity can meet all requirements for nuclear fuel for the foreseeable future, and therefore there is no economic justification to use separated plutonium for electrical power generation;

(4) unless and until effective safeguards exist, the commercial production and use of highly enriched uranium and separated plutonium would significantly increase the risk of nuclear weapons proliferation and should be avoided;

(5) substitution or exchange of foreign special nuclear material for special nuclear material supplied and controlled by the United States has weakened United States nonproliferation policy and should not be permitted without prior approval by the United States;

(6) the worldwide development of alternative energy resources and associated technologies should be encouraged as an essential means for achieving energy independence and international security;

(7) in order to encourage nations to forego the development of national reprocessing and enrighment facilities and the use of separated plutonium, the United states should provide incentives to rely on low-enriched uranium fuel and provide technical assistance to increase the fuel efficiency of existing power reactors, to resolve nuclear waste management problems, and to pursue alternative energy sources that will provide real energy security;

(8) physical security arrangements need to be improved with respect to all nuclear materials in foreign commerce;

(9) in order for United States nonproliferation policy to be effective, it is essential that all concerned Federal agencies fully coordinate their actions and utilize equivalent criteria and standards in authorizing, approving, or licensing nuclear exports and in imposing post-export controls; and

(10) the activities of United States persons directly or indirectly engaged in foreign nuclear commerce can significantly affect United States foreign policy and national security interests and should be permitted only when licensed or otherwise approved by the United States Government.

PURPOSES

SEC. 3. It is the purpose of this Act to—

(1) enhance national security by preventing the dangerous spread of nuclear weapons;

(2) integrate and harmonize energy policies of the United States with its policies to reduce the risk of proliferation of nuclear weapons through the misuse of nuclear energy technologies;

(3) develop sound energy policies which will better utilize the uranium enrichment facilities of the United States to promote the national security;

(4) improve the efficiency of nuclear reactor fuel in order to conserve and extend uranium resources and reduce significantly the amount of nuclear waste which must be managed; and

(5) assist in the development of alternative energy resources and technologies.

PROHIBITION ON THE EXPORT OF ENRICHMENT AND REPROCESSING CAPABILITY

SEC. 4. Section 402(b) of the Nuclear Non-Proliferation Act of 1978 (42 U.S.C. 2153a(b)) is amended to read as follows:

"(b) Notwithstanding any other provision of law, no major critical component of any facility for, and no sensitive nuclear technology or other assistance important to, the enrichment of uranium or other isotopic separation of special nuclear material, nuclear fuel reprocessing, or heavy water production may be exported or otherwise provided under any agreement for cooperation (except an agreement for cooperation pursuant to 91 c., 144 b., or 144 c. of the 1954 Act), under any authorization by the Secretary of Energy under subsection 57 b. (2) of the 1954 Act, or under any license issued by the Secretary of Commerce and subject to section 128 d. of the 1954 Act. For purposes of this subsection, the term 'major critical component' means any component part or group of component parts which the President determines to be important to the operation of a complete facility for the enrichment of uranium or other isotopic separation of special nuclear material, for nuclear fuel reprocessing, or for heavy water production.".

REPROCESSING AND RETRANSFERS OF SEPARATED PLUTONIUM

SEC. 5. Chapter 11 of the Atomic Energy Act of 1954 is amended by adding at the end thereof the following new section:

"SEC. 132. ADDITIONAL CONDITIONS ON REPROCESSING AND ON RETRANSFER OF SEPARATED PLUTONIUM.—a. Notwithstanding any other provision of law, the Secretary of Energy may grant any approval (under section 131 or otherwise) under any agreement for cooperation, or other agreement, understanding, or assurance, for the reprocessing, or the use or retransfer of any plutonium resulting from the reprocessing, of any special nuclear material which is exported by the United States or produced through the use of any nuclear materials and equipment or sensitive nuclear technology exported by the United States, only if the Secretary determines that—

"(1) the end use of the material reprocessed or retransferred involves application for research, development, or demonstration purposes in a facility or facilities (A) located in a nuclear-weapon state or a state which meets the criterion set forth in section 128 a. of this Act, and (B) in operation or under construction as of the date of enactment of this section;

"(2) there are no already existing stocks of separated plutonium reasonably available for the end use requested;

"(3) in the case of requests for reprocessing, the reprocessing will take place in a nuclear-weapon state or a state which meets the criterion set forth in section 128 a. of this Act and only in a facility in operation or under construction as of the date of enactment of this section; and

"(4) adequate physical security measures will be maintained with respect to the material to be reprocessed or retransferred.

"b. The additional conditions contained in this section shall continue in effect unless and until such time as the Congress enacts a joint resolution declaring that the Congress finds that—

"(1) effective international safeguards, which will ensure timely detection of a possible diversion, will be applied with respect to the reprocessing of special nuclear material and to separated plutonium; and

"(2) effective international sanctions against violations of nonproliferation commitments have been established to deter non-nuclear-weapon states from diverting special nuclear material undergoing reprocessing and separated plutonium to the manufacture of nuclear explosive devices.".

EXPORT OF HIGHLY ENRICHED URANIUM

SEC. 6. (a)(1) The Atomic Energy Act of 1954 is amended by adding the following new chapter immediately after chapter 11:

"CHAPTER 11A. EXPORTS OF HIGHLY ENRICHED URANIUM

"SEC. 135. EXPORTS OF HIGHLY ENRICHED URANIUM FOR REACTOR FUEL.—The Nuclear Regulatory Commission may issue a license for the export of highly enriched uranium to be used in a nuclear reactor only if, in addition to other requirements of law, the Commission determines that—

"(1) there is not alternative nuclear reactor fuel available which can be used in that reactor, and that reactor cannot otherwise use uranium which is enriched in the isotope 235 to a lesser percent than is the proposed export;

"(2) the proposed recipient of that uranium has provided assurances that, when an alternative nuclear reactor fuel which can be used in that reactor becomes available, it will use that fuel in lieu of highly enriched uranium; and

"(3) the executive branch is making reasonable progress in developing an alternative nuclear reactor fuel in accordance with the plan required under section 6(b) of the Nuclear Explosives Control Act of 1983.

"SEC. 136. LIMITATIONS ON QUANTITIES OF UNITED STATES-ORIGIN HIGHLY ENRICHED URANIUM.—The Nuclear Regulatory Commission shall, in consultation with the Secretary of State and the Secretary of Energy, determine a kilogram limit on the amount of highly enriched uranium from the United States that will be allowed, in the form of fresh or spent fuel, at any one time in each foreign country and at each reactor site in each such country. The Commission shall apply these limitations when considering any proposed export of highly enriched uranium.

"SEC. 137. DEFINITIONS.—As used in this Act—

"(1) the term 'alternative nuclear reactor fuel' means reactor fuel which is enriched to 20 percent or less in the isotope U-235 and which cannot be easily converted for use in a nuclear explosive device; and

"(2) the term 'highly enriched uranium' means uranium enriched to greater than 20 percent in the isotope 235.".

"(2) The table of contents of the Atomic Energy Act of 1954 is amended by inserting after the items relating to chapter 11 the following new items:

"CHAPTER 11A. EXPORTS OF HIGHLY ENRICHED URANIUM

"Sec. 135. Exports of Highly Enriched Uranium for Reactor Fuel.

"Sec. 136. Limitations on Quantities of United States-Origin Highly Enriched Uranium.

"Sec. 137. Definition.".

(b)(1) Not later than three months after the date of enactment of this section, the President shall submit to the Congress a plan, developed in consultation with the Secretary of State and the Secretary of Energy, with respect to the development and use of alternative nuclear reactor fuels. The objective of the plan shall be to complete, as soon as it is technically feasible to do so, the conversion to alternative nuclear reactor fuels of all reactors which are operated with highly enriched uranium exported from the United States. The plan shall specify—

(A) the amounts that will be spent by the United States each fiscal year to develop alternative nuclear reactor fuels;

(B) the steps the United States will take to facilitate and encourage the use of alternative nuclear reactor fuels; and

(C) how long it is estimated the conversion from highly enriched uranium to alternative nuclear reactor fuels will take.

The plan shall take into account the need to carry out existing bilateral agreements between the United States and other countries.

(2) As used in this subsection, the terms "alternative nuclear reactor fuel" and "highly enriched uranium" have the same meanings as provided for those terms by section 137 of the Atomic Energy Act of 1954.

SUBSEQUENT ARRANGEMENTS AND SUBSTITUTIONS OR EXCHANGES

SEC. 7. Section 131b. of the Atomic Energy Act of 1954 (42 U.S.C. 2121b.) is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(4) the Secretary of Energy may not enter into any subsequent arrangement for the retransfer of any such material to a third country for reprocessing, for the reprocessing of any such material, or for the subsequent retransfer of any plutonium in quantities greater than 500 grams resulting from the reprocessing of any such material, unless the nation or group of nations requesting such arrangement agrees that—

"(A) it will not, without the prior approval of the United States, substitute or exchange any special nuclear material which is not subject to the requirements of this Act for any special nuclear material subject to the subsequent arrangement; and

"(B) if such a substitute or exchange is approved by the United States, the special nuclear material received as a result of the substitution or exchange will be subject to the same requirements of this Act as the special nuclear material for which it was substituted or exchanged.".

FUEL ASSURANCES AND ENERGY ASSISTANCE

SEC. 8. Title I of the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 3221-3224) is

amended by adding at the end thereof the following new section:

"FUEL ASSURANCES AND ENERGY ASSISTANCE

"SEC. 106. (a)(1) The Secretary of State, in consultation with the Secretary of Energy, shall enter into agreements with any nation or group of nations under which, if such nation or group of nations agrees not to obtain or use any facility for nuclear fuel reprocessing or uranium enrichment and not to seek access to or utilize any separated plutonium or plutonium-based fuels, the United States will agree to do the following, subject to all otherwise applicable requirements of the 1954 Act:

"(A) Provide assured enrichment services, at or below the price charged to United States Government customers, to meet the low-enriched uranium reactor fuel requirements for all power reactors in such nation or group of nations during the period of such agreement.

"(B) Provide an additional discount from the price charged to United States Government customers for uranium enrichment to any such nation or group of nations for the enrichment of uranium which such nation or group of nations agrees to use in improved power reactor fuel.

"(C) Authorize the export of a lifetime supply of low-enriched fuel under a single export license issued pursuant to sections 53 and 126 of the 1954 Act covering all power reactors in such nation or group of nations, subject to the conditions that (i) actual exports under such license shall not exceed in any three year period the amount of low-enriched uranium fuel necessary to assure the continuous operation of the reactors in such nation or group of nations during such period, and (ii) the Nuclear Regulatory Commission shall annually review such license to determine whether the conditions of the agreement continue to be met.

"(D) Enter into a program of technical cooperation and assistance aimed at (i) increasing the uranium fuel efficiency of light water reactors and encouraging the use of improved nuclear fuels which reduce the total inventory of plutonium in spent nuclear fuel; (ii) resolving problems associated with spent fuel storage and disposal, in accordance with the cooperative program developed under section 223 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101); and (iii) developing nonnuclear energy resources, in accordance with the provisions of title V of this Act.

"(2) For purposes of paragraph (1)(B), 'improved power reactor fuel' means low-enriched uranium reactor fuel warranted by a commercial fuel fabricator for an average discharge burnup of 50,000 megawatt-days per metric ton or more for pressurized water reactors of 45,000 megawatt-days per metric ton or more for boiling water reactors.

"(3) The prices to be charged under paragraphs (1)(A) and (B) for enrichment services may be determined without regard to the first proviso in section 161 v. of the 1954 Act, and the amount of any discount provided under such paragraphs shall be excluded in applying clause (iii) of that proviso.

"(4) The results of each review of the Nuclear Regulatory Commission pursuant to paragraph (1)(C) shall be reported promptly to the Congress.

"(b) The supply commitments set forth in paragraphs (1)(A), (1)(B) and (1)(C) of subsection (a) may be transferred to an international nuclear fuel authority (INFA) if and when such an authority is established pursuant to section 104 of this Act.

"(c) Not later than three months after the date of enactment of this section, the Secretary of Energy shall submit to the Congress a plan, developed in consultation with the Secretary of State, the Director of the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission, with respect to the implementation of the fuel assurance and energy assistance program under this section. Such plan shall specify, inter alia—

"(1) the countries which are or may be eligible for fuel assurance and technical assistance;

"(2) the enrichment capacity and financial resource requirements necessary to meet United States fuel assurance obligations over a 15 year period, assuming both complete and partial acceptance of the United States offer;

"(3) the impact of the program upon existing enrichment contracts and what modifications, if any, will be required in such contracts;

"(4) current and planned research and technical assistance efforts which will be made part of the program;

"(5) the amounts of money that will be spent by the United States in each of the five fiscal succeeding years to implement the program; and

"(6) the steps which the United States will take to facilitate and encourage the negotiation and conclusion of fuel assurance and technical assistance agreements.

"(d) In accordance with the plan developed pursuant to subsection (c) of this section, the Secretary of Energy shall establish and maintain such programs as are necessary to fulfill the obligations which may be incurred pursuant to agreements entered into under subsection (a) of this section.

"(e) There are authorized to be appropriated to carry out the provisions of this section not to exceed $10,000,000 for fiscal year 1984 and $15,000,000 for each fiscal year thereafter.".

TECHNICAL ASSISTANCE TO NONNUCLEAR WEAPON STATES IN SPENT FUEL STORAGE AND DISPOSAL

SEC. 9. For purposes of carrying out section 223 of Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101) there are authorized to be appropriated not to exceed $8,000,000 for fiscal year 1984 and $10,000,000 for each fiscal year thereafter.

ENERGY ASSISTANCE TO DEVELOPING COUNTRIES

SEC. 10. Section 502(d) of the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 3262(d)) is amended to read as follows:

"(d) For purposes of carrying out this section there are authorized to be appropriated not to exceed $8,000,000 for fiscal year 1984 and $5,000,000 for each fiscal year thereafter.".

IMPROVED PHYSICAL SECURITY

SEC. 11. Title II of the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 3241-3243) is amended by adding at the end thereof the following new sections:

IMPROVED PHYSICAL SECURITY

"SEC. 204. The Nuclear Regulatory Commission and the executive branch shall support efforts, including expanded research, development and demonstration programs, to improve physical security arrangements for exports of nuclear materials and equipment.

AUTHORIZATION FOR APPROPRIATIONS

"SEC. 205. There are authorized to be appropriated to carry out the provisions of this title not to exceed $2,000,000 for fiscal year 1984 and $1,000,000 for each fiscal year thereafter.".

ANNUAL REPORTING

SEC. 12. Section 601(a)(1) of the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 3281(a)(1)) is amended—

(1) by striking out "and" at the end of subparagraph (D);

(2) by adding "and" after the semicolon at the end of subparagraph (E); and

(3) inserting after subparagraph (E) the following new subparagraph:

"(F) negotiating fuel assurance and technical assistance agreements contemplated in section 106 of this Act;".

AUTHORIZATIONS BY THE SECRETARY OF ENERGY FOR CERTAIN ACTIVITIES OUTSIDE THE UNITED STATES

SEC. 13. Section 57 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)) is amended—

(1) by inserting "(1)" immediately after "b.";

(2) by striking out in the first sentence "except (1)" and all that follows through "or (2) upon authorization" and inserting in lieu thereof "unless (A) there is in effect an agreement for cooperation made pursuant to section 123 with the country in which such activity will be engaged in, and (B) authorized"; and

(3) by adding at the end thereof the following new paragraphs:

"(2) Notice of any authorization by the Secretary of Energy under this subsection shall be published in the Federal Register, together with the written determination of the Secretary that the activity authorized will not be inimical to the interest of the United States. The authorization shall not become effective until at least thirty days after such publication.

"(3) Each report submitted to the Congress pursuant to section 601(a) of the Nuclear Non-Proliferation Act of 1978 shall identify the activities subject to this subsection for which the Secretary of Energy provided authorization during the preceding calendar year, the person performing those activities, and the country with respect to which the authorization was provided. For purposes of such reports, the Secretary of Energy shall require that persons, who engage in activities requiring authorization by the Secretary under this subsection and who are not required to submit an application for such authorizations, report to the Secretary with respect to those activities.".

COMPLIANCE WITH FULL-SCOPE SAFEGUARDS AND OTHER NONPROLIFERATION CRITERIA

SEC. 14. Section 128 of the Atomic Energy Act of 1954 (42 U.S.C. 2157) is amended by adding at the end thereof the following new subsection:

"c. (1) Except as provided in paragraph (2) of this subsection, authorizations by the Secretary of Energy under section 57 b. of this Act shall be effective with respect to a non-nuclear-weapon state only if the Secretary of Energy has determined that such state adheres to the criterion set forth in subsection a. of this section and to criteria with respect to activities so authorized which are equivalent to the criteria set forth in section 127 of this Act.

"(2) If the Secretary of Energy finds that an authorization should be provided under section 57 b. with respect to a non-nuclear-weapon state which does not adhere to all the criteria referred to in paragraph (1) of this subsection, the Secretary shall publicly issue such findings and shall submit his rec-

ommendation for the proposed authorization to the President. The President may authorize the Secretary of Energy to grant the proposed authorization in accordance with the procedures, and subject to the requirements and conditions, set forth in the third and fourth sentences of section 126 b. (2) of the Act.".

SPECIAL FUNCTIONS OF THE SECRETARY OF DEFENSE IN NUCLEAR NONPROLIFERATION MATTERS

SEC. 15. Chapter 11 of the Atomic Energy Act of 1954, as amended by section 5 of this Act, is further amended by adding at the end thereof the following new section:

"SEC. 133. SPECIAL FUNCTIONS OF THE SECRETARY OF DEFENSE.—

"a. The Secretary of State and the Secretary of Energy may submit to the President a proposed agreement for cooperation negotiated pursuant to section 123 of this Act only if they have received from the Secretary of Defense a written statement that the Secretary of Defense finds that the proposed agreement will not be inimical to the common defense and security of the United States. Any such statement shall be submitted to the President with the proposed agreement.

"b. The Secretary of State may notify the Nuclear Regulatory Commission of the judgment of the executive branch in accordance with section 126 a. (1) of this Act only if the Secretary of State has received from the Secretary of Defense a written statement that the Secretary of Defense agrees with the proposed executive branch judgment.

"c. (1) The Secretary of Energy may enter into a proposed subsequent arrangement under section 131 of this Act only if the Secretary of Energy has received from the Secretary of Defense a written statement that the Secretary of Defense finds that the proposed arrangement will not be inimical to the common defense and security of the United States. Any such statement shall be published in the Federal Register with the notice of the proposed arrangement.

"(2) In addition, the Secretary of Energy may enter into a subsequent arrangement subject to section 131 b. (2) of this Act only if the Secretary of Energy has received from the Secretary of Defense a written statement that it is the judgment of the Secretary of Defense that the proposed reprocessing or retransfer will not result in a significant increase of the risk of proliferation beyond that which exists at the time that approval is requested. Among all the factors in making this judgment, foremost consideration will be given to whether or not the reprocessing or retransfer will take place under conditions that will insure timely warning to the United States of any diversion well in advance of the time at which the non-nuclear-weapon state could transform the diverted material into a nuclear explosive device.

"(3) In the case of a subsequent arrangement subject to paragraph (3) of section 131 b. of this Act, the Secretary of Energy shall, when obtaining the view of the Secretary of State, also obtain the view of the Secretary of Defense with respect to what conditions satisfy the standards set forth in paragraph (2) of that section.".

EXPORTS LICENSED BY THE DEPARTMENT OF COMMERCE

SEC. 16. Section 128 of the Atomic Energy Act of 1954 (42 U.S.C. 2157), as amended by section 14 of this Act, is further amended by adding at the end thereof the following new subsection:

"d. (1) Except as provided in paragraph (2) of this subsection, the Secretary of Commerce may not issue a validated license under the Export Administration Act of 1979 for the export to a non-nuclear-weapon state of goods or technology which are to be used in a production or utilization facility, or which the Secretary of Commerce has determined, with the concurrence of the Secretary of Defense, the Secretary of Energy, and the Nuclear Regulatory Commission, are likely to be used in the design, construction, operation, or maintenance of such a facility, unless the Secretary of Energy has determined that—

"(A) the United States has an agreement for cooperation with such state;

"(B) such state adheres to the criterion set forth in subsection a. of this section; and

"(C) such state adheres, with respect to all goods and technology exported pursuant to such a validated license and used in such a facility, to criteria which are equivalent to the criteria set forth in section 127 of this Act.

"(2) If the Secretary of Energy finds that a license prohibited under paragraph (1) of this subsection should be issued, the Secretary shall publicly issue his decision to that effect and shall submit the license application to the President. The President may authorize issuance of the license in accordance with the procedures, and subject to the requirements and conditions, set forth in the third and fourth sentences of section 126 b. (2) of this Act.".

EXPORTS OF COMPONENTS

SEC. 17. Section 109 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2139(b)) is amended by amending the second sentence to read as follows: "Except as provided in section 126 b. (2), no such component, substance, or item which is so determined by the Commission shall be exported unless the Commission issues a general or specific license for its export after finding, based on a reasonable judgment of the assurances provided and other information available to the Federal Government, including the Commission, that the nation or group of nations to which such component, substance, or item will be exported—

"(1) has an agreement for cooperation with the United States;

"(2) adheres to the criterion set forth in section 128 a. of this Act; and

"(3) adheres, with respect to each such component, substance, or item to be exported, to criteria which are equivalent to the criteria set forth in section 127 of this Act;

and after determining in writing that the issuance of each such general or specific license or category of licenses will not be inimical to the common defense and security: *Provided,* That a specific license shall not be required for an export pursuant to this section if the component, item, or substance is covered by a facility license issued pursuant to section 126 of this Act.".

LICENSING OF CERTAIN ACTIVITIES IN FOREIGN COMMERCE

SEC. 18. (a) Chapter 11 of the Atomic Energy Act of 1954, as amended by sections 5 and 11 of this Act, is further amended by adding at the end thereof the following new section:

"SEC. 134. LICENSING OF CERTAIN ACTIVITIES IN FOREIGN NUCLEAR COMMERCE.—

"a. Activities described in subsection b. of this section by any person subject to the jurisdiction of the United States—

"(1) may be engaged in only if authorized under an agreement for cooperation;

"(2) shall be considered to be exports for purposes of the procedures and requirements of section 126, section 127, and section 128, except that any such activities relating to transfers or retransfers of components, items, and substances shall be considered to be exports for purposes of the procedures and requirements of section 109 b.; and

"(3) shall require a license from the Nuclear Regulatory Commission.

"b. The requirements of subsection a. apply with respect to any transfer or retransfer, including any activity which directly or indirectly assists in any way the transfer or retransfer, outside of the United States, of any source or special nuclear material (including transfers or retransfers of title to any such material), any production or utilization facility or any technology pertaining to any such facility, any sensitive nuclear technology, or any component, item, or substance determined to have significance for nuclear explosive purposes pursuant to section 109 b.".

(b) Section 234 a. of the Atomic Energy Act of 1954 is amended by striking out "or 109" and inserting in lieu thereof "109, or 134".

CONDUCT RESULTING IN TERMINATION OF NUCLEAR EXPORTS

SEC. 19. Section 129 of the Atomic Energy Act of 1954 (42 U.S.C. 2158) is amended—

(1) by inserting immediately after "exported to" in the text preceding paragraph (1) ", no validated license under the Export Administration Act of 1979 for the export of goods or technology which are to be used in (or which in the judgment of the Secretary of Commerce, with the concurrence of the Secretary of Defense, the Secretary of Energy, and the Nuclear Regulatory Commission, are likely to be used in the design, construction, operation, or maintenance of) any production or utilization facility shall be issued with respect to, and no authorization under section 57 b. of this Act shall be effective with respect to";

(2) by inserting immediately after "such exports" in the text following paragraph (2)(C) ", licenses, and authorizations";

(3) in the proviso in the text following paragraph (2)(C)—

(A) by striking out "shall not become effective" and inserting in lieu thereof "shall become effective only"; and

(B) by striking out "does not favor" and inserting in lieu thereof "does favor"; and

(4) by inserting immediately before the last sentence the following: "In the consideration of a concurrent resolution under this section, the amendment allowed by section 130 d. of this Act is an amendment inserting the word 'does' in lieu of the phrase 'does not' if the resolution under consideration is a concurrent resolution of disapproval.".

MAY 18, 1983.

HON. RONALD REAGAN,
President of the United States, The White House, Washington, D.C.

DEAR MR. PRESIDENT: We are profoundly concerned over your Administration's relaxation of efforts to curb the spread of nuclear weapons. The proliferation of these weapons poses a grave danger, rivaling that of the arms race between the superpowers. As the number of nations possessing nuclear weapons grows, so does the likelihood that nuclear weapons will be used.

Yet, actions by your Administration to prevent proliferation have been inconsistent

and all too often motivated by undue concern for promoting nuclear-export sales. In some instances, the effect of your policies has served to facilitate, rather than inhibit, the spread of technology, equipment and nuclear-explosive materials that can be applied to making nuclear weapons.

Pressure and criticism from Congress—from both Republicans and Democrats—finally resulted in your Administration beginning to recognize the need for stronger anti-proliferation controls. The effectiveness of even these belated initiatives has been woefully compromised, however, by your earlier policies and actions that undermined the bipartisan approach to non-proliferation developed during the Ford and Carter Administrations.

We, therefore, call for restoration of the bipartisan spirit that always has characterized efforts to combat nuclear-weapons proliferation, and we offer to work closely with you in this spirit. We seek a return to forcefulness and consistency in U.S. non-proliferation policy. We would hope, as in the past, that Republicans and Democrats will join in this endeavor. We are committed to five principles that must guide all U.S. non-proliferation efforts:

First, halting the spread of nuclear weapons must become a principal goal of U.S. foreign policy. Attaining this goal requires an emphatic, public commitment by the President to non-proliferation and active Presidential involvement in the formulation and implementation of a consistent U.S. non-proliferation policy.

Second, the spread of nuclear-explosive materials—separated plutonium and highly enriched uranium—and of the facilities that produce these weapons materials, constitutes the most fundamental threat to controlling nuclear proliferation and to protecting long-term U.S. security interests. Consequently, the United States must redouble its efforts to strengthen international restraints on the transfer of these materials and on the technology for producing them. The United States must work to reduce the demand for, and otherwise discourage the use of, separated plutonium and highly enriched uranium as civilian fuels by helping to ensure economical and secure supplies of alternative fuels that are not usable in weapons. To set a meaningful world example, the United States should defer its domestic use of separated plutonium and highly enriched uranium in its commercial power program. This is possible since there is no need to use these dangerous materials in this century.

Third, the cooperation of other nuclear-supplier nations is essential to controlling the spread of nuclear weapons. A major objective of United States diplomacy must be gaining agreement of these nations to:

(A) Intensify export controls over commodities that can be applied directly to development of nuclear weapons in recipient nations and

(B) Suspend all nuclear exports to any nation refusing to allow International Atomic Energy Agency inspections of all its nuclear activities, in order to verify that it is not diverting materials to nuclear-explosive purposes.

To strengthen these diplomatic initiatives, the United States must exert leadership by scrupulously adhering to these principles in the conduct of its own nuclear export activities.

Fourth, the United States must work to strengthen the capabilities of the International Atomic Energy Agency by supporting greater access and authority for the agency in conducting safeguard inspections; increased numbers and improved training to IAEA inspectors; development and deployment of upgraded safeguards technology; and greater disclosure of inspection data.

Fifth, in keeping with its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, and to otherwise strengthen its credibility in persuading other nations to forego development of nuclear arms, the United States must actively pursue efforts to halt the nuclear arms race with the Soviet Union.

As it now stands, your Administration's most troublesome departure from past bipartisan policy is its active promotion of plutonium, a nuclear explosive material, as a civilian nuclear fuel. By strongly encouraging early commercial development of reprocessing plants and breeder reactors at home and abroad, your Administration is paving the way for an industrial process that will produce by the ton materials that can be used by the pound to make atomic bombs. Your Administration is opening the door for exports of the very technologies and materials that can be turned into weapons of mass destruction and used against us.

Even though international commerce in these nuclear-explosive materials cannot be adequately safeguarded by the IAEA; even though many studies now show the use of plutonium fuels as uneconomic; and even though an excess supply of uranium, unsuitable for use in weapons, gluts world markets thus making use of plutonium as a reactor fuel unnecessary and unjustifiable for many decades, if ever—your Administration is promoting the breeder and reprocessing at home and abroad and has sought to end the long-standing bipartisan policy of never exporting reprocessing technology. In particular, it is of grave concern that your Administration intends to grant Japan long-term approval to extract plutonium from used U.S.-origin reactor fuel at will. Your Administration is also prepared to offer these major nuclear trade concessions without obtaining any meaningful strengthening of international non-proliferation controls.

Your Administration has taken a similarly dangerous stance with regard to the other nuclear weapons material, highly enriched uranium. Your Administration has abandoned the decades-old embargo on the export of the technology for manufacturing this material. Your Administration also has slashed funding for programs to develop a non-weapons usable substitute fuel that could replace highly enriched uranium in research reactors around the world.

Since passage of the Nuclear Non-Proliferation Act in 1978 by an overwhelming bipartisan majority, a key element of U.S. policy has been the suspension of nuclear exports to nations not possessing nuclear weapons that refuse to permit IAEA inspections of all of their nuclear installations ("full-scope safeguards"). Yet, during its first two years, your Administration repeatedly circumvented this restriction. First, it encouraged other supplier nations to step in and provide nuclear fuel embargoed under U.S. law to three countries not accepting the required full-scope safeguards—India, South Africa, and Brazil. Second, your Administration has offered, or indicated a willingness to offer, other nuclear technology, not explicitly embargoed by law, to South Africa and India. In addition, your Administration has allowed sensitive nuclear technology to pass through an intermediary nation to an additional nation that refuses comprehensive IAEA inspections—Argentina. Only because of staunch Congressional opposition is the Executive Branch reconsidering this latter policy and withholding certain exports.

In not one of these instances, did your Administration obtain the slightest strengthening of non-proliferation controls in the recipient nation in return for relaxation of U.S. export retrictions. Indeed, since each of the recipient nations involved has developed or is developing the capability to produce nuclear-weapons materials in facilities not under international inspections, this course of action not only undermines the Nuclear Non-Proliferation Act, but also permits these countries to pursue this most dangerous activity without penalty.

From the outset, your Administration also sought to undermine a second key U.S. non-proliferation law, the Glenn-Symington restrictions in the 1976 Foreign Assistance Act. These restrictions prohibit U.S. military and economic aid to nations not possessing nuclear weapons that import nuclear technology capable of producing nuclear-weapons material. Only strong Congressional opposition prevented the virtual repeal of these restrictions originally sought by your Administration in 1981.

We now see all too plainly the unfortunate result of two years of neglect and weakening of U.S. non-proliferation policy by your Administration: the undermining of the legally required U.S. initiative to persuade other nuclear-supplier nations to adopt our tough, full-scope safeguards export treatment.

We reject these dangerous and ill-advised deviations from the bipartisan consensus established by your predecessors and in statute. We, therefore, are supporting legislation being introduced today that would remedy many of our concerns. Under this bill, for example, all nuclear exports to nations that have not accepted full international inspections would be prohibited; exports of technology and equipment directly applicable to producing nuclear-weapons materials would be banned; approvals of the reprocessing of plutonium from U.S.-origin fuel for existing research, development and demonstration activities would be severely limited and approvals for new commercial activities would not be permitted until Congress determines adequate international safeguards and sanctions are in place; and new incentives for nations to forego plutonium would be provided by offering them U.S. uranium enrichment services at a substantial discount to produce assured supplies of nonweapons usable, low-enriched uranium fuel. It is particularly fitting that U.S. facilities that originally had been used to create nuclear bombs would now be used to help curb the spread of nuclear explosive plutonium.

As important as this new legislation is, we cannot, however, legislate what is needed most in this field from the Executive Branch: leadership. We cannot legislate the initiative and vigor so essential to U.S. nuclear diplomacy; we cannot legislate the assertiveness and constancy necessary to enforce the letter (and the spirit) of U.S. non-proliferation laws; and we cannot legislate the sense of urgency and concern needed to make non-proliferation a major priority in your Administration's conduct of U.S. foreign policy.

Today, the deepest aspiration of all Americans is to reduce the horrifying dangers of nuclear conflict. Our citizens, who already fear that your Administration has turned its

back on serious nuclear arms control negotiations, are coming to recognize that your Administration also has turned away from what always has been a resolute bipartisan commitment to halt the spread of these arms to additional nations.

You have stated you will address non-proliferation controls with other Western leaders at the Williamsburg Summit. We agree that their cooperation is essential to strengthen the international non-proliferation regime and particularly, to tighten the rules of international nuclear commerce. But a strong and cohesive policy among the Western nations will only be brought about by resolute U.S. leadership, by setting a good U.S. example, and by a non-proliferation initiative supported in deed as well as word.

We urge you in the strongest terms to give heed to the yearnings of the American people and to devote yourself to reestablishing our nation's leadership in this vitally important area. We urge you to support the legislation being introduced today and the sound policy it reflects.

Representative Richard L. Ottinger, Representative Edward J. Markey, Representative Michael Barnes, Senator Alan Cranston, Representative Morris K. Udall, Representative Howard Wolpe, Senator Gary Hart, Representative Don Bonker, Walter F. Mondale.

SUMMARY—THE NUCLEAR EXPLOSIVES CONTROL ACT OF 1983

The bill has three principal objectives:

I. To discourage and sharply restrict commerce in nuclear explosive materials—plutonium and highly enriched uranium;

II. To offer other nations positive incentives, in the form of nuclear fuel assurances and technical assistance, to forego the use of plutonium and highly enriched uranium in their nuclear programs;

III. To strengthen nuclear export criteria for all Federal agencies to ensure that nuclear exports go only to nations that accept international safeguards inspections of all their nuclear activities ("full-scope safeguards") and have nuclear-cooperation agreements with the United States.

I. Restrictions on nuclear explosive materials:

Bans U.S. exports of civilian technology and equipment that are important to the construction of enrichment, reprocessing and heavy water plants essential to the production of nuclear explosive materials (section 4);

Defers foreign extraction (reprocessing) of plutonium from nuclear fuel provided by the United States for commercial activities until such time as Congress determines adequate international safeguards and sanctions are in place (section 5);

Requires the phasing out of U.S. exports of highly enriched uranium as soon as research reactors can be operated with lower enriched fuel unsuitable for nuclear weapons (section 6);

Requires Federal agencies to improve physical security arrangements for nuclear exports (section 11);

Strengthens the process in existing law for cutting off nuclear trade with nations that develop or assist other nations in developing nuclear weapons or that violate safeguards or other fundamental non-proliferation commitments (section 19);

II. Nuclear fuel assurances and technical assistance:

Offers to nations which agree to forego development of reprocessing and enrichment facilities, as well as to forego the use of separated plutonium, the following major incentives (section 8):

A substantial discount on the price of U.S. uranium enrichment services for low enriched uranium fuel, which is unsuitable for nuclear weapons;

A further discount on the enrichment price for nations agreeing to run reactors on specially improved low enriched fuel that conserves uranium, reduces spent fuel generation and lowers the production of residual, by-product plutonium;

A single export license to assure supplies of low enriched uranium fuel sufficient to meet the lifetime requirements of all their nuclear powerplants—the fuel to be provided in shipments sufficient to operate each plant for three years at a time;

Technical assistance to increase the fuel efficiency of light water reactors and thereby reduce inventories of residual, by-product plutonium;

Technical assistance to resolve nuclear waste management problems, including the storage and disposal of spent fuel;

Technical assistance in developing alternative energy sources.

III. Strengthen nuclear export criteria:

Upgrades export criteria for the Energy and Commerce Departments to ensure that exports of nuclear technology and "dual-use" items go only to nations that accept full-scope safeguards and have a nuclear-cooperation agreement with the United States—the same strict standard that now governs Nuclear Regulatory Commission licensing of nuclear reactor and fuel exports (sections 13, 14 and 16);

Establishes the same strict standard for NRC export licensing of nuclear components as now exist for NRC export licensing of complete reactors and fuel (section 17);

Requires that nuclear transfers by foreign affiliates of U.S. companies are subject to the same requirements as transfers directly from U.S.-based firms (section 18);

Requires the Secretary of Defense to play a key non-proliferation role in determining that proposed nuclear agreements, exports and arrangements are not inimical to the common defense and security (section 15);

Requires that foreign-origin nuclear materials cannot be substituted for nuclear materials under the control of the United States without the approval of the Secretary of Energy (section 7).

NUCLEAR POWER AND PROLIFERATION: A FACTSHEET

Congressional Research Service—Warren H. Donnelly, Senior Specialist, and Joseph F. Pilat, Office of Senior Specialists, May 15, 1983)

NUCLEAR POWER AND PROLIFERATION

The precise nature of the linkage between nuclear power and the spread, or proliferation, of nuclear weapons continues to be debated. However, from the days of the wartime U.S. atom bomb project many observers have seen a more or less direct linkage. Their reasoning is straightforward. Commercial nuclear power requires the production of nuclear fuels. Some of these fuels, as well as the facilities that produce them can be used more or less directly in the fabrication of nuclear warheads.

Materials for nuclear power and bombs

The fissionable isotopes useful to fuel nuclear power plants or to make nuclear weapons are uranium-233, uranium-235 and several isotopes of plutonium.

Uranium-233 does not occur in nature. It is made by exposing thorium to neutrons in a nuclear reactor, then cutting up and dissolving the irradiated thorium in strong acids from which the uranium-233 is separated. The chemical treatment is called reprocessing. While theoretical possibilities of using U-233 for fuel and for bombs is well known, it is yet to be used for either purpose.

Uranium-235 is found in nature but is so diluted with another isotope, U-238, that natural uranium cannot be directly used in most nuclear power plants or in nuclear weapons. A more concentrated form is needed. The process of increasing the proportion of U-235 in a quantity of uranium is called enrichment. Uranium enriched to 90 percent or more U-235 (highly enriched uranium, or HEU) is currently used in some research reactors and for the propulsion of nuclear warships. Uranium enriched to 3-6 percent U-235 (low enriched uranium or LEU) is commonly used to fuel nuclear power plants of the types favored in the United States, Europe, the Soviet Union and Japan, and is currently used to power merchant ships. Natural uranium can be used to fuel types of nuclear power plants developed in Canada and the United Kingdom.

Plutonium exists in nature only in minute trace amounts: Useful amounts may be made by exposing U-238 atoms to neutrons in a reactor and then reprocessing the irradiated uranium to recover the plutonium. Plutonium is created in any reactor that contains U-238 atoms in its fuel. Breeder reactors are particularly efficient in making U-238 into plutonium—so much so that more than one atom of new plutonium is produced for every atom of fuel burned in a breeder. Nuclear power based on breeders and use of plutonium for fuel can get about 60 times as much energy out of every pound of uranium ore mined than can conventional nuclear power systems that do not use plutonium. On the other hand, breeders could in principle be used to produce a grade of plutonium highly suitable for nuclear weapons. Table 1 compares the respective utility of these materials for weapons and for power generation.

Plutonium and highly enriched uranium as weapons materials

Although U-233 could in principle be used to make nuclear weapons, it has not been so utilized. Only highly enriched uranium (greater than 90 percent U-235) and plutonium are used for weapons, and most nuclear weapons in the arsenals of the nuclear-weapon states use plutonium. Estimates of the amount of plutonium or highly enriched uranium necessary to make a nuclear explosive device or weapon depend upon the sophistication of the device. A weapon or device utilizing plutonium would require 5 to 10 kg of good quality plutonium. A device using enriched uranium would require from 15 to 30 kg of uranium enriched to 90 percent or more U-235.[1] According to the International Atomic Energy Agency, a "significant quantity"—defined as approximate quantity of nuclear material which could be used to manufacture a nuclear explosive device—of plutonium is 8 kg. A significant quantity of HEU is 25 kg.

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[1] U.S. Congress. Office of Technology Assessment. Nuclear Proliferation and Safeguards. New York and London; Praeger Publishers, Praeger Special Studies in U.S. Economic, Social and Political Issues, 1977. pp. 179-180.

TABLE 1.—COMPARISON OF USE OF NUCLEAR MATERIALS FOR POWER AND FOR ATOMS

Material	Weapons	Civil power generation	Marine propulsion	
			Naval	Merchant
Natural uranium (0.7 percent U_{-235})	No	Canadian and British type reactors.	No	No.
Low enriched uranium (3, 6 percent U_{-235})	No	United States, European, Soviet, and Japanese type reactors.	No	Yes.
High enriched uranium (90 percent U_{-235} or greater)	Yes	Not now	Yes	Not now.
Uranium-233	Yes	Not now	Not now	Not now.
Plutonium	Yes	Not now	Not now	Not now.

PRODUCTION AND USE OF PLUTONIUM

Production of plutonium

Plutonium is produced as a byproduct of the operation of all conventional nuclear power reactors. Increasing quantities of this nuclear material are accumulating in the United States, the Soviet Union, Eastern and Western Europe, Canada, Japan and other countries with operating nuclear power plants.

Plutonium is also produced in research and testing reactors. Powerful reactors fueled with natural uranium and moderated with heavy water can produce high quality plutonium in significant quantities. Countries having this type reactor with power levels of 10 megawatts (MW) or greater include the Federal Republic of Germany, India, Israel, Japan, Switzerland, Taiwan, and the United Kingdom. Canada previously had research reactors of this size operating on natural uranium, but they have been converted to use HEU which does not normally produce as much plutonium.[2]

Powerful testing reactors fueled with highly enriched uranium can be modified to produce plutonium. These, however, are fewer in number and are found only in the nuclear weapons states, in Canada and in South Africa.

Reprocessing capability

The plutonium produced by power, research and testing reactors is contained in spent fuel. Its separation from the spent fuel is accomplished by a chemical process called reprocessing, the basic technology of which is well known. Certain special components for reprocessing, however, are available only from advanced industrial countries. Table 2 lists foreign reprocessing plants of demonstration and industrial size. In addition, other countries are reported to be developing a reprocessing capability, including Argentina, Brazil, and Pakistan. Israel presumably has a reprocessing capability but little has been published about it.

TABLE 2.—FOREIGN REPROCESSING PLANTS

Reprocessor	Plant name	Location	Design capacity (MTU/yr)	Startup date	Current status
1. Eurochemic	Eurochemic [1]	Mol, Belgium	75	1966	Shutdown since 1974.
2. COGEMA	UP-1	Marcoule, France	1,200	1958	Operating.
	UP-2 (metal head-end)	La Hague, France	400	1966	Operating.[2]
	UP-2 (oxide head-end)	La Hague, France	[3] 400	1976	Operating.
	UP-3A	La Hague, France	800	1985	Planned.
	UP-3B	La Hague, France	800	1989	Planned.
3. CNEN	EUREX	Saluggia, Italy	25	1970	Shutdown since 1978.
4. IDAE	Tarapur Fuel Reprocessing Plant	Trarapur, India	100	1978	Operating.[4]
IAEC	None	Kalpakkam, India	100	1985	Planned.
5. PNC	Tokai-mura	Tokai-mura, Japan	200	1978	Operating.
None	Not yet sited	1,500	1991	Planned.	
6. BNFL	B205 (metal head-end)	Windscale, United Kingdom	2,100	1964	Operating.
	B204 (oxide head-end)	Windscale, United Kingdom	400	1969	Shutdown since 1973.
	THORP	Windscale, United Kingdom	1,200	1987	Planned.
7. U.S.S.R.[5]					
8. DWK	WAK	Karlsruhe, West Germany	40	1971	Operating.

[1] A contract for the transfer of this plant to the Belgian State was signed in 1978; it was originally a joint undertaking of 13 European OECD states.
[2] To be phased out by 1983.
[3] To be increased to 800 MTU/yr by 1984.
[4] Initial operation may have involved fuel from experimental reactors at Trombay.
[5] No information available in open literature.

Source: Inquiry of DOE. July 1981.

Fissile plutonium in spent fuel

INFCE estimated that the fissile plutonium contained in cumulative world spent fuel arisings would be some 227.2 metric ton(t) in 1985, 517.4t in 1990 and greater than 1539.7t in 2000.[3] The fissile plutonium in stored spent fuel would be, according to INFCE estimates, 175t in 1985, 399t in 1990, and greater than 971t in 2000.[4] Many observers in the U.S. and abroad consider INFCE projections to be unrealistically high. However, even if INFCE, overestimated by a factor of two, or three, the projection indicates large quantities of plutonium will be present in spent fuel.

Separated fissile plutonium

According to INFCE, total world stocks of separated fissile plutonium at the end of 1977 were greater than 21 metric tons. This projection does not include any French, Canadian and Indian stocks, which were not reported.[5] INFCE estimated cumulative fissile plutonium separated from spent fuel would be more than 54t in 1985, more than 126t in 1990, and more than 423t in 2000.[6]

Again, even if INFCE projection were too high by a factor of two or three, the nuclear future it presumed would produce large amounts of separated plutonium.

Plutonium under IAEA safeguards

Table 3 reports amounts of plutonium under IAEA safeguard for the years 1975–1980.

TABLE 3.—QUANTITIES OF PU UNDER IAEA SAFEGUARDS [1]

[Tonnes]

	1975	1976	1977	1978	1979	1980	1981
Separated	2	3	6	7	8	[2] 5	5
Contained in spent fuel	15	23	28	41	49	[2] 58	71
Total	17	26	34	48	57	63	76

[1] Except covered by agreements implementing the voluntary offers of 2 nuclear-weapon States.
[2] In 1 nuclear-weapon State, irradiated fuel has again been placed under safeguards instead of separated plutonium that had been temporarily substituted for it.

Source: IAEA, the annual report for 1980, p. 45; the annual report for 1981, p. 63.

PRODUCTION AND USE OF HIGHLY ENRICHED URANIUM

Enrichment capacity

Natural uranium must be enriched for use as nuclear fuel as well as weapons use. Industrial scale enrichment plants exist in the United States, the Soviet Union, the United Kingdom, France, the Netherlands and the Peoples Republic of China. The facility in France is owned and operated by Eurodif, a French-controlled multinational enrichment body. A considerably smaller enrichment capacity also in Europe is that of Urenco, a trinational enrichment consortion composed of the United Kingdom, the Federal Republic of Germany, and the Netherlands. South Africa and West Germany have small, pilot sized, enrichment plants and are building larger plants. Japan also has some pilot scale capacity and is planning a commercial sized plant; Italy has two experimental enrichment facilities; Brazil is committed to developing an enrichment capacity and expects help from West Germany via a long standing arrangement for nuclear assist-

[2] Inquiry of DOE, July 1981. Data on PRC was not available.

[3] Reprocessing, Plutonium Handling, Recycle. Report of Working Group 4. INFCE. Vienna: IAEA, 1980. p. 268.

[4] Ibid. p. 272.
[5] Ibid. p. 279.
[6] Ibid. p. 281.

ance; and Australia is taking steps that could culminate in a commercial plant. Pakistan too is reportedly trying to build a small enrichment plant.

Among these countries, the only ones with plants producing highly enriched uranium are those of the nuclear weapons states and South Africa. However, Pakistan's plant, if completed, might be able to provide high enrichment. Since highly enriched uranium is not used as a commercial nuclear fuel for power generation, there would be little commercial demand for this material.

INFCE's estimates.—Assuming Brazil and South Africa would have some enrichment capacity by 1985, but no production by Pakistan or Australia, INFCE estimates show a world capacity of 20.9 million separative work units per year (MSWU/a) by 1980; from 43.1 to 43.2 MSWU/a in 1985; 65.7 to 65.8 MSWU/a by 1990; and 81.1 to 83.6 MSWU/a by 1995.[7] Note, on the basis of existing and planned uranium enrichment capacity in 1983, these estimates appear high.

Research reactors using HEU

Over twenty countries have research reactors with power outputs of 5 MW or greater, fueled with highly enriched uranium. These include Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, France, FRG, Greece, Iran, Israel, Italy, Japan, the Netherlands, Pakistan, South Africa, Sweden, Switzerland, the UK and the USSR.[8] Additionally, West Germany is developing a high temperature, gas-cooled reactor that uses HEU as fuel.

HEU under IAEA safeguards

According to the Annual Reports of the IAEA, the quantity of uranium enriched to 20 percent U-235 or greater (HEU) under Agency safeguards was: 4 tonnes of HEU in 1975, 5 in 1975; 11 in 1977, 1978, 1979; and 1980; and 10 in 1981.[9]

THE "PROBLEM STATES" OF TODAY AND TOMORROW

Currently concern about proliferation appears to be focused on several so-called "problem states," which are seen to pose the highest proliferation risks. Among these problem states, Argentina, Brazil, India, Israel, Pakistan and South Africa appear to many observers to be particularly worrisome because of their advanced capabilities and suspected intentions.

The nuclear industrial bases of all of these countries are relatively substantial, particularly those of Argentina, India and South Africa. And all of these countries have completed or are building facilities for enrichment, reprocessing, or both. Israel's situation is somewhat ambiguous. While it has a powerful reactor capable of producing good quality plutonium, its ability to extract that plutonium from the spent fuel is little discussed in the open literature. For the nuclear capabilities of these states, see Table 4.

All of the countries represented in this first tier of problem states have refused to take the no-weapons pledge of the NPT or of the Treaty of Tlatelolco, or to put the latter into effect, albeit most of these states have disclaimed nuclear weapons intentions. See Table 5. Some also have some nuclear facilities not subject to IAEA inspection and safeguards, notably Argentina's pilot reprocessing plant which is under construction, India's several safeguarded nuclear research and power reactors and reprocessing plants, Pakistan's unsafeguarded enrichment and reprocessing projects, Israel's unsafeguarded reactor, and South Africa's unsafeguarded pilot enrichment plant. On the other hand, with the possible exception of Israel, all of these states have not notable nuclear facilities under IAEA safeguards.

Finally, the governments of all of these states are widely seen to be developing nuclear weapons options, if they are not also seen as having an explicit interest in immediately producing nuclear weapons or arsenals. Note that some reserve the right to make peaceful nuclear explosives, which are virtually indistinguishable from nuclear weapons.

Other states are also held to be problem states by many observers. Among these states, Iran, Iraq, Libya, South Korea and Taiwan are notable. However, they are seen to be much less of a proliferation risk in the next decade, either because their nuclear industrial bases are virtually non-existent (see Table 4); because they are parties to the NPT or the Treaty of Tlatelolco (see Table 5); or because of the dependence of their programs on the United States or other suppliers, who can be expected to attempt to use the influence from this relation to curb any weapons aspirations among these states. Over time, the situation in these countries can be expected to change. This second tier of problem countries could be among those regarded as primary concerns of tomorrow, or their nuclear programs could be viewed as posing no significant dangers whatsoever.

Clearly the "problem states" change with time. In the 1960s, proliferation risks were seen mainly in the major industrial states. Now, in the 1980s, the principal risks are seen in developing states that have much less of a technological and industrial base, but that nonetheless are thought capable of producing nuclear weapons and nuclear arsenals. In the future, the assessment of proliferation risks could again radically change, and an entirely new group of countries could be regarded as "problem states."

TABLE 4.—COMPARISON OF PRESENT NUCLEAR INDUSTRIAL BASES OF PERCEIVED "PROBLEM STATES" IN 1982

State	Nuclear power (MWe)* in operation, 1981	Enrichment capacity	Breeder development	Reprocessing capacity	Plans to use plutonium	Heavy water capacity	Technical personnel
Argentina	335	No	No	Not yet [1]	Yes	Some	Some.
Brazil	0	Under construction	No	No [2]	Some	No	Some.
Egypt	0	No	No	No	No	No	Minor.
India	809	No	[3] Yes	Yes	Yes	Yes	Good.
Iran	[4] 0	No	No	No	No	No	Minor.
Iraq	0	No	No	No	No	No	Minor.
Israel	0	No	No	Suspected	No	No	Strong.
Libya	0	No	No	No	No	No	Minor.
Pakistan	125	Under construction	No	Under construction	Yes	No	Some.
South Africa	0	Some	No	No	No	No	Some.
South Korea	564	No	No	No	No	No	Some.
Taiwan	2,159	No	No	No	No	No	Some.

*Source: Nuclear Engineering International, August 1982, p. 3.

[1] Argentina has a prototype plant nearing completion.

[2] Brazil ultimately expects to get reprocessing assistance from West Germany.

[3] India's long-range plan is to breed U-233 from thorium.

[4] Iran has several partially completed nuclear powerplants, but construction stopped with the revolution.

TABLE 5.—ADHERENCE TO NON-PROLIFERATION AND RELATED TREATIES: 1981

State	Treaty and date of entry into force					
	Antarctic Treaty 1961	Limited Test Ban Treaty 1963	Treaty Prohibiting Nuclear Weapons in Latin America 1968 [1] [2]	Nuclear Non-Proliferation Treaty 1970	Type of safeguards agreement	All nuclear facilities safeguarded
Argentina	Party	Signatory	Signatory		Limited [3]	No.
Brazil	Party	Party	Signatory		Limited [3]	No. [4]
Egypt		Party		Party	FS [5]	Yes.
India		Party			Limited [3]	No.
Iran		Party		Party	FS [5]	Yes.

[7] Enrichment Availability. Report of Working Group 2. INFCE. Vienna: IAEA, 1980. p. 75.

[8] Inquiry of DOE, July 1981. Data on People's Republic of China was not available.

[9] IAEA, Annual Report for 1980. p. 45; Annual Report for 1981. p. 63.

TABLE 5.—ADHERENCE TO NON-PROLIFERATION AND RELATED TREATIES: 1981—Continued

State	Treaty and date of entry into force					
	Antarctic Treaty 1961	Limited Test Ban Treaty 1963	Treaty Prohibiting Nuclear Weapons in Latin America 1968[1] [2]	Nuclear Non-Proliferation Treaty 1970	Type of safeguards agreement	All nuclear facilities safeguarded
Iraq		Party		Party	FS [5]	Yes.
Israel		Party			Limited [3]	No.
Libya		Party		Party	FS [5]	Yes.
Pakistan		Signatory			Limited [3]	No.
South Africa	Party	Party			Limited [3]	No.
South Korea		Party		Party	FS [5]	Yes.
Taiwan		Party		Party	FS [5]	Yes.

[1] Not yet in force for all signatories.
[2] Ratified subject to preconditions not yet met.
[3] Non-NPT type which apply only to imported nuclear materials and facilities.
[4] There is some difference of opinion as to whether 1 small unsafeguarded laboratory should be considered a facility.
[5] NPT full scope safeguards.

A SELECTED CHRONOLOGY OF NUCLEAR PROLIFERATION EVENTS AND U.S. POLICY RESPONSES

1945

The United States exploded the first atomic bomb, Trinity, at Alamogordo, New Mexico.

The United States dropped atomic bombs on Hiroshima and Nagasaki.

1946

Congress enacted the Atomic Energy Act of 1946.

The United States started atomic bomb tests at Bikini atoll.

U.S. proposal for international control of atomic energy was made to the United Nations Atomic Energy Commission (The Baruch Plan).

1949

The first Soviet atomic test in the Ustyurt desert.

1952

The first British atomic test.

The first U.S. hydrogen bomb test.

1953

The first Soviet hydrogen bomb test.

President Eisenhower made his Atoms-for-Peace speech to the U.N. General Assembly.

1954

Congress enacted the Atomic Energy Act of 1954.

1957

The International Atomic Energy Agency was established in Vienna.

The first British hydrogen bomb test.

Sputnik I was launched.

1958

Unilateral cessation of nuclear tests by the United States, the United Kingdom and the Soviet Union.

1960

France tested a plutonium bomb in the Sahara desert.

1961

The Soviet Union resumed atmospheric nuclear testing.

1962

The United States resumed atmospheric testing.

The Cuban Missile crisis occurred.

1963

The Limited Test Ban treaty, banning nuclear tests in the atmosphere, space and underwater, was ratified and entered into force.

1964

The first Chinese atomic bomb test near Lop Nor.

1966

The first French hydrogen bomb test.

1967

The first Chinese hydrogen bomb test.

The Treaty for Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) opened for signature.

1968

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was opened for signature.

1970

The NPT entered into force with its no-weapons pledges verified by international inspection.

1974

India tested a plutonium device under the Rajasthan desert.

The United States and U.S.S.R. signed a limited underground test ban treaty.

1975

The first NPT Review Conference was held.

The Federal Republic of Germany agreed to supply Brazil with a complete nuclear fuel cycle, including enrichment and reprocessing.

1976

President Ford's nuclear policy statement prohibited export of reprocessing and other nuclear technologies that could contribute to proliferation and tried to discourage reprocessing in other countries of particular concern.

The United States persuaded South Korea not to proceed with a reprocessing plant supplied by France.

The United States and U.S.S.R. signed a treaty limiting peaceful nuclear explosions.

Congress amended the Foreign Assistance Act to cutoff certain U.S. economic and military aid in some circumstances to countries that supplied or received exports and assistance in enrichment and reprocessing (The Symington Amendment).

1977

President Carter's nuclear policy statement sought indefinitely to defer production and use of plutonium as a nuclear fuel in the United States and abroad. He also proposed cancellation of the Clinch River Breeder Reactor Demonstration and enactment of non-proliferation legislation.

Congress abolished the Joint Committee on Atomic Energy.

The United States, the Soviet Union and other states put pressure on South Africa not to proceed with what appeared to be a nuclear test in the Kalahari desert.

1978

Congress enacted the Nuclear Non-Proliferation Act of 1978, which imposed many conditions upon U.S. nuclear cooperation and commerce, and specified sanctions for various violations of U.S. policy.

The states of the Nuclear Supplier Group (NSG) jointly submitted public statements to the IAEA committing themselves to certain guidelines concerning safeguards and restraint in supply of sensitive nuclear materials, facilities and technologies.

The French ceased deliveries under a contract to supply Pakistan with a reprocessing plant.

The United States and the IAEA entered into an agreement for the United States to voluntarily open some U.S. nuclear facilities to IAEA inspection.

1979

A strange double flash was detected by a U.S. satellite in the southern hemisphere, which some thought was a nuclear weapons test by South Africa.

The United States cut off economic and military assistance to Pakistan under the Symington Amendment as a result of that state's attempt to construct an enrichment plant.

1980

The conclusion of the International Nuclear Fuel Cycle Evaluation, which supported many aspects of U.S. non-proliferation policy, but diverged on many others.

The Second NPT Review Conference, which was unable to agree upon a final report because of controversy over lack of progress in the arms control negotiations of the superpowers and differences among nuclear suppliers and recipient states.

ANALYSIS OF SOME POTENTIAL IMPACTS OF A PROPOSED AMENDMENT TO THE NUCLEAR NON-PROLIFERATION ACT OF 1978 (NNPA)

(Robert L. Civiak, Analyst in Energy Technology, Science Policy Research Division, April 20, 1983)

This report analyzes several potential impacts of a proposed amendment to the Nuclear Non-Proliferatrion Act of 1978 (NNPA) that would provide financial incentives in the form of reduced rates for uranium enrichment services to nations agreeing to certain conditions. The proposed legislation would authorize the Department of Energy (DOE) to grant discounts in the price of uranium enrichment services sold to customers from nations that agree not to obtain or use any facility for nuclear fuel reprocessing and/or uranium enrichment and not to seek access to or use any plutonium-based fuels.

We have estimated the following for the years 1985, 1990, and 1995:

1. The excess DOE enrichment capacity that might be available to meet the increased enrichment demand which could result from the proposed incentive program;

2. The increased enrichment demand that might result from the program; and

3. The cost to the Government of the financial incentives.

EXCESS DOE ENRICHMENT CAPACITY

The Department of Energy currently enriches uranium for sale to commercial users by a process called gaseous diffusion. The existing gaseous diffusion plants (GDPs) were built in the 1940s and 1950s to meet defense needs for enriched uranium. Now, however, commercial enrichment requirements exceed defense needs. To meet growing commercial needs, the performance of the plants was upgraded and their capacity increased between 1977 and 1982.

In an effort to make enrichment more efficient and to reduce costs, DOE is currently building a new plant that will use a centrifuge process which requires only one-twentieth as much electricity as the diffusion process. That plant, called the Gas Centrifuge Enrichment Plant (GCEP), is scheduled to begin operation in 1989 and reach full production in 1994. The DOE is also developing a laser-based enrichment process that may further reduce enrichment costs.

DOE contracts to buy power for the diffusion plants 8 to 10 years in advance of need. According to the most recent Uranium Enrichment Operating Plan.[1] DOE has contracted to purchase considerably more power each year than it now plans to use for all years through 1991, which suggests the plants will be run at less than full capacity. Table 1, based on information contained in that Operating Plan, compares the amount of enrichment that DOE currently plans to produce in 1985, 1990, and 1995 to meet its projected demand with (1) the potential production based on existing contracts for power purchases for the diffusion plants and (2) the maximum capacity of the enrichment plants.

TABLE 1.—PLANNED AND POTENTIAL DOE ENRICHMENT PRODUCTION

[In millions of separative work units (SWU's)]

Year	Production[1]	Potential production with contracted power			Maximum potential production		
		GDP's	GCEP	Total	GDP's	GCEP	Total
1985	16.7	23.4	0	23.4	24.7	0	24.7
1990	22.3	23.0	3.1	26.1	24.7	3.1	27.8
1995	26.3	[2]	[2]	[2]	24.7	13.0	37.7

[1] Production planned to meet projected demand.
[2] Not yet contracted.

The table shows that the current capacity of the diffusion plants is well in excess of projected enrichment demand through at least 1990. If GCEP is completed as planned, DOE would have considerable excess capacity through 1995. The excess capacity could be available to meet the increased demand for U.S. enrichment services that might result from the proposed incentives.

According to the Operating Plan, DOE has contracted to purchase 2120 MW-years of power in 1985 and 1330 MW-years in 1990 above what it will need to run the enrichment plants. Based on the average FY983 demand charge of $80,000 per MW-year,[2] DOE could be liable for $170 million in demand charges in 1985 and $106 million in demand charges in 1990. Most of these demand charges could be eliminated if DOE were to operate the diffusion plants near the level of contracted power in order to meet increased demand for enrichment that might result from the proposed incentives program.

Table 2 gives the additional nuclear power generating capacity that could be supplied with enrichment services from the excess SWU capacities given in table 1. The table assumes an annual requirement of 120 thousand SWU's for a 1 GW (gigawatt) nuclear power plant.[3]

TABLE 2.—ADDITIONAL NUCLEAR GENERATING CAPACITY SUPPORTABLE WITH EXCESS URANIUM ENRICHMENT CAPACITY

[In gigawatts]

Year	Supportable with contracted power	Supportable at maximum production
1985	56	67
1990	32	46
1995	([1])	95

[1] Not yet contracted.

Besides the additional nuclear power capacity that could be supported by DOE operating the enrichment plants nearer to their full capacity, more nuclear generating capacity could be supported by raising the "tails assay" of the enrichment plants. The tails assay is the amount of uranium-235 left in the waste stream, or tails, of the diffusion plant. If the tails assay is increased, then more uranium but less enrichment would be needed to produce the same amount of fuel for a nuclear power plant.

Currently the enrichment plants are operated with a tails assay of 0.2 percent. If the tails assay were raised to 0.3 percent, the enrichment plants could support about 25 percent more nuclear generating capacity at a given level of operation. For example, at a tails assay of 0.2 percent the 26.1 million SWU that might be produced with contracted power in 1990 could support about 218 GW of nuclear plant capacity. However, at a tails assay of 0.3 percent the same SWU production could support about 272 GW of nuclear plant capacity.[4] Table 3 gives the additional nuclear power generating capacity above current demand projections that might be supported by production from the DOE plants at a tails assay of 0.3 percent.

TABLE 3.—ADDITIONAL NUCLEAR GENERATING CAPACITY SUPPORTABLE WITH EXCESS URANIUM ENRICHMENT CAPACITY AND 0.3 PERCENT TAILS ASSAY

[In gigawatts]

Year	Supportable with contracted power	Supportable at maximum production
1985	104	118
1990	86	104
1995	([1])	174

[1] Not yet contracted.

INCREASED ENRICHMENT DEMAND THAT MIGHT RESULT FROM THE PROPOSED INCENTIVES PROGRAM

This section estimates the potential increase in demad for DOE uranium enrichment services resulting from the proposed incentives program under various scenarios.

However, before the increase in uranium enrichment demand can be estimated it is necessary to examine the factors that may determine whether countries with operating or planned nuclear powerplants can qualify for the proposed incentives program, and also their commitment to other sources of enriched uranium.

From discussions with the staff of the Energy Conservation and Power Subcommittee regarding the proposed bill, we understand that countries that have not signed the Nuclear Non-Proliferation Treaty (NPT) or do not agree to full scope safeguards would not be eligible for the reduced enrichment price, nor would countries that have any operable enrichment or reprocessing facilities or facilities which fabricate or use plutonium (Pu) based fuels, including breeder reactors.

COUNTRY-BY-COUNTRY ANALYSIS OF FACTORS RELEVANT TO PARTICIPATION IN THE PROPOSED INCENTIVES PROGRAM

Following is a country-by-country listing of the relevant factors that affect whether a nation may qualify and whether it would be interested in purchasing discounted uranium enrichment from DOE. The listing includes 24 Western countries projected in the January 1983 NUKEM Marketing Report to have operating nuclear powerplants by 1995.[5] The numbers next to the country names 1990, and 1995 adjusted by us to account for plants that do not use enriched uranium.[6] [7]

Argentina (0, 0, 1.4): Has not signed the NPT. Is not known to have any facilities that would currently disqualify it from the program, but a pilot reprocessing plant is under construction. Nuclear powerplants now in operation and under construction do not use enriched uranium. The design of the 1.4 GW of new capacity projected for 1995 has not been finalized.

[1] Department of Energy. Office of Uranium Enrichment and Assessment. Uranium Enrichment Operating Plan. January 1983. 18 p. plus figures and attachments.

[2] U.S. Department of Energy. "Congressional Budget Request Fiscal Year 1984," v. 4. p. 127.

[3] Annual enrichment requirements for an operating 1 GW nuclear plant are between 100,000 and 110,000 SWU. The larger figure has been used to account for the SWU requirements of the initial core.

[4] For additional discussion of the relationship between tails assay and enrichment capacity see: U.S. Congress. Senate. Commitee on Energy and Natural Resources. Uranium Enrichment. Committee Print. Prepared by the Congressional Research Service. 97th Cong., 2d sess. Washington, U.S. Government Printing Office, May 1982. 54 p. Publication No. 97-68.

[5] "Net Nuclear Power Plant Capacity in the Western World." NUKEM Marketing Report. Jan. 1983. p. 18.

[6] Adjustments are based on information contained in: Power Reactors 1982: A Directory of the World's Nuclear Power Reactors. Nuclear Engineering International. August 1982 Supplement.

[7] Much of the information for this section for European countries comes from: Greenhalgh, G. and E. Jeffs. Nuclear Industry Almanac. Volume 1: 1982, Werstern Europe. Buckinghamshire, England, Nuclear Energy Intrelligence, 1981. 303 p. Additional information for European and non-European countries comes from various news reports and other published sources.

Belgium (5.4, 5.4, 6.4): Has a reprocessing plant that is not currently operable. Has a fuel fabrication plant that has produced plutonium based fuels for breeder reactor projects in France and Germany. Is not currently using plutonium fuels in domestic reactors. Holds 11 percent of the capital of the Eurodif diffusion plant in France, and is required to take 1 million SWUs per year of Eurodif's production, which is enough to supply about 8 GW of nuclear capacity.

Brazil (0.6, 3.1, 4.3): Has not signed the NPT. Reportedly is building a uranium enrichment plant with assistance from West Germany. Has announced intentions to obtain breeder reactors and reprocessing facilities, but plans for specific facilities are not known.

Canada (0.3, 0.3, 0.3): Could currently qualify for the incentives program. Demand for enrichment is low, because all Canadian power reactors use natural (unenriched) uranium. No facilities that would disqualify Canada from the incentives program are known to be planned.

Egypt (0.0, 0.0, 1.8): Could currently qualify for the incentives program and no facilities that would disqualify it are known to be planned.

Finland (2.2, 2.2, 3.2): Could currently qualify for the incentives program and no facilities that would disqualify it are known to be planned. Currently receives all needed nuclear fuel and enrichment services from the Soviet Union under 30-year contracts.

France (32.1, 51.1, 60.8): Weapons state. Has operating breeder reactors and reprocessing plants, and appears firmly committed to breeder development. Owns about a 60 percent interest in the Eurodif enrichment plant, which is located in France.

Germany, Federal Republic of (16.1, 23.8, 28.8): Has an experimental breeder reactor in operation and a demonstration breeder plant under construction. Has a pilot reprocessing plant in operation and commercial scale plants planned. Is currently fabricating Pu-based fuels for breeder plants and for recycle in LWRs on an experimental basis. Is a member of the Urenco enrichment consortium, has experimental enrichment plants in operation, and is planning a commercial plant.

India (0.4, 0.4, 1.5): Has not signed the NPT, and has exploded a nuclear device. Has small reprocessing plants in operation. An experimental breeder reactor and a pilot Pu fuel fabrication plant are under construction.

Italy (1.1, 4.0, 6.6): Has two small experimental reprocessing facilities and two enrichment test facilities in operation. Has a fuel fabrication facility that has made Pu-based fuels for recycle in LWRs, but it is not known if these fuels have been placed in reactors. An experimental breeder reactor is under construction. Italy holds a 17 percent interest in Eurodif, which commits it to considerably more enrichment than it needs through 1995.

Japan (18.8, 36.6, 50.6): Has an experimental breeder reactor in operation and a demonstration plant under construction. Has pilot enrichment plants in operation and a commercial plant planned. Has a demonstration reprocessing facility in operation and a large plant planned. Has fabricated and is currently testing Pu-based fuels for both LWRs and breeders.

Korea (South) (2.1, 4.9, 7.7): Could currently qualify for the incentives program and no facilities that would disqualify it are known to be planned.

Mexico (0.7, 1.3, 1.3): Could currently qualify for the incentives program and no facilities that would disqualify it are known to be planned.

Netherlands (0.5, 0.5, 0.5): Netherlands is part of the Urenco consortium and has a commercial enrichment plant in operation as well as experimental enrichment facilities.

Pakistan (0.0, 0.0, 0.0): Has not signed the NPT. Is reported to be trying to build small enrichment and reprocessing plants. The only Pakistani power reactor in operation uses natural uranium.

Philippines (0.6, 0.6, 1.2): Could currently qualify for the incentives program and no facilities that would disqualify it are known to be planned.

Portugal (0.0, 0.0, 0.9): Could currently qualify for the incentives program and no facilities that would disqualify it are known to be planned.

South Africa (1.8, 1.8, 1.8): Has not signed the NPT. Has a small enrichment plant in operation and is planning to build a commercial scale enrichment plant.

Spain (5.9, 9.7, 13.7): Has not signed the NPT, but has agreed to full scope safeguards. Could currently qualify for the incentives program and no facilities that would disqualify it are known to be planned. Holds an 11 percent share of Eurodif, which commits it to 1.1 million SWU per year, which is enough to supply about 9.6 GW of nuclear power.

Sweden (8.3, 9.3, 9.3): Could currently qualify for the incentives program and no facilities that would disqualify it are known to be planned. Is already contracted with DOE for most of its enrichment requirements.

Switzerland (2.9, 2.9, 2.9): Could currently qualify for the incentives program. Has contracts with the French reprocessing facility to reprocess Swiss spent fuel and plans to recycle Pu-based fuel in LWRs. However, is not known to have yet used Pu-based fuel and no facilities are planned that would disqualify Switzerland from the incentives program.

Taiwan (4.0, 4.9, 6.7): Could currently qualify for the incentives program and no facilities that would disqualify it are known to be planned. Has contracts with DOE to supply the lifetime enrichment needs of the first 4.9 GW of nuclear capacity.

United Kingdom (4.4, 4.8, 8.0): Nuclear weapons state. Has experimental and demonstration breeder reactors in operation and a commercial scale plant is planned. A small reprocessing plant is in operation and a large commercial plant is planned. In addition to old enrichment plants that were used to produce weapons material, the United Kingdom is a partner in Urenco and has a commercial enrichment facility in operation.

Yugoslavia (0.6, 0.6, 1.6): Could currently qualify for the incentives program and no facilities that would disqualify it are known to be planned.

ESTIMATES OF INCREASED ENRICHMENT DEMAND

Tables 4–6 show country-by-country estimates of the potential increase in demand for DOE uranium enrichment services in 1985, 1990, and 1995 that might result from the proposed incentives program under various scenarios. It is assumed that countries would not qualify for the reduced enrichment prices: (1) if they have not signed the Nuclear Non-Proliferation Treaty (NPT) or otherwise agreed to full scope safeguards; (2) if they have any operable facilities for the enrichment or reprocessing of nuclear fuel; or (3) if they have any operating reactors (including breeder reactors) which use Pu-based fuels.

Four scenarios, represented by columns A–D in tables 4–6 are considered. The characteristics of the four scenarios are as follows:

Scenario A: Includes countries that do not hold a share in Eurodif or Urenco and could qualify for the incentives program without changing current policies.

Scenario B: Includes all countries that could qualify for the incentives program without changing current policies.

Scenario C: Includes all countries that do not hold a share in Eurodif or Urenco.

Scenario D: Includes all countries except weapons states.

In all four scenarios, the additional demand is taken to be the difference between the adjusted NUKEM nuclear power plant capacity projections given above and the August 1982 estimate by DOE's Office of Uranium Enrichment and Assessment of the "most likely" nuclear power capacity to be served by DOE, which is given in table 8 below.

The estimates given in tables 4–6 should be considered upper limits of the increase in demand resulting from the incentives program, because most potential enrichment customers have existing purchase commitments, which may be difficult or costly for them to break. In addition, there is currently a large secondary market for the sale of enrichment by utilities that have contracted to purchase enrichment that they do not now need. In some cases the enrichment price in the secondary market might be at or below the proposed incentive price, and this market could compete with sales from the proposed incentive program.

TABLE 4.—POTENTIAL INCREASE IN DEMAND FOR DOE ENRICHMENT IN 1985

[In gigawatts of nuclear plant capacity]

Country	Scenario—			
	A	B	C	D
Argentina				
Belgium		5.4		5.4
Brazil				
Canada	0.3	.3	0.3	.3
Egypt				
Finland	2.2	2.2	2.2	2.2
France				
Germany				11.1
India			.4	.4
Italy				1.1
Japan			1.6	1.6
Korea				
Mexico	.7	.7	.7	.7
Netherlands				.1
Pakistan				
Philippines	.6	.6	.6	.6
Portugal				
South Africa			1.8	1.8
Spain				
Sweden	.9	.9	.9	.9
Switzerland	.4	.4	.4	.4
Taiwan				
United Kingdom				
Yugoslavia				
Total	5.1	10.5	8.9	26.6

TABLE 5.—POTENTIAL INCREASE IN DEMAND FOR DOE ENRICHMENT IN 1990

[In gigawatts of nuclear plant capacity]

Country	Scenario—			
	A	B	C	D
Argentina				
Belgium		5.4		5.4
Brazil			2.5	2.5
Canada	0.3	.3	.3	.3
Egypt				
Finland	2.2	2.2	2.2	2.2

TABLE 5.—POTENTIAL INCREASE IN DEMAND FOR DOE ENRICHMENT IN 1990—Continued

[In gigawatts of nuclear plant capacity]

Country	Scenario—			
	A	B	C	D
France				
Germany				19.2
India			.4	.4
Italy				4.0
Japan			13.2	13.2
Korea	.1	.1	.1	.1
Mexico				
Netherlands				.1
Pakistan				
Philippines				
Portugal				.9
South Africa			1.8	1.8
Spain		2.8		2.8
Sweden	.9	.9	.9	.9
Switzerland	.4	.4	.4	.4
Taiwan				
United Kingdom				
Yugoslavia				
Total	3.9	12.1	21.8	54.2

TABLE 6.—POTENTIAL INCREASE IN DEMAND FOR DOE ENRICHMENT IN 1995

[In gigawatts of nuclear plant capacity]

Country	Scenario—			
	A	B	C	D
Argentina			1.4	1.4
Belgium		6.4		6.4
Brazil			3.7	3.7
Canada	0.3	.3	.3	.3
Egypt	1.8	1.8	1.8	1.8
Finland	3.2	3.2	3.2	3.2
France				
Germany				24.9
India			1.5	1.5
Italy				6.6
Japan			10.7	10.7
Korea	.9	.9	.9	.9
Mexico				
Netherlands				.1
Pakistan				
Philippines	.6	.6	.6	.6
Portugal	.9	.9	.9	.9
South Africa			1.8	1.8
Spain		6.8		6.8
Sweden	.9	.9	.9	.9
Switzerland	.4	.4	.4	.4
Taiwan				
United Kingdom				
Yugoslavia				
Total	9.0	22.2	28.1	72.9

COMPARISON OF ENRICHMENT SUPPLY AND DEMAND

Table 7 summarizes the above estimates of nuclear generating capacity that could be supported by DOE from its excess uranium enrichment capacity. It also summarizes the estimates of the potential increase in demand for DOE enrichment that might result from the proposed incentive program.

TABLE 7.—EXCESS ENRICHMENT CAPACITY AND POTENTIAL ADDITIONAL DEMAND

[In gigawatts of nuclear plant capacity]

	1985	1990	1995
Available additional capacity:			
Contracted power/0.2 percent tails	56	32	NA
Maximum power/0.2 percent tails	67	46	95
Contracted power/0.3 percent tails	104	86	NA
Maximum power/0.3 percent tails	118	104	174
Potential additional demand:			
Scenario A	5	4	9
Scenario B	11	12	22
Scenario C	9	22	28
Scenario D	27	54	73

It can be seen that ample excess enrichment capacity is available to meet the largest estimated increase in demand resulting from the proposed incentives program, without increasing the operating tails assay of the enrichment plants, except for Scenario D in 1990. Scenario D assumes that all countries except the weapons states (France and the United Kingdom) would qualify and apply for the discounted service. It is quite unlikely that this would be the case. However, if it were, DOE could still satisfy the demand by increasing the operating tails of the enrichment plants or by stockpiling enriched uranium during the 1980s when there would be excess capacity.

COST OF THE PROPOSED INCENTIVES PROGRAM

The proposed legislation would require DOE to sell enrichment to qualifying countries at the price that is applied to sales to U.S. Government users of enrichment services.[8] According to the Department of Energy, the current price for enrichment sales to U.S. Government users is about $90/SWU compared to DOE's average commercial price of about $140/SWU. DOE determines the Government users price by subtracting depreciation and interest on the capital cost of the enrichment plants from the commercial price.

One way to estimate the "cost" of the proposed incentives program is to multiply the total projected amount of enrichment (SWUs) that may be sold under the program by the $50 per SWU discount that is to be offered. This would produce a valid estimate of the total discount offered by the program. However, it might be considered an overestimate of costs to the Government, because the marginal cost of producing a SWU is less than $140. In fact, the $90 price for Government users is meant to reflect the marginal cost to produce each SWU. Hence, an argument could be made that at a price of $90/SWU there is no cost associated with the discounted sales. On the other hand, if enrichment is sold at $90/SWU to customers that otherwise would have paid $140/SWU, the Government could be considered as having lost potential income from the sale.

While there is ambiguity regarding the cost of enrichment, it is relatively straightforward to estimate the total discount that might be given to foreign enrichment customers under the program assuming that the incentive price is $50/SWU below the commercial price.

To determine the total discount, it is necessary to determine how many of DOE's current customers might qualify for the incentives and add that to the previously estimated extra demand that might result in response to the proposed incentives. Table 8 gives DOE's August 1982 estimate of the foreign nuclear capacity that will most likely be supplied with enrichment services from DOE.

TABLE 8.—AUGUST 1982 "MOST LIKELY" FOREIGN NUCLEAR POWER CAPACITY SUPPLIED WITH ENRICHMENT SERVICES BY DOE

[In gigawatts]

Country	1985	1990	1995
Brazil	0.6	0.6	0.6
France	1.9		
Germany	5.0	4.6	3.9
Japan	17.2	23.4	39.9
Korea	2.1	4.8	6.8
Mexico		1.3	1.9
Netherlands	.4	.4	.4
Philippines		.6	.6

[8] Gerald Brubaker, staff member of the Energy Conservation and Power Subcommittee. House Energy and Commerce Committee.

TABLE 8.—AUGUST 1982 "MOST LIKELY" FOREIGN NUCLEAR POWER CAPACITY SUPPLIED WITH ENRICHMENT SERVICES BY DOE—Continued

[In gigawatts]

Country	1985	1990	1995
Spain	6.0	6.9	6.9
Sweden	7.4	8.4	8.4
Switzerland	2.5	2.5	2.5
Taiwan	4.0	4.9	7.7
Yugoslavia	.6	.6	1.6
Total	47.7	59.2	81.2

Of the countries listed in Table 8, it appears that Korea, Mexico, Philippines, Spain, Sweden, Switzerland, Taiwan, and Yugoslavia could qualify for the incentives program without changing current policies. According to table 8, DOE projects that it will supply enrichment services for a total of 22.6, 30.0, and 36.4 GW of nuclear capacity from these countries in 1985, 1990, and 1995 respectively. If the potential increase in demand from Scenario B above is added to these figures, then a maximum total of 34, 42, and 58 GW of nuclear power capacity might qualify for the reduced enrichment price in 1985, 1990, and 1995 respectively if no countries change their current policies.

The total cost of the discount in enrichment price may be estimated by multiplying the capacity figures by 120 thousand SWU per gigawatt and the resulting figure by the proposed $50/SWU discount. The cost figures are presented in Table 9.

If it is assumed that all countries but the weapons states meet the U.S. conditions, then the nuclear plant capacity that could qualify for the reduced enrichment price would be found by adding the totals from table 8 (except for the 1.9 GW from France in 1985) to the increase in demand calculated for Scenario D. In that case 73, 113, and 154 GW might qualify for the reduced enrichment price in 1985, 1990, and 1995. The total cost of the discounted enrichment sales for these capacity figures are also presented in table 9.

TABLE 9.—PROJECTED DISCOUNT THAT MAY BE OFFERED ON ENRICHMENT SALES

[Dollar amounts in millions]

Year	No countries change policies			All but weapons states qualify		
	Current customers	Additional demand	Total	Current customers	Additional demand	Total
1985						
Capacity (GW)	23	11	34	46	27	73
Cost	$138	$66	$204	$276	$162	$438
1990						
Capacity (GW)	30	12	42	59	54	113
Cost	$180	$72	$252	$354	$324	$678
1995						
Capacity (GW)	36	22	58	81	73	154
Cost	$216	$132	$348	$486	$438	$924

There is considerable uncertainty regarding the extent to which countries might participate in the proposed program. However, the cost figures presented in table 9 span the range of potential discounts on enrichment sales that might be offered. For example, if no countries change their current nonproliferation policies in response to the program and no new enrichment customers are attracted to DOE, according to table 9 the cost of the discount in 1985 would be

$138 million (1983 dollars). On the other hand, if all Western countries with nuclear power programs, except the weapons states (France and the United Kingdom), obtain their enrichment from DOE under the proposed program, the cost of the discount in 1985 would be $438 milion.

SECTION-BY-SECTION ANALYSIS—NUCLEAR EXPLOSIVES CONTROL ACT OF 1983

SECTION 1

Section 1 contains the title of the Act, the "Nuclear Explosives Control Act of 1983."

SECTION 2

Section 2 sets forth Congressional findings. Findings (1) and (2) are that the spread of plutonium and highly enriched uranium poses grave risks and that effective safeguards do not now exist for these materials and their associated technologies. Finding (3) is that there is no economic justification for utilizing separated plutonium for electric power generation. Finding (4) is that the commerical use of highly enriched uranium and separated plutonium; and the technologies to produce them, should be avoided unless and until effective safeguards exist. Finding (5) notes that substitution or exchange of foreign nuclear fuel for fuel supplied and controlled by the United States has weakened U.S. nonproliferation policy and should not be permitted without prior U.S. approval. Finding (6) expresses the United States' commitment to encouraging development of alternative energy resources and technologies. Finding (7) notes the United States' readiness to provide nuclear fuel assurances and technical assistance in order to encourage nations to forego the development of national reprocessing and enrichment facilties and the use of separated plutonium. Finding (8) states the need to improve physical security arrangements. Finding (9) reflects the Bill's provisions designed to ensure consistent and coordinated action among federal agencies. Finding (10) expresses the need to control the activities of foreign affiliates of U.S. firms.

SECTION 3

Section 3 states the purposes of the Act. These are to: (1) enhance national security by preventing the spread of nuclear weapons; (2) integrate and harmonize energy and nonproliferation policy; (3) better U.S. utilize uranium enrichment facilities; (4) improve the efficiency of reactor fuel use; and (5) assist in the development of alternative energy resources and technologies.

SECTION 4

The Administration has fundamentally broken with the nonproliferation policies of the Ford and Carter Administrations by eliminating the ban on domestic reprocessing of plutonium from commercial spent fuel, and promoting reprocessing, plutonium use, and breeder development at home and abroad. At the same time, and contrary to the Ford and Carter policies, it has explored the possibility of exporting sensitive nuclear technologies, such as reprocessing and enrichment plants. Indeed, within the last two years, the Administration decided in principle to permit the transfer of reprocessing technology to Japan and Euratom countries and enrichment technology to Australia, while it has negotiated with Mexico concerning the possibility of U.S. exports of both enrichment and reprocessing technology as an inducement for Mexico to buy power reactors from the United States.

The Administration's policy toward exports of sensitive nuclear technology undermines U.S. nonproliferation policy for a number of reasons.

First, current U.S. law prohibits, with few exceptions, nuclear exports to any country that transfers reprocessing technology to a non-nuclear weapon state. If the United States exports such technology, it will be engaged in precisely the trade that we now seek to stop our nuclear trading partners from engaging in.

Second, the policy is dangerous, given the inadequacy of international safeguards over plutonium and highly-enriched uranium (HEU)—products of these sensitive technologies that are directly weapons-usable.

Third, there is no economic justification for using plutonium rather than uranium to fuel nuclear power reactors.

Fourth, the export of sensitive nuclear technologies presents precisely the wrong example to other countries.

Our past restraint in not exporting reprocessing and enrichment technologies has brought similar restraint on the part of the nuclear supplier countries, such as the commitments of West Germany and France not to engage in further exports of these technologies. Abandonment of restraint on our part would inevitably lead to abandonment of restraint on their part, and would invite sensitive exports by such emerging or potential suppliers as Japan, India, Argentina and South Africa. It is thus necessary to state as strongly as possible that the United States will not support nor engage in the export of technologies that have the potential for direct application for nuclear explosive purposes.

Section 4 provides such an unambiguous example by banning the export from the U.S. of enrichment, reprocessing and heavy water plants, as well as sensitive nuclear technology and other assistance important to the design, construction or operation of such plants.

SECTION 5

The Administration has adopted a policy condoning the use of plutonium, a nuclear-explosive material, as a civilian fuel. Thus, for example, the Department of Energy (DOE) has authorized Japan to begin full-capacity separation of plutonium from U.S.-supplied reactor fuel in the pilot-scale Tokai-Mura reprocessing plant. The United States and Japan are now negotiating an agreement that would provide for the long-term, advance approval (so-called programmatic approval) of the reprocessing within Japan, of U.S. supplied nuclear fuel. Further, the Administration has announced its intention to grant such programmatic approvals to other countries for the reprocessing of U.S.-controlled nuclear fuel and the use of extracted plutonium. While it may be appropriate to permit limited research, development and demonstration projects involving plutonium-use to go forward where prior commitments already have been made to these projects, and where the proliferation risk can be narrowly limited, it is essential not to approve premature and unnecessary commitments to a full-scale plutonium economy. Indeed, it is vitally important to signal that there is no current justification for, and grave risk in, commercial applications of plutonium-based fuels.

Section 5 provides that the Secretary of Energy may only approve subsequent arrangements for reprocessing of U.S.-controlled nuclear fuel and for retransfer and use of separated plutonium if the following tests are met:

1. The end use must be for research, development or demonstration (RD&D) purposes;

2. The RD&D must be in a facility or facilities in a nuclear weapons state or in a nation with full-scope safeguards and in operation or under construction as of the date of enactment of the Act;

3. There are no already existing stocks of separated plutonium reasonably available for their requested end use;

4. Any approved reprocessing would take place in a existing facility in a weapons state or in a nation with full-scope safeguards; and

5. Adequate physical security must be maintained. These conditions can be lifted only by a joint resolution of Congress declaring that effective international safeguards and effective sanctions exist.

SECTION 6

Highly-enriched uranium is used chiefly for fueling nuclear research reactors. It is also capable of providing the explosive for a nuclear weapon. The United States, China, the Soviet Union, Great Britain and France all have detonated nuclear bombs made with HEU. In the 1950s, the United States entered into several agreements for cooperation allowing for the export of research reactors fueled by HEU. In subsequent years, DOE has become the world's largest exporter of this nuclear explosive material.

The widespread use of HEU, which involves a large number of domestic and international fuel shipments, increases the risk of proliferation through theft or diversion of this material. Consequently, the United States has sought to reduce HEU inventories abroad. In addition, the U.S. has established a Reduced Enrichment for Research and Test Reactors Program (RERTR) which, if successful, could lead to a significant reduction and possible elimination of HEU inventories abroad. However, progress has been slow and funding for the RERTR Program has been below its needs. Indeed, the Administration has proposed significant reductions for this program in FY 1984. If proliferation risks are to be reduced, it is critical to accelerate rather than impede the substitution of alternative lower-enriched uranium, unsuitable for making weapons, as research reactor fuel.

Section 6 establishes a series of measures designed to phase out U.S. exports of highly-enriched uranium. Such exports will not be permitted unless (1) alternative lower-enriched fuel is unavailable, (2) the proposed recipient has provided assurances that, when such alternative fuel is available, it will be used, and (3) the Executive Branch is making reasonable progress in developing alternative research reactor fuels. In addition, the Nuclear Regulatory Commission (NRC) must establish the kilogram limit on the amount of HEU that will be allowed at any one time in recipient countries. Finally, the President is required to submit a plan leading to the conversion of research reactors to alternate lower-enriched uranium fuel.

SECTION 7

Under current law, nuclear fuel is considered to be a fungible commodity—a given amount of fuel supplied by the United States can be exchanged for or substituted by an equal amount of fuel from another source, and the Government does not consider that prior approval is required for such a transaction. The net effect is to allow U.S. trading partners to substitute non-U.S. nuclear fuel in a way that avoids U.S.-im-

posed safeguards and physical security requirements.

An example of the substitution problem is found in recent efforts by the Japanese to return separated plutonium from Western Europe after reprocessing there of U.S.-origin nuclear fuel. When the United States and Japan could not agree upon adequate physical security arrangements for the transfer, Japan entered into serious discussions with the British about substituting British plutonium for plutonium of U.S. origin. Had the transaction gone through, the U.S. would have lost any say in the application of safeguards and physical security requirements on the fuel. Moreover, under existing law the transaction would not have required the approval of U.S. authorities. Plainly, the potential for abuse is great.

Section 7 requires prior approval by the Secretary of Energy, under Section 131 of the Atomic Energy Act, for arrangements involving the substitution of or exchange for U.S.-supplied materials by materials which are not subject to the requirements of the Act.

SECTIONS 8, 9 AND 10

A policy that relies solely on disincentives and prohibitions is too negatively cast to be effective in achieving United States nonproliferation goals. Market forces and economic incentives can also be instrumental in achieving such objectives. There need to be positive assurances and technical assistance programs which make it worthwhile for other countries to forgo the development of sensitive nuclear technologies and the use of plutonium-based fuels.

The time is right to make fuel assurance programs work. Currently, uranium is in abundant supply, prices are low, and U.S. enrichment plants have excess capacity. We can, therefore, make attractive offers to foreign trading partners who are willing to subscribe to our nonproliferation goals. A fuel assurance program can not only the United States a more desirable and reliable supplier of low-enriched uranium, but it can help make the United States competitive with other suppliers of low-enriched uranium fuel.

Technical assistance programs are also timely. Management of nuclear waste, development of alternative energy technologies, and increasing light-water reactor (LWR) fuel efficiency are all areas of great and growing concern abroad. The United States has technology and programs in all these areas which it can make available to other countries, thereby directly reducing their incentives to move to more dangerous technologies. Moreover, because these programs are in place, their benefits can be extended to others at relatively little cost.

Section 8 establishes a program of fuel assurances and energy assistance. A nation or groups of nations agreeing to forego the development of national enrichment and reprocessing facililties, and to not seek access to or utilize separated plutonium, would receive in return the following:

1. Enrichment services, at a cost no greater than that charged U.S. government customers, to meet all their power requirements;

2. A lifetime fuel export license, covering the low enriched uranium fuel requirements of all power reactors in an agreeing country, subject to the export criteria of existing law and the additional requirements that (a) actual exports do not exceed the amount of low-enriched fuel needed in any three-year period to fuel reactors and (b) there be an annual review by the NRC, with a report to Congress promptly thereafter, to ensure that the conditions continue to be met;

3. Technical assistance aimed at increasing light water reactor fuel efficiency and thereby reducing plutonium inventories in spent reactor fuel;

4. Technical assistance in resolving waste management problems, in accordance with the cooperative program for spent-fuel management developed under Section 223 of the Nuclear Waste Policy Act; and

In addition, a further discount on enrichment is provided for countries which agree to use improved nuclear fuel now being developed in a joint government-industry program. The mutually beneficial characteristics of the improved fuel include a 40 percent reduction in spent fuel generation, 30 percent less residual plutonium in spent fuel which is generated, and a 15 percent savings of uranium resources. The improved nuclear fuel could be commercially available by 1990 or before.

The Secretary of Energy is directed to develop a plan for an to establish and maintain fuel assurance and incentive programs, and a new provision is added to Title I of the Nuclear Non-Proliferation Act which authorizes appropriations for such programs. Fuel supply commitments may be transferred to an international nuclear fuel authority (INFA) if and when such an authority is established. The section also provides that the discounted enrichment services will not increase the U.S. commercial enrichment price.

Section 9 provide an authorization for appropriations in specific dollar amounts to carry out the provisions of Section 223 of the Nuclear Waste Policy Act.

Section 10 amends Title V of the Nuclear Non-Proliferation Act to provide for an authorization for appropriations to assist development of non-nuclear energy resources.

SECTION 11

There is still considerable disagreement today over what constitutes adequate physical security over nuclear shipments and facilities. Moreover, efforts to develop adequate security measures have lagged because of the absence of needed funding. As long as there is any plutonium or highly-enriched uranium moving in international trade, it is essential that physical arrangements be as stringent as possible.

Section 11 amends Title II of the Nuclear Non-Proliferation Act by providing that the NRC and the Executive branch shall expand efforts to improve physical security. It authorizes appropriations in specific dollar amounts for this purpose.

SECTION 12

Section 12 amends the reporting provisions of the Nuclear Non-Proliferation Act (Title VI) to require annual reporting of progress with respect to the negotiation of fuel assurance and energy assistance agreements.

SECTIONS 13 AND 14

DOE, under current law, has substantial authority to grant authorizations for firms and individuals to engage directly or indirectly in the production of special nuclear material, such as plutonium and enriched uranium, outside the United States. Such activities can contribute as much to proliferation as direct export of nuclear fuel and equipment from the United States. Yet while the direct export of nuclear fuel and equipment licensed by the NRC is governed by a tough set of restrictions, DOE authorizations are not. For example, DOE can still authorize nuclear transfers to a country that refuses to accept full-scope safeguards and that has not entered into an agreement for nuclear cooperation with the United States.

Sections 13 and 14 put the Secretary of Energy essentially under identical obligations as the NRC in approving nuclear transfers. Under these provisions, authorizations by the Secretary of Energy for activities outside of the United States could not be given unless there was an agreement for cooperation in place, and the country in question has accepted full-scope safeguards and otherwise adheres to the criteria of sections 127 and 128 of the Atomic Energy Act. Further, notices of authorizations must be published in the Federal Register and will not become effective until at least thirty (30) days after publication. Provision is made for Presidential authorization, subject to Congressional review and override procedures, in those cases in which export criteria cannot be met, in the same fashion as the President may now authorize exports which could not be licensed by the NRC.

SECTION 15

Nuclear nonproliferation is a national security problem. Nevertheless, the Secretary of Defense is now on the periphery of most U.S. international nuclear decisions. The Secretary has only a consultative role in decisions to grant export licenses and to permit subsequent arrangements. He has no formal say whatsoever concerning agreements relative to military partnerships. This lack of formal Defense Department involvement in U.S. commercial nuclear trade decisions is particularly troublesome today, when a number of countries, on the brink of confrontation, might well seek to acquire nuclear explosive materials to make nuclear weapons.

Section 15 provides a specific role for the Secretary of Defense in nuclear non-proliferation matters. The Secretary of Defense must find that proposed agreements for cooperation are not inimical to the common defense and security of the U.S.; he must so advise the NRC, through the Secretary of State, in connection with export licenses; and he must sign off on subsequent arrangements under section 131 of the Atomic Energy Act.

SECTION 16

Department of Commerce (DOC) export licenses for nuclear-related commodities are not now subject to restrictions comparable to those governing NRC export licenses. As a result, items on the Commerce Nuclear Referral List, which include commodities which have direct application for nuclear weapons production, may be sent to a country that does not accept full-scope safeguards or provide other assurances. Most recently, the export of two powerful computers applicable to nuclear weapons design was approved to South Africa, despite South Africa's refusal to accept full-scope safeguards. DOC also approved the export by an American company of a powerful computer, via Belgium and Switzerland, for use in an Argentine heavy water plant, even though Argentina likewise has refused to accept safeguards on all its nuclear activities.

Section 16 imposes upon DOC the same obligations that are imposed upon the NRC and DOE. In other words, before a validated license can be issued under the Export Administration Act for goods or technology which are to be used in a production or utilization facility, or for goods or technology which are likely to be applied to such use,

there must be an agreement for cooperation in place and the country in question must have full-scope safeguards and otherwise adhere to the criteria set forth in sections 127 and 128 of the Atomic Energy Act.

The concurrence of the Department of Defense, DOE and the NRC is required in connection with findings of likelihood that particular goods or materials will be used in nuclear facilities. Presidential authorization is again provided for, subject to Congressional review and override procedures, if the export criteria are not met.

SECTION 17

One of the anomalies in current law is that component exports by the NRC are not subject to the same stringent licensing requirements as "facilities". The NRC has broad discretion to decide what does and what does not constitute a "facility", and, under current regulations, numerous, critical components are excluded from the full panoply of licensing procedures and requirements. Consequently, exports may be allowed to countries which do not have full scope safeguards or an agreement for nuclear cooperation with the United States.

Section 17 makes component exports by the NRC subject to the same licensing requirements as production and utilization facilities.

SECTION 18

Another anomaly in existing law related to sales and transfers which may be made by affiliates of U.S. corporations. The Westinghouse Electric Co., for example, at one point appeared near to circumventing U.S. nuclear export controls by offering a $1.1 billion, 900 megawatt nuclear power reactor to Pakistan through affiliated companies in Spain. Although direct export of nuclear powerplant to Pakistan is prohibited by U.S. law, because Pakistan has neither accepted full-scope safeguards nor entered into an agreement for peaceful nuclear cooperation with the United States, such indirect transactions appear to fall through a major loophole in our nonproliferation legislation.

Section 18 asserts control over foreign affiliates of U.S. firms, so that transfers via foreign affiliates will be controlled as if they were transfers by U.S.-based firms.

SECTION 19

Prohibitions have little meaning if they are not enforced. Under the existing law, even if non-proliferation requirements are violated by nations receiving nuclear assistance from the U.S., there is no automatic cut-off of nuclear exports. Potential violators can thus afford to take greater risks in pursuing policies and programs contrary to U.S. nonproliferation objectives.

Section 19 provides for an automtic cutoff of nuclear exports to nations in violation of section 129 criteria, unless the President determines, and Congress agrees by concurrent resolution, that exports should continue.●

By Mr. GARN (for himself, Mr. HOLLINGS, Mr. INOUYE, Mr. GOLDWATER, Mr. MATTINGLY, Mr. LUGAR, Mr. HUDDLESTON, Mr. THURMOND, Mr. GORTON, Mr. BENTSEN, Mr. BUMPERS, Mr. DOMENICI, Mr. TRIBLE, Mr. ARMSTRONG, Mr. MOYNIHAN, Mr. WALLOP, and Mr. FORD):

S.J. Res. 104. Joint resolution to redesignate July 20 of each year as "Space Exploration Day"; to the Committee on the Judiciary.

SPACE EXPLORATION DAY

● Mr. GARN. Mr. President, 1983 is the 25th anniversary of Explorer I, the first U.S. venture into space, and the 25th anniversary of our civilian space agency, the National Aeronautics and Space Administration, NASA. It is fitting that this year the Congress act on the resolution I am introducing today which would designate July 20 of each year as "Space Exploration Day."

Twenty-five years ago, the United States embarked upon an adventure that opened up new horizons to the American people and to all of mankind. The American spirit which drove our ancestors further and further west until the American continent was settled is the same spirit which propelled us into the newest frontier of space. Just 11 short years after the first successful launch of an artificial satellite weighing 31 pounds, the United States captured the imagination of men and women throughout the world with the first lunar landing. It is this greatest exploratory venture in the history of mankind that is commemorated by designating July 20 as "Space Exploration Day."

This resolution, however, also reminds us that it is the American spirit of exploration, of desiring to cross new horizons and to learn more about ourselves and the world and universe around us, that made the space program successful. It also reminds us that our explorations, unlike many of the past, were peaceful ones. We did not claim the Moon as U.S. territory. Instead, we left a plaque proclaiming: "We came in peace for all mankind."

Mr. President, only one generation separates us from the first primitive spacecraft that we launched. Those 25 years have been dynamic and exciting years. In that period, we gathered more information about the universe around us than in all the centuries that preceded that period. Remotely controlled spacecraft have been sent on missions extending from near-Earth orbit to the far reaches of the solar system; man has set foot on truly foreign soil, the lunar crust 240,000 miles from the Earth's surface; the winds of Mars have been measured, the rings of Saturn counted, and the volcanoes on a Moon of Jupiter observed. And just 2 years ago, we inaugurated a new space transportation system which is reusable, capable of delivering satellites to orbit and retrieving or servicing them.

Just recently, the second orbitor in the Space Transportation System (STS) inaugurated the operational status of STS. In the years to come, this system will open even more horizons for scientific work, experimentation, and possibly manufacturing in space.

While the 25 years of the space age has been exciting and fruitful in terms of scientific knowledge, it must also be pointed out that the American people who paid for this adventure have materially benefited from it. The knowledge and the products developed for space have been applied to a wide range of human endeavor.

In the field of telecommunications, the space program has resulted in a decrease in real dollars in the costs of long-distance telephone calls with improved service. Calculators, which were prohibitably expensive just a decade ago, are now being replaced in the homes and schools by computers cheaper than the original calculators. We are just beginning to find uses in education, the management of small businesses, financial management of the household, and even entertainment for many of the outgrowths of the space program.

Recently in my home State of Utah, we saw the first artificial heart implanted in an individual. The knowledge and technology for this program is a spinoff of the space program. Industry is exploring many possibilities of improved efficiency through the use of robotics and other technologies resulting from this country's commitment to and investment in space.

Mr. President, each year we, in this body, debate the merits of our foreign aid to developing nations throughout the world. I served on the Appropriations Foreign Operations Subcommittee and suggest that the best foreign aid has been the sharing of knowledge and technology. The United States has helped nations develop communications, resource management, meteorological data management, and basic technologies which have led to improvements in health delivering systems, education, agriculture, mining, and other industries. Inefficient utilization of the precious resources of these developing nations has, in many cases, become efficient and profitable. The good will generated cannot be measured.

At this time in our industrial history, many are calling for a partnership among industry, Government, and labor to rebuild our industrial base. Perhaps we should look to the experience of the space program whose success was due, to large measure, on the partnership of Government, industry, universities, and labor. Few ventures in the history of mankind have been more successful.

The resolution I introduce today commemorates the achievements of the past and offers hope for the future. The adventure and the challenge are not over. They are just beginning. There is so much that still needs to be done; there are so many questions that still need to be answered. We are just beginning to explore the feasibility of manufacturing in space, to examine the ecological im-

pacts of natural and manmade events on Earth, and to investigate how events in the universe around us influence the world we live in. These peaceful explorations of space offer hope for a better and a more peaceful world.

Mr. President, in the American spirit of exploration of new frontiers, it is fitting that we honor the accomplishments of the past and the commitment to the future by declaring July 20 of each year as "Space Exploration Day." Let history record that "We came in peace for all mankind."●

By Mr. RUDMAN (for himself, Mr. NUNN, Mr. WEICKER, Mr. GORTON, Mr. BAUCUS, Mr. BINGAMAN, Mr. BRADLEY, Mr. CHAFEE, Mr. COHEN, Mr. D'AMATO, Mr. EXON, Mr. FORD, Mr. GLENN, Mr. HEINZ, Mr. HUMPHREY, Mr. KENNEDY, Mr. LAUTENBERG, Mr. MATTINGLY, Mr. MELCHER, Mr. METZENBAUM, Mr. PERCY, Mr. PROXMIRE, Mr. QUAYLE, Mr. STAFFORD, Mr. TSONGAS, Mr. WILSON, and Mr. BOSCHWITZ):

S.J. Res. 105. Joint resolution calling upon the Department of Justice and all other appropriate Federal agencies to enforce Federal antitrust laws including the prohibition against vertical price restraints; to the Committee on the Judiciary.

ENFORCEMENT OF FEDERAL ANTITRUST LAWS

Mr. RUDMAN. Mr. President, today my colleagues and I are offering a Joint Resolution in response to what we perceive to be a very grave problem concerning the Federal enforcement of our antitrust laws. The Attorney General and his Assistant Attorney General in charge of the Antitrust Division of the Department of Justice are responsible for enforcement of the Federal antitrust laws. As a former New Hampshire attorney general, I understand this to mean the enforcement of all of the Federal antitrust laws, not just the ones with which our Federal enforcement officials happen to agree. However, our Assistant Attorney General believes otherwise.

The PRESIDING OFFICER. The Senate will be in order. The Chair will respectfully advise Senators that the Senator from New Hampshire has the floor. Those who would like to conduct conversations, please move to the cloakrooms.

Mr. RUDMAN. Assistant Attorney General William Baxter does not agree with the U.S. Supreme Court and the U.S. Congress that vertical price restraints, also known as resale price maintenance, should be illegal, per se. He thinks that vertical price-fixing conspiracies are all right in some cases, and, therefore, has stated publicly that he will not enforce the law.

I find this highly objectionable. First, the law, and the intent of Congress, is abundantly clear on the issue. As the Supreme Court recognized in Continental T.V. against GTE Sylvania:

> The per se illegality of price restrictions has been established firmly for many years. . . . Furthermore, Congress recently has expressed its approval of a per se analysis of vertical price restraints by repealing those provisions of the Miller-Tydings and McGuire Acts allowing fair trade pricing at the option of the individual states.

The Attorney General and Assistant Attorney General Baxter, by failing to enforce the law, are ignoring, without a legitimate basis, the large body of law on the per se illegality of vertical price-fixing conspiracies.

Mr. President, this is not merely a scholarly debate over an obscure law.

Vertical price restraints constitute price fixing at the retail level, force consumers to pay higher prices, and effectively eliminate competition among retailers. Again, quoting from the Supreme Court in GTE Sylvania:

> [U]nlike nonprice restrictions, [R]esale price maintenance is not only designed to, but almost invariably does in fact, reduce price competition not only among sellers of the affected product, but quite as much between that product and competing brands.

This is precisely the reason the U.S. antitrust laws were enacted, to eliminate conspiracies designed to reduce or eliminate competition and to insure a free, competitive market, thus encouraging the efficient allocation of economic resources.

Arbitrary decisions not to enforce the antitrust laws provide a shield for anticompetitive activities, and, consequently, damages the foundation of our economic theory.

In addition to the lack of enforcement efforts, the Solicitor General of the Department of Justice has filed a brief for the United States as amicus curiae in support of a petition for a writ of certiorari in the case Monsanto Co. against Spray-Rite Service Corp. The United States is not a party to the case, and, therefore, the brief was submitted at their own initiative.

In the brief, the Department of Justice devotes an entire section to the argument that the Supreme Court should grant review in Monsanto in order to reconsider and remove the per se prohibition against vertical price restrictions. I find this equally as disturbing as the fact that the Department of Justice is failing to enforce the law. The brief is ostenisbly on behalf of the United States, yet the U.S. Congress itself has upheld the per se prohibition. I am at a loss as to what authority the Department of Justice is relying upon in raising this argument. I find none. But, the Supreme Court has granted the petition for review and intends to hear the case. Now, the Department of Justice has filed a second brief which, once again, on behalf of the United States supports weakening the law regarding resale price maintenance.

To respond to what I believe are inadequate law enforcement efforts and inappropriate arguments before the Supreme Court, I am introducing a joint resolution which, very simply, calls for vigorous enforcement of U.S. antitrust laws and would restrain the Department of Justice from making court arguments designed to weaken resale price maintenance law. The resolution invites the Attorney General to offer legislation to the Congress if he deems that the prohibition against vertical price restraints is unjustified.

The resolution is designed so that it does not impinge on the authority of the Attorney General to carry out the duties of his office. It carries the resolve of Congress that the antitrust laws should be enforced by appropriate Federal agencies, and would stop the Department of Justice from entering into arguments in court on a side opposite that which is evident in existing law. The resolution does not impinge on the Department's authority to argue the remaining legitimate issues in their brief, nor does it attempt in any way to limit the Supreme Court's jurisdiction. I believe this is a justifiable and reasonable approach to a very real problem, and I am hopeful that it will receive quick support.

Mr. President, let me say in closing that I think it is lamentable that 26 Members of the U.S. Senate feel constrained to introduce this kind of a resolution in behalf of the Congress and the people of this country simply to tell the Attorney General of the United States and his assistants that the law means exactly what it says and they ought to enforce it.

Mr. President, I ask unanimous consent that the Senator from Minnesota (Mr. BOSCHWITZ) be added as an original cosponsor.

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

Mr. RUDMAN. Mr. President, I ask unanimous consent that the joint resolution be printed in the RECORD.

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

S.J. Res. 105

Whereas the Congress in 1890 enacted the Sherman Act to prohibit "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations . . .";

Whereas the United States Supreme Court has consistently held that vertical price restraints are per se violations of the Sherman Act;

Whereas the Congress upheld the Supreme Court's interpretation of the Sherman Act prohibiting verticial price restrictions when in 1975 portions of the Miller-Tydings Act and the McGuire Act authorizing State laws permitting "fair-trade" restrictions were repealed;

Whereas consumers benefit from vigorous price competition at the retail level and are hurt by vertical price-fixing conspiracies which raise consumer prices and infringe upon retailers' rights to free trade;

Whereas the United States Attorney General is charged with instituting proceedings to prevent and restrain violations of the antitrust laws;

Whereas the United States Attorney General, in contravention of his responsibility for enforcing the antitrust laws is not actively enforcing the law regarding vertical price restraints; and

Whereas the Solicitor General of the United States Department of Justice, on behalf of the United States, has filed an *amicus curiae* brief with the Supreme Court which, in part, advocates weakening the law regarding vertical price restraints: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States Attorney General and all other appropriate Federal agencies and officials shall faithfully and vigorously enforce the Federal antitrust laws, including the prohibition against vertical price restraints, and shall cease propounding arguments in court designed to weaken the law prohibiting vertical price restraints. To the extent that the Attorney General or other Federal officials shall deem necessary changes in the law prohibiting vertical price restraints, the same shall forward proposed legislation embodying such changes to the Congress for its proper consideration.

(During the presentation of Mr. RUDMAN's remarks the following occurred, which, by unanimous consent appears at this point in the RECORD:)

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

Mr. RUDMAN. I yield.

Mr. BYRD. I ask unanimous consent that my remarks not show as an interruption of the Senator's remarks.

I compliment the Presiding Officer. He is enforcing the rules as the Presiding Officer is supposed to do. It is the responsibility of the Presiding Officer to maintain order without a request being made from the floor.

I see this so seldom. I congratulate the Senator and I hope that other Senators will take him as a model when presiding over the Senate.

The PRESIDING OFFICER. The Chair thanks the distinguished minority leader.

Mr. METZENBAUM. Mr. President, I rise to commend the Senator from New Hampshire for offering this resolution, which I cosponsor. The issue to which he addresses himself is a matter that is pending in the Supreme Court and the issue, as I see it, has to do with whether or not the laws of this country will be maintained as enacted by the Congress of the United States or whether they will be changed by the Assistant Attorney General for Antitrust by going to the Supreme Court and asking that the law be changed.

Mr. President, it is my strong feeling that we in the Congress have that prerogative and that, therefore, this resolution addresses itself well to the issue. I am very proud of the fact that the Senator from New Hampshire and I and a number of other Members of the Congress will file an amicus brief with the Supreme Court in connection with this issue, the major issue not only being the question of the law itself, but the question of whether or not the law should or should not be changed by the Supreme Court or by the courts, or whether the prerogative does not indeed belong to the Members of Congress.

Mr. President, I rise in support of the joint resolution offered by my good friend from New Hampshire. The resolution is directed at preventing what is an unprecedented assault on our antitrust laws by the Assistant Attorney General Mr. Baxter. It seems that Mr. Baxter believes that it is his duty to pick and choose among the antitrust laws, and to enforce only those that fit his personal economic theories. What is worse, Mr. Baxter has repeatedly spent taxpayers' dollars to interfere with private litigation on behalf of antitrust defendants.

Mr. President, little could be more clear than that both Congress and the courts have expressly condemned vertical price fixing as one of the most serious and costly antitrust violations. Yet Mr. Baxter has seen fit to ignore the law and the facts. He has filed amicus briefs in at least four private cases, each time urging the Court to make it easier for firms to fix retail prices, and hence, raise prices to consumers.

The most recent action by Mr. Baxter has been in the Monsanto case, now before the Supreme Court. He has argued to the Court—at taxpayer expense—that the Court should reach out to reverse over 70 years of established antitrust policy in this area. This action is a perversion of what the Antitrust Division of the Justice Department is supposed to be doing. The Antitrust Division is a law enforcement agency, not a spokesman on behalf of antitrust violators and would be violators.

The reaction to this behavior has been strong and bipartisan. The Judiciary Committee in the House of Representatives has acted by including in the Justice Department authorization bill a provision that would prevent the Department from spending money on such activities. I and a number of my colleagues intend to file a brief in the Monsanto case before the Supreme Court to make clear that Congress, not the courts, is the proper body for changing the law, if a change is necessary. I am proud that my friend from New Hampshire has joined me in this brief. I urge my colleagues also to join us as signators to this brief. The issue is not the merits or demerits of a particular business practice, but rather, the legislative prerogative to change the law.

The resolution offered by the Senator from New Hampshire is another step in this direction. It would make clear that the actions by the Justice Department on behalf of antitrust defendants are improper. It would also reestablish the fact that Congress, not the Justice Department, is responsible for making antitrust policy.

I applaud my colleague from New Hampshire for showing once again that antitrust is not a partisan policy. I urge my colleagues to join us by supporting this joint resolution.

● Mr. WEICKER. Mr. President, I am pleased today to cosponsor Senate Journal Resolution 105, along with several of my distinguished colleagues. This joint resolution calls upon the Department of Justice and all other appropriate Federal agencies to enforce Federal antitrust laws including the prohibition against vertical price restraints, rather than ignore the law and attempt to usurp the role of Congress by changing these laws.

I am also announcing today that the Senate Small Business Committee, which I chair, will conduct hearings in the near future on the nature and magnitude of illegal anticompetitive restraints which violate the antitrust laws.

We should not have to plead with the administration to enforce laws already on the books prohibiting vertical price restraints, also known as resale price maintenance. The Sherman Act for the past 93 years has held that these anticompetitive restraints are per se illegal. Although the Supreme Court clearly and correctly decided in Continental T.V. against GTE Sylvania that it was the intent of Congress to make resale price maintenance a per se violation of the antitrust laws, the Department of Justice now is attempting to override Congress, and convince the Supreme Court that vertical price restraints should not be illegal in all cases.

The Department has filed a brief for the United States as amicus curiae in support of a petition for a writ of certiorari in Monsanto Company against Spray-Rite Service Corporation. The Government is not a litigant in this case, but Justice Department officials, on their own initiative, are using this case to argue that the Supreme Court should ignore the intent of Congress by making some vertical price restraints legal.

What the Department of Justice does not understand is that if such action is to be taken, it is for the Congress to take and not the executive or judicial branches of the Government, which implement and interpret the laws but do not make the laws. I might also point out that the Department's position on vertical price restraints is

not a new revelation. On December 1, 1981, and September 9, 1982, the Small Business Committee conducted hearings on current antitrust enforcement efforts. The Assistant Attorney General in charge of the Department's Antitrust Division testified at both hearings, and made his views clear: That since he did not believe resale price maintenance to be illegal in every case, despite the intent of Congress and a confirmation of that intent by the Supreme Court, his department has not, and will not, enforce this law.

Not enforcing the law is bad enough. But now the Department is trying to change the law on vertical price restraints by attempting to circumvent the authority of Congress through the courts. I understand the Department plans to file a brief in another antitrust case before the Supreme Court which deals with vertical price restraints, in further support of their position that the laws established by Congress prohibiting resale price maintenance should be weakened through judicial reinterpretation.

The joint resolution does not question or restrict the authority of the Department of Justice to represent the United States in antitrust cases or file briefs with the Supreme Court, or any other court. But Congress, not the Department of Justice, enacts laws, or when necessary, changes them. It has never been the position of Congress that vertical price restraints are not a per se violation of antitrust law. The joint resolution states that, if the Department seeks changes in the law, then it shall propose those legislative changes to Congress, and not attempt to usurp the authority of Congress by asking the Supreme Court to, in effect, create new legislation through judicial interpretation.

Vertical price restraints attempt to establish, illegally, prices which can be charged at the retail level. These restraints not only are anticompetitive, with a particularly negative effect on small business, but they force consumers to pay higher prices. I believe that Congress acted correctly when it enacted legislation to make vertical price restraints illegal. Therefore, I intend that Senate Joint Resolution 105 be the first step in calling to the administration's attention the need for strict enforcement of our antitrust laws.

The hearings will specifically focus on vertical restraints, including resale price maintenance, monopolization, and price discrimination. These illegal practices, left unchecked, are disruptive forces that lead to an increase in economic concentration and must be curtailed. We cannot afford to allow the executive branch to sit on the sidelines while illegal antitrust practices, as determined by Congress, not the Department, take place. Accordingly, I intend to insure that the Department of Justice enforces these laws and does the job it is required by law to do.●

ADDITIONAL COSPONSORS

S. 102

At the request of Mr. PELL, the name of the Senator from New Jersey (Mr. BRADLEY) was added as a cosponsor of S. 102, a bill to require the Administrator of General Services to notify States of the availability of surplus real property and to convey at reduced cost certain surplus real property for public park or public recreational use to State and local governments.

S. 137

At the request of Mr. ROTH, the name of the Senator from Florida (Mr. CHILES) was added as a cosponsor of S. 137, a bill to amend the Internal Revenue Code of 1954 to continue to allow mortgage bonds to be issued.

S. 197

At the request of Mr. INOUYE, the name of the Senator from Hawaii (Mr. MATSUNAGA) was added as a cosponsor of S. 197, a bill to direct the Secretary of the Department of Transportation to conduct an independent study to determine the adequacy of certain industry practices and Federal Aviation Administration rules and regulations, and for other purposes.

S. 269

At the request of Mr. MCCLURE, the name of the Senator from Arizona (Mr. GOLDWATER) was added as a cosponsor of S. 269, a bill to provide for the disposal of silver from the National Defense Stockpile through the issuance of silver coins.

S. 453

At the request of Mr. WARNER, the name of the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. 453, a bill to amend the Tariff Schedules of the United States to impose a one-tenth of 1 percent duty on apple and pear juice.

S. 467

At the request of Mr. JEPSEN, the name of the Senator from Nevada (Mr. LAXALT) was added as a cosponsor of S. 467, a bill to establish U.S. governmental policy with regard to respect for human life.

S. 560

At the request of Mr. HOLLINGS, the name of the Senator from Washington (Mr. GORTON) was added as a cosponsor of S. 560, a bill to authorize and regulate the launch of space objects by nongovernmental entities, and for other purposes.

S. 563

At the request of Mr. CHILES, the names of the Senator from Kentucky (Mr. HUDDLESTON) and the Senator from Illinois (Mr. PERCY) were added as cosponsors of S. 563, a bill to reform the laws relating to former Presidents.

S. 591

At the request of Mr. INOUYE, the names of the Senator from Tennessee (Mr. SASSER), the Senator from Wyoming (Mr. SIMPSON) and the Senator from Texas (Mr. TOWER) were added as cosponsors of S. 591, a bill to amend the Internal Revenue Code of 1954 to provide a mechanism for taxpayers to designate $1 of any overpayment of income tax, and to contribute other amounts, for use by the U.S. Olympic Committee.

S. 596

At the request of Mr. PRYOR, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 596, a bill to provide surplus commodities to farmers who lost grain stored in certain insolvent warehouses.

S. 617

At the request of Mr. STENNIS, the name of the Senator from New Jersey (Mr. BRADLEY) was added as a cosponsor of S. 617, a bill to promote the use of energy-conserving equipment and biofuels by the Department of Defense, and for other purposes.

S. 671

At the request of Mr. MCCLURE, the name of the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of S. 671, a bill to authorize a national program to encourage dam safety.

S. 780

At the request of Mr. SARBANES, the names of the Senator from Maryland (Mr. MATHIAS) and the Senator from Ohio (Mr. METZENBAUM) were added as cosponsors of S. 780, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to require the Administrator of the Environmental Protection Agency to maintain a facility for the biological testing of pesticides under such act.

S. 955

At the request of Mr. HOLLINGS, the name of the Senator from Massachusetts (Mr. TSONGAS) was added as a cosponsor of S. 955, a bill to maintain the preeminence of the United States in space, to promote the peaceful exploration and utilization of space, and for other purposes.

S. 996

At the request of Mrs. KASSEBAUM, the name of the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of S. 996, a bill to amend the Natural Gas Policy Act of 1978 to limit natural gas prices and to improve natural gas pricing and marketing practices, and for other purposes.

S. 1006

At the request of Mr. SPECTER, the name of the Senator from Wyoming (Mr. WALLOP) was added as a cosponsor of S. 1006, a bill to amend the Internal Revenue Code of 1954 to repeal the 15-percent reduction in percentage depletion for iron ore and coal.

S. 1159

At the request of Mr. HATFIELD, the names of the Senator from Hawaii (Mr. MATSUNAGA) and the Senator from Wisconsin (Mr. KASTEN) were added as cosponsors of S. 1159, a bill to amend the Export Administration Act of 1979 to extend the provisions relating to the export of domestically produced crude oil.

S. 1179

At the request of Mr. GARN, the name of the Senator from Washington (Mr. GORTON) was added as a cosponsor of S. 1179, a bill to repeal provisions of law concerning price support for, and marketing of, tobacco, and for other purposes.

S. 1244

At the request of Mr. PACKWOOD, the name of the Senator from North Dakota (Mr. BURDICK) was added as a cosponsor of S. 1244, a bill to amend title XVIII of the Social Security Act to provide for a program of health care for elderly individuals who require long-term care.

S. 1245

At the request of Mr. THURMOND, the name of the Senator from Maine (Mr. COHEN) was added as a cosponsor of S. 1245, a bill to amend chapter 157 of title 10, United States Code, to authorize the Secretary of Defense to provide transportation for next of kin of certain persons who are unaccounted for, to attend annual national meetings sponsored by the National League of Families of American Prisoners and Missing in Southeast Asia.

S. 1255

At the request of Mr. SPECTER, the name of the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of S. 1255, a bill to establish the Northeast-Midwest States Federal Hydropower Financing Authority.

S.J. RES. 18

At the request of Mr. JEPSEN, the names of the Senator from Texas (Mr. BENTSEN), the Senator from Idaho (Mr. SYMMS), and the Senator from Nebraska (Mr. EXON) were added as cosponsors of S.J. Res. 18, a joint resolution designating September 22, 1983, as "American Business Women's Day."

S.J. RES. 54

At the request of Mr. NICKLES, the name of the Senator from Alabama (Mr. DENTON) was added as a cosponsor of S.J. Res. 54, a joint resolution to authorize and request the President to designate the month of January 1984 as "National Eye Health Care Month".

S.J. RES. 75

At the request of Mr. SYMMS, the names of the Senator from Maryland (Mr. MATHIAS) and the Senator from Illinois (Mr. PERCY) were added as cosponsors of S.J. Res. 75, a joint resolution to provide for the designation of June 12, through 18, 1983 as "National Scleroderma Week."

S.J. RES. 97

At the request of Mr. BOSCHWITZ, the names of the Senator from Maine (Mr. COHEN), the Senator from Nevada (Mr. HECHT), the Senator from California (Mr. CRANSTON), the Senator from Delaware (Mr. BIDEN), the Senator from New Hampshire (Mr. HUMPHREY), and the Senator from California (Mr. WILSON) were added as cosponsors of S.J. Res. 97, a joint resolution to authorize the erection of a memorial on public grounds in the District of Columbia, or its environs, in honor and commemoration of members of the Armed Forces of the United States and the allied forces who served in the Korean war.

S.J. RES. 98

At the request of Mr. TOWER, the name of the Senator from Alabama (Mr. HEFLIN) was added as a cosponsor of S.J. Res. 98, a joint resolution to designate October 2 through October 9, 1983, as "National Housing Week".

S. RES. 114

At the request of Mr. PRESSLER, the names of the Senator from Montana (Mr. MELCHER) and the Senator from North Dakota (Mr. ANDREWS) were added as cosponsors of S. Res. 114, a resolution to express the sense of the Senate that certain rural fire protection programs should receive a level of funding for fiscal year 1984 which is at least as high as the level of funding provided for such programs for fiscal year 1983.

S. RES. 135

At the request of Mr. PERCY, the names of the Senator from North Carolina (Mr. HELMS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Texas (Mr. BENTSEN), the Senator from Alabama (Mr. HEFLIN), the Senator from Oklahoma (Mr. BOREN), the Senator from Minnesota (Mr. BOSCHWITZ), the Senator from Massachusetts (Mr. TSONGAS), the Senator from California (Mr. CRANSTON), the Senator from Ohio (Mr. GLENN), and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of S. Res. 135, a resolution expressing the sense of the Senate with respect to the urgency of achieving and maintaining proper alinement of major international currencies essential to stem protectionism and aid early recovery of world trade expansion.

S. RES. 148

At the request of Mr. PERCY, the names of the Senator from Arizona (Mr. GOLDWATER), the Senator from Texas (Mr. TOWER), the Senator from Delaware (Mr. BIDEN), the Senator from Nevada (Mr. LAXALT), the Senator from Kentucky (Mr. FORD), the Senator from South Carolina (Mr. HOLLINGS), the Senator from New Hampshire (Mr. HUMPHREY), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Missouri (Mr. DANFORTH), the Senator from Alabama (Mr. DENTON), the Senator from Arkansas (Mr. BUMPERS), and the Senator from Arizona (Mr. DECONCINI) were added as cosponsors of S. Res. 148, a resolution expressing the support of the Senate on the decision of the Governments of Lebanon and Israel on agreeing to the arrangements for this withdrawal of Israeli forces from Lebanon.

AMENDMENT NO. 1274

At the request of Mr. MATSUNAGA, his name was added as a cosponsor of amendment No. 1274 proposed to S. 529, a bill to revise and reform the Immigration and Nationality Act, and for other purposes.

SENATE RESOLUTION 150—AUTHORIZING THE PRINTING OF ADDITIONAL COPIES OF A JOINT ECONOMIC COMMITTEE PRINT

Mr. ABDNOR (for himself and Mr. JEPSEN) submitted a resolution, which was referred to the Committee on Rules and Administration:

S. RES. 150

Resolved, That there be printed for the use of the Joint Economic Committee two thousand additional copies of its Joint Committee print of the 97th Congress, 2d Session, entitled "The Changing Economics of Agriculture: Challenge and Preparation for the 1980's".

AMENDMENTS SUBMITTED

IMMIGRATION AND NATIONALITY ACT REFORM

HUMPHREY AMENDMENT NO. 1275

Mr. HUMPHREY proposed an amendment to the bill (S. 529) to revise and reform the Immigration and Nationality Act, and for other purposes; as follows:

On page 195, line 15, strike out "(e)(1)" and insert in lieu thereof "(e)".

On page 195, line 17, strike out "three-year".

On page 195, line 19, insert after "(b)(3)" the following: "and extending to the date on which such alien becomes a naturalized citizen of the United States".

On page 196, strike out lines 14 through 21.

On page 195, line 21, strike "except as provided in paragraph (2),".

CRANSTON AMENDMENT NO. 1276

Mr. CRANSTON proposed an amendment to the bill S. 529, supra; as follows:

On page 198, line 2, strike out the quotation marks and the second period.

On page 198, between lines 2 and 3, insert the following:

"(i) The Attorney General in his sole discretion may waive the requirements of subsection (d)(1)(A) or (d)(2)(A) in cases which would result in exceptional and extreme hardship to the alien or to his spouse, parent, or child.

The decision to grant or deny such a waiver shall not be reviewable in any court or administrative proceeding in the United States.

CRANSTON AMENDMENT NO. 1277

Mr. CRANSTON proposed an amendment to the bill S. 529, supra; as follows:

On page 197, line 6, strike out "No" and insert in lieu thereof "Except as provided in paragraph (4), no".

On page 197, line 9, strike out "No" and insert in lieu thereof "Except as provided in paragraph (4), no".

On page 197, line 12, strike out "deportation or".

On page 197, between line 18 and 19, insert the following:

"(4) A court of the United States or of any State may review any denial of adjustment of status under this section if such denial were raised in a deportation proceeding conducted under this Act and if such review is based solely upon the administrative record established at the time of the review and if the findings of fact and determination contained in such record shall be conclusive unless the applicant can establish gross abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

CRANSTON AMENDMENT NO. 1278

Mr. CRANSTON proposed an amendment (subsequently modified) to the bill S. 529, supra; as follows:

On page 195, on lines 14 and 15, add the following: "A duly attested declaration under penalty of perjury by such individual's employer, who is a U.S. citizen, of continuous residency by an individual applying for adjustment of status under this section shall constitute only a rebuttable presumption of physical presence for purposes of this section."

McCLURE (AND OTHERS) AMENDMENT NO. 1279

Mr. McCLURE (for himself, Mr. SYMMS, Mr. LAXALT, Mr. TOWER, Mr. WILSON, Mr. CRANSTON, Mr. DECONCINI, and Mr. DOMENICI) proposed an amendment to the bill S. 529, supra; as follows:

At the appropriate place in the bill insert the following:

Section 287 of the Immigration and Nationality Act (8 U.S.C. 1357) is amended by adding at the end thereof the following:

"(d) Notwithstanding any other provision of this section, other than paragraph (3) subsection (a), an officer or employee of the Service may not enter onto the premises of a farm or other agricultural operation without a properly executed warrant.".

D'AMATO (AND OTHERS) AMENDMENT NO. 1280

Mr. D'AMATO (for himself, Mr. HATCH, Mr. CHILES, Mr. MOYNIHAN, Mr. BENTSEN, Mr. SPECTER, Mrs. HAWKINS, Mr. JOHNSTON, Mr. WILSON, Mr. LAUTENBERG, Mr. TOWER, Mr. LEAHY, Mr. MURKOWSKI, Mr. INOUYE, Mr. COCHRAN, Mr. BOREN, and Mr. MATSUNAGA) proposed an amendment to the bill, S. 529, supra, as follows:

At the appropriate place in the bill insert the following:

SEC. . (a) The Attorney General shall reimburse a State for the costs incurred by such State for the imprisonment of any alien who is convicted of a felony by such State.

(b) An alien referred to in subsection (a) is any alien, as defined in section 101(a)(3) of the Immigration and Nationality Act, other than—

(1) an alien who was issued an immigrant visa or who otherwise acquired the status of an alien lawfully admitted for permanent residence, and who was subject to the numerical limitations contained in section 207 (a) of the Immigration and Nationality Act (other than an alien accorded the status of a temporary or permanent resident under section 245A of such Act);

(2) an alien who is an immediate relative within the meaning of section 201(b) of such Act; and

(3) an alien who is a nonimmigrant within the meaning of subparagraphs (A) or (G) of section 101(a)(15).

(c) There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

(d) This amendment shall become effective on October 1, 1983.

HATFIELD (AND OTHERS) AMENDMENT NO. 1281

Mr. HATFIELD (for himself, Mr. KENNEDY, Mr. CRANSTON, and Mr. JEPSEN), proposed an amendment to the bill S. 529, supra, as follows:

On page 108, line 11, strike out "Within" and insert in lieu thereof "Except as provided in paragraph (3), Within".

On page 110, between lines 8 and 9, insert the following:

"(3)(A) Before the President implements any change in or addition to the requirements of subsection (b) which would require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, he shall prepare and transmit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report setting forth his proposal to implement such a change or addition. No such change or addition may be implemented if, within 30 calendar days after receiving such report, the Congress adopts a concurrent resolution stating in substance that it objects to the implementation of such change or addition.

"(4)(A) Any such concurrent resolution shall be considered in the Senate in accordance with paragraph (5).

"(B) For the purpose of expediting the consideration and adoption of concurrent resolutions under paragraph (3), a motion to proceed to the consideration of any such concurrent resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

"(5)(A) For purposes of paragraph (3), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated.

"(B) Subparagraphs (C) and (D) of this subsection are enacted—

"(i) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of concurrent resolutions referred to in paragraph (3), and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

"(ii) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner and to the case of any other rule of the Senate.

"(C)(i) If the committee of the Senate to which has been referred a resolution relating to a certification has not reported such resolution at the end of ten calendar days after its introduction, not counting any day which is excluded under subparagraph (A), it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same certification which has been referred to the committee, except that no motion to discharge shall be in order after the committee has reported a resolution with respect to the same certification.

"(ii) A motion to discharge under clause (i) may be made only by a Senator favoring the resolution, is privileged, and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution, the time to be divided equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(D)(i) A motion in the Senate to proceed to the consideration of a resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(ii) Debate in the Senate on a resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(iii) Debate in the Senate on any debatable motion or appeal in connection with a resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

"(iv) A motion in the Senate to further limit debate on a resolution, debatable

motion, or appeal is not debatable. No amendment to, or motion to recommit, a resolution is in order in the Senate.

KENNEDY AMENDMENT NO. 1282

Mr. KENNEDY proposed an amendment to the bill S. 529, supra, as follows:

On page 207, between lines 7 and 8, insert the following:

LEGALIZATION REVIEW COMMISSION

SEC. 303. (a) There is established the Legalization Review Commission (hereafter in this section referred to as the "Commission") which shall be composed of three members appointed by the President from among individuals of the private sector. The President shall designate one member to serve as Chairman.

(b) Each member of the Commission shall receive compensation at a rate equal to the daily rate payable for GS-18 under the General Schedule under section 5332 of title 5, United States Code, for each day, including travel time, such member is engaged in the actual performance of duties as a member of the Commission. All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(c)(1) The Commission shall meet at the call of the Chairman but not less than once every 3 months.

(2) Two members of the Commission shall constitute a quorum.

(d) The Commission shall—

(1) monitor the implementation of the program to adjust the status of aliens under section 245A of the Immigration and Nationality Act;

(2) keep the President currently and fully informed on the degree of compliance with the provisions of such section; and

(3) prepare and transmit, not later than 18 months after the date of enactment of this Act, to the President, the Committee on the Judiciary of the House of Representatives, and the Committee on the Judiciary of the Senate a report summarizing the progress made since such date in carrying out the intent of Congress in enacting section 245A of such Act, together with any recommendations which the Commission may have.

(e) The Commission may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(f) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission in order to assist the Commission in carrying out this section.

(g) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(h) The provisions of this section shall terminate 18 months after the date of enactment of this Act.

On page 103, in the table of contents, after the item relating to section 302, insert the following:

"Sec. 303. Legalization Review Commission.".

SIMPSON TECHNICAL AMENDMENT NO. 1283

Mr. SIMPSON proposed an amendment to the bill S. 529, supra, as follows:

On page 181, line 22 delete all words after the word "unless" through page 183, line 3 and insert in lieu thereof the following:

"(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(ii) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(C) For each fiscal year (within the pilot program period) after the period specified in subparagraph (B)—

"(i) in the case of a country which was a pilot country in the previous fiscal year, a country may not be designated as a pilot country unless the sum of—

"(I) the total of number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

"(II) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2.0 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year, or

"(ii) in the case of another country, the country may not be designated as a pilot country unless—

"(I) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(II) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year."

On page 180, line 2 insert the word "health" immediately after the word "welfare".

On page 115, line 20, delete 1856(b) and insert in lieu thereof 1851(b).

Page 192, after line 18, insert the following paragraph:

"(4) Notwithstanding the Federal Property and Administrative Services Act of 1949, 63 U.S.C. 377, as amended, the Attorney General is hereby authorized to expend from the appropriation provided for the administration and enforcement of the act, such amounts as may be necessary for the leasing or acquisition of real property in the fullfilment of this section. This authority shall end two years from enactment."

On page 192, line 19, delete "(4)" and insert "(5)" in lieu thereof.

On page 106, line 11 delete everything after the word "or" through the word "subclause" in line 14 and insert in lieu thereof "where no such documentation is available."

On page 162, line 8 insert "or (4)" immediately after "(3)".

On page 162, line 13 insert "or 203(b)(4)" immediately after "203(b)(2)".

On page 162, line 16 insert "or (4)" immediately after "(2)".

On page 210, line 22 immediately after the comma, insert the following: "compiled and validated in accordance with sound statistical practice,"

On page 211 delete lines 6 and 7 and insert in lieu thereof the following: "The initial report shall be submitted not later than two years after the date of the enactment of the Act and three additional reports be submitted every two years thereafter."

Page 178, beginning on line 2, strike out "or, with respect" and all that follows through "him" on line 7.

Page 178, line 17, before the period insert the following: ", except that such amendments shall not apply to aliens who as of the date of the enactment of this Act meet the qualifications for a waiver of the two-year foreign residence requirement under paragraph (A) of section 212(e) of the Immigration and Nationality Act (as amended by section (a) of this section)".

On page 111, on line 16, delete "(2) Whenever the Attorney General" through the end of the page and insert in lieu thereof:

"(2) Whenever the Attorney General (i) has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of subsection (a); or (ii) within an 18 month period issues to a person or entity a second notice of a violation of subsection (a) and the two notices charge violations involving a total of five or more individuals, the Attorney General may bring a civil action in the appropriate district court of the United States requesting such equitable relief, including a temporary or permanent injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary. In the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for its own hiring, recruiting or referral for employment, each such subdivision shall be considered a separate person or entity if such hiring, recruiting or referral for employment is not under the direct control of another subdivision or any entity or office exercising final management authority over such subdivisions.

On page 209, line 5 immediately before the word "temporary" insert the following: "agricultural labor transition program and the"

On page 210 delete lines 3 and 4 and insert in lieu thereof the following:

"The report on the temporary worker program shall be submitted not later than two years after the date of the enactment of this Act and the report on the agricultural labor transition program each year for three years beginning a year after the date of the enactment of the Act."

LEAHY AMENDMENT NO. 1284

Mr. SIMPSON (for Mr. LEAHY) proposed an amendment to the bill S. 529 supra; as follows:

On page 138, after line 14, insert the following new subsection:

"(3) The provisions of paragraph (2) of this section shall not be applicable to the

person who is the subject of such application for asylum, refugee status, withholding of deportation, or any other application arising under a claim of persecution on account of race, religion, political opinion, nationality, or membership in a particular social group, provided however, that this subsection shall not limit the authority of any agency to withhold information pursuant to the Freedom of Information Act.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, May 18, at 10 a.m., to hold a hearing on controlling space weapons.

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

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, May 18, at 1:30 p.m., to consider the following nominations:

Myles Robert Rein Frechette, of Washington, D.C., to be Ambassador to the United Republic of Cameroon;

Robert Brendon Keating, of Washington, D.C., to be Ambassador to the Democratic Republic of Madagascar, and to serve concurrently and without additional compensation as Ambassador to the Federal and Islamic Republic of the Comoros.

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

SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY AND THE DISTRICT OF COLUMBIA

Mr. STEVENS. Mr. President, I ask unanimous consent that the Subcommittee on Governmental Efficiency and the District of Columbia of the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Wednesday at 10 a.m., to hold a hearing on emergency preparedness in the Washington metropolitan area.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Thursday, May 19, at 9:30 a.m., to hold an oversight hearing on the management of the Department of Defense.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, May 19, at 3 p.m., to consider the nomination of Curtin Winsor, Jr., to be Ambassador to Costa Rica.

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

SUBCOMMITTEE ON ARMS CONTROL, OCEANS, INTERNATIONAL OPERATIONS, AND ENVIRONMENT

Mr. STEVENS. Mr. President, I ask unanimous consent that the Subcommittee on Arms Control, Oceans, International Operations, and Environment of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, May 19, at 10 a.m., to hold a hearing on U.N. Regulations—Food and Other Exports.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, May 19, at 10:30 a.m., to hold an oversight hearing on the geopolitics of strategic and critical minerals.

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

ADDITIONAL STATEMENTS

FIFTH ANNIVERSARY OF SENTENCING OF DR. YURI ORLOV

● Mr. DOLE. Mr. President, 5 years ago today, on May 18, 1978, Dr. Yuri Orlov, the renowned Soviet physicist and founder of the Moscow Helsinki monitoring group, was sentenced to 7 years of strict regime labor camp and 5 years internal exile. While his alleged crime was "anti-Soviet agitation and propaganda," his real crime was that he dared to challenge the Soviet Government to live up to its obligations under the Helsinki Final Act.

Thanks to the painstaking efforts of Orlov and other courageous members of the Moscow, Ukrainian, Lithuanian, Armenian, and Georgian Helsinki groups, who monitored the human rights situation in the Soviet Union, we in the West have been able to get a better insight into the nature of the Soviet system.

Mr. President, the significance of Yuri Orlov's efforts in bringing to international attention the extent of human rights violations in the U.S.S.R. and for effectively speaking out on behalf of the victims of Soviet repression must not be underestimated. Men and women the world over owe him a debt of gratitude because of his principled stand and deep conviction that individuals have dignity and that their fundamental rights must not be trampled upon by repressive state organs. The over 1 billion people residing in the 35 nations which are signatory to the Helsinki Final Act especially owe Dr. Orlov and the other members of the Helsinki monitoring groups a debt of gratitude for persistently reminding us of the essence of the Helsinki Final Act and the possibilities it offers.

ORLOV'S SITUATION CRITICAL

In sharp contrast to the ideals which the final act embodies, the Soviet Government's inhumane treatment of this noble individual is a striking illustration of man's inhumanity to man, not to mention a further tragic example of its glaring contempt for both the letter and spirit of the final act.

Throughout his 5-year term, Orlov has suffered humiliating treatment which amounts to entended torture—exhausting forced labor, unnourishing food, and extreme cold. He has spent a major portion of his camp term in prison, solitary confinement, or in various punishment cells. He has been denied correspondence rights. His wife, Irina, who has written numerous appeals on his behalf, has not been permitted to visit him. In addition, the authorities have taken every possible measure to prevent him from continuing his scientific research. Mr. President, Dr. Orlov's situation is critical. According to his wife, Irina, he is in extremely poor health and his life is in danger. He is currently suffering from tuberculosis. Despite his illness, he has been thrown into solitary confinement. I have just received word that Irina recently appealed to Soviet Secretary-General Andropov to examine the possibility of early release in light of her husband's deteriorating health.

It is essential for us, as Members of this esteemed body, not to forget Yuri Orlov and all of the other imprisoned and persecuted Helsinki monitors. The U.S. delegation to the Madrid meeting of the Conference on Security and Cooperation in Europe, on which I serve as Vice Chairman, has voiced our deepest concern over the plight of Yuri Orlov on numerous occasions. If the Helsinki accords are to have any credibility in the eyes of the international community, our Nation and the nations of the free world must insist on conscientious observance of agreements set forth in that document by all the signatory states. By insisting upon justice for prisoners of conscience such as Yuri Orlov we not only maintain and strengthen the Helsinki process, we also remain faithful to our own values.●

NOMINATION OF DANIEL G. AMSTUTZ TO BE UNDER SECRETARY OF AGRICULTURE FOR INTERNATIONAL AFFAIRS AND COMMODITY PROGRAMS

● Mr. BOSCHWITZ. Mr. President, I rise in strong support of Daniel G. Amstutz, who has been nominated to serve as Under Secretary of Agriculture for International Affairs and

Commodity Programs. This position demands full familiarity with and expertise in both international and domestic agricultural programs and policies. Mr. Amstutz is eminently well qualified to deal with the diversity of problems and issues which confront a person in this position.

For nearly 25 years, he was associated with Cargill, Inc., a Minneapolis-based commodity trade and marketing corporation. During that period he held positions as president and chief executive officer of Cargill Investor Services; assistant vice president and director of feed grain merchandising; and, deputy director of wheat merchandising. In these and other capacities, he was directly involved in domestic and international agricultural trade and worked with the wide variety of programs administered by the Department of Agriculture.

His long association with a Minnesota-based agricultural trade and marketing firm provided him a microcosm of the domestic agricultural situation. Minnesota agriculture is highly diverse and the problems and issues which confront the Minnesota farm sector often duplicate those which affect the domestic farm sector in general. Minnesota is also one of the Nation's major agricultural exporting States. The experience of working with a major agricultural trade and marketing firm while being based in one of the Nation's major agricultural trade and marketing States makes Mr. Amstutz acutely aware of the practical problems confronting U.S. agriculture.

He has also served as manager of Cargill's activities in Germany and Scandinavia. While living in Hamburg, Germany, he helped create Cargill's overseas organization, TRADAX, in Geneva, Switzerland. This gave him firsthand experience in international agricultural trade—invaluable experience which well suits the requirements of the position he has been nominated for.

Since 1978, he has been general partner in charge of commodity activities for Goldman, Sachs & Co. of New York, a major investment banking firm, and he is currently director of the National Grain & Feed Association. His nomination has been strongly supported by farm groups, including the National Corn Growers Association, and the National Council of Farmer Cooperatives.

In short, Mr. Amstutz is right for this extremely demanding position. U.S. agriculture is facing difficult challenges, both domestically and internationally, and the position for which he has been nominated is the focal point for addressing and resolving these challenges. For these reasons, Mr. President, I urge rapid consideration and confirmation of Mr. Amstutz as Under Secretary of Agriculture for International Affairs and Commodity Programs.●

STAMP HONORING JUSTICE HUGO BLACK

● Mr. MOYNIHAN. Mr. President, I wish to join the many who are urging the issuance of a stamp honoring Justice Hugo Black. Justice Black's influence on the development of American constitutional law was extraordinary. He championed application of the Bill of Rights to the States, and his views on the first amendment largely carried the day. As a Senator, he was a leading congressional investigator and sponsored the first minimum wage law.

Only three other justices have had stamps issued in their honor—Justices Holmes, Marshall, and Stone. Again I urge that Justice Black be added to this list.●

LESSONS OF VIETNAM

● Mr. ABDNOR. Mr. President, the Racine, Wis., Journal Times of April 8, 1983, carried a commentary by a former South Dakota resident which is highly pertinent to the foreign policy debates of the day.

Gene Malone, an American history teacher at Kenosha, Wis., and a graduate of the University of South Dakota, recalls the lessons of Vietnam and how we can profit from them today.

Many of the very same voices that dominated the Vietnam debate are being heard today, whether it be in our dealings with the Soviet Union, the nuclear freeze movement, the defense budget or in our efforts to contain the Marxist beachhead in Central America.

Their advice led to the tragedy that Indochina represents to the world today. Should we listen to them again?

Mr. Malone believes not and offers some convincing testimony in his column headlined, "Teacher cites needs in quest for freedom." I ask that it be printed in the RECORD.

The material follows:

[From the Racine (Wis.) Journal Times, Apr. 8, 1983]

TEACHER CITES NEEDS IN QUEST FOR FREEDOM

(By Gene Malone)

The history of the United States as a "friend of freedom" in the last 20 years should be studied very carefully. To repeat wrong actions or to act on wrong conclusions is folly repeated.

James Russell Lowell, the American freedom poet, said, "True freedom is to share all the chains our brothers wear, and, with heart, and hand, to be earnest to make OTHERS free."

The war to keep South Vietnam free began for the United States in 1964. Ten years later the Communist forces of North Vietnam, with weapons from the Soviet Union, over-ran the struggling forces of freedom in the South. It was over!

Yes. I remember it all well. While our soldiers fought to keep South Vietnam free, the media here incessantly bombed us with word pictures, saying it was only a civil war there; the government of South Vietnam was in daily violation of human rights to the people.

The Domino theory, asserting that if South Vietnam fell to the Communist hordes the rest of Southeast Asia would fall, was erroneous. And back in the United States our State Department limited our servicemen in such ways that it would be impossible to end the war. Little was required of our people in this struggle, but the parents of 50,000 Americans killed in the war were anguished.

Yes, I remember the unbrella-front groups that marched for "Surrender with Honor," and Jane Fonda's trips to North Vietnam to bring greetings to the "other side." And the "peace priests," those seeking alternatives by "fleeing to Canada," and the tortured American POWs who returned from the war area while leading "peaceniks" said the POWs had been treated well.

And the books, propaganda materials; speakers that crisscrossed our country denouncing our help to South Vietnam and extolling the virtue of "socialist liberation": the political rhetoric and the news with nightly bias toward the "revolutionary activists" who sought to take over to stamp out freedom in South Vietnam.

Yes, yes, the last 20 years have been a nightmare to those who knew and know that freedom was undermined and the war lot here at home.

The lessons of Vietnam are that our soldiers were not allowed to win, the propaganda war by the media and well-organized forces were successful in manipulating the truth to sow confusion and doubt, the domino fear was real as all of S.E. Asia had fallen. The rhetoric about human rights, it's only a civil war, Russia has no part in aiding the guerrilla forces, was, of course, false.

Now, the exact plan for freedom's defeat in El Salvador and the rest of Central America is being implemented with the insulting reminder, "Remember the lessons of Vietnam." The parroted "lessons of Vietnam" oozed by the surrender-now fifth column in America and the gloating monopoly press are the false conclusions that alert Americans reject. The "Surrender Folks" say the lesson of Vietnam is that we should never get involved in the struggle for liberation from communism.

Defense of freedom as a universal concept maintains that free nations ought to be interested that others and even their neighbors should not be in bondage—political, economic or spiritual. The lesson we must learn from Vietnam is that all Americans must sacrifice for freedom if the goal is clear and our country commits itself to that goal—or at least not undermine the efforts of those who are struggling to be free.

John Stuart Mill, an English philosopher, once said, "War is an ugly thing, but not the ugliest thing: The decayed and degraded state of moral and patriotic feeling which thinks nothing worth a war is worse. A man who has nothing which he cares about more than his personal safety is a miserable creature who has no chance of being free, unless made and kept so by the exertions of better men than himself."

How much a nation should give to help another maintain freedom is subject to great moral discussion and differences, but sacrifice for freedom is not a new notion.

President Harry Truman said, "The free peoples of the world look to us for support in maintaining their freedom. If we falter in

our leadership, we may endanger the peace of the world—and we shall surely endanger the welfare of our own nation."

Freedom forces lost in the battle to save South Vietnam. Look at it today: a faceless, freedomless, forsaken land. U.S. Ambassador to the United Nations, Jeane Kirkpatrick, stated. "How can it be that persons so deeply committed to the liberation of South Vietnam and Cambodia . . . were so little affected by the enslavement that followed their liberation? Why are Western Liberals—who often are such smart people—such slow learners about Communism?" That is a very good, unanswered question.

Winston Churchill noted, "If you do not fight for what is right when you can easily win without bloodshed, if you do not fight when the victory will be easy and not too costly, the moment may come when you will have a fight with all the odds against you and with only a precarious chance of survival . . . You may even have to fight when there is no hope of victory, for it is better to perish than to live as slaves."

And Ralph Waldo Emerson sums the priorities of life with, "For what avail the plagh or sail or land or life if freedom fail?"●

SENATOR BILL BRADLEY

● Mr. LAUTENBERG. Mr. President, I wish to join many of my House colleagues today from the New Jersey delegation in bringing forth a recent article from the Star-Ledger of Newark on the State's senior Senator.

The article aptly characterizes BILL BRADLEY's style and determination, attributes responsible, no doubt, for his wide acceptance by his colleagues in the U.S. Senate.

The article follows:

[From the Star-Ledger, May 15, 1983]

STILL SCORING—PERSISTENCE MARKS BRADLEY STYLE

(By Robert Cohen)

WASHINGTON.—When Bill Bradley was growing up in the small Mississippi River town of Crystal City, Mo., he would place obstacles on the basketball court to dribble around, and spend hour after hour choreographing and perfecting every move and shot he could imagine.

Bradley, says his mother, was always ready to go extra lengths to achieve his goals, and she and her husband were usually willing to adjust their routine to accommodate their son.

"We waited many dinners for Bill to shoot 25 straight free throws. It got to be a normal way to live," recalled Susan Crowe Bradley earlier this month when her son was inducted into the Basketball Hall of Fame.

Two decades later, after endless practice and singleminded determination had made him a nationally known college and professional basketball star, Bradley used the same technique to learn the ropes in the U.S. Senate.

In the first months after his election, Bradley set aside large chunks of his busy schedule to steep himself in the Senate's rules and procedures. Floyd Riddick, the Senate parliamentarian, recalls how Bradley spent more than 100 hours presiding over debates so he could observe the pros, absorb the detail and learn how to get things done.

Now 4½ years into his first term as a senator from New Jersey, Bradley continues to display the same perseverance, preparation and what one friend calls his "burning desire to succeed."

He shows these traits in the committee rooms, on the Senate floor, and most recently in his plans for re-election.

Political observers consider Bradley virtually unbeatable in 1984 and Republicans wonder who will volunteer to run against him. Yet, he already has raised about $1 million, has some top campaign people in place, and is approaching the upcoming election as if it will be the toughest contest of his life.

To Bradley, this passion to achieve and to win began to take shape at age 13 when a basketball mentor told him that if he didn't practice, he should be aware that someone, somewhere was practicing. Given roughly the same abilities, the coach said, that other guy would beat him if they were to meet.

"I never wanted to lose because I didn't make that effort," said Bradley. "I never wanted to be unprepared."

Bradley sees this driving force as just "the internal coach," but a friend tells him it is really "John Calvin haunting me."

This has been true for Bradley the All-America student-athlete at Princeton University, Bradley the Olympic Gold Medal winner. Bradley the Rhodes Scholar. Bradley the professional basketball player with the New York Knicks for 10 years, and now Bradley the U.S. senator.

Bradley said his mother always wanted him to be a success while his father wanted him to be a gentleman.

"Neither wanted me to be a basketball player or a politician," said Bradley.

When he left the baskeball arena and entered the staid Senate in 1979, Bradley not only set out to master his new job like he did his old one, but he was determined to wipe away any thought that he might be just a sports celebrity.

Bradley by all accounts has become an accomplished member of the club. His colleagues say he has gotten their attention because he is thinking about, searching for and proposing some answers to questions dealing with taxes, the economy and energy.

"He picked a few areas, established a reputation as being knowledgeable and he gained respect," said Sen. Jospeh Biden (D-Del.)

Some of the issues Bradley has chosen are tough, complex, and do not lend themselves to immediate solutions. They are the issues that do not necessarily yield short-term political gains.

Bradley has come to be known for his cautious, analytical approach. He avoids the political soapbox and reserves judgment when he has not thoroughly reviewed a problem.

Gordon MacInnes Jr., the executive director of the New Jersey Public Broadcasting Authority and the campaign manager for a 1976 Bradley primary opponent, said the senator has a "blurred image."

"It's tough to see a corner on the guy," said MacInnes. "He's illuminating on describing what the situation is and how complicated it is and what needs to be looked at, but it's difficult to know what he thinks about a situation and what be proposes."

Larry Fleisher, Bradley's friend and the lawyer for the National Basketball Association players' union, said the senator has always been this way.

"Some of us are free wheeling," said Fleisher. "He won't get involved in anything unless he analyzes it and knows what it is. This was done before his political days. It is not related to him trying to cover his fanny."

Bradley's mother agreed. "Bill never gives an immediate opinion," she said.

Fleisher said Bradley "keeps himself from being emotional."

"He is not a guy who will be marching in the streets with people cheering behind him. It's not his style," said Fleisher.

Bradley says he knows he's not the most dynamic speaker in the world, but like everything else, he's working on it. "I used to see at least three people sleeping in the audience, but there are fewer now," he says in typical self-deprecating humor.

Asked what arouses his righteous indignation, Bradley thought for a moment, subtracted the word righteous from the question, and said:

"I guess to summarize briefly, it would be phonies, bullies and bigots That's how I would put it, and I suppose in the political context, there are some of those around, but I guess that's evident."

When it was suggested he is not often heard railing against the "phonies, bullies and bigots," the senator pointed out that "politics operates on many levels, and speech is only one of them."

"The important thing is to be effective, to get things done and to try and be clear," said Bradley.

When Bradley came to the Senate, he lobbied influential Democrats for his energy and finance committee assignments, and was repeatedly told there are two types of senators, workhorses and showhorses.

By nature, Bradley chose to be a workhorse.

"On a consistent basis, you have to like the nitty gritty. If you view the Senate only as an opportunity to make speeches, then I think you don't understand how it works and how the power flows," said Bradley.

"And in my own case, I like the nitty gritty and if anything, I've had to push myself to go out on the platform."

Bradley's former New York Knicks teammates are not surprised the senator favors fundamentals over showboating, but they say he wouldn't have made it to Washington without their help.

"Bill was a man in those days, unfortunately, who couldn't match a shirt and a pair of pants," former Knicks teammate Jerry Lucas deadpanned to an appreciative crowd May 2 when Bradley was inducted into the Hall of Fame in Springfield, Mass.

"I think as I look back at my time with Bill and the success he has had, I have to name his Knick teammate Dick Barnett. In those days, Dick taught Bill how to dress . . . Perhaps without that Bill may not have gotten past Eighth Avenue in New York," said Lucas.

Bradley, who is used to good-natured ribbing from his teammates and can give it back in kind, said he is proud of his basketball days and the friends he made in those times.

He also said he is now more comfortable talking publicly about his former career, a fact apparent by his use in recent weeks of basketball as a metaphor for his current endeavors.

"One of my major moments of insight in the U.S. Senate was the realization that dedication to the team, the community, has a larger, more important application than I ever dreamed," said Bradley. "I was in the Senate about five months, and I was sitting in the Democratic cloakroom about 11

o'clock at night because we were having late votes.

"I saw one senator angry, one senator talking, one senator walking up and down the floor pacing, one senator on the telephone, one senator thinking. I said to myself, 'This isn't a lot different from the Knicks locker room.' "

Bradley said both activities involve getting people from different backgrounds with different experiences and personal agendas to agree on a shared goal and to work toward it.

"That process defines both teamwork and the public interest," said Bradley.

An aide says Bradley's approach represents "inclusionary politics." Bradley's wife, Ernestine, says her husband is more comfortable when he's working as part of a team.

"It is germane to his vision, a condition he functions best under," says his wife. "He believes in consensus, cooperation, working out individual talents and stresses . . . He loves it. He thrives on it."

Bradley also is curious about what makes his colleagues tick, how different senators react and how coalitions are formed. He studies his colleagues and is intrigued how a senator is persuaded to make a decision.

"There are certain tried and tested techniques that you can see certain people using over and over on the senators, whoever they are," said Bradley. Sometimes those techniques are obvious, said Bradley, and sometimes they are more subtle.

During his brief tenure, Bradley has gotten along with his political opponents, has campaigned for many of his Democratic colleagues, and has studiously avoided rocking many boats. He is no maverick, and he plays by the rules.

"He's a bright liberal Democrat," said Republican Senate Finance Chairman Bob Dole of Kansas. "I don't get many votes out of him, but he's good to work with. If there's a problem, he'll help hammer it out."

Sen Henry M. Jackson (D-Wash.) said Bradley is "not one of those people who try to do everything at once, or who is brash."

"He's humble, quiet, and never points a finger or shouts," said Jackson.

Jackson's observation about Bradley's lack of rancor appears to be a trait that goes back a few years.

"I never heard him say a derogatory word about a playmate, an opponent or any high school student," said Bradley's mother. "His best friend ran against him for student council president and he never said a word against him."

"Mr. (Warren) Bradley is exactly like that," said Mrs. Bradley of her husband, a man she described as an avid reader and a frustrated politician. "He never said anything malicious about anybody."

While Mrs. Bradley accompanied her son to his Hall of Fame induction, her husband, a severe arthritic, was unable to travel and remained at the couple's winter home in Florida. Mrs. Bradley said her husband, a Republican banker, would have given anything to have been with his son on that day.

Bradley, whose first interest in politics came from his father, follows the same basic game plan and approach to New Jersey politics as he does in Washington.

He makes frequent public appearances in New Jersey and has avoided alienating state Democrats. He remains aloof from state party infighting, but helps candidates in the general elections.

Some Democrats have criticized him for not taking a more active role, but former Gov. Brendan Byrne suggests Bradley rightly avoids "unnecessary controversy" and serves as a unifying force after primary elections or party squabbles.

"I was known for getting into unnecessary fights, but it was nice to know Bill Bradley was there to bind it all up when it was over," said Byrne.

New Jersey Assembly Speaker Alan Karcher (D-Middlesex) said Bradley has "made between one and no enemies" in his four and a half years in office.

"It's a wonderful thing to have Bill Bradley going in to campaign," added Karcher. "He's an event all by himself."

In trying to grasp his politics, some commentators in New Jersey and in Washington have lumped Bradley with a group of young Democrats referred to as neo-liberals.

This term is used to describe a new generation of politicians who are trying to promote some of the standard values of the Democratic Party while disassociating themselves from the big spending, social welfare-state image of the traditonal liberal Democrats.

Bradley neither accepts or completely rejects the neo-liberal label.

"I'm looking for a new agenda. Or a better way to put that is a new way to realize the old agenda," Bradley said. "I'm interested in economic growth—I think that's the key to everything, the cornerstone of the new agenda."

Bradley said the Democrats must begin talking about a few major issues, and he specifically mentioned taxation, education, arms control, the environment and international competitiveness.

Bradley feels it is important for Democrats to talk in broader, national terms and not become "captive to the narrower interests" by making too many small promises.

When asked about the traditional liberal social agenda, Bradley feigns ignorance, He later says he obviously supports the welfare and social services programs, but feels they must be more efficiently administered.

Bradley's major legislative initiative so far is his ambitious and detailed plan to reform the federal personal and corporate income tax systems.

Bradley says the current tax system is too complex and unfair, and impedes economic growth. He has proposed lowering the tax rates and eliminating most of the current deductions, loopholes and exemptions.

While the idea is not new, Bradley spent several years consulting with economists and has offered the most thorough plan in the Congress. He admits his proposal faces stiff opposition, but in typical fashion says he intends to stick with it, and make it part of the national debate.

At the same time, Bradley is working on a plan to help American workers cope with technological change. The proposal, though still on the drawing board, envisions severance funds to provide financial help for displaced workers.

If workers can be financially assisted during a period of disruption, Bradley said, a major obstacle to technological change and automation will be removed, enabling industry to more easily make the transition and compete effectively in world markets.

Some legislators have sought to address the problems facing American industry by calling for the imposition of trade restrictions to reduce competition from abroad. Bradley; instead, chooses to avoid this approach, and in a typical maneuver, addresses the problem on his own terms.

This way Bradley avoids the pitfalls of the sticky traditional argument of protectionism versus free trade.

When he arrived in Washington Bradley focused on energy, warned about the U.S. dependence on the insecure foreign oil and tried to get the Carter administration to fill the Stategic Petroleum Reserve. Nobody had paid much attention to this oil reserve before, but Bradley kept the issue before the Senate.

In his first year, Bradley took on the oil companies and Sen. Russell Long (D-La) during the debate on the windfall profits tax on decontrolled oil. Bradley managed to get the tax increased substantially, and won a backhanded compliment from Long, who good naturedly told the freshman senator be might know how to play basketball, but he didn't know how to compromise.

Bradley also lobbied members of the Senate Energy Committee to win approval of his experimental residential conservation program and a waste-to-energy plan, but both fell by the wayside with President Reagan's budget cuts.

In 1980 be filled a vacuum and helped negotiate a compromise chemical hazardous waste bill known as the superfund through the Senate—a measure important to a state like New Jersey. He also persisted and overcame several defeats to win adoption of an amendment that guarantees the state will get its first VHF television station in 15 years.

Two years earlier, Bradley spent his energies throwing facts and figures at the Army to disprove their contention that the basic training operation at Fort Dix was uneconomical. In the end, the Army retreated.

In March 1982 Bradley listened pensively to several days of debate, and then rose to call for the expulsion of Harrison A. Williams Jr., his fellow New Jersey senator who had been convicted of bribery in the Abscam corruption probe.

In 1981, he bucked the tide, and voted against President Reagan's three-year $750 billion tax cut measure after failing to win support for a one-year tax cut or a plan that would have allowed cancellation of the third year reduction.

However, he voted for the first round of Reagan budget cuts in 1981, and 1982 supported the budget on final passage after trying to restore some social spending cuts. He also has supported increased defense spending.

A 1982 survey of 202 votes conducted by the respected Congressional Quarterly magazine shows Bradley sided with the majority of the Senate Democrats 87 percent of the time. The magazine found in another survey of 119 key votes that Bradley opposed positions supported by President Reagan 62 percent of the time in 1982—not a particularly high opposition score.

Bradley generally has received high marks from the liberal Americans for Democratic Action, organized labor, and environmental, consumer, senior citizens and good government groups. His ratings from conservative organizations and business groups have been low.

Neil Newhouse, a spokesman for the U.S. Chamber of Commerce, said Bradley's cumulative 29 percent rating is "one of the lowest in the Senate."

Despite the low marks, Bradley has not alienated some segments of the business community in New Jersey.

Gerald Hall, vice president of the New Jersey State Chamber of Commerce, said there is "no doubt that Bradley has gone

the wrong way on a number of things," but he added that "a good many businessmen in New Jersey find him a refreshing version of a big time politician."

"I give him credit. He makes an effort to meet with business groups, learn of their concerns and tell them how he thinks," said Hall. "They toss the bull back and forth. He's no stuffed shirt, and the businessmen always go away from the meetings with good feelings."

The conservatives don't like Bradley because of his voting record, but Jeffrey Bell, Bradley's 1978 opponent, gives the senator credit for "moving in a direction I think the country will eventually accept" regarding his plan to eliminate tax deductions and reduce tax rates.

Jay Angoff, a spokesman for the Ralph Nader group known as Congress Watch, said Bradley has been "pretty good" on consumer issues, but has been disappointing when it comes to some finance and tax matters.

"We wish he would be more a leader of the progressive wing," said Angoff."

Others take issue with Bradley's support of elective abortion and tuition tax credits, while some say he is indecisive on issues like El Salvador and should be a more forceful critic of the President. Bradley says he's still studying the Central American question.

Bradley responds that he cannot be all things to all people, and notes that many senators get stretched too thin trying to widen their band of issues.

Those who know Bradley say he has a wry sense of humor, a penchant for one-liners and like to "horse around" and give impersonations in private, but will not show that side very often in public.

In his speech at the Hall of Fame dinner, Bradley told the crowd he had performed in Massachusetts many times, but never before in long pants.

Although he lets his lighter side show now and then, Bradley tries to keep his family life as private as possible.

He makes a conscious effort to spend time with his wife and his 6-year-old daughter, Teresa Ann, whether it's at their Washington or Denville home.

Bradley's wife, a professor at Montclair State College, says he uses the time with his family to "rejuvenate," although she points out that he sometimes is put to work at home.

"Our back porch is falling apart, and he put in some nails knowingly," said his wife. "He even went out and bought the right nails. To my great surprise he is handy."

Bradley uses his private time to read, play with his daughter, help her with her homework, go to the movies or get occasional exercise like jogging or walking, but he no longer plays basketball.

"It's over," said Bradley. "I have occasionally in the last six months gone out and taken a few shots. My daughter and I go to the playground with a ball . . . Sometimes, I take three or four shots.

"I don't get enjoyment out of it," he said. "I'm not in the same condition. I couldn't shoot jump shots or anything. I can just shoot free throws."

Since his Princeton days, Bradley has been in the limelight, and very much a public figure.

He has grown used to this condition over the years, and his friends say he has learned to handle his fame and keep it in perspective.

Michael Kaye, Bradley's friend and campaign media consultant, said Bradley "has his ego in control and never makes anybody feel he is better than they are."

Bradley's almost storybook public life, including his quick acceptance in the Senate, has fostered repeated speculation about his future. He has always had high expectations for himself, but so has the public.

His next hurdle could be a possible leadership role in the Senate, although wherever he goes, there are repeated suggestions that the Senate is only one rung on his climb up the political ladder.

Many suggest that Bradley is presidential timber.

Bradley says he is "flattered" by the comments, but claims not to give the subject any thought and insists he has no interest in any job other than being a senator from New Jersey.

"I like what I'm doing now," said Bradley. "I can only say no, it's the only way I can respond. I learned in my former profession that you play one game at a time. I don't have any expectations or plans."

He adds that he never plans anything eight or 10 years in advance.

Bradley is no doubt a patient man who takes his time making decisions, but it would be out of character for him not to at least be thinking about his future.

Bradley's mother says the night he was elected to the Senate, she pulled out a letter he wrote to her as a senior at Princeton.

"I hope to win a Rhodes scholarship, after which I want to enter the field of politics and become a U.S. senator," Mrs. Bradley remembered the letter as saying.

Bradley, with a bemused look on his face, said he does not remember writing that letter, but added, "If she said it, it must be so."●

PROPOSED ARMS SALES

● Mr. PERCY. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive prior notification of proposed arms sales under that act in excess of $50 million or, in the case of major defense equipment as defined in the act, those in excess of $14 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulated that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

In keeping with the committee's intention to see that such information is available to the full Senate, I ask to have printed in the RECORD at this point the notifications which have been received. The classified annexes referred to in several of the covering letters are available to Senators in the office of the Foreign Relations Committee, room SD 426.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., May 17, 1983.

In reply refer to I-01510/83ct.

Hon. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 83-30 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter of Offer to Japan for defense articles and services estimated to cost $26 million. Shortly after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

PHILIP C. GAST,
Director.

[TRANSMITTAL No. 83-30]

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act

(i) Prospective purchaser: Japan.

(ii) Total estimated value:

	Millions
Major Defense Equipment [1]	$23
Other	3
Total	26

[1] As defined in section 47(6) of the Arms Export Control Act.

(iii) Description of articles or services offered: A quantity of 24 HARPOON missiles and spare parts for eight missiles.

(iv) Military department: Navy (LHK).

(v) Sales commission, fee, etc., paid, offered, or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: See annex under separate cover.

(vii) Section 28 report: Included in report for quarter ending March 31, 1982.

(viii) Date report delivered to Congress: May 17, 1983.

POLICY JUSTIFICATION

JAPAN—HARPOON MISSILES AND SPARE PARTS

The Government of Japan has requested the purchase of 24 HARPOON missiles and spare parts for eight missiles at an estimated cost of $26 million.

Japan is one of the major political and economic powers in East Asia and the Western Pacific and a key partner of the United States in ensuring the peace and stability of that region. It is vital to the U.S. national interests to assist Japan in developing and maintaining a strong and ready self-defense capability which will contribute to an acceptable military balance in the area. This sale is consistent with these U.S. objectives and with the 1960 Treaty of Mutual Cooperation and Security.

The sale of these missiles, which will be installed on three new destroyers being built in Japan, is in keeping with United States desires that Japan expand its defense role. Japan already employs HARPOON missiles and will have no difficulty in absorbing these additional missiles.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be McDonnell Douglas Astronautics Company of St. Louis, Missouri.

Implementation of this sale will not require the assignment of any additional U.S. Government or contractor personnel to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C. May 17, 1983.
In reply refer to I-01222/83ct.

Hon. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 83-34 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter of Offer to Singapore for defense articles and services estimated to cost $601 million. Shortly after this letter is delivered to your office, we paln to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

PHILIP C. GAST,
Director.

[TRANSMITTAL No. 83-34]

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act

(i) Prospective purchaser: Singapore.

(ii) Total estimated value:

	Millions
Major Defense Equipment [1]	$348
Other	253
Total	601

[1] As defined in section 47(6) of the Arms Export Control Act.

(iii) Description of articles or services offered: Four E-2C aircraft with spare parts, support equipment, training, and publications.

(iv) Military department: Navy (SAV, LAN, LAP, GAT, and BCW).

(v) Sales commission, fee, etc., paid, offered, or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: See annex under separate cover.

(vii) Section 28 report: Case not included in section 28 report.

(viii) Date report delivered to Congress: May 17, 1983.

POLICY JUSTIFICATION

SINGAPORE—E-2C AIRCRAFT WITH SUPPORT

The Government of Singapore has requested the purchase of four E-2C aircraft with spare parts, support equipment, training, and publications at an estimated cost of $601 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by helping to improve the security of a friendly country which is a continuing force for peace and regional stability in Southeast Asia. Singapore's strategic location commands the primary route between the Indian and Pacific Oceans.

Recognizing that its small size could make Singapore a target of aggression, Singapore's defense strategy has been to make it clear that an attack would be unprofitably expensive. Singapore sits astride the narrow entrance to the Strait of Malaccá, one of the world's busiest waterways. Through this strait passes the bulk of West to East tanker traffic from the oil rich Middle-East. The E-2C aircraft will provide the Royal Singapore Air Force (RSAF) with the capability of monitoring at long range all approaching air and surface traffic to this strategic choke point. In times of increased tension, the intelligence gathered at extended ranges will assist in countering potential threats. The RSAF has the technical competence necessary to operate and maintain the aircraft proposed in this sale.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Grumman Aerospace Corporation of Bethpage, New York.

Implementation of this sale will require the assignment of 21 additional contractor representatives to Singapore for two years.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., May 17, 1983
In reply refer to I-01422/83ct.

Hon. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 83-36, concerning the Department of the Air Force's proposed Letter of Offer to Saudi Arabia for defense articles and services estimated to cost $57 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

PHILIP C. GAST,
Director.

[TRANSMITTAL No. 83-36]

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act.

(i) Prospective Purchaser: Saudi Arabia.

(ii) Total Estimated Value.

	Millions
Major Defense Equipment [1]	0
Other	$57
Total	57

[1] As defined in section 47(6) of the Arms Export Control Act.

(iii) Description of articles or services offered: This amendment will increase the capitalization value of the existing stock level equity portion of the Cooperative Logistics Supply Support Arrangement for spare parts in support of major items of U.S. Air Force equipment of U.S. origin already delivered to and being operated by the Royal Saudi air Force.

(iv) Military department: Air Force (KAA, amendment 9).

(v) Sales commission, fee, etc., paid, offered, or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: None.

(vii) Section 28 report: Included in report for quarter ending March 31, 1983

(viii) Date report delivered to Congress: May 17, 1983.

POLICY JUSTIFICATION

SAUDI ARABIA—COOPERATIVE LOGISTICS SUPPLY SUPPORT ARRANGEMENT

The Government of Saudi Arabia has requested that the value of the existing Cooperative Logistics Supply Support Arrangement (CLSSA) stock level equity case for support of major items of U.S. Air Force equipment of U.S. origin already delivered to and being operated by the Royal Saudi Air Force be increased from $114 million to $171 million, an increase of $57 million.

This sale is consistent with the U.S. policy of assisting other nations to provide for their own defense by allowing the transfer of reasonable amounts of defense articles and services. It will demonstrate the continuing willingness of the U.S. to support Saudi Arabia which is an important force for moderation in the region.

This amendment will increase the CLSSA equity of Saudi Arabia in the U.S. Air Force logistics system and will provide continued logistical support for U.S. Air Force equipment previously sold to Saudi Arabia by the U.S. Government.

This sale will not affect the basic military balance in the region.

There will be no prime contractor for this transaction.

Implementation of this sale will not require the assignment of any additional U.S. Government or contractor personnel to Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this sale.●

CHAMPION NEW YORK ISLANDERS

● Mr. MOYNIHAN. Mr. President, I rise today with great pride to salute the Stanley Cup Champion New York Islanders, who in clinching the cup last night have become the first post-expansion team to win four consecutive Stanley Cup championships. By winning for the fourth straight time the Islanders have set a mark of excellence matched by few teams in any sport. Most importantly, their unselfish, dedicated, and tireless play teaches valuable lessons to the youth of our country. Although there are many great individual players on the Islanders, their accomplishments as a team of superb character are what we laud today. The Islanders fought back from adversity and injury to becomes the champions for an unprecedented fourth consecutive time—they should be a source of pride not only for New York, but for the entire country.●

QUEST FOR FREEDOM

● Mr. ABDNOR. Mr. President, it is clearly evident that civilization has rarely benefited from the lessons from history, and this age is no different.

While for over 200 years the United States has been relatively safe from attack from the outside, it is no longer. Moreover, our freedom like the freedom of peoples elsewhere is at stake.

I commend to the attention of my colleagues and submit for the RECORD a recent column by Gene Malone, a long time South Dakota resident, who now teaches in Kenosha, Wis. It states the issue well.

The column follows:

[From the Journal Times, (Racine, Wis.), Apr. 8, 1983]

TEACHER CITES NEEDS IN QUEST FOR FREEDOM

(By Gene Malone)

The history of the United States as a "friend of freedom" in the last 20 years should be studied very carefully. To repeat

wrong actions or to act on wrong conclusions is folly repeated.

James Russell Lowell, the American freedom poet, said, "True freedom is to share all the chains our brothers wear, and, with heart, and hand, to be earnest to make others free."

The war to keep South Vietnam free began for the United States in 1964. Ten years later the Communist forces of North Vietnam, with weapons from the Soviet Union, over-ran the struggling forces of freedom in the South. It was over!

Yes, I remember it all well. While our soldiers fought to keep South Vietnam free, the media here incessantly bombed us with word pictures, saying it was only a civil war there; the government of South Vietnam was in daily violation of human rights to the people.

The domino theory, asserting that if South Vietnam fell to the Communist hordes the rest of Southeast Asia would fall, was erroneous. And back in the United States our State Department limited our servicemen in such ways that it would be impossible to end the war. Little was required of our people in this struggle, but the parents of 50,000 Americans killed in the war were anguished.

Yes, I remember the umbrella-front groups that marched for "Surrender with Honor," and Jane Fonda's trips to North Vietnam to bring greetings to the "other side." And the "peace priests," those seeking alternatives by "fleeing to Canada," and the tortured American POWs who returned from the war area while leading "peaceniks" said the POWs had been treated well.

And the books; propaganda materials; speakers that crisscrossed our country denouncing our help to South Vietnam and extolling the virtue of "socialist liberation; the political rhetoric and the news with nightly bias toward the "revolutionary activists" who sought to take over to stamp out freedom in South Vietnam.

Yes, yes, the last 20 years have been a nightmare to those who knew and know that freedom was undermined and the war lost here at home.

The lessons of Vietnam are that our soldiers were not allowed to win, the propaganda war by the media and well-organized forces were successful in manipulating the truth to sow confusion and doubt, the domino fear was real as all of S.E. Asia had fallen. The rhetoric about human rights, its only a civil war, Russia has no part in aiding the guerrilla forces, was, of course, false.

Now, the exact plan for freedom's defeat in El Salvador and the rest of Central America is being implemented with the insulting reminder, "Remember the lessons of Vietnam." The parroted "lessons of Vietnam" oozed by the surrender-now fifth column in America and the gloating monopoly press are the false conclusions that alert Americans reject. The "Surrender Folks" say the lesson of Vietnam is that we should never get involved in the struggle for liberation from communism.

Defense of freedom as a universal concept maintains that free nations ought to be interested that others and even their neighbors should not be in bondage—political, economic or spiritual. The lesson we must learn from Vietnam is that all Americans must sacrifice for freedom if the goal is clear and our country commits itself to that goal—or at least not undermine the efforts of those who are struggling to be free.

John Stuart Mill, an English philosopher, once said, "War is an ugly thing, but not the ugliest thing: The decayed and degraded state of moral and patriotic feeling which thinks nothing worth a war is worse. A man who has nothing which he cares about more than his personal safety is a miserable creature who has no chance to being free, unless made and kept so by the exertions of better men than himself."

How much a nation should give to help another maintain freedom is subject to great moral discussion and differences, but sacrifice for freedom is not a new notion.

President Harry Truman said, "The free peoples of the world look to us for support in maintaining their freedom. If we falter in our leadership, we may endanger the peace of the world—and we shall surely endanger the welfare of our own nation."

Freedom forces lost in the battle to save South Vietnam. Look at it today: a faceless freedomless, forsaken land. U.S. Ambassador to the United Nations, Jeane Kirkpatrick, stated, "How can it be that persons so deeply committed to the liberation of South Vietnam and Cambodia . . . were so little affected by the enslavement that followed their liberation? Why are Western Liberals—who often are such smart people—such slow learners about Communism?" That is a very good, unanswered, question.

Winston Churchill noted, "If you do not fight for what is right when you can easily win without bloodshed, if you do not fight when the victory will be easy and not too costly, the moment may come when you will have to fight with all the odds against you and with only a precarious chance of survival . . . You may even have to fight when there is no hope of victory, for it is better to perish than to live as slaves."

And Ralph Waldo Emerson sums the priorities of life with, "For what avail the plough or sail, or land or life if freedom fail?"●

NOTICE OF DETERMINATIONS BY THE SELECT COMMITTEE ON ETHICS

● Mr. STEVENS. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD this notice of a Senate employee who proposes to participate in a program, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The Select Committee has received a request for a determination under rule 35 which would permit Mr. Sheldon J. Himelfarb, of the staff of Senator CHARLES McC. MATHIAS, JR., to participate in a program sponsored by Soochow University, in Taipai, Taiwan, from May 27 to June 5, 1983.

The committee has determined that participation by Mr. Himelfarb in the program in Taiwan at the expense of Soochow University, to participate in seminars and meetings, is in the interest of the Senate and the United States.

The Select Committee has received a request for a determination which permits Mr. Richard F. Kaufman of the Joint Economic Committee to participate in a conference on security and economic issues in Tokyo, Japan, on March 28, 1983, paid for by the International House of Japan and the Institute for Domestic and International Policy Studies.

The committee has also received a request for a determination which permits Dr. James K. Galbraith to participate in a program on economic issues in Berlin, Federal Republic of Germany, on April 28, 1983, paid for by the Wissenschaftszentrum Berlin (Berlin Science Center).

The committee has determined that participation by these individuals in these programs is in the interest of the Senate and the United States.●

GARRISON DIVERSION UNIT: TIME FOR AN ALTERNATIVE

● Mr. HUMPHREY. Mr. President, 2 weeks ago the Christian Science Monitor did a series of articles on wasteful Federal projects, "Pork Barrel Politics Today." The second article in this series was entitled, "Garrison Diversion: Needed, or A Clear Case of 'Pork'?" and focused entirely on the controversy surrounding this proposed $1 billion water project.

Conservationists have long opposed this reclamation project because of the environmental harm it will do to the Dakota and Manitoba regions. Studies indicate that the project will destroy between 175,000 and 350,000 ducks annually and will pollute several major rivers that flow northward into Lake Manitoba.

The Canadian Government also is concerned because the project could destroy between 50 and 75 percent of Manitoba's multimillion dollar commercial fishing industry in violation of a 1909 boundary waters treaty with the United States. Finally, taxpayer groups, such as the National Taxpayers' Union opposed the Garrison project because the irrigation it will provide will cost the taxpayer over $3,753 per acre but the benefited farm is only required to repay $77.

Fortunately, there is one favorable aspect to this story: The project now is only 15 percent complete and we have a chance to stop or redirect it before any real damage is done. I believe the Bureau of Reclamation can propose a better water project than this. Indeed, I think it is high time that Congress ask some hard questions about Garrison and require the Bureau of Reclamation to come up with a project that is not so environmentally harmful.

Mr. President, I ask that the full text of the Christian Science Monitor article be entered into the RECORD.

The article follows:

11-059 O-87-16 (Pt. 10)

[From the Christian Science Monitor, May 4, 1983]

GARRISON DIVERSION: NEEDED, OR A CLEAR CASE OF "PORK"?

(By Peter Grier)

(Second of four articles on congressional pork barrel projects)

By 1936, North Dakota farmers desperately needed water.

For three years in a row, drought had shriveled their wheat into broom straw and parched their pocketbooks—while in the western part of the state the Missouri River, untapped, gushed south toward the Mississippi River and the sea. North Dakota begged the federal government for money to divert Missouri River water into thirsty fields. The funds didn't come. Before the dry years ended, four-fifths of the state's farmers lost their farms.

The great drought of the Great Depression is but a dim memory now, and in summer North Dakota's fields are golden seas of wheat raised by dry-land farming techniques. But the state is still fighting for a Missouri River irrigation project—the Garrison Diversion.

Garrison, a complex web of canals, dams, and lakes, was first authorized by Congress in 1965. Today, the project is only 15 percent complete, and faced with stiffening opposition in Congress its future is far from secure.

"The logic in this program was lost long ago," says a congressional staffer who studies public works programs. "It insults ducks, fish, and Canadians."

"The main question is do we have our fair share of the water?" retorts Sen. Quentin Burdick (D) of North Dakota. "[Missouri] water is our right. They can't take that away from us."

Traditionally, Congress loves to play with water. Long ago, legislators discovered that federal water projects—dams, canals, levees—are fun to dispense, since such construction is highly visible and easy to take credit for.

Not all these projects make sense from a national point of view. Political scientists consider many water projects classic examples of the "pork barrel" spending process, in which members of Congress push programs that benefit their constituents, but don't make economic sense from a national point of view. But affected legislators insist that critics of water projects don't understand the importance of water to many states.

Garrison thus symbolizes a debate that swirls around many water projects. Whatever its merits, the Garrison Diversion would amount to man altering nature on a grand scale. Water would be pumped from the Missouri River near the town of Garrison, in northwest North Dakota, and diverted to the center and east of the state through 3,000 miles of reservoirs, canals, pipelines, and drains. If completed as planned, Garrison would irrigate 250,000 acres of farmland, while occupying 220,000 acres itself.

But the U.S. House of Representatives last year voted to cut off the project's funds; only concerted arm-twisting by North Dakota's senators convinced a House-Senate conference committee to keep Garrison alive. The Interior Department's Bureau of Reclamation now plans to build the project in phases. Construction won't progress beyond Phase I, about one-third of the project, before sensitive environmental problems are solved, a bureau official says.

"I don't think we'll get the extensive project we once hoped for," admits an aide to a member of the North Dakota congressional delegation.

Cost is one obstacle. Congress originally thought the project would cost $207 million. But inflation and lawsuit-induced delays have helped push its projected price to $1.1 billion.

Theoretically, the US Treasury would get this billion dollars back sometime next century. Most of the money would come from a fee on hydroelectric power generated by Missouri River basin dams. Users of Garrison water would pay back only 2 percent of the project cost.

"Garrison is fundamental pork barrel," insists Sen. Gordon Humphrey (R) of New Hampshire, a member of a water resources subcommittee. "It benefits a few people at the expense of many."

Irrigation, of course, is Garrison's primary reason for existence. But only 0.6 percent of North Dakota's agricultural land would be irrigated by the project. Back in 1965, the Bureau of Reclamation figured Garrison would produce $2 in benefits for each $1 of cost. That cost-benefit ratio has since slipped to 1.3 to 1—and even this calculation may be too rosy, since it assumes interest rates will hover around 3 percent.

"This whole program is only marginally justifiable on an economic basis," says an aid to Rep. Silvio Conte (R) of Massachusetts, ranking Republican on the Appropriations Committee and one of Garrison's most vocal critics.

North Dakotans, in reply, say Washington owes them a water project. In the 1940s the federal government dammed the Missouri River near the town of Garrison, to prevent flooding in states downstream. Five hundred and fifty thousand acres of rich North Dakota farmland were suddenly at the bottom of the brand-new Lake Sakakawea.

In return, North Dakota was promised a 1-million-acre water diversion project, state politicians say. Garrison, say North Dakotans, is thus but partial payment for the loss of some of the state's best farmland.

"Look at the sacrifice we've made by being denied the economic production from that bottomland. We've lost $35 million a year in net personal income," says former North Dakota Gov. William Guy, citing a state economic study.

But "out-of-state opposition," Mr. Guy mutters, has stalled Garrison. This opposition, led by the National Audubon Society, took legal action that halted work on Garrison for five years, until a federal court dismissed its lawsuit last May. Its objections are focused on the project's possible environmental effects.

"Garrison would do as much environmental damage as any water project in the US today," says Brent Blackwelder of the Environmental Policy Center.

Consider ducks—an easy thing to do in North Dakota, since the state is home to more ducks than any other part of the US, except Alaska. Garrison's canals would be laid smack through a "prairie pothole" region, where shallow lakes, sloughs, and marshes provide a waterfowl's version of ideal real estate. Sixty thousand acres of wetlands would be destroyed, estimates the US Fish and Wildlife Service, with another 13,000 acres damaged. A dozen national wildlife refuges would be adversely affected.

Garrison's supporters complain that environmental objections are overblown. "The environmentalists don't really like any water project," grouses an aide to Sen. Mark Andrews (R) of North Dakota.

But the project's possible environmental effects have also riled the Canadian government. As now designed, Garrison would connect the Missouri River with the Hudson Bay Drainage Basin, and the Canadians are worried this new link will introduce pollutants and "rough" fish such as carp into their waters, killing off valuable species. The International Joint Commission, a US-Canadian advisory group that monitors water resources shared by the two countries, found in 1976 that Garrison might reduce the commercial fish population of Manitoba by half.

Opposed by Canadians, US environmentalists, and conservative budget-watch groups such as the National Taxpayers Union, Garrison owes its continued existence to the power and persuasiveness of North Dakota's two senators.

Senators Andrews and Burdick are on the Appropriation Committee, a powerful rostrum from which to persuade other senators to vote for the North Dakota water project. Andrews, as chairman of the Appropriations subcommittee on transportation, is in a particularly good position.

"Andrews carries a lot of weight, especially considering he's a first-term senator. Everybody depends on him for their state's transportation projects," says a House Appropriations staff member.

The Reagan administration's fiscal 1984 budget proposes to spend $22.3 million on Garrison. The House will likely vote to stop this money, the project's critics claim, setting up another showdown with the Senate over Garrison's future.

"North Dakota should be looking at a cheaper, more sensible proposal," perhaps using pipelines instead of canal says the Environmental Policy Center's Mr. Blackwelder.

Several North Dakota newspapers have also called for another look at the project. But something must happen relatively soon if North Dakota is to get a Missouri River diversion in any form. The Missouri is one of the few Western rivers with water that isn't divided up by an interstate compact—and there are thirsty, growing states downstream.

ONE MAN'S HOLOCAUST

● Mr. LEVIN. Mr. President, I want to take this opportunity to submit a May 12, 1983, Washington Post article about Isidore Zimmerman, a man who spent 25 years in prison for a crime he never committed. Isidore Zimmerman's story is a tragic one, but it is not unique. I have documented many cases similar to his where persons sentenced to death were later found to be innocent of the crime.

Fortunately for Isidore Zimmerman, 2 hours before he was scheduled to die in the electric chair, Governor Lehman commuted his sentence to life imprisonment. Had Zimmerman not received this commutation from the Governor, he could not have eventually walked out of prison a free man when the original indictment against him was dismissed by the supreme court of the County of New York.

Over 20 years after his death sentence was commuted, the court was pursuaded to release Zimmerman

when new evidence revealed that the key prosecution witnesses against him had made statements before the trial that Zimmerman was completely innocent of the murder charge. These same witnesses later changed their story and testified against Zimmerman, but the prosecutor did not inform Zimmerman's defense attorney about their original statements. Chief Judge Charles S. Desmond wrote in his opinion dismissing the indictment that:

> The failure of the prosecutor to correct this falsehood and to afford counsel an opportunity to examine those statements, which were in his possession, in effect amounted to a suppression of such material and prejudiced the defendant in his right to a fair trial.

Mr. President, I hope my colleagues will consider how difficult it is to compensate the Isidore Zimmerman's of this country who are pawns of a judicial system which is not perfect. But at least Isidore Zimmerman is alive to tell his story and to seek compensation for the years he was deprived of his freedom due to an error of justice. Once an innocent person has been executed, these errors can never be corrected.

The article follows:

ONE MAN'S "HOLOCAUST"—"SURVIVORS' SYNDROME" AND THE PRISONER ZIMMERMAN

(By Christian Williams)

NEW YORK, May 11.—Isidore Zimmerman, who was released from prison in 1962 after serving 25 years for a murder he did not commit, now exhibits symptoms common to survivors of Nazi extermination camps, the New York Court of Claims was told today.

Zimmerman, 66, suffers from post-traumatic stress disorder, or "survivors' syndrome," according to Dr. Israel Zwerling, called as an expert witness in Zimmerman's suit for $10 million in damages from the state.

Zwerling, chairman of the Department of Mental Health Sciences at Hahnemann medical school in Philadelphia, is head of the Holocaust Study Group. Last year, the organization completed a study of 80 Holocaust survivor families, comparing them with 120 American families.

Zwerling testified that Zimmerman, a former doorman, exhibits symptoms of social isolation, "startle reaction," sleep disorders, extreme irritability and reduced attention span, which the study group found in concentration camp survivors. "This combination of symptoms is unique to people who have survived an extended traumatic experience with constant threat to their lives."

Zimmerman already has turned down an offer of $1 million tax-free from the State of New York. In hearings scheduled to stretch well into next week he is attempting to show through health and psychiatric records and economic projections of his lost earnings that his compensation should be $10 million. The case is being heard before Judge Joseph Modugno, who will set the figure. Zimmerman is represented by the large New York law firm of Shea & Gould on a one-third contingency basis. Milton Gould said today in an interview that "this case has many interesting sociological and penological implications especially in the Holocaust comparison." He added that "I have no doubt that this will go to the appellate court."

Zimmerman, arrested in 1937, spent nine months on Death Row at Sing Sing and about 24 years in other prisons, where he frequently was punished for fighting and insolence. He is blind in one eye and attributes the injury to a beating by guards at Attica prison. He finally was released, and his original indictment dismissed, when an appeals court found that he had been convicted on perjured testimony knowingly admitted by a prosecutor.

Zwerling, describing Zimmerman's survivors' syndrome, said "except when he is asked about something else, he constantly talks about prison life even though that was more than 20 years ago. He has recurring nightmares. He reacts with panic to any situation requiring him to remember prison life. If a policeman comes unexpectedly into view he immediately looks to see if he's after him.

". . . He has flattened his emotional responses. He cannot maintain his old interest in sports even on television because he gets too restless. He has marked evidence of organic brain syndrome—in his attention span, judgment and ability for abstract thought."

Zwerling testified that he had given Zimmerman the "seven from 100" test. In this psychiatric examination, a subject is asked to subtract seven from 100 and then seven from 93 and so on. "He failed this test, which is a test of attention span. This is common in survivors' syndrome," Zwerling said.

Startle reaction was defined by Zwerling as a normal reaction to a sudden shock. In Zimmerman, Zwerling, said, the startle reaction is exacerbated by his imprisonment experience so that he frequently overreacts to stimuli.

"He is extremely suspicious," and at the same time "driven to telling everyone how important he is," Zwerling said. "It comes as no surprise to me that he has no friends. He has isolated himself. He was fired from his job as a doorman because he continually stopped tenants of his building to tell them about his prison experiences. That is typically grossly inappropirate behavior."

Asked by Gould if Zimmerman is able to "enjoy life," Zwerling replied, "That's the heart of the issue. He cannot enjoy life. He is unable to pursue pleasure for its own sake."

In the afternoon session, Zimmerman testified about life in prison at Auburn, Greenhaven, Sing Sing, Attica and the Tombs and about the succession of jobs he held after his release.

Assistant state Attorney General Frank Miller, over the objection of Zimmerman's lawyers, questioned Zimmerman about a juvenile record, with Miller contending that before Zimmerman's conviction for murder he had "fantasized himself as a gang member," and been a "macho kid" and a "delinquent." Miller also noted, again over the objection of Zimmerman's attorneys, that Zimmerman had, in fact, been arrested and charged with an earlier murder, although the case against him subsequently was dismissed.

Zimmerman contended that although he had fantasized about being a gang member, "I also fantasized about being a cowboy and an Indian and a sheik."

The juvenile record indicated that Zimmerman at the age of about 15 was "habitually disobedient, beyond the control of his parents, and associated with bad characters." It listed his IQ as 96, and contained the allegation that he had "flushed a drunk," 1930s street parlance for robbery of an inebriate.

After testimony concludes, Modugno is expected to announce the damage award within a few weeks.●

ROLLCALL OF HEROES

● Mr. HEINZ. Mr. President, at this time each year we pay tribute to those courageous law enforcement officers who were killed in the line of duty while serving their communities and country. There is no way that we could sufficiently pay homage or begin to express our thanks to them and so many other officers who have given the ultimate sacrifice so that the rest of us can live in safety.

It is important that we never lose sight of the efforts of each and every one of these outstanding citizens. They were our friends and our neighbors, and they represented the finest this country has in public servants. They leave behind memories and families; they leave behind the bitter realization that our system is far from perfect and that the war on crime must be high on our agenda.

As he has since 1969, former National Chaplain Virgil D. Penn, Jr., of the Fraternal Order of Police has conscientiously gathered a list of slain officers from around the country who perished during the previous year. Known as the Rollcall of Heroes it is our acknowledgement of their sacrifice and a small way for us to give support to the families that will have to live with their absence.

Mr. President, I ask that the remarks of former Chaplain Penn be placed in the RECORD along with the National Police Prayer and the list of slain officers, the Rollcall of Heroes.

The material follows:

ROLLCALL OF HEROES, 1982

(By Virgil D. Penn, Jr.)

During the past year, eighty seven Law Enforcement Officers have paid the supreme sacrifice while serving and protecting the citizens of America. We are thankful that these losses are diminishing; but it is little consolation to the families who have lost their loved ones. In every hamlet and Village the only defense against crime are the brave "Soldiers of Peace" who patrol lonely beats and crowded highways to ensure the safety of all.

The most discouraging factor of these tragic events are the judicial results handed down to the murderers of our Officers. How many felons have received the just penalty they deserve? We believe the punishment should fit the crime and not prolong the manufactured rights of these criminals such as plea bargaining and insanity. The time has come to recognize the rights of the victims and put the fear of the Lord into the perpetrators so others will think twice before committing these henious acts.

We the Law Enforcement Officers throughout the entire nation appreciate the action of The United States Congress and

Senate in making all America aware of the sacrifices of our deceased brothers. By the presentation of the "Rollcall of Heroes" on this day, manifests the concern of the Legislators of America. May the Good Lord bless each and every one of you.

Respectfully Submitted,

VIRGIL D. PENN, JR.,
Past National Chaplain,
Fraternal Order of Police

1982 NATIONAL POLICE PRAYER

Almighty and most merciful God, we ask Thee to bless all Law Enforcement Officers who have paid the supreme sacrifice in the performance of their duties. They have bestowed upon us all an example of devotion and selflessness by their brave actions.

Comfort, we beseech Thee Merciful Father, the family and friends of our fallen brothers. Lift up their spirits and give them peace and understanding to bear the loss of their loved ones.

We commend the souls of our brother officers to Thy everlasting care and pray You will give them eternal rest until the blessed day of Resurrection. This we pray in His name to whom be glory both now and forever more. Amen.

LAW OFFICERS KILLED IN THE LINE OF DUTY IN THE YEAR OF 1982

	Department	State	Rank	Deceased
January:				
5	Montgomery	Alabama	Investigator	Mary Pearl McCord.
7	North Little Rock	Arkansas	Officer	Jerry Claude Davis.
8	Buena Vista	Virginia	Lieutenant	William D. Oyler.
11	Milwaukee	Wisconsin	Officer	Sydney C. Snow, Jr.
13	Salt Lake City	Utah	Sergeant	Ronald L Heaps.
14	Memphis	Tennesse	Officer	Larry Paul Childress.
19	Los Angeles County	California	Deputy sheriff	Kenneth D. Ell.
21	Marysville, Union County	Ohio	Sheriff	Harry L. Wolfe.
29	Clayton	North Carolina	Officer	William Rayvon Gilmore, Jr.
February:				
4	Ashland, Cheatham County	Tennessee	Deputy	Charles Frank Jordan.
5	Chicago	Illinois	Officer	James E. Doyle.
7	Pennsylvania State Police	Pennsylvania	Trooper	Herbert Wirfel.
8	Prince Georges County	Maryland	Officer	Raymond Hubbard.
9	Michigan State Police	Michigan	Trooper	Craig A. Scott.
9	Chicago	Illinois	Officer	Richard J. O'Brien.
10	do	do	do	William P. Fahey.
11	NYC Housing Authority	New York	do	James G. Carragher.
14	Northern Mariana Islands Public Safety Department.	Saipan	Captain	Justino T. Arriola.
18	Tucson	Arizona	Officer	Jeffrey Hugh Ross.
21	New York City	New York	do	George J. Werdann.
25	Detroit	Michigan	do	Frank X. Siemion.
March:				
6	Grant County	Oregon	Deputy	Edward A. Morrow.
17	Pocahontas	Arkansas	Sergeant	James Ray Hand.
25	San Joaquin County	California	Deputy sheriff	Michael Arthur Coleman.
29	Detroit	Michigan	Officer	William Green.
30	Huron	South Dakota	Sergeant	Thomas Lloyd Callies.
April:				
3	State Police	Alaska	Trooper	Rowland Chevalier.
19	Butler County	Kansas	Deputy sheriff	Alvin Thomas Wolf.
26	East Baton Rouge Parish	Louisiana	Deputy	Jimmy Charles Matthews.
27	Montcalm County	Michigan	Detective lieutenant	William Leo McCarthy.
28	Houston	Texas	Detective	Daryl Wayne Shirley.
May:				
13	Riverside	California	Officer	Denis C. Doty.
13	do	do	do	Philip N. Trust.
15	Kenova	West Virginia	Captain	George Myers.
16	Roseville	Indiana	Officer	Bruce Michael Russell.
18	Puerto Rico	Puerto Rico	do	Wilfredo Cotto Aponte.
June:				
3	Palm Beach County	Florida	Deputy sheriff	Frank Dean Genovese.
18	Puerto Rico	Puerto Rico	Officer	Ricardo S. Morales.
20	Dallas County	Texas	Deputy sheriff	Ray Edward Kovar.
24	King County	Washington (public safety)	Sergeant	Samuel A. Hicks.
July:				
1	Charlotte	North Carolina	Officer	Ernest T. Coleman.
1	Phoenix	Arizona	Detective	Ignacio C. Conchos.
6	San Francisco	California	Sergeant	John S. Macauley.
7	Winston County	Alabama	Sheriff's officer	James W. Taylor, Jr.
13	Houston	Texas	Officer	James Donald Harris.
14	Metro-Dade	Florida	do	Cheryl W. Seiden.
17	Highway Patrol	California	do	Dale E. Newby.
26	Daytona Beach	Florida	do	Gregory J. Sorenson.
August:				
2	Ashland County	Ohio	Detective sergeant	Glenn M. Sturgill.
4	Nashville (Metro)	Tennessee	Officer	William L. Bowlen.
6	Phoenix	Arizona	Detective	John R. Davis.
6	Salamanca	New York	Sergeant	Perry F. Barrett.
9	Riley County	Kansas	Officer	Donald R. Harbour.
10	Uvalde	Texas	Chief deputy sheriff	Clyde E. Hobbs.
24	Dona Ana County	New Mexico	Agent in charge metro narcotics squad	Robert P. Larson.
30	State Police	New York	Trooper	Gary E. Kubasiak.
31	Wayzata	Minnesota	Sergeant	James W. Anderson.
September:				
6	Coconino County	Arizona	Reserve deputy	John B. Jamison.
6	Hollywood	Florida	Officer	Frankie Mae Shivers.
11	Angelina County	Texas	Deputy sheriff	Byford H. Hunter.
14	Conroe	do	Sergeant	Ed Holcomb.
14	Metro Police Department	Washington, D.C.	Officer	Donald G. Luning.
23	Laurens County	South Carolina	Deputy sheriff	William E. Jones.
27	Chicago	Illinois	Officer	Martin E. Darcy, Jr.
27	Chesapeake	Virginia	Sergeant	John H. Cherry.
29	Franklin County	Mississippi	Sheriff	James Posey.
30	Forest Park	Illinois	Officer	Michael Thomas Caulfield.
30	Yonkers	New York	do	John Silinski.
October:				
6	Eau Claire	Wisconsin	Officer	Robert P. Bolton.
7	West Baton Rouge	Louisiana	Warden and chief deputy	Roy S. Bujol.
11	Los Angeles	California	Officer	Jack Hayden.
13	Puerto Rico	Puerto Rico	do	Jose Juan Ofray-Vasquez.
15	Oakdale	Minnesota	do	Richard Warren Walton.
19	Pensacola	Florida	Patrol officer	Stephen Alan Taylor.
28	Mathis	Texas	Officer	Ricardo De Alejandro.
29	Charleston County	South Carolina	do	Steven B. Hiott.
30	Elsa	Texas	Chief	Jesus Rosales, Jr.
November:				
6	Volusia County	Florida	Sheriff's deputy	Stephen Saboda.

LAW OFFICERS KILLED IN THE LINE OF DUTY IN THE YEAR OF 1982—Continued

	Department	State	Rank	Deceased
28	Conservation	Alabama	Officer	Cecil C. Chatman.
29	Humboldt County	California	Sheriff	Gene Cox.
December:				
2	Miami ATF	Florida	Special agent	Airel Rios.
4	Lake Charles	Louisiana	Officer	David P. Hampton, Jr.
6	Colorado Springs	Colorado	do	Mark L. Dabling.
8	Niles	Ohio	do	John A. Utlak.
9	Spencer	Oklahoma	do	Kevin Simmons.
15	Metro Police	Washington, D.C.	do	Robert K. Best.
22	Hallandale	Florida	do	William S. Hart.

"May their souls rest in peace"●

VOA: FUNDING ITS FUTURE

● Mr. HUMPHREY. Mr. President, amendments adopted by the Senate Foreign Relations Committee during its recent markup of the U.S. Information Agency's fiscal year 1984 request will effectively eliminate the Voice of America's $55 million modernization plans. Anyone at all familiar with the Voice is aware of its serious problems with aging and deteriorating equipment and facilities.

Ninety percent of VOA's transmitters are 15 years or older; two European sites are using vintage World War II transmitters. VOA has had to manufacture some of its spare parts because parts for much of its equipment are no longer made. Last December, President Reagan wrote to Members of the Congress:

It is vital that we undertake initiatives now for the modernization and strengthening of our international broadcasting operations. The time has come to give these operations—for too long systematically underfunded and neglected—the attention they deserve. Particularly at this time of critical change in the Communist world, having these improved capabilities as soon as possible is a matter of vital national interest.

I fully agree with his statement and hope my colleagues will carefully read the following Wall Street Journal and Washington Times editorials in anticipation of the VOA budget coming to the Senate floor.

Mr. President, I ask that these two editorials be inserted in the CONGRESSIONAL RECORD.

The editorials follow:

[From the Washington Times, May 13, 1983]

TURNING CONGRESS AROUND ON VOA, MARTI FUNDING

Nowhere does the gap between promise and performance in the Reagan administration seem wider than in its failure to date to obtain necessary congressional funding for the long-overdue strengthening of the Voice of America's broadcasts.

First as candidate and then as president, Ronald Reagan has consistently called for improvement of the VOA's obsolete and deteriorating equipment. But when the issue finally came up in the Senate Foreign Relations Committee, a bipartisan majority voted 10 to 5 for a $65 million reduction on the FY '84 USIA budget. This cut leaves no room for the $55 million the administration had planned to spend on beginning the modernization of VOA.

Rather than accept so damaging a blow to America's long-term capacity to communicate with the rest of the world, the administration is determined to seek restoration of these funds on the floor of the Senate and in conference with the House. Former Republican congressman Edward Derwinski of Illinois, now serving as counsellor in the State Department, has belatedly been put in charge of the effort to turn Congress around.

A really competent lobbying drive under the veteran Derwinski's guidance has a chance of succeeding, for two reasons. First, it is becoming clear that the Senate cut was aimed more at the leadership of USIA than it was at VOA. Although Reagan's appointee as head of USIA, Charles Wick, is a presidential friend, he has, in the words of one Republican official, "misinterpreted courtesy for affection" and lost influence on both sides of the aisle through a series of controversial decisions.

In effect, VOA was hit by a stray bullet aimed at Wick, and the administration has a good chance of winning over the Senate if it can concentrate attention on the merits of the case. The essence of this argument for capital investment in new transmitting equipment is summed up in a letter to VOA from a listener in Iran: "It bewilders me why a country whose astronauts can easily speak to earth from outer space is not able to transmit her own voice across the world."

As the result of years of neglect, bad planning and underfunding, VOA now lags far behind the Soviets in every measurement of international broadcasting effort. The Russians are estimated to spend 10 times as much, to have 37 superpower transmitters compared to VOA's six, and to broadcast twice as many hours a week.

These quantitative comparisons are only part of the story. Ninety percent of VOA transmitters are at least 15 years old and 35 percent more than 30 years old. These ancient transmitters can only operate at 60 percent efficiency and in the absence of modern antennas the signal is not precisely focused on the target. No wonder America's voice is almost inaudible in Iran.

As the professionally competent new director of VOA, Kenneth Tomlinson, points out, the United States is as far behind the Soviets in international broadcasting as it was in the space race in the late '50's. Similarly, it will take years of careful planning and a bipartisan commitment of adequate resources to catch up.

In the case of one particular target country, Cuba, the Reagan administration is convinced that strenghtening of VOA broadcasts is not a sufficient answer. In addition to standard VOA broadcasting to Cuba, the administration is making a new effort to revive the Radio Marti project which was killed last year by the threat of filibuster in the Senate after it had passed the House.

Co-sponsored by a bipartisan group of 33 senators, the new bill would establish a Radio Marti funded by and under the policy control of the Board for International Broadcasting it would have wide autonomy to broadcast to the Cuban people, as Radio Free Europe has been speaking with such impact to the Polish population. It would be an effective substitute for the free press that does not exist in Cuba and would hope to win a mass audience by a reputation for scrupulous accuracy.

The potential effectiveness of a well-managed Radio Marti is dramatized by new evidence that events in Poland are having deep repercussions in Cuba. The International Confederation of Free Trade Unions in Brussels has protested that five Cuban workers have been sentenced to 30 years for trying to set up a Solidarity-type union and their lawyers also have been arrested. Timely and detailed coverage of this growing ferment would be one of Radio Marti's functions.

While professing to be unconcerned with Radio Marti's threat to his control of Cuban opinion, Fidel Castro has moved ingeniously to enlist against Radio Marti the National Association of Broadcasters in the United States, which represents our domestic commercial radio stations. The NAB is now convinced that Castro will escalate his damaging interference with their domestic broadcasts if Radio Marti is established, while quiet hints have been dropped by Cubans that they would not retaliate against a beefing-up of VOA broadcasts to Cuba.

If the NAB commits its lobbying clout on the Hill to blocking the establishment of Radio Marti, Castro again will have demonstrated his ability to manipulate American opinion and his mastery of the subtle art of blackmail.

[From the Wall Street Journal, May 4, 1983]

THE BIG SQUEEZE

Remember the presidential campaign of 1980, and the turning point we thought it marked in the conduct of our foreign policy? Remember how we were going to rebuild our defenses, become more assertive, beef up our international radio operations so they could do a stronger job in the battle of ideas? Well, it turns out that things didn't change so much at the radios after all. We had hirings, firings, planning for new initiatives—and this year, just as in years past, the bottom line is that the Voice of America is plaintively begging for more money.

The Voice is the one of the U.S. radios charged with, among other things, presenting straight news to listeners around the world. When the Reaganites arrived, some

old hands screamed that a shrine of objective journalism was about to be turned into a propaganda machine.

But these ideological wars did not continue for long. The Voice got a permanent director, Kenneth Tomlinson, and the general atmosphere calmed down. The agency has been having an effect in the cultural wars and the real ones: Just last week the government of Poland actually filed an official protest complaining that VOA and Radio Free Europe were destabilizing Poland's political arrangements. If this is true, it is not an achievement to sneeze at.

At these efforts, though, have been running smack into one massive fact: The Voice of America is falling apart. Without question. Beyond the slightest debate. For one thing, it lacks certain personnel that any world-wide journalistic organization would have to call essential. Its Rome bureau was closed as an economy move during the Carter administration, days before the election of Pope John Paul II. Almost all its foreign language services are clearly understaffed. This means it cannot match the broadcasting hours put out by the Taiwanese government, let alone the U.S.S.R.

Even more fundamentally, the Voice's physical plant is going to pieces. Almost all its transmitters are more than 15 years old, a third are at least 30 years of age and some broadcasting to the Soviet Union and Eastern Europe comes out of transmitters built approximately around World War II. They are held together with the technical equivalent of baling wire and further limit the amount that the U.S. can broadcast.

The Voice now has before Congress two money requests for beginning the necessary fix-up. One is a $22 million supplemental request for the fiscal 1983 budget; it now sits before a dubious House Appropriations Committee. The other is the fiscal year 1984 budget request.

The '84 request has gone for authorization to the Senate Foreign Relations Committee, as part of the budget request for the whole U.S. Information Agency of which the Voice is a part. What the Foreign Relations Committee has done to this request is to adopt an amendment by Sen. Edward Zorinsky cutting $65 million from the USIA budget. Then at the request of Sen. Claiborne Pell and others the committee tied up large chunks of money for specific purposes: one chunk for exchange programs, another to give to the private organizations that are slated to run the new Project Democracy.

What all this means is that for practical purposes the money for the Voice's modernization is gone.

It doesn't look as if anyone on the Foreign Relations Committee really had it in for the Voice. Indeed, the U.S. Senate periodically rings with mellow rhetorical tributes to the fine work the agency is doing. What seems to have happened is that some of the committee members wanted to take a general shot at USIA, and the Voice got caught in the squeeze.

The action can still be corrected. But it's already given us quite a snapshot of the way we conduct our legislative affairs in general and our foreign policy in particular. Our senators are awfully fond of talking about big ideas—about whether or not to get the MX missile, about moving the country lock, stock and blast furnace into the high-tech age. But when it comes to carrying out a policy that is indubitably beneficial and just needs a little attention to detail, they are a bust.

If there is one thing about which there is a consensus among those attentive to policy, it is that our radios do much for us in the world and can do more. You would think that this feeling would translate into some concrete beneficence. But no, when the chips are down, the Voice falls victim to the same slushiness that pervades most of our legislative activity.

Congress should reverse itself on this one, and show that it can walk and chew its policy gum at the same time.●

DEFEAT OFFERS LESSONS

● Mr. McCLURE. Mr. President, on April 23, the Northern Tier Pipeline Co. threw in the towel. After 8 years of fighting regulation and redtape, the company was forced to scrap its plans to construct a 2,800-mile pipeline to transport Alaskan crude oil from Washington State to Midwest refineries.

The demise of the Northern Tier Pipeline painfully illustrates the problems that excessive regulation poses to America's energy security. These problems were clearly explained in an editorial which appeared in the April 26 edition of the Spokesman Review, Spokane, Wash. Mr. President, I ask that the text of this editorial be reprinted in the RECORD.

The editorial follows:

[From the Spokesman Review, Apr. 23, 1983]

DEFEAT OFFERS LESSONS

The Northern Tier pipeline seemed destined for failure almost from the beginning.

Political, economic, environmental and regulatory roadblocks met the proposed oil pipeline all the way from Port Angeles, Wash., to Clearbrook, Minn.

In its own often clumsy way, the Northern Tier Pipeline Co. plodded forward in its hope of constructing a line to transport Alaskan crude oil from the West Coast to the Midwest.

The company waged battle for eight years and spent $55 million.

But alas, company officials finally lost their will to continue. What always seemed like inevitable failure became official Wednesday. Northern Tier abandoned its plans to construct the $2.8 billion pipeline.

After obtaining nearly 1,400 permits, the company felt it had no better than a 50-50 chance of obtaining the last one, that from the state of Washington. The odds, it was decided, did not justify the additional $8 million to $10 million that would have been expended in battle.

The Washington permit was withheld last year over environmental concerns about Puget Sound. A 28-mile stretch of pipe planned to run under the sound was determined to pose an unacceptable ecological threat.

Northern Tier responded with an alternate plan for a longer overland pipeline around the sound.

The revised plan, presented to the state Energy Facility Site Evaluation Council last September, met far less resistance. EFSEC consultants deemed the revised route safer than the original and said it would be environmentally safe with a few minor modifications.

The company, however, required stronger assurances that its revised permit would be granted. Not finding them, it gave up.

While Northern Tier failed, its efforts need not have been in vain. There are many lessons to be learned from the Northern Tier experience as well as many problems that remain to be corrected.

Foremost, perhaps, is the continuing need for a safe, embargo-proof way of transporting oil to inland refineries.

Alaskan crude oil now must be shipped east by tanker through the Panama Canal. The political instability of Central America easily could disrupt a vital part of our nation's energy lifeline. A pipeline would alleviate that vulnerability.

In the specific case of Northern Tier, construction also would have paid dividends in Spokane County and the other locales through which the pipeline passed. Jobs would have been added, and the local tax base would have been widened. There always was the possibility, too, that a refinery might have been located in Eastern Washington.

The Northern Tier experience also points to our nation's unquestioned need for regulatory overhaul. It is beyond comprehension to think a company had to obtain almost 1,400 permits—nearly one per mile—to construct a pipeline.

The crushing burden of regulatory red tape created by government at all levels threatens to destroy all progress toward our social, economic and national security goals. Unchecked regulation strikes at the very heart of business investment, productivity and the formation of new jobs.

Construction of the Northern Tier pipeline, we believe, would have been in the best interests of Eastern Washington and the nation.

Perhaps in another time, in another political climate, the pipeline concept will become more viable. Certainly, the need still will exist.●

FIFTIETH ANNIVERSARY OF TVA

● Mr. COCHRAN. Mr. President, today, May 18, 1983, the Tennessee Valley Authority celebrates its 50th anniversary. Fifty years ago, TVA was a new concept, initiated on a trial basis. It has proven to be effective beyond the most optimistic expectations. Today, it is highly regarded as an institution extremely successful in the conservation of America. The phenomenal uplifting of an entire region stands as testimony to its success.

As you know, the Rural Electrification Administration owes much of its success in establishing effective rural electric co-ops across the Nation to the early assistance and innovations of TVA-aided co-ops. I submit for the record a letter from Robert D. Partridge, executive vice president, National Rural Electric Cooperative Association, to Mr. Charles Dean Jr., chairman of TVA, which pays eloquent tribute to TVA on this 50th anniversary.

The letter follows:

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION,
Washington, D.C., May 16, 1983.

Mr. CHARLES H. DEAN, Jr.,
Chairman, Tennessee Valley Authority, Knoxville, Tenn.

The National Rural Electric Cooperative Association, representing America's 1,000 rural electric systems, today pays tribute to the Tennessee Valley Authority on its 50th Anniversary as one of America's greatest Twentieth Century institutions.

As we recall May 18, 1933, when President Franklin D. Roosevelt signed into law the TVA Act, we acknowledge the manifold human and economic benefits which have flowed from this remarkable investment in the reclamation of what appeared to be a region's lost resources.

The TVA is America's pinnacle achievement in multi-purpose river basin development. When first begun as an experimental project, the doubters were many. With the dawning of its success, its foes were legion.

Today TVA stands as an unparalleled achievement, a living monument to the "wise use" school of the American conservation movement. Its successes are reflected all along the Tennessee River and throughout the valley—in the river under control; the electric energy for farms, homes, factories and defense; in the widespread navigational network of interregional commerce; the revitalized soils and restored woodlands; the development of a great recreational asset; the pioneering environmental research, energy conservation and industrial applications, and, in the miraculous economic uplifting of an entire region and its people.

For those of us, and there are many, who began their working lives in rural electrification, this is also a day when we acknowledge our debt to the pump-priming efforts of the TVA in nourishing the early rural electric cooperatives in a seven-state area. The successes of the TVA-aided co-ops set a pattern for others to follow all across the land as the Rural Electrification Administration (REA) later adapted a number of its innovations and practices.

The TVA Act, like the Reclamation Act of 1902, and other important comprehensive pieces of legislation involving the generation of electricity with federal dollars, has underscored through experience the wisdom of the time-honored federal doctrine of "preference" in the sale of power to nonprofit entities such as municipally-owned systems and cooperatives. It was in the TVA Act that cooperatives were first specifically mentioned as preference customers in the sale of federal power.

It is with pride and a strong sense of kinship that we of rural electrification today acknowledge the origins of TVA and honor its achievements, for in so doing we acknowledge our own great heritage. The eminent TVA Director and Chairman David Lilienthal was right when he said in 1939 that TVA and REA are "historically and actually, blood brothers." Both TVA and REA share the spotlight of a time when great visions and dreams were acted upon in the quest for the betterment of humankind. Fortunately for America, the dream of a TVA was not denied. And the TVA region and our nation and the world are the better for it. This nation again today requires the TVA spirit of determination and concern in solving its problems and meeting the needs and aspirations of the American people.

ROBERT D. PARTRIDGE,
Executive Vice President.●

TRIBUTE TO THE UKRAINIAN PEOPLE

● Mr. SARBANES. Mr. President, in the great and noble history of the Ukraine, the famine of 1933 was a terrible event. But throughout their long history, the people of the Ukraine have suffered onslaught upon onslaught. It was little more than 7 years ago that 10 Ukrainians, in the face of harassment and repression in their native land, issued the declaration of implementation of the Helsinki accords, better known as the Ukrainian Helsinki group. It is fitting that, as we commemorate the great famine of 1933 which occurred in the face of ruthless collectivization and claimed the lives of more than 7 million Ukrainian men, women, and children, we should pay tribute as well to the men and women of the Ukraine who are carrying forward, at great personal sacrifice, the quest for human liberty.

A proud and courageous people, the Ukrainians have a history stretching over 1,000 years. Encompassing 232,000 square miles, theirs is a rich and fertile land. But this very fertility has been a source of an enduring tragedy, for the fine soil of the Ukraine, tilled productively by the industrious Ukrainian people, has been coveted by powerful neighbors throughout recorded history. Time after time these valiant people have been conquered by aggressor nations.

Yet the bitter Ukrainian experience—of lives extinguished, of liberty suppressed, of hopes betrayed—has not meant the destruction of the strong sense of national and cultural identity or of the freedom-loving spirit of the Ukraine. That spirit can be traced back to the great Kievan state which had emerged in the Ukraine by the ninth century. Building the first durable political institutions on the plains of Eastern Europe, tying together the cities of the Dnieper River region, providing vital means of trade and communication between the Byzantine Empire and the adventurers of northern Europe, giving to the world monuments of religious art that have never been surpassed, the Kievan state survived for more than 300 years before succumbing to the catastrophic invasion of the Golden Horde in 1238.

But the ambitious princes of Muscovy did not succeed in extending their hegemony over the territory of the Ukraine. By the 17th century the Ukraine had become once again a center of learning and culture, a crossroads of Eastern and Western intellectual and religious thought. Coveted by would-be aggressors on the East and on the West, for a time the Ukraine escaped foreign domination. But, in 1667, Khmelnitski was defeated. Then, a century later, with the successive partitions of Poland, the Ukraine was finally absorbed in the Russian Empire of Catherine the Great.

Again, however, the Ukrainian spirit survived and Ukrainian nationalism was reborn in 1846 when 30 Ukrainian patriots under the leadership of the great Ukrainian poet, Taras Shevchenko, formed the Secret Brotherhood of St. Cyril and St. Methodius. Their movement inaugurated a cultural revival which eventually found expression in the independent Ukrainian state established in 1918. The centuries old dream of independence was realized only briefly for the Ukraine was invaded by the Soviets and by the end of 1919 the free republic of Ukrainia ceased to exist.

The magnitude of the deprivation suffered by the Ukrainians between World War I and II under Soviet rule was severe. The dark days that began in the 1930's will always be remembered by those who cherish freedom and respect the human rights of individuals.

On this 50th anniversary of the famine in the Ukraine, we think not only of the past but of the present. Since the historic date of 1918, much has been accomplished worldwide to insure respect for fundamental human rights. We find leadership and inspiration in those who, at great personal cost, have lived courageously by the principles which they espouse—Valentin Moroz, Petro Vins, Lev Lukyanenko, Mykola, and Raisa Rudenko. Their names are well known to us. Countless others whose names we do not always know have joined them in openly protesting cultural oppression, religious persecution, and economic exploitation, and like them many have gone to prison for daring to express their most deeply held convictions. Their extraordinary efforts have the support of our own great and free Nation of countless dedicated Ukrainian Americans, and indeed of all Americans who cherish the blessings of freedom.

As we pay tribute to this heroic devotion to freedom, we are also aware of the hundreds of thousands of Americans of Ukrainian descent who have made valuable contributions to the growth of America. The Ukrainian immigrant distinguished himself not only by his hard work and intelligence but also by his constructive citizenship and sense of justice. Ukrainian Americans have contributed to the economic and cultural development of America through their participation in the arts, science, politics, business, and other endeavors.

We in Maryland are very fortunate to have a large and active Ukrainian American community. Ukrainians in Maryland through their stable family life, their sense of community responsibility, and their social and religious activities have greatly enriched the life of our State.

As we salute the achievements of the Ukrainian people, we recall the sacrifices as well of these brave and courageous people and in so doing, we renew our commitment to speak out on behalf of those who suffer deprivation under a government which continues to deny basic human rights.●

AMBASSADOR BROCK'S SUCCESS IN LOWERING JAPANESE TRADE BARRIERS

● Mr. DOLE. Mr. President, I was pleased with U.S. Trade Representative Bill Brock's report this morning that the Diet of Japan had approved an omnibus bill designed to eliminate import barriers caused by Japanese technical standards and certification laws. Ambassador Brock estimates that the 16 revised laws cover products representing $5 billion in potential U.S. exports.

Members will recall the saga of metal baseball bats that in an unfortunate, if accurate, way has symbolized the nature of our trading relationship with Japan in recent years. Until the controversy was recently resolved, U.S. baseball bat manufacturers—and makers of other athletic equipment—could not sell their products in Japan because the responsible Japanese Government agencies and private associations would not certify that these imported articles met the domestic standards. These standards were set by the Japanese manufacturers, and were not performance based. Instead, the standards incorporated unnecessary design criteria clearly established to disadvantage U.S. exporters.

Although this dispute was finally settled—after nearly 3 years and a U.S. complaint in the General Agreement on Tariffs and Trade—it continues to symbolize the nontariff means by which the Japanese and others inhibit U.S. exports. The Diet action this morning is welcome evidence that the Japanese Government indeed is accepting the responsibility of convincing its constitutents of the necessity to restore balance and fairness to our trading relationship. The 16 revised standards and certification laws will provide national treatment to U.S. exports of many articles, including pharmaceuticals, medical devices, cosmetics, electrical and other appliances, consumer products, and machine tools. Of particular interest will be changes in laws governing imports of agricultural products, such as feeds, fertilizers, forestry products, and agricultural equipment.

Of course, the laws will be only as effective as their implementing regulations. I wish to emphasize the need for the Japanese Government to promulgate rules to carry out these new laws that will effect fully their stated purpose. When Prime Minister Nakasone last visited this country, he promised expeditious action in the standards area. The Diet action today demonstrated impressively his ability and commitment in this endeavor. It is my hope that, as implemented, the laws will show the promised results.

In conclusion, I must point out that this Diet action is only one step toward realizing the potential promised in the GATT nontariff barrier negotiations, concluded in 1979. When the Congress approved the Trade Agreements Act of 1979, we sought an expansion of trade—and the creation of jobs—through the reduction of such trade barriers as discriminatory technical standards and Government procurement restrictions. The results after 3 years appear mixed. But the Japanese action suggests that the MTN codes can be employed in an effective manner benefiting U.S. exporters.

The leadership of Bill Brock, following the initial work of Bob Strauss on the 1979 codes, should be credited with today's success. I look forward to similar positive results as he leads further talks with the Japanese Government on industrial targeting, Government procurement, and other trade issues.●

CALLING THE BANKERS' BLUFF

● Mr. HUMPHREY. Mr. President, Congress will soon be asked to sanction the transfer of $8.4 billion in hard American cash to the International Monetary Fund, largely to enable debt-laden Third World borrowers to maintain interest payments to U.S. banks. While there has been some talk of tightening reserve and reporting requirements in conjunction with this bailout legislation, it is becoming all too apparent that supporters of the quota increase are not serious about forcing the banks to bear their full share of the burden.

In a column appearing in a recent edition of the Washington Times, columnist Patrick Buchanan examines the "bankers' bluff of 1983." As Mr. Buchanan notes, an increase in the resources of the IMF will not defuse the debt bomb, but rather will exacerbate it by forcing the banks to pump more money into unprofitable ventures, and by shielding the banks from facing the consequences of their actions.

The Buchanan article raises another salient point which is often overlooked in the IMF debate. While it is true that the total international debt figure may be in the $500-$600 billion range, only a relatively small portion of this total can be regarded as highly at risk of default. Were the banks forced to stretch out repayment schedules on the questionable loans, or writeoff any amounts that plainly never will be collected, the remaining debt would constitute a sum that can and will be managed when the worldwide recovery begins to bear fruit.

The $8.4 billion that we are asked to contribute to the IMF could make a valuable domestic contribution to our efforts to promote such a recovery.

I submit the article for the RECORD. The article follows:

[From the Washington Times, May 16, 1983]

THE BANKERS' BLUFF OF 1983

(By Patrick Buchanan)

By unanimous vote, the Republican-controlled Senate Banking Committee has approved the transfer of $8.4 billion to the International Monetary Fund—a foreign-controlled organization sitting atop a hoard of $45 billion in gold. With the House Banking Committee in tow, the Great Bank Bailout of 1983 should become national policy.

Soon, however, the men at Treasury who sold this scheme to the President will discover they have solved nothing.

For the operating premise of their plan is that the way to help nations over their heads in debt is to shove them in deeper; the way to save banks overexposed in lending to busted and bankrupt countries is to increase that exposure . . . and pray for recovery to save us all.

As the boys at Treasury say cheerily, we are not bailing the banks out, we are "bailing them in." Indeed, they are; with our money. As Craig Roberts, formerly of Treasury, caustically notes, for every dollar in past IMF loans, "our private banks lent $4.30 . . . If that ratio continues to hold, our participation in the IMF-led bailout will drain $44.5 billion from our capital market."

More than that, with these rescue billions to the IMF goes real clout, leverage to force Chase Manhattan and Citibank to re-enact the follies of the decade past, to require them to send billions in good money chasing after the billions in bad loans. If the Big Banks balk, the IMF can wave over their heads the club of formal default. It is sovereignty, as well as savings, we are surrendering here.

As for the enthusiasm of the establishment for the Reagan-Regan Bailout Plan, it is genuine. Before their disbelieving eyes, a Republican Senate is constructing the greatest foreign aid machine in history—a mechanism for indefinite wealth transfers from U.S. banks to the Socialist South and Communist East—and turning the controls of that machinery over to international bureaucrats who could care less about the national interests of the United States.

Instead of defusing the "debt bomb" as Treasury hopes, we are converting it from a large conventional explosive into an atomic one.

Already, the scenario sketched out by the bankers and finance ministers in Toronto nine months ago has begun to unravel.

The smaller American banks are turning a deaf ear to Secretary Regan's exhorations to increase their lending to the Third World. Chastened by their experience, they are closing down their foreign operations, coming home. They are not doubling their bets; sadder but wiser men, they are picking up their chips.

The Latin nations, seeing new sources of capital drying up, are growing sullen over accepting ever-higher levels of indebtedness only to pay back past loans. Never an affluent lot, they have begun to chafe under the "austerity" yokes imposed by the IMF as a "condition" of continued capital flows. In

Brazil, there have been riots. According to the London *Economist*, the once forbidden talk of "default" is rife from Mexico City to Santiago. In almost every Latin country, radicals and nationalists of the right and left have at the top of the list of their nonnegotiable demands, sticking it to the Yanqui banks.

Nor is this surprising. How would we Americans have reacted if, in 1860, say, some agent of European royalists arrived in Washington to impose an "austerity" plan upon the Union to force repayments of billions of dollars sent by the banks of Queen Victoria to the administration of Millard Fillmore?

Why would the most conservative Senate in years preside over so unprecedented a wealth transfer from America to countries whose leaders openly despise us? One reason—fear. The U.S. Congress has been buffaloed by the bankers into believing that if we do not make good each and every one of their idiotic loans, we have no option but to watch the Third World default, the Big Banks come crashing down, and the U.S. economy collapse in a Depression reminiscent of 1933.

As the following numbers indicate, however, the bankers are running a gigantic bluff.

While America's ten largest banks do have some $44 billion in shaky loans to developing countries, these problem loans represent only 10 percent of their bank portfolios. Ninety percent of their loan assets are sound. Assume a huge slice of these shaky loans, 50 percent or $22 billion, turn totally sour. If the banks are allowed to write these loans down over a period of, say, ten years—$2.2 billion a year, $220 million per bank—it would scarcely entail national collapse.

What it would mean is lost profits, interrupted dividends, depreciated stock, a reduction in employees, a closing of some foreign lending operations, a suspension of perks, bonuses, travel; and, possibly, a change in management—and a redirection of bank capital back into the United States.

If a run developed on any bank, the Fed could step in with available cash. If billions were pulled out of one shaky bank, they would soon turn up in other solid ones, which is as it should be. If some equity were destroyed, and the nation's money supply thereby diminished, the Fed has shown since last summer that the creation of new money is hardly beyond its capacity.

When one considers what the GOP is risking to salvage their tarnished reputations, America's Big Bankers have good reason to remain "solid Republican."●

TWO-HUNDREDTH ANNIVERSARY OF THE EPISCOPAL DIOCESE OF MARYLAND

● Mr. SARBANES. Mr. President, my own State of Maryland, founded in the quest for religious freedom and toleration, has the distinction of being the American birthplace of three great religions, for here were organized the first Episcopal, Roman Catholic, and Methodist Churches in this country.

This week, on May 20, the Diocese of Maryland of the Episcopal Church in the United States, under the leadership of the Right Reverend David K. Leighton, Sr., Bishop of Maryland, will be celebrating its 200th anniversary.

Maryland is the oldest diocese of the Episcopal Church in this country, for it was here, following the Revolution, that the Episcopal Church in the United States was first organized. Prior to the Revolution, the Episcopal Church was part of the Church of England and was, in many of the colonies, the official church.

After the Revolution it was necessary for the Episcopal Church to find a new life rooted in the American experience, and it was in Maryland that the birth took place. The meetings at Chestertown and Annapolis, organizing the diocese and establishing the corporation which still flourishes today are recognized as the founding of the Protestant Episcopal Church in this country.

Mr. President, the significance of these events in the illustrious history of Maryland and her numerous contributions to the forming of the religious and civil spirit of this country are recounted in the current issue of the Maryland Church News. I ask that an article on this celebration be reprinted in the RECORD at this point.

The article follows:

MAY 20TH: WHAT WE CELEBRATE

The history of Maryland's pioneering efforts to revive and reorganize the American Church begins in 1780, with a meeting of three clergymen and twenty-four laymen in Chestertown. They met without publicity, no doubt in fear of opposition or reprisals, framed a petition to the Legislature regarding public support of religion, and, for the first time in this country, officially adopted the name of the Protestant Episcopal Church.

That this was recognized as an event of national significance, is attested by a later statement of one of the participants, the Rev. James J. Wilmer, who wrote in 1810: "I am one of the three who first organized the Episcopal Church during the Revolution, and consequently one of the primary aids of its consolidation throughout the United States." He called this "the first convention of the Church of Maryland."

Other meetings followed, in 1781 and 1782, in Chestertown and Baltimore, which no doubt helped to preserve vitality in a Church struggling under the disabilities of the revolution, but this diocese has traditionally dated its organization from clergy meetings of May and August 1783. The date was thus celebrated at our centennial in 1883, and at the establishment of the Diocese of Washington in 1895. It appears on the official seal of the Diocese of Maryland.

The May meeting of 1783 discussed alterations in the liturgy, how the Church might be organized, and maintenance of the ministry. A petition to the Legislature was framed concerning some of these matters, which were of crucial importance to preserving the Church and making good its claim to be the legal successor of the Church of England. The convention then adjourned, to meet in Annapolis in August.

That the August assemblage was considered of more than local interest is evidenced by a proposal that clergymen of other states be invited to attend. Had this been carried out, we might have hosted a preliminary General Convention, but the idea was given up in order that nothing be done to jeopardize the rights of the Maryland Church to property formerly belonging to the established Church of England.

This August convention of 1783 took the major steps in organization of the Diocese. It drafted a bill, subsequently enacted by the Legislature, establishing the Corporation for the Relief of Widows and Children of the Clergy of the Protestant Episcopal Church in Maryland (a significant step in legal recognition of the Church). This corporation still flourishes. Measures were taken concerning perpertuation of the ministry, including election of the Rev. William Smith, President of Washington College, Chestertown, to become Bishop of Maryland. An address was sent to the Bishop of London requesting Dr. Smith's consecration, but this was never obtained, although he went on to become one of the leaders in organization of the national Church. Superintending Committees were established for the Eastern and Western Shores of Maryland, to examine candidates for the ministry and license lay readers to serve vacant parishes. A convention of both clergy and laity was called for the following June.

Above all, the August convention of 1783 framed a Declaration of Certain Fundamental Rights of the Episcopal Church in Maryland, presented to the Legislature, which is a key document in the history of the Church in this country. This statesmanlike document claimed the right of the Church "to preserve herself—agreeably to her ancient usages and profession"; to have three orders of ministers; to admit only regularly ordained ministers to property formerly held by the Church of England; and to revise the liturgy. Such claims established our right to exist and foreshadowed the work of the preliminary convention of the national Church, held the following year, and the first General Convention of 1785.

These matters are briefly dealt with at the beginning of the dramatic reading concerning our history which has been prepared for performance at the banquet on May 20th.

While comparisons may be invidious and claims of being first are not of great importance, these praiseworthy efforts of the Church of 1783 in Maryland were truly pioneering and no doubt helped to inspire organization in other states. The Maryland conventions of that year were the first in this country to give comprehensive attention to such matters and set them in motion. In contrast, the only earlier meeting, of ten clergymen in Connecticut, in April of 1783, shortly before our May convention, seems to have dealt solely with choice of a candidate for consecration as bishop, without any other attempts at church organization, which in fact came much later in that state.

At this bicentennial, therefore, we are celebrating the organization of the Church in Maryland; its legal transition "from a daughter to a sister Church" of the Christ of England; and its leadership, after dangerous and difficult revolutionary years, in reviving and organizing the Episcopal Church in this country.●

JAPANESE TRADE REFORM

● Mr. CHAFEE. Mr. President, I would like to congratulate the Government of Japan for taking a major step forward in enchancing United States-Japanese trade relations.

The Japanese Diet has today approved legislation allowing self-certification for 16 broad categories of import products.

Rather than subjecting each import item to costly and time consuming dockside examination, Japan will now accept self certification by manufacturers. This legislation is expected to benefit 60 percent of U.S.-manufactured exports to Japan. The United States already allows self-certification of products imported into this country.

This action removes a serious impediment to the sale of American exports to Japan. It represents an important break through for freer world trade and demonstrates to those who seek a protectionist response to trade barriers that steady negotiations do work, producing genuine reforms rather than retaliation. By revamping their certification standards, the Japanese have demonstrated a spirit of cooperation and a commitment to greater foreign access to their markets. Let me commend particularly the Nakasone government for recognizing the need for such reform and its leadership in bringing it about.

I would also commend Ambassador Brock for his very dedicated and skillful work in bringing about the resolution of a matter of longstanding U.S. concern.

There is still more to be done on standards. Implementing regulations will have to be developed, and automobile imports must still be addressed. But the steps taken today go a long way toward resolving an important trade problem. This resolution can only be of benefit to the United States, Japan, and world trade.●

THE RURAL ELECTRIFICATION AND TELEPHONE REVOLVING FUND SELF-SUFFICIENCY ACT OF 1983

● Mr. COCHRAN. Mr. President, I am pleased to be a cosponsor of S. 1300, the Rural Electrification and Telephone Revolving Fund Self-Sufficiency Act of 1983, introduced yesterday by Senator HUDDLESTON.

This bill which amends the Rural Electrification Act of 1936 will insure the continued financial integrity of the rural electrification and telephone revolving fund which is the nucleus of sound and continued operations. I have long supported a strong REA effort, and I am interested in assuring that rural people continue to receive the electric and telephone service they have worked so hard to obtain at an affordable cost.

One of the most significant contributions made by the REA program has been that REA financing was available to rural people in my State at a time when such financing from other sources was unavailable. Over the years, changes in the REA program have occurred to keep pace with growing capital requirements. This bill continues the effort to keep REA responsive to current needs and the current economic situation.

Passage of this bill will reduce the adverse impact of several years of high interest rates by making the revolving fund self-sustaining, thus restoring the credit rating of REA. This will assure that adequate financing can be obtained. Without this legislation, it will force higher financing costs and higher rates for rural utility services. If not passed, the disparity between rural utility costs and urban costs will become even greater than the 12 percent already experienced by rural residents.

S. 1300 also includes adjustments to allow REA to adopt and effectively utilize new communication technologies and to service rural towns of 2,500 people or less rather than the 1,500 limit now existing.

I urge my fellow colleagues to support passage of this bill.●

ANNUAL FINANCIAL DISCLOSURE OF SENATOR STAFFORD

● Mr. STAFFORD. Mr. President, in each of the last 9 years, I have made public disclosures of my financial holdings, along with summaries of my Federal income tax report.

I have pledged that I would issue a similar report to the citizens of Vermont each year for the remainder of my time in public office.

In keeping with that promise, I am once again issuing a public statement of financial disclosure.

The financial statement shows that my wife, Helen, and I had net assets of $593,000 as of May 15, 1983, when the evaluation was made.

The statement I am making public lists details of our holdings, including bank accounts, cash value of life insurance and Federal retirement fund, real and personal property we own, and stocks and bonds.

The majority of the stocks and bonds listed were owned by us before I entered public office and there has been little real change in our financial condition in terms of real dollars since I entered public office in Vermont 29 years ago. Like most Americans, the Staffords have felt the impact of inflation.

The summary of our joint Federal income tax return shows that Mrs. Stafford and I had an adjusted gross income of $104,000 last year. Of that total, $60,663 came from my salary as a U.S. Senator.

We paid nearly $35,000 in Federal income taxes and more than $8,000 in Vermont State income taxes. Our total tax bill for the year was $43,289—or 41.7 percent of our adjusted gross income.

I shall ask that details of our financial statement be printed in the CONGRESSIONAL RECORD, as in the past. And, as I have done in each of the last 9 years, I am making copies of the statement available to newspapers, radio and television stations, and other news services in Vermont.

This information is being made public because I remain convinced that those who serve in Government, as well as Government itself, must be as open and candid as possible with the public.

The net assets of the Staffords increased by $38,000 last year, a gain of less than 7 percent. The value of our stock portfolio increased by $14,000 and we were able to increase our savings by $10,000 and $5,000 was added to my Federal retirement fund.

The bulk of our assets continues to consist of homes in Virginia and Vermont whose estimated total fair market value is $275,000.

One of the best ways Americans have to judge whether their Government and their officials are acting properly is to provide full disclosure of all interests of Government and of those who make decisions in Government.

Thus, I invite all Vermonters—and all other Americans—to examine my financial interests and to match those interests with my record as a public official.

We have made some progress in providing the public with more information about the interests and activities of public officials, but we have some way to go in providing full public disclosure.

I shall continue to support legislation that provides greater ventilation of the way we do business in our Government. In the meantime, I shall continue to make my own full disclosure to my fellow Vermonters.

I ask that the summary of our joint Federal income tax return be printed in the RECORD.

The summary follows:

Summary of 1982 joint Federal income tax return—Robert T. and Helen K. Stafford

Income:	
Salary	$60,662.50
Interest	6,363.88
Dividends	4,812.50
Honoraria	26,100.00
Other	12,470.14
Total	110,409.02
Adjustments to income:	
Allowable congressional expenses not reimbursed	3,000.00
Keogh plan	3,750.00
Total	6,750.00
Adjusted gross income	103,659.02
Deductions	9,612.99
Exemptions	4,000.00
Taxable income	90,046.03
Federal income tax due and paid	34,912.35

Statement of financial conditions—Senator and Mrs. Robert T. Stafford—May 15, 1983

Savings account:	
Bellows Falls Trust Company	$5,000
Vermont Bank	5,000
Burlington Savings Bank	5,000
The Howard Bank	5,000
Rutland Bank	5,000
Total	25,000
Certificates of deposit:	
Chittenden Trust Co.	10,000
First Vermont Bank	10,000
The Howard Bank	10,000
Marble Savings Bank	10,000
Proctor Bank	10,000
Vermont National Bank	10,000
Proctor Bank	10,000
Total	70,000
Checking accounts:	
First Virginia Bank	400
Howard Bank	300
Riggs National Bank	12,000
Total	12,700
Life Insurance: Connecticut General; MONY; NSLI; NYLIC; Travelers;	20,000
Real estate (estimated market value):	
3541 Devon Drive, Falls Church, Va.	125,000
27 Howard Avenue, Rutland, Vt.	50,000
64 Litchfield Avenue, Rutland, Vt.	100,000
Total	275,000
Additional assets:	
Contributions to Federal retirement (12-31-82)	71,029.27
Law library and office furniture (27 S. Main/Rutland)	2,000
Boat and two cars	24,000
Personal property	25,000
Total	122,029.27
Stocks (Name and shares):	*Value*
A.T.&T.—100 at 68¼	$6,825.00
Bellows Falls Trust Co.—80 at 60	4,800.00
Cluett Peabody—20 at 26¼	525.00
Con. Edison of New York—100 at 22¼	2,225.00
Gillette Co.—20 at 44½	890.00
Greyhound—20 at 23⅜	467.50
Howard Bank—1,172 at 12	14,064.00
International Harvester—20 at 10¾	215.00
Manufacturers Hanover Trust—664 at 49	32,536.00
Monsanto—40 at 86½	3,460.00
N.L. Industries—40 at 16¼	650.00
National Distillers—40 at 28½	1,140.00
Outboard Marine—20 at 39½	790.00
Security Pacific Corp.—16 at 54⅞	878.00
Time, Inc.—30 at 69⅛	2,073.75
Vendo—10 at 10¾	107.50
Total	71,646.75
Liabilities: National Permanent Federal Savings & Loan Assn. (first mortgage, Devon Drive, 12-28-81)	3,100.00
Recapitulation:	
Total assets	596,376.02
Total liabilities	3,100.00
Net assets	593,276.02

ORDER OF PROCEDURE

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

Mr. STEVENS. Will the Senator withhold that?

Mr. METZENBAUM. Without losing my right to the floor, I yield to the Senator from Illinois, with the understanding that upon the conclusion of his remarks, I shall regain the floor. I ask unanimous consent that that be done.

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

SIGNING OF AGREEMENT BETWEEN LEBANON AND ISRAEL ON WITHDRAWAL OF ISRAELI FORCES FROM LEBANON

Mr. PERCY. Mr. President, yesterday I introduced Senate Resolution 148 for myself, Senator PELL, the ranking member of the Senate Foreign Relations Committee; Senator BOSCHWITZ, chairman of the Near Eastern Subcommittee; Senator SARBANES, the subcommittee's ranking member; Senator BAKER, majority leader; Senator BYRD, minority leader, and 55 other Members of the Senate. This resolution now has the cosponsorship of the entire Senate. Senator BIDEN's name was omitted inadvertently as an original cosponsor. I ask unanimous consent that the complete list of original cosponsors be added to the resolution at this time.

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

The list of original cosponsors follows:

Mr. Percy, Mr. Pell, Mr. Boschwitz, Mr. Sarbanes, Mr. Baker, Mr. Byrd, Mr. Stevens, Mr. Thurmond, Mr. Domenici Mr. Lautenberg, Mr. Packwood, Mr. Garn, Mr. Heinz, Mr. Rudman, Mr. Murkowski, Mr. Hecht, Mr. Symms, Mr. Kasten, Mr. McClure, Mr. Gorton, Mr. Wilson, Mrs. Kassebaum, Mr. Warner, Mr. Boren, Mr. Bingaman, Mr. Dole, Mr. Quayle, Mr. Stafford, Mr. Specter, Mr. Inouye, Mr. Burdick, Mr. Randolph, Mr. Long, Mrs. Hawkins, Mr. Pryor, Mr. Johnston, Mr. Stennis, Mr. Metzenbaum, Mr. Wallop, Mr. Trible, Mr. D'Amato, Mr. Roth, Mr. Grassley, Mr. Proxmire, Mr. Riegle, Mr. Armstrong, Mr. Huddleston, Mr. Heflin, Mr. Mattingly, Mr. Hatfield, Mr. Zorinsky, Mr. Baucus, Mr. Abdnor, Mr. Tsongas, Mr. Mitchell, Mr. Nickles, Mr. Leahy, Mr. Chiles, Mr. Andrews, Mr. Sasser, Mr. Mathias, Mr. East, Mr. Pressler, Mr. Helms, Mr. Lugar, Mr. Glenn, Mr. Cranston, Mr. Weicker, Mr. Hatch, Mr. Cohen, Mr. Jepsen, Mr. Cochran, Mr. Durenberger, Mr. Simpson, Mr. Bradley, Mr. Jackson, Mr. Kennedy, Mr. Moynihan, Mr. Eagleton, Mr. Dodd, Mr. Dixon, Mr. Levin, Mr. Exon, Mr. Hart, Mr. Matsunaga, Mr. Melcher, Mr. Nunn, and Mr. Bentsen.

Mr. PERCY. I wish particularly to compliment Senator BOSCHWITZ for his assistance in helping accomplish something I have never accomplished before. In all my years in the Senate, I have never introduced a resolution with 100 Senators on the resolution. This is unanimity in the Senate.

I thank my distinguished colleague (Mr. MATHIAS) in advance for comments he will make that will clarify certain aspects of this resolution.

Mr. President, Senate Resolution 148 demonstrates the support of the U.S. Senate for the Governments of Lebanon and Israel on their agreement on the arrangements for the withdrawal of Israeli forces from Lebanon. This agreement is an important step in the process of reestablishing Lebanese sovereignty throughout that troubled nation. The Lebanese have suffered a great deal during the past decade. It is in the interest of the people of Lebanon and peace in the region for all foreign forces to withdraw as quickly as possible.

The resolution urges the Syrians and the Palestinians to withdraw their armed forces from Lebanon as promptly as possible. Their continued occupation of Lebanon is not in the interest of Lebanon, Syria, or peace in the region.

Many of Lebanon's Arab neighbors have forthrightly declared their backing of Lebanon's decision to sign the agreement. Our Egyptian friends have exerted their regional leadership in supporting the Government of Lebanon's right to conclude this agreement. Other Arab states, including Iraq, Algeria, Jordan, and Tunisia have urged the Syrians and the Palestinian Liberation Organization to conclude an agreement with the Government of Lebanon establishing the conditions for their withdrawal.

This agreement is the latest in a series of agreements negotiated through the good offices of the United States which have brought the Middle East closer to peace. We have come a long way since 1948 and we have a great distance to go, but progress continues to be made. I have faith that further negotiations between Israel and its neighbors can bring peace to the region.

Mr. President, I ask unanimous consent that we take up Senate Resolution 148 at this time for immediate consideration.

The PRESIDING OFFICER. Is there objection?

The clerk will state the resolution by title.

The assistant legislative clerk read as follows:

A Senate resolution (S. Res. 148) expressing the support of the Senate on the decision of the Governments of Lebanon and Israel on agreeing to the arrangements for the withdrawal of Israeli forces from Lebanon.

The Senate proceeded to consider the resolution.

Mr. PERCY. I yield to my distinguished colleague from Minnesota, the chairman of the Subcommittee on Near Eastern and South Asian Affairs.

Mr. BOSCHWITZ. Mr. President, the resolution now before us on the Lebanon-Israeli agreement is a strong and clear expression of our support for a sovereign Lebanon and peace in the Middle East. It supports the agreement on the withdrawal of Israeli forces and calls on Syria and the Palestine Liberation Organization to also agree to a prompt withdrawal of their forces.

It is important that we make clear our support for those countries who tried and succeeded in following the path of diplomacy and negotiating an agreement on peaceful relations between them.

It also is important that we make clear that others should join in the process. We and the people of the Middle East cannot acquiesce in the rejectionism and strident calls for war which we hear from the Syrian and PLO leadership.

Therefore, Mr. President, I am pleased to have joined with the chairman of our Foreign Relations Committee, the senior Senator from Illinois, and every other member of the Senate in introducing this resolution.

The resolution spotlights both the recent accomplishments and the task which lies ahead. It expresses our praise and support for the Lebanese and Israel Governments for their persistence, flexibility, and determination in negotiating the agreement.

The negotiations were lengthy and difficult, but this was to be expected. Indeed some observers predicted last January that it would take about 6 months and they were 2 weeks too pessimistic.

The Lebanese and Israeli negotiators are to be commended. They had a difficult task, and had to deal with a variety of pressures and conflicting views within their own countries and—in the case of Lebanon—a variety of economic and other pressures from other Arab nations. We also pay tribute to Secretary of State Shultz whose trip and patience was so important in helping close the deal, and to Ambassador Habib and the others in the American negotiating team who worked tirelessly to help the negotiations.

In particular, the Lebanese and Israeli negotiators came a long way.

The agreement is only the second one an Arab country has signed with Israel.

The agreement should, but probably will not, ruin one of the favorite cliches of editorial writers and columnists who almost as a habit write the words "inflexible" or "intransigent" in front of the word "Israelis."

Memories are short, but it should be noted for the record that when negotiations began, half a year ago, the Begin government's demands included a formal peace treaty with Lebanon, to have half of the negotiations conducted in Jerusalem, an agreement on the normalization of trade, tourism, and other economic relations, and at least several Israeli military posts in southern Lebanon.

Israel did not achieve these objectives, and many Israelis apparently have doubts about the security provisions. Nevertheless, Israel did sign the agreement and showed considerable flexibility in doing so.

The agreement also ruins some of the conventional wisdom about the United States. It was almost an article of faith that the United States had to demonstrate its credibility by forcing Israel to withdraw from Lebanon. Otherwise, the argument went, the Arabs could not be expected to give King Hussein the green light to even discuss the future of the West Bank with Israel.

It is debatable whether the United States did or could deliver Israel if Israel did not think the withdrawal agreement protected its security concerns. Nevertheless, Israel agreed to sign a withdrawal which did fall short of the initial security formulas the Israeli Government originally thought were necessary.

Many Arabs and pundits chose to link the Lebanon and Jordanian situations, wrongly, I believe.

Thus, we are entitled to ask:

Where is the Arab credibility? Now that the United States proved its credibility, where is the Arab green light for King Hussein?

Or is the credibility test only something which applies to the United States when an excuse is needed for not taking tough decisions?

Are the Arabs going to let Syria be an obstacle to an Israeli withdrawal from an Arab country?

The Arab countries had sharply criticized the Israeli invasion of Lebanon and demanded its withdrawal. A majority of Arab countries have called for the withdrawal of all foreign forces from Lebanon.

Now that Israel has signed a withdrawal agreement, we have the spectacle of Syria and the PLO attacking the negotiated agreement. Indeed Arafat this weekend called for war to redress the military balance. It is this kind of sterile thinking which has led the Palestinians further away from their own state than at any time since the Arabs rejected the U.N. partition plan 35 years ago.

President Mubarak of Egypt commented on the situation in a speech to Parliament last Saturday. He said "It is inconceivable that the Arab position should be the cause of extending the duration of the Israeli occupation or allowing attempts at partition and subversion to emerge."

I hope he is right. Unfortunately, it is conceivable that Syria, with Soviet backing, will be the cause of the status quo—the continued de facto partition of Lebanon. That is, unless the so-called Arab moderates show real concern for the Lebanese people and take up the challenge of persuading Syria and the PLO to withdraw.

I also hope that some of our European friends who have cultivated Syria and the PLO, will try to bring to bear their influence. The United States played its part in assisting the Lebanon-Israeli withdrawal agreement. Now it is up to the Arab leaders to get their act together and help bring about the next encouraging development for Lebanon—the withdrawal of Syrian and PLO forces.

Mr. MATHIAS. Mr. President, this has been a long and difficult negotiation, one in which the Secretary of State of the United States, George Shultz, has distinguished himself by patience, by endurance, by skill at negotiating. He has spent long hours flying from Cairo to Jerusalem to Riyadh to Damascus. He has been in Beirut. I think the world owes him a debt of gratitude for the effort that he has put into this agreement. I salute the chairman of the Committee on Foreign Relations, the Senator from Illinois (Mr. PERCY) for bringing this resolution to the floor. I think this has been a historic achievement, one that should be recognized by the Senate, as the chairman of the committee now calls upon us to do. I am glad to be one of the cosponsors. I think it is a remarkable fact that we have unanimous cosponsorship of the Senate.

I do feel, however, that some of the language of the resolution might benefit from being discussed and having some legislative history made so there cannot be a misinterpretation somewhere down the line.

For example, the resolution calls for the support of the Senate on the decision of the Governments of Lebanon and Israel in agreeing to the arrangements for the withdrawal of Israeli forces. Before we proceed to the vote by which the resolution will be adopted, we would do well to establish certain facts. There is the public text of this agreement. But it is also a matter of public knowledge that there are certain confidential provisions that have not yet been made public.

I ask the chairman of the Committee on Foreign Relations whether our approval of this resolution will prejudice in any way any future review of the accord and, specifically, whether it will prejudice the provisions relating to any American role in the withdrawal agreement.

Mr. PERCY. The Senator is quite right to raise this issue for clarification. The Senator is correct in his assumption that nothing in this resolution is intended to foreclose the Senate's right and prerogative to further review in detail the agreements referred to in this resolution, and specifically, to satisfy ourselves about the assurances and commitments made by the United States in connection with the basic agreement between Israel and Lebanon.

Mr. MATHIAS. Second, can the chairman give us his assurance that this resolution is consistent with S. 639, the Lebanon Emergency Assistance Act, as amended by the Senate Foreign Relations Committee, which requires that "the President shall obtain statutory authorization from the Congress with respect to any substantial expansion in the number or role of U.S. Armed Forces in Lebanon or for the creation of a new, expanded, or extended multinational peacekeeping force in Lebanon."

Mr. PERCY. Mr. President, I can assure my distinguished colleague, the senior Senator from Maryland (Mr. MATHIAS), that for legislative history purposes, nothing in this resolution is inconsistent with the Lebanon emergency assistance bill and our insistence in that legislation that specific authorization will be required for any substantial change in the role of the multinational force in Lebanon.

Mr. MATHIAS. I thank the chairman for his assurance in this matter. I think it is important not only for our own peace of mind but for the parties in the area to know precisely what the legal obligations of the United States are and for us to understand very clearly the limits of our commitments. I am happy to join with the chairman and with the 98 other cosponsors in urging the prompt adoption of the resolution.

Mr. PERCY. I thank my distinguished colleague.

Before we vote on the issue, Mr. President, I have two comments, one to the leadership and one to the distinguished Senator from Maryland.

In extending his high praise to Secretary George Shultz, I want to join in that. Always in the Mideast, George Shultz is backed up by the Deputy Secretary, Kenneth Dam, and by the Assistant Secretary for Near Eastern and South Asian Affairs, Nick Veliotes. Obviously, the foundation for all this was laid by Ambassador Philip Habib and Ambassador Morris Draper. I know the distinguished Senator from Maryland has always praised the work they have done and I know for the record, he would want to add their names at this time.

Mr. MATHIAS. I thank the chairman. In my desire to accommodate the Senate in passing this resolution at the earliest possible moment, I had not extended my thanks to the people he mentions. Obviously, it does extend to them and to all the State Department personnel.

Mr. PERCY. We shall add also the name of Lawrence Eagleburger, Under Secretary of State for Political Affairs.

To the majority leader, let me say I hope the Senate will agree this evening to a unanimous-consent time agreement so that, tomorrow, the Senate might consider the separate urgent Lebanon authorization. Is it the Senator's understanding that such a unanimous-consent agreement will be entered into?

Mr. STEVENS. It is the intention of the leadership to attempt to get that.

Is the resolution ready for approval, Mr. President?

The PRESIDING OFFICER. The resolution is ready for approval.

Mr. STEVENS. I ask for immediate passage of the resolution.

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

The resolution (S. Res. 148) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 148

Whereas the Governments of Lebanon and Israel on May 17, 1983, signed a historic agreement arranging for the withdrawal of Israeli forces from Lebanon;

Whereas the Lebanese and Israeli Governments deserve strong praise for their persistence, flexibility, and determination in negotiating the agreement and dealing with the difficult decisions required to conclude the document;

Whereas American officials played an important role in assisting the negotiations;

Whereas the agreement marks an important step in the efforts to achieve peace and stability in the region;

Whereas the agreement is an essential part of the effort to restore the sovereignty and stability of Lebanon;

Whereas the withdrawal of all foreign forces from Lebanon is in the interests of the Lebanese people and of peace in the region; and

Whereas a majority of Middle Eastern nations have expressed their support for the withdrawal of all foreign forces from Lebanon: Now, therefore, be it

Resolved, That the Senate of the United States:

Supports the decision of the Governments of Lebanon and Israel on agreeing to the arrangements for the withdrawal of Israeli forces from Lebanon;

Calls on other nations to work toward achieving the withdrawal of all foreign forces from Lebanon;

Emphasizes the need for all nations to recognize and respect the sovereignty and territorial integrity of Lebanon; and

Urges Syria and the Palestine Liberation Organization to respect the sovereignty and territorial integrity of Lebanon by agreeing to arrangements for the prompt withdrawal of their forces from Lebanon.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

Mr. STEVENS. I thank the Chair.

ORDER OF PROCEDURE

Mr. METZENBAUM. Mr. President, I believe I have the floor.

The PRESIDING OFFICER. The Senator is correct. The Senator from Ohio does have the floor.

Mr. METZENBAUM. Mr. President, I suggest——

Mr. STEVENS. Mr. President, may I inquire how the Senator got the floor?

The PRESIDING OFFICER. He got it by unanimous consent.

Mr. STEVENS. The Senator asked for unanimous consent to be rerecognized after the Senator from Illinois was recognized in routine morning business?

The PRESIDING OFFICER. That is correct.

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

Mr. STEVENS. As a point of clarification, I want to ask, is there a record of unanimous consent being asked for to recognize the Senator from Ohio at that time?

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

Mr. STEVENS. Yes.

Mr. BYRD. The Senator from Ohio got the floor. Then he asked unanimous consent that he could yield to Senators who have been carrying on a colloquy without losing his right to the floor.

Mr. STEVENS. Is there not a unanimous-consent for a period of routine morning business during which Senators could speak for 5 minutes each? The Senator from New Hampshire was recognized and then the Senator from Illinois under that request.

Will the presiding officer please read the record for the period the request was made?

Mr. METZENBAUM. Mr. President, I want to assure my friend I do not intend to create a problem, but the fact is I did have unanimous consent——

The PRESIDING OFFICER. The Chair advises the Senate, in response to the question of the Senator from Alaska, at 6:39 p.m., according to the Journal, Senator METZENBAUM received unanimous consent that he yield to Senator PERCY without losing his right to the floor and it was agreed to. There was no objection.

Mr. STEVENS. Very well.

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

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I thank the Senator from Ohio and the Senator from Oregon for their consideration.

UNANIMOUS-CONSENT AGREEMENT—S. 66

Mr. STEVENS. I now ask unanimous consent that at 1 p.m. on Monday, June 13, the Senate turn to the consideration of Calendar No. 106, S. 66, a bill to amend the Communications Act of 1934, and that there be 13 hours of consideration thereon, including debate on any amendments, motions, appeals, or point of order, if submitted to the Senate, equally divided, to be controlled by the Senator from Oregon (Mr. PACKWOOD) and the Senator from South Carolina (Mr. HOLLINGS) or their designees.

I further ask unanimous consent that a Commerce Committee modification to the committee amendment and an amendment to be offered by the Senator from Oregon (Mr. PACKWOOD) dealing with telecommunications shall be in order; that no other amendments that are not germane shall be in order, with the exception of amendments to be offered by the Senator from South Dakota (Mr. ABDNOR), the first dealing with deleting the two-way grade communications, the second amendment dealing with insuring that all providers of telecommunications services share in the obligation of providing universal service, and that they be limited to 1 hour equally divided on each.

I also ask unanimous consent that there shall be 30 minutes of debate on any other amendment or debatable motion, appeal, or point of order, if submitted to the Senate, equally divided, and that following the conclusion of the debate the Senate proceed to vote on S. 66 without any intervening debate, motion, appeal, amendment, or point of order.

Mr. METZENBAUM addressed the Chair.

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

Mr. METZENBAUM. Objection. Objection.

Mr. BYRD. Objection is heard.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Reserving the right to object, it is my understanding that the latter portion after S. 66 was to be dropped from the unanimous-consent request.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. That is correct. Where it says "proceed to vote on S. 66," simply put a period and delete the words "without any intervening debate, motion, appeal, amendment, or point of order."

The reason I had initially put that in the unanimous-consent order is I wanted to make sure when we got to the end of the 12 hours we were not suddenly faced with a plethora of amendments that could not be debated but could be voted on. The Senator from Ohio has assured me that he has no intention of attempting to filibuster in that fashion.

I have assured him that I have no intention of offering an amendment under these privileges that I am given that is unrelated to the bill. I am not sure if they are technically germane, but I can assure the Senator they are related to the bill. I know the fear he has. The minority leader will recall it well. As I recall, we were considering a public housing bill and one Senator asked to have an amendment offered and it turned out to be a capital punishment amendment.

I have no intention of doing anything of that nature. It will be related to this bill. I will be happy to show it to the Senator from Ohio ahead of time.

Mr. METZENBAUM. Mr. President, the understanding is that the amendment which the Senator from Oregon is proposing and asking be made germane will be consistent with the general thrust of the legislation?

Mr. PACKWOOD. It will clearly be consistent. It may extend it a bit.

What I am trying to do in this bill, you slay one dragon and two more pop up as we are going along, and I am doing the best I can to harmonize different interests. I may be able to harmonize some and in the process of doing that I might expand the bill a bit to the satisfaction of all the parties, but it technically might not be germane.

Mr. METZENBAUM. I understand. I have no objection.

Mr. MOYNIHAN. Mr. President, am I correct in my understanding that the provisions of the bill with respect to cable television in cities, at this point, do not have the unanimous, harmonious acceptance of the Nation? And, am I correct that we hope to use this interval to see if we cannot get some agreements that do not now exist, so that even more people will be voting for the bill when the time comes?

Mr. PACKWOOD. I hope so. There was a time when I thought we had a harmonious relationship between cable and the cities, and then a few cities have jumped places, but I am hoping we can bring them all back.

Mr. MOYNIHAN. Also, a time certain tends to concentrate the mind, for those of us who are hanging.

Mr. STEVENS. Mr. President, does the Senator from Arizona seek to reserve the right to object to this unanimous-consent request?

Mr. GOLDWATER. Mr. President, reserving the right to object, and I will not object, I think this is a very sorry turn of events. We have been working nearly 4 years on this piece of legislation. Most of the time has been spent in conference with the mayors and city councils of the various cities around this country. The mayor of New York never asked to come and be heard, yet he has phoned a number of us and asked that this be put off. No one from the State of New Jersey, to my knowledge, except the distinguished Senator representing New Jersey, has raised any objections to this. The Coalition of Cities, which does not include New York, has sort of worked around this, never raised any objection. The National League of Cities, the largest league of cities in the country, is still unanimously behind this.

So, Mr. President, I am kind of at a loss to know why after all these years we are suddenly going to say no to the American people who want a little better television reception than they can get over antenna-to-antenna.

This is a very sad turn of events, because only the day before we completed work on this bill, the American Telephone & Telegraph Co. took it unto themselves to try to shoot this bill down. Why, I do not know. But we have adopted amendments to take care of them and to take care of the various new telephone companies that have sprung up around the country as a result of AT&T's divestiture.

So, Mr. President, here, at the last moment, when the cable people of this country have been waiting, when the American people in New York City and in Washington, D.C., and all over this country have been waiting for decent television reception, we have a handful of Senators, representing a handful of cities, and the American Telephone & Telegraph Co., who decide they do not want this bill discussed.

Mr. President, I think patience has been about exhausted among the people who are interested in this bill, and they are mainly the people of this country, not the cable television people.

So, while I know we cannot get this bill up tonight—we have to postpone it until the 13th of next month—I hope

that by that time the mayor of New York City will take the time to study this bill and find out what it is all about. Maybe the mayors of other big cities, two or three of them, will take the time to find out what they are talking about when they call here and object.

The objections I have had from those cities have come from labor unions and a handful of people who might lose their jobs if this bill is passed. I do not think so, but they might. But I think this is a sad way to run the affairs of this country.

Mr. BYRD. Mr. President, reserving the right to object, may I ask the distinguished acting Republican leader a couple of questions?

Personally, I do not intend to object, and I do not want to object. I notice that the time will be controlled by the Senator from Oregon (Mr. PACKWOOD) and the Senator from South Carolina (Mr. HOLLINGS) or their designees.

My question is this: Are these Senators both on the same side of the question? If so, it is normal for the minority leader to control the time in opposition. That does not necessarily mean I am in opposition.

Mr. STEVENS. I say to the Senator that it is a matter of form. If the chairman and the ranking minority member of the Commerce Committee are on the same side, the Senator is correct. As I understand it, he would be in control of the time, if the Senator from South Carolina agreed with the Senator from Oregon. The time would automatically go to the other side.

Mr. BYRD. I would appoint a designee on this side. It is not that I want to control it, but the opposition is entitled to have the time.

Mr. STEVENS. That is correct.

Does the Senator wish to add to this agreement that if the Senator from Oregon and the Senator from South Carolina are in agreement, the Senator from West Virginia will control the time?

Mr. BYRD. In opposition. I do that only because it is normal. I may not be in opposition.

Mr. GOLDWATER. Mr. President, I must say that the entire committee approved this bill, with the exception of one member. The ranking minority member, the Senator from South Carolina, is for this legislation. So I think you are going to have trouble finding somebody to take the position you have asked about.

Mr. STEVENS. Mr. President, I ask that my unanimous-consent request be so modified, that in the event the two floor managers are in agreement, the time in opposition will be controlled by the minority leader or his designee.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, further reserving the right to object, is it also agreed that there will be no votes on Monday?

Mr. STEVENS. It is the intention of the leadership to state that any rollcall votes ordered on amendments or motions relating to S. 66 on Monday will be postponed until Tuesday, for a time to be determined after consultation with those involved in the consideration of this bill.

Mr. BYRD. The time to be determined by the two leaders.

Mr. STEVENS. Yes.

Mr. BYRD. They will, naturally, work with the managers.

Mr. STEVENS. It will be by the two leaders, after consultation with the managers of the bill, for the votes to occur on Tuesday, the 14th.

Mr. BYRD. Mr. President, will the Senator yield further?

Mr. STEVENS. I yield.

Mr. BYRD. It should be determined by the leader, after consultation with the minority leader.

Mr. STEVENS. That is my understanding. We are not prepared to enter into the agreement as to the time that will occur, so that has not been included in this request. It will be determined by the leader, after proper consultation.

Mr. BYRD. And I will be in charge of the time in opposition.

Mr. STEVENS. The Senator is correct.

Mr. BYRD. Which does not mean I am opposed. In the normal course of things, that is the way it is done.

Mr. STEVENS. The Senator's fairness is known.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request, with the modifications proposed?

Mr. BYRD. I have no objection.

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

Mr. STEVENS. I thank all concerned, particularly the Senator from Ohio and those who have been involved in the negotiations.

The text of the unanimous-consent agreement is as follows:

Ordered, That at 1:00 p.m. on Monday, June 13, 1983, the Senate proceed to the consideration of S. 66 (Order no. 106), a bill to amend the Communication Act of 1934, and that there be 13 hours of consideration thereon, including debate on any amendments, debatable motion, appeals, or points of order which are submitted or on which the Chair entertains debate, with the time to be equally divided and controlled by the Senator from Oregon (Mr. Packwood) and the Senator from West Virginia (Mr. Robert C. Byrd), or their designees.

Ordered further, That no amendment that is not germane to the provisions of the said bill shall be received, with the following exceptions: a Commerce Committee modification to the committee amendment; an amendment to be offered by the Senator from Oregon (Mr. Packwood) dealing with telecommunications; an amendment to be offered by the Senator from South Dakota (Mr. Abdnor) dealing with deleting the "two-way" grade communication; and an amendment to be offered by the Senator from South Dakota (Mr. Abdnor) dealing with insuring that all providers of telecommunications services share in the obligation of providing universal service: *Provided*, That there be 1 hour debate on each of the above amendments, with the time to be equally divided and controlled by the mover of such and the manager of the bill.

Ordered further, That there be 30 minutes debate on any other amendment, debatable motion, appeal, or point of order if submitted to the Senate, with the time to be equally divided and controlled by the mover of such and the manager of the bill.

Ordered further, That at the conclusion of the debate, the Senate proceed to vote on passage of S. 66.

TIME AGREEMENT ON S. 639, LEBANON EMERGENCY ASSISTANCE ACT OF 1983

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate turns to the consideration of Calendar No. 120, S. 639, a bill to authorize supplemental assistance to aid Lebanon, it be considered under the following time agreement:

One hour on the bill, to be equally divided between the chairman of the Foreign Relations Committee and the ranking minority member, or their designees; that no amendments be in order with the exception of the committee reported amendments; 10 minutes on any debatable notions, appeals or points of order, if so submitted to the Senate; and that the agreement be in the usual form.

Mr. President, prior to scheduling this item, the majority leader will consult with the minority leader.

Mr. BYRD. I have no objection.

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

The text of the unanimous-consent agreement is as follows:

Ordered, That when the Senate proceeds to the consideration of S. 639 (Order No. 120), a bill to authorize supplemental assistance to aid Lebanon in rebuilding its economy and armed forces, and for other purposes, there shall be no amendments in order except the committee reported amendments, and there shall be 10 minutes debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate, with the time to be equally divided and controlled by the mover of such and the manager of the bill: *Provided*, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee.

Ordered further, That on the question of final passage of the said bill, debate shall be limited to 1 hour, to be equally divided and controlled, respectively, by the Senator from Illinois (Mr. Percy) and the Senator from Rhode Island (Mr. Pell), or their designees: *Provided*, That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

ORDER FOR HOUSE JOINT RESOLUTION 265 TO BE PLACED ON THE CALENDAR

Mr. STEVENS. Mr. President, I ask unanimous consent that once the Senate receives House Joint Resolution 265, a joint resolution to provide for the temporary extension of certain insurance programs relating to housing and community development, from the House of Representatives, it be placed on the calendar.

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

ORDER OF PROCEDURE

Mr. STEVENS. Mr. President, does the distinguished Democratic leader have anything further to consider?

Mr. BYRD. Mr. President, I thank the distinguished acting Republican leader for his customary courtesy and understanding. I have nothing else.

LEAVE OF ABSENCE

Mr. MATHIAS. Mr. President, under the provisions of rule VI of the Senate, I ask that I may have leave to be absent on Friday of this week, if the Senate is in session, for the purpose of attending a memorial service in Boston, Mass., for the late Governor of Massachusetts, Robert Bradford.

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

Mr. BYRD. Mr. President, I compliment the Senator. He is doing what Senators are supposed to do when they absent themselves from the Chamber.

I wish to compliment the majority leader, who is not here at the moment. He has been following this practice, in accordance with the rule.

I have no objection. I compliment the Senator.

Mr. MATHIAS. I thank the Senator.

Mr. BYRD. I could not have objected if I had wanted.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDERS FOR THURSDAY

ORDER FOR RECESS UNTIL 2:30 P.M.

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 2:30 p.m. tomorrow.

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

RECOGNITION OF CERTAIN SENATORS ON TOMORROW

Mr. STEVENS. Mr. President, I ask unanimous consent that following the two leaders under the standing order there be special orders for not to exceed 15 minutes each for the following Senators: Mr. McCLURE, Mr. SPECTER, and Mr. SYMMS.

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

ORDER FOR PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, I ask unanimous consent that following the time for the special orders there be a period for the transaction of routine morning business to extend beyond the hour of 4 p.m. with statements by Senators limited therein to 5 minutes each.

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

ORDER TO PROCEED TO CONSIDERATION OF BUDGET RESOLUTION, SENATE CONCURRENT RESOLUTION 27

Mr. STEVENS. Mr. President, I ask unanimous consent that at 4 p.m. the Senate proceed to the consideration of the budget resolution as reported, Senate Concurrent Resolution 27.

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

ORDER OF PROCEDURE

Mr. STEVENS. Mr. President, is there further business to come before the Senate?

Mr. BYRD. Mr. President, before the Senator makes a motion, would he then anticipate that the action on the budget resolution would probably be concluded if the full time is used around, say, circa 7 p.m.?

Mr. STEVENS. 7 to 7:30 p.m.

Mr. BYRD. I understand he cannot predict how much of the time will be used, but if it is all used, I assume it will be around between 7 and 8 p.m.?

Mr. STEVENS. It was my understanding that the leader intended to do the best we could to finish that early in the evening and then lay down the MX resolution.

Mr. BYRD. I thank the Senator.

RECESS UNTIL 2:30 P.M. TOMORROW

Mr. STEVENS. Mr. President, if there be no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess in accordance with the previous order.

There being no objection, the Senate, at 7:12 p.m., recessed until tomorrow, Thursday, May 19, 1983, at 2:30 p.m.

NOMINATIONS

Executive nominations received by the Senate May 18, 1983:

FEDERAL HOME LOAN BANK BOARD

Donald I. Hovde, of Wisconsin, to be a member of the Federal Home Loan Bank Board for the remainder of the term expiring June 30, 1985, vice Richard T. Pratt, resigned.