United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 98th CONGRESS, SECOND SESSION

SENATE—*Friday, June 29, 1984*

(Legislative day of Monday, June 25, 1984)

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

PRAYER

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

They that wait upon the Lord shall renew their strength; they shall mount up with wings as eagles, they shall run, and not be weary; and they shall walk, and not faint.—Isaiah 40:31.

Father God, our culture celebrates the workaholic—one who works 7 days a week, 12 hours a day. In our human pride, we forget that even God rested after 6 days of work. Help the Senators to be aware of their responsibility to themselves. Help them not to underestimate the punishment their bodies, minds, and hearts have suffered under the stress of these last 2 weeks. Grant them discernment as to their recess schedules—to cancel appointments if necessary, that they may get adequate rest. Help them, Lord, to realize they cannot fulfill their mandate if they burn out or break down.

The Lord bless you and keep you: The Lord make His face to shine upon you and be gracious unto you: The Lord lift up His countenance upon you, and give you peace. (Numbers 6:24-26) Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

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

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

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

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BAKER. Mr. President, I assume that I am now recognized under the standing order. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. BAKER. Has the time so far consumed by the quorum call been charged?

The PRESIDING OFFICER. It has.

Mr. BAKER. To whom?

The PRESIDING OFFICER. To the majority leader.

Mr. BAKER. It does not leave me much. On the other hand, I do not need much.

SENATE SCHEDULE

Mr. BAKER. Mr. President, I do not have the foggiest idea of when we will get out today.

We will await the action of the House on the debt limit and on the bankruptcy conference report. If we can find other things to do, we will do them, including the possibility of doing the concurrent resolution to accompany the conference report on the deficit reduction package, if that can be worked out.

The two essential items that must be dealt with are the debt limit and the bankruptcy conference report. Since the House must act on both of those first, I would not dare make a prediction about what time we will finish. However, I caution Senators to consider the possibility that it will not be early. I understand that the House may not have the debt limit to us until 3 or 4 o'clock this afternoon; and if that is the case, it will be after that, obviously, that we will proceed to it.

VITIATION OF ORDER FOR RECOGNITION OF SENATOR TOWER

Mr. BAKER. Mr. President, I am advised that the distinguished Senator from Texas [Mr. TOWER] does not need his special order today, and I ask unanimous consent that it be vitiated.

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

SENATOR PROXMIRE COMMENDED FOR GENOCIDE CONVENTION CRUSADE

Mr. BAKER. Mr. President, for more than 17 years now, the distinguished gentleman from Wisconsin [Mr. PROXMIRE] has been urging the Senate to give its consent to the ratification of a treaty outlawing the practice of genocide.

Senator PROXMIRE has set a record for persistence that may never be broken. He has spoken on this subject every day the Senate has been in regular session since January 11, 1967. He has made more than 2,900 speeches on the subject, all told, and he seems no less committed to the issue today than when he gave his first speech 17 years ago.

The history of the Genocide Convention is a curious one. It was drafted, largely by Americans, as the first human rights treaty of the United Nations following the Holocaust of World War II. It was unanimously approved by the U.N. General Assembly in 1948, and America's ratification of the treaty—formally submitted for the Senate's consent by President Truman in 1949—seemed a foregone conclusion.

Yet the Genocide Convention has remained in the longest running legislative limbo in the history of Congress. The Convention has been considered numerous times by the Committee on Foreign Relations and reported favorably for action by the full Senate. It was debated on the Senate floor in executive session early in 1974. But to this date the Senate has neither approved nor rejected this convention which has now been on the legislative calendar for more than 30 years.

I have not risen today to debate the merits of this treaty, although it may be about time that debate began

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

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again. I understand there are legitimate arguments of national sovereignty involved which render this convention more complicated than a simple referendum on genocide.

I rise today simply to commend the gentleman from Wisconsin for his extraordinary commitment to the resolution of this significant issue. The Senator has not been deterred by the fact that this treaty and his efforts to ratify it have not received elaborate media attention. He has not been deterred by the fact that a legislative "hold" was placed on this measure by the late Senator John Bricker and seems never to have been cleared. He has not been deterred by anything at all, and this kind of determination ought not go unremarked.

The tradition of the "voice crying in the wilderness" is long and distinguished. It dates back to the Biblical prophets and it includes such latter-day episodes as Winston Churchill's early warning of the dangers of nazism. The tradition lives in even so gentle an issue as Everett Dirksen's perennial call for the designation of the marigold as our national flower.

Veteran Senators will be quick to note that the senior Senator from Tennessee has also waged a crusade of long standing for a return to the "citizen legislature" and for the televising of the Senate's floor proceedings. I only wish I had served these causes with half the zeal BILL PROXMIRE has served his.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, I wonder if the distinguished acting minority leader would like to proceed at this point.

I ask unanimous consent, if I may, that the time allocated to the minority leader under the standing order be reserved for his use during the course of the day, except as may be used by the acting minority leader.

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

TECHNICAL AMENDMENTS TO THE TAX BILL

Mr. MELCHER. Mr. President, the public and the Senate, as well as the House, are entitled to know what is the holdup on bringing out the concurrent resolution to the tax bill.

Let me state briefly that House Concurrent Resolution 328 consists of "technical amendments" to the tax bill. As a matter of fact, that document, House Concurrent Resolution 328, consisting of 60 pages, is more than the ordinary technical amendments that would be accompanying a bill, even a tax bill.

What has been found to be wrong with the tax bill in one instance is the computation of the imputed interest rates on homes and farmland that must be corrected. I say it must be corrected because it is quite embarrasing, I think, for anyone to find out that the imputed interest on homes and farmland sales would be raised from 9 percent to 15 percent. That is a very significant increase. It would probably bring the large portion of the homes that are being sold today to a screeching halt. It would probably bring farmland sales to a halt. I might add, Mr. President, it would certainly do the same for the sale of small businesses.

I do not believe that economic recovery is built on having suddenly a new law adopted because the Treasury Department saw fit to write the language and to present it to the two tax-writing committees as if it were necessary and have them accept it and then find out that by accepting and enacting it into law the economic recovery is stymied by the action of the Treasury Department.

It does little good for speeches made by the Secretary of the Treasury or other people in the administration or, for that matter, ourselves in Congress about our hope for continued economic recovery and then pass a law that would directly stymie that economic recovery.

You might think, Mr. President, that I am overexaggerating this situation. But that is exactly the way it is.

When we found this to be the case on Wednesday, when we considered the tax bill conference report, we entered into the RECORD and made statements here in the Chamber as to the effect that these provisions would have on these normal transactions of housing, farmland, and small business.

We had the feeling that perhaps some correction would be proposed that we could all review yesterday, but unfortunately that has not happened.

I did receive a letter from Chairman DOLE of the Finance Committee and included with it an explanation of the application of amended section 483 to seller financing.

Mr. President, I ask unanimous consent to have printed in the RECORD that example of application of imputed interest rates effect on home sales.

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

EXAMPLE OF APPLICATION OF IMPUTED INTEREST RATES EFFECT ON HOME SALE IN TAX BILL TECHNICAL CORRECTIONS HOUSE CONCURRENT RESOLUTION 328

APPLICATION OF AMENDED SECTION 483 TO SELLER FINANCING

Assume a seller contracts to sell his principal residence, with a cost basis of $150,000, for $250,000. The contract requires the buyer to assume the seller's mortgage of $150,000, and to pay $100,000 at the end of 5 years, with 9 percent simple interest paid each year. Under this balloon note, the buyer's payments are as follows:

Year:	Payment
1	$9,000
2	9,000
3	9,000
4	9,000
5	109,000

Under the new rules of Section 483, 9 percent simple interest on a 5-year obligation would not be adequate interest since the "test rate" for 5-year obligations would be approximately 11 percent. Accordingly, a portion of the $100,000 characterized as principal would be recharacterized as interest income. However, this interest income would not be recognized until it was actually paid. The seller's cash flow and tax treatment would be approximately as follows:

	Cash payment	Amount seller reports as interest	Amount seller reports as capital gains
Year:			
1	$9,000	$9,000	0
2	9,000	9,000	0
3	9,000	9,000	0
4	9,000	9,000	0
5	109,000	22,000	[1] $87,000

[1] This is an approximation of the result that will be required under Treasury regulations. The precise breakdown of interest and principal in the last year may vary.

Thus, the deferred payment rules would not require any interest income to be reported where there are no cash payments. Instead, it would only recharacterize actual cash payments of principal as deferred interest, where an inadequate interest rate was stated.

Mr. MELCHER. Mr. President, I have also responded to Chairman DOLE's letter, and I likewise ask unanimous consent to have printed in the RECORD that letter.

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

U.S. SENATE,
June 29, 1984.

HON. ROBERT J. DOLE,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR BOB: Thank you for your letter to clarify the Treasury Department's intention and the House Concurrent Resolution effect on imputed interest rates concerning the sale of farms and principal residences amounting to $250,000 or less.

Your example of a 5-year balloon contract portrays the vigorous objection sellers have to imputed interest increases. In that example, on the fifth year with the balloon payment all of the imputed interest would be added to the tax obligation of the seller.

Lumping it in one year actually works to the disadvantage of the seller since the taxable income would be greater for that year and exacerbates the tax payment problem rather than alleviates it.

The net effect of raising imputed interest payments from 9% to 12% on sales of farms and homes of less than $250,000 and on those selling above that amount from 9% to 15% is to prevent seller financed sales.

In addition to these above increases in interest, all small business sales would be subject to an increase of imputed interest rate from 9% to 15%.

I remain convinced that the only solution for the bill is to provide an exemption from the imputed interest rate increase on those sales of homes at $250,000 and $1½ million on farms, ranches and small businesses, as is

indicated by my proposed amendment language:

"Notwithstanding any other provision of law and H.R. 4170, interest rates imputed for transactions involving the sale or exchange of farms, ranches, or small businesses not in excess of $1,500,000, or transactions involving the sale or exchange of residential housing not in excess of $250,000 shall not exceed 9 percent simple interest."

Without such exemption, most if not all home, small business and farm sales would be stopped. Forced interest rates at 15% on these sales required under H.R. 4170 to avoid the Internal Revenue Service setting the imputed rate at 16½% would be extremely damaging to economic recovery.

Kindest personal regards.

Yours sincerely,

JOHN MELCHER.

Mr. MELCHER. Mr. President, it is really ironic that we are here in the Senate trying to correct action pushed by the Internal Revenue Service and, a far as I can tell, no one else. They are the only ones that believe that this is a constructive tax law. It would increase the amount of interest that must be charged, indeed, for contractor seller financed sales of farms, ranches, small businesses, and homes, at the very time that Secretary of the Treasury Regan is stating publicly that increased interest rates are the biggest threats to our economic recovery.

I suggest, Mr. President, that an increase in imputed interest rates from 9 percent to 15 percent is a gigantic climb.

Now, if we are able to adopt House Concurrent Resolution 328 today, there would be some ameliorating effects of that adoption reducing those rates from 15 to 12 percent on the sale of a principal residence up to $250,000. That still leaves out everything over $250,000 in farmland. It still leaves out small business entirely. Those types of transactions would be forced up to 15 percent.

The effect of that is that, since the seller cannot conceivably find buyers who can pay 15 percent and yet would have to be obligated to pay taxes on the 15 percent as if it were paid, there will not be any transactions at that rate, and so the devastation of this cannot be overexaggerated.

It just does stop home sales at the point where you cannot sell a home at 12 percent. It stops all of the farm sales above $250,000. You have 12 percent up to $250,000. But all of them above that, if you cannot find 15 percent, no one can afford to buy farmland at that rate. And all small business sales that are seller financed at any amount unless the rate was set at least at 15 percent.

I do not believe that is normal commonsense and to correct it I have had an amendment at the desk since Wednesday which would exempt homes from imputed interest rates, just take them out of consideration up to $250,000 and for farmland and small business up to $1.5 million.

That to my way of thinking is about the only way to handle this situation. We will be told, I am afraid, that we must act immediately within the 10 or 15 minutes on this concurrent resolution whenever it is called up and, Mr. President, that is not only impractical, that is impossible for the Senate to logically and with some thought make some corrections to this particularly odious unworkable, unconscionable section in the bill. So it is going to take more time than that, Mr. President.

We did not get anywhere yesterday on constructive alternatives to the language I proposed because the concurrent resolution simply was not offered by the Finance Committee for the Senate to consider.

So, we are going to have to keep in mind as we go through the day that indeed if we are going to adjourn today and pass House Concurrent Resolution 328, we have at least some time before we can make the proper corrections. It is important that we do, if that concurrent resolution is going to be considered today, because there will be no time later this year when we could be certain that we are going to have the proper tax vehicle before us where corrections can be made.

Mr. President, I thank the Democratic leader for yielding some of his time to me.

Mr. BYRD. The Senator is welcome.

Mr. President, may I be recognized under the order.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. Under the standing order, the minority leader is recognized.

Mr. BYRD. I thank the Chair.

THE SENATE'S RECESS IN JULY AND AUGUST

Mr. BYRD. Mr. President, I wish to engage the distinguished majority leader in a brief colloquy.

Would he be in position at this time to state whether or not there will be any change in or extension of the recess in July for the Democratic Convention, which is 3 weeks, and the recess in August for the Republican Convention, which is 2 weeks, as shown on the calendar?

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

Mr. President, I have discussed this matter with the minority leader and a number of other Senators. I hope then that what I am about to say will not come as a surprise to anyone.

First, the July recess will remain intact as published and as it appears on the calendar and on the so-called blue cards which have been distributed. That means that the Senate will return, after it adjourns today or tomorrow or whenever the Senate adjourns, on July 23.

Mr. President, second, contrary to earlier hopes and aspirations, we will be here all 3 weeks between the two conventions; that is, the week of the 23d, the week of the 30th and week of the 6th of August. The Senate will then adjourn for the Republican Convention on August 13.

The third item I would now state in response to the minority leader is that the leadership on this side feels that we should not return until September 5, which will mean we will go out at the close of business on August 10 and come back on September 5.

The net effect of that is to say we will not attempt to be in session for the week after the Republican Convention and before Labor Day. It seems to the leadership on this side that that would be a very brief time in which to ask Senators to come back—less than a week—and then we would be out for the Labor Day break. So once more I announce at this time that we will go out at the close of business on August 10 or 11, as the adjournment resolution may direct—in any event at the end of the week of the 6th of August, I assume that is the 10th of August—and we will not return then until Wednesday September 5.

Let me say however that it is anticipated that we will have business to transact and votes will occur during that week beginning on the 5th of September, notwithstanding that is a Wednesday.

Mr. BYRD. Mr. President, I thank the distinguished majority leader.

Mr. BAKER. I thank the minority leader.

Mr. President, there are special orders now in favor of Senators ABDNOR and PROXMIRE, neither of whom are on the floor at this moment.

I ask unanimous consent that, if Senators in whose favor special orders are ordered are not here to claim their time at the close of the minority leader's time, it may be in order to suggest the absence of a quorum without it charging against the special order time.

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

Mr. BAKER. I thank the Chair, and I thank the minority leader.

Mr. BYRD. I thank the distinguished majority leader.

MINDING THE STORE AND RESPECTING THE LAW

Mr. BYRD. Mr. President, Wednesday evening, June 27, on the NBC evening news, it was reported in some detail that the Navy had paid many millions of dollars for completely fraudulent charges—in padded costs

and phony invoices—by contractors on items being procured for our naval ship construction. The report outlined widescale corruption among the contractors in the execution of Navy shipbuilding contracts worth billions of dollars. The large sums charged for work not done or materials not delivered were paid out by the Navy in apparently a routine or cursory way. There was not any challenge or careful attention paid to the details of the exorbitant bills which the taxpayers were forced to pay.

This account is but the latest in the endless series of episodes, demonstrating a lack of zeal on the part of our armed services in routing out wasteful expenditures in military procurement. It is difficult to understand why our uniformed services cannot be more attentive to these matters. Close and constant investigation of military contracting is needed, all the time, and from the very top down, in order to achieve effective reform of DOD waste.

When an individual story such as this reaches the level of the national evening news, one is forced to assume that many other examples of sloppy procurement practices are going unreported, unpoliced, and unnoticed.

Mr. President, some senior officers of the Navy have recently taken to the public podium to condemn the War Powers Resolution—which has been the law of the land since 1973. These high-ranking officers, including the top command in naval operations, are expending considerable effort in publicly challenging the merits of the law of the land. I believe this exercise is totally inappropriate to their military role—which is to make our forces ready to fight, and to procure workable weapons systems at reasonable prices. Rather than jumping into the political and constitutional debates that are out of the domain of their responsibilities, our uniformed top naval leaders would be far better off investigating how their procurement officials are protecting the public pocketbook.

SOVIET BRUTALITY IN AFGHANISTAN

Mr. BYRD. Mr. President, since the Soviet invasion of Afghanistan on December 27, 1979, there have appeared periodic reports of Russian brutality directed against the civilian population of that nonaligned nation. The June 28, 1984 edition of the New York Times carried a story providing firsthand details from two Soviet Army defectors of this brutality against civilians.

The two defectors, who are presently in Great Britain, have provided information that Russian soldiers are ordered by their officers to kill Afghan villagers in cold blood. They stated that if a cartridge or bullet were found, officers ordered the village to be destroyed, the young men usually shot on the spot, and the women killed with grenades.

The two officers stated that they had taken part in the killing of 100 to 200 people in an Afghan village.

The deserters also stated that the morale among Soviet soldiers was low and that drug use was high. The Afghan Army the Soviets are supposed to be advising is not an army, just a mess, with half the soldiers running away and the other half joining the rebels, according to the two defectors.

Mr. President, as the brave Afghan freedom fighters continue to mount impressive resistance to the Soviet invaders, it is apparent that the only response of which the Russian Army is capable is that of conducting genocide against the civilian population of Afghanistan. This morally reprehensible conduct not only should lead to continued international condemnation of the Soviet occupation of Afghanistan, but also to greater efforts among the free nations of the world—and that would include Moslem nations—to ensure that the freedom fighters have the weapons necessary to continue inflicting heavy casualties on the Soviet invaders.

I ask unanimous consent that the New York story of June 28, 1984 be printed in the RECORD.

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

AFGHAN WAR: RUSSIANS TELL OF THE HORROR

(By Jo Thomas)

LONDON, June 27.—Two Soviet Army deserters speaking at a news conference here today described the fighting in Afghanistan as a "monstrous war where innocent people are killed on both sides."

The two, Igor F. Rykov, 21 years old, and Oleg G. Khlan, 20, deserted to the Afghan insurgents in July 1983. Lord Bethell, a Conservative member of the European Parliament, found them during a visit to the rebels and arranged for their release. Since they arrived in Britain two weeks ago, they have been undergoing treatment for withdrawal from opium, to which they became addicted in Afghanistan.

The two looked thin and pale and wore blue jeans and seersucker jackets at the news conference, which was arranged by Lord Bethell and Resistance International, a group that supports the Afghan insurgents.

The deserters, who had served as armored personnel drivers, said their officers treated them "not like human beings but like animals" and they, in turn, had been ordered to kill Afghan villagers in cold blood.

A VILLAGE SEARCH DESCRIBED

"An officer decides to have a village searched to see if there are any rebels in it," they said, speaking through an interpreter. "What usually happened is we found a cartridge or a bullet. The officers said; 'This is a bandit village. It must be destroyed.' So they bring the women into a separate room. The men and the young men are usually shot right were they are. And the women, what they do is try to kill them with grenades."

They said they had taken part in the killing of 100 to 200 people in the village of Bazarcha, near Kandahar, but they did not seem to be sure of the date. They said the incident was in 1980, although they themselves did not get to Afghanistan until early 1982.

In another incident, in Nangarhar Province, described at the news conference and in a letter seeking political asylum from Prime Minister Margaret Thatcher, Mr. Rykov said:

"Our lieutenant, First Lieut. Anatoly Gevorkyan, ordered the members of our platoon to bring out a young Afghan boy, about 16 years old. He then ordered Pvt. Oleg Sotnik to kill him with a knife, saying: 'Now then, Sotnik, here is the knife. Stick it into this young man. They tell me you are afraid of blood. You must get used to killing in cold blood, like I do.' "

When the private's attempt was unsuccessful, the lieutenant cut the boy's throat himself, Mr. Rykov said.

INTERVIEW IN PARIS NEWSPAPER

The deserters said morale among Soviet soldiers was low, drug use was high and the Afghan Army the Russians were supposed to be aiding was "not an army, just a mess, with half the soldiers running away and the other half joining the rebels."

They said some Afghan soldiers, marching behind the Russians, would shoot them in the back. As captives, they said they had also seen insurgents kill wounded Soviet soldiers.

Some of the incidents described today were similar to accounts given by the two in an interview published April 19 in the Russian-language newspaper Russkaya Mysl of Paris.

Mr. Rykov and Mr. Khlan were among five Soviet soldiers—four deserters and a prisoner of war—who were interviewed while still held by the Afghan rebels. They were interviewed by Fatima Salkazanova, a reporter for Radio Liberty, the American-supported station based in Munich that broadcasts to the Soviet Union.

RECOGNITION OF SENATOR ABDNOR

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

IMPUTED INTEREST

Mr. ABDNOR. Mr. President, a few moments ago, the Senator from Montana, Senator MELCHER, spoke on imputed interest. I would like to say that is something which is of great concern to this Senator, also. My staff and I have been working for several months on this subject and were advised that we should wait until the tax legislation was acted on by the conference committee before we introduced our legislation. I think it would be well for anyone interested in that subject to take a look at the legislation I introduced yesterday. My legislation on imputed interest is S. 2822.

S. 2833—TAX LAW EFFECT ON AGRICULTURE

Mr. ABDNOR. Mr. President, today I am introducing a bill which is designed to help preserve our family farm system while curbing a tax abuse and at the same time reducing the Federal deficit. My bill would limit to the national median household income—approximately $23,600—the amount of off-farm income which could be sheltered by farm losses.

As my colleagues will remember, I offered a similar amendment to the deficit reduction package. At that time, a number of Senators were concerned about my amendment and urged that it be considered by the tax committees of the House and Senate. So as not to delay congressional action on the deficit reduction bill, I withdrew my amendment after my colleague, Senator DOLE, chairman of the Finance Committee, assured me that he would hold hearings on this issue.

Very simply, Mr. President, my bill would close a tax loophole which is aggravating our festering farm problems.

Farmers and ranchers not only have to deal with low commodity and livestock prices, high interest rates, and declining agricultural exports, but they also must compete with so-called gentleman farmers who are more interested in farming the Tax Code than in producing food and fiber. These so-called "farmers and ranchers" compete with the bona fide farmers and ranchers of America for farm and ranch land, add to our surplus production problems, and sometimes farm marginal lands, thus aggravating our soil and water conservation problems.

To add insult to injury, these "farmers of the Tax Code" rob the Federal Treasury of tax dollars which could be put to use to help reduce the Federal deficit, which in turn would help to reduce interest rates to bona fide farmers and ranchers.

In a recent study of 1976 farm income tax returns, the Internal Revenue Service identified 12,000 returns which reported farm losses in excess of $50,000. These same returns showed an average off-farm income of over $122,000. After deducting an average of over $104,000 in farm losses, these 12,000 so-called farmers paid taxes on an average adjusted gross income of just $16,362.

IRS found another 24,000 tax returns which recorded farm losses in the range of $25,000 to $50,000. The so-called farmers had an average off-farm income of almost $52,000 and after deducting average farm losses of $34,000, paid taxes on an average adjusted gross income of only $17,366.

The Joint Committee on Taxation estimated a revenue gain to the Treasury of approximately $2.6 billion for fiscal years 1985–87 from my proposed amendment to the deficit reduction bill. That amount could go to reduce the deficit and illustrates the magnitude of abusive tax sheltering in agriculture.

Realizing that the information on agricultural tax shelters is inadequate and often sketchy, I have requested the Treasury Department to prepare recent data on tax shelters in agriculture. Specifically, this information should enable Congress to determine the total loss to the Treasury, the commodities involved in tax sheltering, the occupations of tax-loss investors, the incomes of these investors, and the States and regions in which tax-loss farming is most prevalent.

The response to the amendment I offered earlier has been overwhelmingly positive and supportive. Farmers, ranchers, and other citizens and groups who are concerned about American agriculture have registered support. Additionally, the National Governors Association has endorsed the concepts embodied in my bill.

In an effort to collect the thoughts of knowledgeable individuals in regard to the issues of agricultural taxation and tax shelters, I queried a number of individuals about their options. Prof. Harold F. Breimyer, of the University of Missouri-Columbia, was perhaps the most outspoken and direct in stating:

"* * * For years, I have deplored the negative effects of tax deductions. They overstimulate agricultural production; they transform agriculture from an economy that generates income from its productiveness to a tax shelter economy; and they are devastating to a proprietary owner-operator agriculture * * * the farming community has been slow to recognize that the devices by which farmers minimize their tax obligations are a Trojan Horse."

Chairman D. Gale Johnson of the University of Chicago's Department of Economics offered some pointed comments which appear in agreement with Professor Breimyer's "Trojan Horse" theory:

"* * * Given the tendency of U.S. agriculture to increase production at a faster pace than the growth of demand is capable of providing a profitable outlet, it is clearly against the best interests of American farmers to have policies that encourage further investment in agriculture * * * tax policies that encourage investment in agriculture serve not only to increase farm production but also reduce the demand for farm labor by encouraging the substitution of capital for labor * * * It seems especially important that there be recognition that while some people gain from the tax provisions, the net effects include lower incomes for farm operators as a group and a substantial net cost to taxpayers."

If our Nation's tax policies are a Trojan horse and unfair to most farmers, they are indeed a disaster in many respects for taxpayers at large. Consider the comments of E. Gerald Corrigan, President of the Federal Reserve Bank of Minneapolis:

"Though I am not expert on agricultural taxation in particular, I do recognize the problems * * * as part of a larger problem. The labyrinth of special exemptions and loopholes in our Tax Code constitutes a huge Federal tax expenditure that complicates the task of coming to grips with our Federal budgetary problems. As I have noted in our annual report, the sheer magnitude of aggregate tax expenditures may have unintended negative effects on the sectors they directly affect but also contribute, collectively, to higher deficits and interest rates."

Mr. President, these comments are representative of the bulk of the comments I have received, and I believe we must move forward to study and correct abusive tax shelters if we are to come to grips with the problems confronting American agriculture. No longer can we focus myopically on typical farm program issues—like target prices, loan levels, and set-asides—and think we are doing anything to solve the problem in the long run.

I would be remiss if I did not mention, however, that I have received a few calls and letters from individuals and groups who have concerns about my proposal. Some of these concerns are expressed by those who currently benefit from the Tax Code and are enjoying the unchecked ability to shelter huge nonfarm incomes through "paper losses" from farming. This is natural, and we can expect to hear from those individuals and groups.

Additionally, some concern has been expressed by a few individuals who argue farming is a very unpredictable business, with inherent cyclical gyrations which cause it to be profitable one year and unprofitable the next. They point out that nonfarm income is a necessity in some years to keep some operations afloat.

To accommodate this legitimate concern, I have included a provision in my bill to exclude from the tax-loss limitation those individuals, partnerships, or corporations which receive more taxable income from farm than nonfarm sources in 3 out of the previous 7 years.

In other words, the tax-loss limitation would not apply to farmers with off-farm income if they actually are in the business of farming to make a profit and if they receive the greatest share of their income from farming in 3 of 7 years.

In closing, Mr. President, I ask unanimous consent to print in the RECORD following my remarks several articles and editorials concerning tax-loss farming, as well as the text of the bill. They highlight the problem of farm tax shelters and also are indicative of the public concern about abusive tax shelters, which are eroding the structure of American agriculture.

I welcome the input, guidance, and assistance of my colleagues in addressing this important issue.

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

[From the Aberdeen American News, June 11, 1984]

THERE IS A STRONG AND GROWING CASE FOR LOOKING AT AGRICULTURAL TAX SHELTERS

Sen. James Abdnor of South Dakota has, as chairman of an Appropriations subcommittee, directed the Treasury Department to study the subject of sheltered income from farms and to report back quickly.

And well he might.

In an article in the Washington Post, the writers said a recent study by the Department of Agriculture showed in 1976 the Internal Revenue Service found 12,000 tax returns showing tax losses exceeding $50,000. On these returns, the average off-farm income was $122,000 and the average farm loss was $104,000. That resulted in adjusted gross income of about $16,000 on the average—a handsome subsidy to the tax-shelter "farmer."

It is a matter of concern, particularly in agricultural states such as South Dakota. Not only do wealthy nonfarmers avoid paying taxes because of their farming of the tax laws but they put additional stress on full-time farmers.

As the article points out, "Congress . . . has never quite been able to distinguish between genuine and gentleman farmers, those truly in the business and those sheltering from the tax collector.

But there is growing evidence that the agricultural shelters have a profound effect on the structure, the output and the economic wellbeing of bona fide farmers, particularly in the middle-size range.

The tax provisions have lured investors heavily into farming activities. The Post article quotes another recent USDA study, "Were agriculture less tax favored than it is, land prices would undoubtedly be lower; there would be less need for sophisticated financial and tax advisers; holding period for farm assets would likely be less; there would likely be higher proportion of owner-operators in farming; there would be fewer high-bracket taxpayers in farming and farmers might be younger on the average."

The article quotes Abdnor: "We do not know how much of this sheltering is excessive or abusive and how much is legitimate but it seems to me that reasonable people would not throw $100,000 away. There must be a payoff there somewhere."

He called it "outrageous" that individuals with huge off-farm incomes are competing for farm land against family farmers and ranchers.

Further, he says, current tax law encourages production on marginal lands since investors are able to incur greater farming losses on these lands, "thus aggravating our surplus production problems and adding to our soil conservation problems."

There is a strong and growing case for taking a long, hard look at the way investors and wealthy people shelter non-farm income from taxation. But when Abdnor proposed limiting agricultural tax shelters he was hit by a storm of protest and finally withdrew the proposal to save it from certain floor defeat.

It looks as if something should be done about the matter, but it won't be easy.

[From the Rapid City Journal, June 21, 1984]

TIME TO COORDINATE TAX AND AGRICULTURAL POLICY

Although a proposal by Sen. Jim Abdnor to limit agricultural tax shelters as a start toward trimming the federal deficit didn't go far on the Senate floor, the idea isn't dead.

According to Abdnor, skillful "farming of the tax code" by investors and wealthy people seeking to shelter non-farm income from taxation will cost the Treasury more than $2.6 billion between 1985 and 1987. He therefore proposed that the amount of off-farm income that could be sheltered by farm losses be limited to $21,000. Half of the revenue gain from the loophole closure would have been allocated to a trust fund for loans to beginning farmers.

Swamped by protests from all over the country and from colleagues, Abdnor withdrew his proposal to save it from certain floor defeat. However, he did extract a commitment from Finance Committee Chairman Sen. Robert Dole to hold future hearings on the issue.

The Abdnor proposal focuses attention on tax policies that have a direct, and heretofore largely ignored, impact on the health of U.S. agriculture.

Congress had never quite been able to distinguish between genuine and gentleman farmers, those truly in the business and those who are only sheltering income from the tax collector.

By decreeing that dairy barns and pig sheds could be considered equipment rather than buildings and that the productive life of grapevines and walnut trees, which may last 50 years or more, shall be considered five years, Congress has allowed greater tax write-offs.

These agricultural shelters have an effect on the structure, the output and the economic well-being of bona fide farmers, particularly those in the middle-size range.

Growth of syndicated offerings for non-farmer investment in cattle feeding has resulted in half or more of the cattle in the biggest feedlots being owned by investors rather than farmers or ranchers, according to some estimates.

Rapid depreciation of the costs of establishing vineyards and orchards has stimulated investment that has led to overproduction, depression of prices and land values, market instability and hard times for producers whose only source of income is from their vineyards and groves.

A U.S. Department of Agriculture study reported the Internal Revenue Service in 1976 found 12,000 tax returns showing tax losses exceeding $50,000. On these returns, the average off-farm income was $122,000 and the average farm loss was $104,000. That resulted in adjusted gross income of about $16,000 on the average—a handsome subsidy to the tax-shelter "farmer."

Abdnor is right when he says it's outrageous that tax laws allow individuals with large off-farm incomes to compete for farm land against family farmers and ranchers, and to enjoy a tax subsidy that gives them a competitive edge over legitimate farmers. These laws also encourage production on marginal lands since investors are able to incur greater farming losses on these lands, thus aggravating surplus production problems and adding to soil conservation problems.

It's time for coordination between tax policy and agricultural policy.

[From the Washington Post, May 28, 1984]

TAX LAW'S EFFECT ON AGRICULTURE UNDER SCRUTINY

(By Ward Sinclair and Martha M. Hamilton)

When the call went out to cut the federal deficit, Sen. James Abdnor (R-S.D.) was right there on the Senate floor with a proposal that seemed ready-made for starters: limiting agricultural tax shelter.

Abdnor had found that skillful "farming of the tax code" by investors and wealthy people seeking to shelter non-farm income from taxation would cost the Treasury more than $2.6 billion between 1985 and 1987, and he was proposing a way to recoup some of it.

But in less than 24 hours, swamped by a wave of telephoned protests from all over the country and complaints from other senators, he extracted a promise of hearings later at the Finance Committee, then withdrew his proposal to save it from certain floor defeat.

Beyond highlighting the political difficulty of achieving tax reform, the proposal symbolized another important development: a growing realization here and around the country that tax policies have a direct, and heretofore largely ignored, impact on the health of U.S. agriculture.

In recent years Congress has decreed that for tax purposes dairy barns and pig production sheds shall no longer be considered buildings but equipment, and that the productive life of grapevines and walnut trees, which may last 50 years or more, shall be considered five years. Both these rearrangements of reality have meant greater tax write-offs.

Congress also has never quite been able to distinguish between genuine and gentleman farmers, those truly in the business and those sheltering from the tax collector.

The congressional Joint Economic Committee, for one, has begun hearings on the effect of tax-stimulated investment on agriculture as part of an ongoing study of farm policy. President Reagan's 1984 economic report to Congress raised questions about tax policies that encourage overproduction and lower prices. A few private groups, such as the pioneering Center for Rural Affairs in Walthill, Neb., have raised similar questions for years.

Farmers and agricultural investors, of course, are eligible for most of the same operating expense reductions and investment credits that other business and industrial investors receive.

In fact, according to Treasury data, farming tax schemes represent only about 3 percent of total revenue lost to the government through shelters.

Nevertheless, there is mounting evidence that the agricultural shelters have a profound effect on the structure, the output and the economic well-being of bona fide farmers, particularly those in the middlesize range. Some examples:

The growth of syndicated offerings for non-farmer investment in cattle feeding, which allows an investor to defer taxes, is believed to have been a major factor in the movement of large-scale cattle feeding from the Midwest to huge feed lots in the High Plains. By some estimates, half or more of the cattle in the biggest lots have been owned by investors rather than farmers or ranchers.

Tax code provisions that allow rapid deductions of the cost of establishing vineyards and orchards have had a sharp effect on the grape and walnut industries, stimulating investment that has led to overproduction, depression of prices and land values, market instability and hard times for many producers whose only income is from their groves and vineyards. The Economic Recovery Tax Act of 1981 allowed faster depreciation on trees and vines,

prompting another surge of non-farmer investment in these perennial crops.

As the pork industry has moved increasingly toward large-scale hog facilities, investment tax credits and full cost recovery in five years, allowed by the 1981 law, have attracted more outside investors and big corporations into the hog business. Their tax subsidy offsets operating costs and gives them a competitive edge over small and medium-sized family farmers.

Complaints from some farmers have caught the attention of some members of Congress and have begun to result in tax code changes aimed at curbing tax-motivated investment in agriculture.

A tax package approved by the Senate last month would reduce incentives to investors seeking tax shelters in at least two areas. An amendment added to the bill on the Senate floor by Sen. Charles E. Grassley (R-Iowa) would limit depreciation benefits for special-purpose agricultural buildings such as dairy barns, hog breeding buildings and greenhouses.

Another provison in the Senate and House tax bills would limit the ability of tax shelter investors to write off production-related costs long before any income is realized from production. The bills are waiting action in a House-Senate conference.

Hoy Carman, a University of California-Davis agricultural economist, put it this way at a hearing of the Joint Economic Committee this month: "It's really time to start getting some coordination between tax policy and agricultural policy."

Notwithstanding such pleas, the congressional agriculture committees and a plethora of public-interest groups, debating the shape of a 1985 farm bill, are talking about remodeling the old-line commodity support programs but paying little apparent attention to the tax side of agricuture.

Sen. Roger W. Jepsen (R-Iowa), chairman of the Joint Economic Committee, said at the first hearing on tax-shelter aspects of farming that some of the economic stress suffered by full-time farmers today may be increased by the tax laws.

"If farm investment by non-farmers occurs due to sheltering, and the resulting extra production occurs during a time of surpluses, prices can fall, jeopardizing farms that are in a cash-flow pinch," he said.

Other studies indicate, however, that it isn't only the outside investor whose quest for tax breaks distorts farm production and markets. Reagan's economic report, for example, noted that the tax code helps the largest, wealthiest farmers gain an edge over smaller competitors.

"Larger farms, which generate higher incomes, appear to gain proportionately greater benefits than smaller farms. People in higher marginal tax brackets can benefit more from the tax provisions. This creates an incentive for higher-income people to invest in farming. In practice, losses from farm operations reduce taxes on other income by more than the total federal tax revenue from farm profits," the report said.

The result, according to James C. Miller of the National Grange, is that, "for every dollar collected in farm profits, two other dollars of income are sheltered."

Although there is concern, there is not much up-to-date data available on the overall impact of tax breaks on agriculture. Abdnor, as chairman of an Appropriations subcommittee, has directed the Treasury Department to study the subject and report back quickly.

A recent U.S. Department of Agriculture study reported that the Internal Revenue Service in 1976 found 12,000 tax returns showing tax losses exceeding $50,000. On these returns, the average off-farm income was $122,000 and the average farm loss was $104,000. That resulted in adjusted gross income of about $16,000 on the average—a handsome subsidy to the tax-shelter "farmer."

Obviously not all use of the tax shelters is by the non-farmer. Legitimate farmers forced to take off-farm jobs to supplement their incomes also can subsidize their operations through skillful use of the tax code.

"We do not know how much of this sheltering is excessive or abusive and how much is legitimate," Abdnor said. "But it seems to me that reasonable people would not throw $100,000 away. There must be a payoff there somewhere."

Evidently so, judging by the quick reaction to Abdnor's aborted amendment. It would have limited to $21,000 the amount of off-farm income that could be sheltered by farm losses.

Half of the $2.6 billion revenue gain from closure of the loophole would have been allocated to a trust fund for loans to beginning farmers.

Abdnor, concerned with the economic problems of farmers in his state, said he thought it "outrageous that our current tax laws allow individuals with huge off-farm incomes to compete for farm land against our family farmers and ranchers. . . . Current tax law encourages production on marginal lands since investors are able to incur greater farming losses on these lands, thus aggravating our surplus production problems and adding to our soil conservation problems."

Another recent USDA study took this thought further. "Were agriculture less tax favored than it is," it said, "land prices would undoubtedly be lower, there would be less need for sophisticated financial and tax advisers, holding period for farm assests would likely be less; there would likely be a higher proportion of owner-operators in farming; there would be fewer high-bracket taxpayers in farming, and farmers might be younger on the average."

S. 2833

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That part IX of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to items not deductible) is amended by adding after section 280E the following new section:

"SEC. 280F. LIMITATION ON DEDUCTIONS ATTRIBUTABLE TO FARMING.

"(a) IN GENERAL.—The deductions allowable under this chapter for the taxable year to any taxpayer engaged in the trade or business of farming shall not exceed the sum of—

"(1) the gross income of such taxpayer from the trade or business of farming for such taxable year, plus

"(2) an amount equal to the national median family income for the previous year.

if the taxable income of such taxpayer from sources other than the trade or business of farming has exceeded the taxable income of such taxpayer from the trade or business of farming in 5 of the 7 preceding taxable years.

"(b) SPECIAL RULES.—For purposes of this section—

"(1) INCOME AND DEDUCTIONS.—The determination of whether any item of income is derived from the trade or business of farming and whether any deduction is attributable to the trade or business of farming shall be made under regulations prescribed by the Secretary.

"(2) SEVERAL TRADES OR BUSINESSES OF FARMING.—In the case of a taxpayer engaged in more than one trade or business of farming, all such trades or businesses of the taxpayer shall be treated as one trade or business.

"(3) PARTNERSHIP, TRUSTS, AND S CORPORATIONS.—A trade or business of farming carried on by a partnership, trust, or S corporation shall be treated as carried on by the partners of such partnership, the beneficiaries of such trust, or the shareholders of such corporation in proportion to their interest in such partnership, trust, or corporation.".

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

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

THE MX MISSILE: THE SUPREME FLEECE

Mr. PROXMIRE. Mr. President, in an article that appeared in the Washington Post, May 16, Walter Pincus provided the final and most convincing argument against the MX missile. Pincus agrees that the MX would be the "most accurate and reliable land-based intercontinental ballistic missile in the nuclear arsenal of either superpower." Does that sound convincing? After all, accuracy is the name of the game. The power of a missile is primarily a function of its accuracy. When we increase the accuracy of a missile by a factor of two, we get an increase in force, or hard target kill capacity of a factor of four. The MX's accuracy makes it a superreliable killer.

So if the MX is all that accurate, and accuracy is the name of the game, why should not we build it, and make the United States No. 1? Here is why:

First, President Reagan has called for the building of 100 MX's with 10 warheads each. Even if each warhead should work perfectly and destroy its target completely, it would not do the job. Why not? Because the Soviets have 1,400 ICBM's. So with a 100-percent perfect MX score with all 1,000 MX warheads striking precisely on target the other side would still have 400 ICBM's left. The answer to this MX shortcoming seems obvious. Why not build 100 or 200 more MX's with another 1,000 or 2,000 warheads? Why not build enough to do the job for sure? The answer to that brings us to our second reason why the MX won't do the job.

Second, the MX missile would be based in existing silos in Wyoming and Nebraska. Are those silos vulnerable to Soviet attack? Yes, indeed. The Air Force tells us that within 5 years the Soviets will be able to destroy 99 percent of our land based missiles. They certainly could destroy our MX mis-

siles. And since the MX's are as threatening as they are, since they would be equipped with 10 warheads each, and therefore constitute an ideal target, we know we would lose them in the event of a nuclear war with the Soviet Union, unless we fired them first. And by first I mean before the nuclear war started.

Third, does this mean that the MX would be a first strike weapon? Yes, indeed, it means exactly that. Under what circumstances, if any, would an American President elect to initiate a first nuclear strike against the Soviet Union? Answer: if the Soviets seemed about to win a conventional war in Europe, if they seemed about to sweep to the channel, then the President might decide to use tactical nuclear weapons to stop Soviet tanks or even troop concentrations.

When administration critics last year proposed that this country join the Soviets in denying that we would ever be the first to use nuclear weapons, then Secretary of State Alexander Haig opposed such renunciation of the first use of nuclear weapons. He argued that this country must reserve the right to use tactical nuclear weapons on a European battlefield because of the Soviets' superiority in mechanized armor and planes. Haig and the administration, however, made it clear that they were talking about critical nuclear weapons not ICBM's. Obviously, any first use of ICBM's against the Soviet Union—even if it were completely successful, and knocked out every Russian land based missile—would provoke an answering Soviet retaliation from Russian submarines and bombers that would devastate our country.

So I think it is clear that neither Ronald Reagan nor any successor would, under any circumstances, initiate a first strike nuclear attack on the Soviet Union from our MX's. Obviously the administration is reserving the possibility of using tactical nuclear weapons in response to a successful Soviet conventional invasion of Western Europe. But would the administration order an MX attack on Soviet land based missiles without either a Soviet nuclear attack on our allies or on this country? No.

Fourth, what does that leave for MX use? The only real likelihood that this country would ever use this multibillion dollar weapon system would come from a report real or mistaken that Soviet nuclear missiles were on their way.

The President could hold his fire to determine absolutely that incoming missiles were the real thing for our submarine and our bomber fleets. The subs could be sent to sea. The bombers into the air. Neither would be vulnerable. But the MX would sit there, motionless—surely targeted and precisely targeted by the adversary. The President would have no choice: Use it or lose it—incinerate the world for sure or rely on our invulnerable subs and bombers that have more than 70 percent of our nuclear punch for retaliation. That would not be a hard Presidential decision.

Fifth, and that leaves all alone—standing by itself—the argument for the MX that has persuaded the Congress in the past to continue this weapon system. That argument is that it serves as a "bargaining chip." We build 100 MX's with a thousand warheads so we can negotiate and trade off with the Soviet Union for their land-based missiles. And this argument has to be the most fallacious of all. Why in the world would the Soviets want to give up their land-based missiles that constitute more than 70 percent of their deterrent in whole or in part for a vulnerable U.S. MX that would constitute only a small fraction of our deterrent? And, especially why would they want to make this kind of a trade when the MX and our other land-based missiles are the only U.S. nuclear weapons they know they can take out when they want to do so? Their own land-based missiles are only effective against our land based and stationary nuclear weapons—not our sea- and air-based mobile deterrent. So is the MX a wise and useful bargaining chip? Of course not.

If the Congress decides to build the MX we will be throwing tens of billions of dollars down a nuclear rathole. It will be a total waste that will leave this country not more secure but less secure, as nuclear war will be more likely.

Mr. President, I ask unanimous consent that the article to which I have referred from the May 16, Washington Post, entitled "MX Makes Threat It Cannot Back Up" be printed at this point in the RECORD.

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

MX MAKES THREAT IT CANNOT BACK UP

(By Walter Pincus)

The giant MX missile, which promises to be the most accurate and reliable land-based intercontinental ballistic missile in the nuclear arsenal of either superpower, has been dogged for a decade by questions about its military purpose and how to deploy it.

The problem is that the MX is designed to threaten Soviet ICBMs without having the capability of carrying out the threat.

Although technical features of the missile have changed little since advanced development began 10 years, the military role for the 100 sought by the Reagan administration has become increasingly vague, primarily because there are not enough MX warheads to knock out the 1,400 Soviet ICBMs.

In addition, the MX missiles are to be based in existing silos, in Wyoming and Nebraska, considered vulnerable to Soviet attack. Despite 10 years of study, no one has devised a way to guarantee that the missiles would survive a Soviet first strike.

MX missiles are designed to carry 10 nuclear warheads up to 6,000 miles in less than 30 minutes and to have each warhead fall within 300 to 400 feet of its target. The MX would be the only missile in the U.S. arsenal designed to knock out Soviet ICBMs.

A recent General Accounting Office report said that the push to make the first 10 MXs operational by the end of 1986 would require some parts to be built before they are tested fully. Many U.S. missiles have been produced that way, and there is little doubt that bugs in the MX design will be worked out.

Pentagon officials privately acknowledge that the Reagan MX plan is temporary, a transition to some more survivable MX basing mode or to a smaller ICBM that would be easier to defend either in an extremely hardened silo or in a mobile form.

Almost 20 years ago, when the Air Force began development studies of the "missile experimental," later called MX, an ICBM was designed to be able to survive a Soviet first-strike attack because of its cement-hardened silo. It was then to be launched, destroying Soviet nuclear forces and the Soviet economy.

The American threat to deliver such "unacceptable damage" in a retaliatory attack on the Soviet Union was considered enough to deter the Kremlin from a first strike.

Five years ago, when President Carter approved full-scale development of the MX, costly deployment plans had to be worked out so the missiles would be safe from Soviet attack. The Soviets had increased the number of warheads on their missiles and made them more accurate. Moscow had also greatly hardened its own missile silos, making it more difficult for U.S. warheads to destroy them.

The 200 MX missiles Carter sought to build were to be rotated among 4,600 hardened shelters in Utah and Nevada, creating so many potential targets for Soviet missiles that U.S. planners argued the Kremlin would have to use the bulk of its large strategic force to knock out half of them, still leaving the United States with enough to inflict "unacceptable damage" on the Soviet Union.

In 1979 and 1980 candidate Ronald Reagan criticized Carter's MX plan as not being enough to deter the Soviets. He said that by building more missiles or putting more warheads on existing missiles the Soviets could overwhelm 4,600 shelters and the 200 MX missiles they had.

Having killed the Carter plan, however, the Reagan administration had problems coming up with one of its own that could pass Congress.

The one it now proposes stands most of the old arguments for land-based ICBMs on their heads. The 100 MX missiles are designed to "threaten" Soviet ICBMs, the same way Soviet missiles threaten U.S. ICBMs.

The problem is that unless the MX missiles are launched in a first strike or before a Soviet first strike reaches them they can be destroyed before they are used.

Then there is the question of the number of MX missiles Reagan seeks, half the total Carter sought. The 1,000 warheads they represent are too few to threaten the entire Soviet missile force, which numbers 1,400.

And, based on Pentagon figures, at most 10 to 20 MXs would survive a Soviet first strike, leaving too few U.S. warheads to inflict in retaliation the "unacceptable damage" that traditionally has been part of U.S. strategy.

TREBLINKA: THE ULTIMATE DEATH CAMP

Mr. PROXMIRE. Mr. President, 42 years ago this month, the Nazis began operating one of their largest and most efficient concentration camps. Alexander Donat, an author and Warsaw ghetto survivor, describes Treblinka as "the reign of ultimate undiluted evil, the mesmerizing dread of unmitigated terror, combined with masterly delusion and camouflage."

Treblinka served exclusively as a death camp.

There was no forced labor;

There was no product produced other than corpses;

The camp was for Jews only; and

There were almost no survivors.

The estimates of the number of persons who died at Treblinka vary. German experts say 700,000. The official Polish figure is 800,000. Other sources report 1 million victims.

Francis Zabecki, a Pole who was traffic controller at the Treblinka railroad station, secretly kept a daily record of all train transports for the Polish Home Army. He insists the death count could not possibly have been less than 1.2 million.

And Samuel Rajzman, the oldest of some 50 Treblinka survivors, claimed he had been eyewitness to an SS party celebrating the 1-millionth arrival in Treblinka. That party was held long before the end of the camp's operations.

Prisoners arrived at Treblinka in sealed boxcars. They were led in droves to the gas chambers, which the victims thought were baths. Those doomed for gassing lost their clothes and possessions. They walked naked to the gas chambers, which accommodated up to 200 at a time. The SS guards used prisoners to clear the piled-up bodies from the gas chambers. After shaving the head and removing the gold fillings from the teeth, the prisoners threw the bodies into incinerators.

Treblinka was one of three primary concentration camps in Poland. The other two were Chelmno and Auschwitz.

Chelmno began operations in late 1941 and reached a record of 1,000 deaths a day. Nazis gassed the victims in three sealed railroad cars and cremated bodies in the nearby woods.

Auschwitz was the model extermination camp. By 1943, it was capable of destroying 12,000 or more persons a day. Its gas chambers accommodated up to 2,000 prisoners at a time.

Auschwitz was not merely a death camp. It served also as an inexhaustible reservoir of slave labor for German industries. While more than 2½ million Jews were murdered there, many thousands survived. Not so in Treblinka. Only about 50 prisoners made it through Treblinka, which was even more barbaric than Auschwitz.

In all, about 6 million of the 8.3 million European Jews died in the Holocaust.

The horrendous crimes that occurred at Treblinka must not be forgotten nor repeated. The Genocide Convention represents one attempt to make sure that the world never sees another Treblinka. But the U.S. Senate still has not ratified this important document, which makes genocide a crime by international law.

Mr. President, the Senate must ratify the Genocide Convention and it must do it now.

The PRESIDING OFFICER. The Senator from Mississippi.

S. 2808—MISSISSIPPI WILDERNESS DESIGNATIONS

Mr. COCHRAN. Mr. President, yesterday I introduced legislation to designate certain areas of Mississippi as components of the National Wilderness Preservation System.

I want to express my sincere appreciation to Louis McCool, from Oxford, MS, who is active in the Mississippi chapter of the Sierra Club, for his assistance and counsel in the preparation of this legislation.

I also want to express my appreciation to Gray Reynolds, a member of my staff, who has worked very hard to sort through all of the various interests in developing this important bill.

This is the first important Mississippi wilderness bill, Mr. President, that has been introduced. It calls for designating the Black Creek Leaf Acres in the De Soto National Forest as wilderness and releases the Sandy Creek further planning area. It is my understanding that the Senate Committee on Agriculture, Nutrition, and Forestry, under the chairmanship of the distinguished Senator from North Carolina [Mr. HELMS], will be able to schedule and conduct hearings as soon as we return from the July break. We hope that those hearings can be held on either July 23 or July 24 and that the bill can be acted on by the committee at an early date.

FLOOD OF HEROIN AND COCAINE CHANGING PATTERNS OF DRUG USE

Mrs. HAWKINS. Mr. President, it has been said about drug abuse in our Nation that the worst is yet to come.

But, I ask you, how can it be worse than is reported in the article reprinted below?

When cocaine use reaches every level of our society; when the number of cocaine addicts increases by one-third in 1 year; when the supply of cocaine and heroin becomes so extensive the price drops 60 percent in 1 year; when drug-related murders increase 50 percent in 1 year; when the increased purity level of the cocaine on the streets causes strokes and seizures in its unsuspecting young users; it is time to put a stop to it.

Personal histories of those whose lives were devastated by drugs are included in the first of this series of articles on drug abuse. To see a young man ruin a promising career on Wall Street and decimate his savings because of cocaine; to see a young woman fall victim to cocaine addiction thereby losing her job and her husband; to see a ghetto-escapee turn to crime to feed his narcotics addition; to see a young immigrant break his family's heart by dropping out of school and turning to crime to support his need for drugs; it is time to put a stop to it.

Mr. President, the amount and accessibility of cocaine and heroin in this country have increased to such an extent that law-enforcement officials have virtually ceased large-scale investigations into marijuana trafficking to turn their attention to these more dangerous drugs. Cocaine and heroin are available in such quantity that former users of only one type of narcotic are turning into garbage heads—the street term for users of more than one drug.

It is not as if efforts are not being made to put a stop to this situation. Numerous crackdowns against drug traffic, both on the part of New York City drug enforcement officials and Federal authorities, have been made, as have many seizures of drugs and arrests of dealers.

But there is so much money to be made, and so many drugs available, that the dealers who do escape these raids just move to another place to ply their trade. There is another phenomenon that is occurring in New York right now, and that is that average middle-class people, once only intermittent users of drugs, are becoming dealers of cocaine and heroin. Again, the risk is worth it to them because of the tremendous amount of money to be made. The use of heroin and cocaine thus rises in the areas outside the city, as these new kinds of pushers take their wares home with them to the suburbs.

While the situation that is described in this article about drug abuse in New York is particularly horrifying, I think we would be making a mistake to think that these problems are limited to our Nation's largest city. In my home State of Florida, many urban areas are as affected by increased supply and use of drugs as is New York City. The problem of drug abuse is our Nation's No. 1 problem, and articles like the one reprinted below point this out in graphic terms.

Mr. President, it is time to put a stop to it.

I ask unanimous consent that the article entitled, "Drugs Flood Altering

Patterns of Use," of the New York Times, dated May 20, 1984, be printed in the RECORD.

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

DRUG FLOOD ALTERING PATTERNS OF USE

(By Selwyn Raab)

Supplies of illegal heroin and cocaine have grown so plentiful in the New York City area that drug experts see a dissolving of the traditional lines between people who use the two drugs as well as between people who sell them.

Heroin addiction, while still more prevalent among the poor, has recenty risen among members of the white middle class, rehabilitation experts say. And cocaine appears to be contributing to the increase. A state study has found that some cocaine abusers have become addicted to heroin after experimenting with that drug to overcome the mental anxieties created by cocaine.

At the same time, cocaine, once the exclusive preserve of wealthy drug users, has become a popular street drug. High-priced cocaine with a purity level as high as 40 percent is still sold for $100 a gram and $1,000 an ounce to affluent users. But for the first time, the drug, with purity levels of 5 to 10 percent, is being widely sold in small units called bags or tins for as little as $10.

Dozens of cocaine and heroin addicts, from all segments of society, from bank executives to admitted shoplifters, described in interviews how with little difficulty they managed to get both drugs. Wealthy cocaine users, whose habits cost more than $50,000 a year, told of using the telephone to arrange direct deliveries to their East Side apartments.

And in the Bronx, a longtime heroin addict who tells of financing his $100-a-day habit by shoplifting and burglaries said that "the dope situation has never been better." He said the recent flood of cocaine at low prices had allowed him to "speedball"—or inject a combination of heroin and cocaine.

Moreover, the difficulties in combating two hardcore drugs have severely strained the police and rehabilitation agencies. And because heroin and cocaine are so much more health-threatening than marijuana, law-enforcement agencies have virtually ceased large-scale investigations into marijuana trafficking, although the drug is openly sold on street corners.

Until several months ago, few dealers handled both heroin and cocaine. But with the surge in illegal use and trafficking in the New York metropolitan area, officials say the two drugs are now being offered together in abundant quantities. New York dealers have coined a name for multiple drug customers—"garbage heads."

GOING INTO DRUG DEALING

"There is so much money to be made that average middle-class people are going into coke and heroin dealing," said Sterling Johnson Jr., the city's special narcotics prosecutor. "They know the odds are on their side, that most dealers who take care of friends and neighbors don't get caught."

The surge has occurred despite crackdowns by the city's Police Department and Federal authorities against trafficking on the Lower East Side and in Harlem, two of the most notorious areas in the city for narcotics sales. Most officials, including Police Commissioner Benjamin Ward, say that in the wake of the police campaigns many of the dealers have simply moved their operations indoors or to other neighborhoods.

Deaths attributed to narcotics overdoses—mainly heroin—have more than doubled since 1978, to about 500 in the city last year. And the Police Department's last homicide analysis in 1981 estimated that at least 393 slayings in the city, or 24 percent of the total, were drug-related, principally involving heroin or cocaine users and dealers.

"Coke and heroin are probably at an all-time high," said the director of the state's Division of Substance Abuse Services, Julio A. Martinez. "Previously, coke and heroin dealers dealt to different classes of people. Now what you have is a department store—you can get all types of drugs from any one dealer."

The recent police drives seem to have had little effect on experienced heroin users.

"Even if they clean up Avenue D, it doesn't matter," the Bronx addict said of the notorious drug-selling on the Lower East Side. "There's always somewhere else—in East Harlem, College Avenue in the Bronx, Bed-Stuy and Williamsburg. They can't stop it. Too many junkies, too much money. Nobody's worried about it."

With the changing patterns of heroin and cocaine use in the New York area have come other significant trends, according to Federal and local law enforcement agents, rehabilitation counselors, drug addicts and former drug addicts, and public and confidential reports on narcotics problems.

The experts cited these key changes in cocaine abuse:

Use of the drug is rising in the city and the suburbs, according to a study by the state's Substance Abuse Services Division. The study estimated that at least 750,000 of the state's residents have used cocaine, almost double the number in a 1981 survey. About 400,000 people in the state are believed to use cocaine at least once a week.

More patients in drug-treatment programs are citing cocaine as their major problem. Last year, a record number of patients cited cocaine abuse problems when applying for admission to state-financed drug treatment programs. Outside of the city, about 9 percent of the patients who sought help listed cocaine as their major problem, compared with 4 percent in 1981. In the city, the proportion of patients with cocaine problems in state-financed programs rose to 9 percent last year from 6 percent in 1981.

Cocaine is making inroads among low-income populations. For example, a state study found that 26 percent of the residents in the city's single-room-occupancy hotels—many of whom are on welfare—are users of cocaine.

As many women as men are using cocaine. Dr. Arnold M. Washton, a psychologist and drug researcher, said a recent survey of cocaine abusers in the metropolitan area had found that about half were women, up from one-third a year ago. The growing rate among women, Dr. Washton said, stemmed partly from the changing roles of women in society and increased stress faced by those who work.

"Women also are being introduced to cocaine through courtships," Dr. Washton added. "Instead of candy or roses, men bring cocaine as a gift."

Because of apparently abundant supplies, the price of cocaine for large-scale dealers has fallen in New York. According to officials of the Federal Drug Enforcement Administration, in the last year importers have dropped their price to middle-level distributors from $40,000 a kilogram, or 2.2 pounds, to $30,000.

The lower prices have also made it easier for teen-agers in the city and the suburbs to purchase and to try cocaine, drug counselors said.

Many drug experts are concerned that the increasing use of high-purity or more potent cocaine may lead to medical as well as psychological problems among abusers. Because large-scale cocaine use is relatively new, reliable studies on the possible long-term physical side effects have not been made. But Dr. Robert B. Millman, director of drug research at New York Hospital, said there are "ominous signals."

"We are getting a large number of anecdotal reports of young people who use cocaine and who are having seizures, strokes and premature heart attacks," he said.

With heroin, the picture is somewhat different.

The number of heroin addicts in New York State has risen slightly in the last year to about 247,000, Federal and State officials estimate. Most—190,000—live in the city. About 32,000 heroin users live in Long Island and the northern New York suburbs. About 20,000 come from northern New Jersey.

Heroin addicts are still believed to be more heavily involved in violent crime than are cocaine users, who generally are more affluent. Researchers said about 20 percent of frequent cocaine users admitted having committed crimes to support their habits. Most crimes were white-collar offenses, such as embezzlement and theft.

The typical, or daily, heroin addict in the city, in addition to buying, selling and using drugs, commits 209 nondrug crimes each year, according to a study recently completed by the state's Substance Abuse Services Division.

Based on interviews with 201 addicts, the study found that the average addict, who spends between $50 and $100 a day on heroin, had been involved in 12 robberies, 34 burglaries and 91 other types of thefts each year. The typical crime netted $41, the report said.

MOST CRIMES WERE NONVIOLENT

Dr. Bruce D. Johnson, a sociologist who was in charge of the study, said the vast majority of crimes committed by heroin addicts were nonviolent, such as shoplifting, check forgeries and prostitution.

Another sign of heroin use and its link to crime has been noted by officials through a sharp increase in the number of newly arrested inmates in city jails who require detoxification or medical aid for withdrawal symptoms. From 1980 to 1983, the number of inmates who underwent detoxification rose from 7,679 to 13,046.

The proportion of blacks addicted to heroin in the city and the state appears to be falling. Since 1980, black patients in state-supported treatment programs dropped from 48 percent to 38 percent. Meanwhile, the number of Hispanic patients rose from 32 percent to 35 percent and the number of whites from 20 percent to 27 percent.

Experts attributed the drop among blacks partly to vigorous anti-heroin educational programs directed at black youths. The rise in use among Hispanics, the experts said, may have resulted from the easy availability of heroin in Hispanic neighborhoods, including the Lower East Side, Williamsburg, East Harlem and the South Bronx.

An increase in heroin use by whites—mainly men and women in their 30's—resulted largely from a relapse problem, rehabili-

tation experts said. Many former addicts, they said, stopped using the drug in the mid-1970's when it was hard to get but had been lured back by its greater availability and purity.

In the 1970's, purity was usually below 2 percent. Recent Police Department laboratory tests have shown purity, especially on the Lower East Side, as high as 17 percent.

Cocaine, which pharmacologically is not a narcotic but a stimulant of the central nervous system, has also been blamed for an increase in the use of heroin. Heroin is a narcotic that numbs the senses. A state study of new heroin users found a large number who said they had turned to the drug in an attempt to relieve psychological stresses caused by cocaine.

"They get so wired, so hyperstimulated by chronic cocaine use that they can't sleep or function," explained Dr. Douglas S. Lipton, research director in the state's Substance Abuse Services Division. "They resort to heroin to avoid the depression which normally happens when cocaine is cut off, only to become addicted to heroin."

In analyzing the recent trends, Dr. Mitchell S. Rosenthal, the president of the Phoenix House Foundation, which runs the largest private drug rehabilitation program in the metropolitan area, said that 20 years ago less than 4 percent of the population had used any illicit drug.

"Today, more than 35 percent of the population has used an illicit drug," Dr. Rosenthal said. "It is no longer a phenomenon of the minority poor, the underclass. Over 20 years, there has been a de facto decriminalization of drug use. Our culture, in effect, has said, you want to get high, then get high."

Dr. Washton, who is director of substance abuse research and treatment at Regent Hospital in Manhattan, said: "What we have is the baby boom generation of post World War II that has shifted from marijuana to cocaine. Many of them get comfortable with the idea of so-called recreational drugs in the 60's and 70's and they are smack dab in the middle of life, dealing with problems they never thought they would have to deal with."

DRUG USERS, RICH AND POOR, TELL OF THE COSTS AND THE ANGUISH

Some grew up in wealth and comfort in New York City, the suburbs and upstate. They went to private schools and Ivy League universities before moving almost effortlessly into well-paid executive jobs in finance or the fashion industry.

Their lives in New York City involve business deals in the garment district and Wall Street, fashionable Gramercy Park apartments, expensive restaurants and parties.

Others grew up in middle-class Brooklyn and shabby inner-city neighborhoods. Most of them are school dropouts who worked briefly as teen-agers. Now they support themselves and their families by mugging, shoplifting and selling illicit drugs.

All of them—the wealthy, the blue-collar workers and the criminals—are heroin or cocaine addicts.

Some affluent addicts began using drugs, mainly cocaine, often because it was considered a harmless diversion. They could afford it, even if it cost $50,000 a year.

For poorer addicts, cocaine and heroin are sometimes an escape mechanism, a way, they say, to temporarily forgetting their daily plights. And crime is the only way they know of supporting addictions that can cost more than $100 a day.

They described their experiences with drugs and the consequences in taped interviews on the condition that their names be withheld. Whether rich or poor, they spoke of an easy availability of drugs in the city and often of misplaced confidence that they could occasionally use cocaine or heroin without becoming addicted.

A DIFFERENT WORLD

He is a 29-year-old investment banker, a native of upstate New York who graduated from an Ivy League college and moved to the city six years ago. He recently entered a private rehabilitation program.

Like most people of my generation, I started with pot in high school. I experimented with cocaine in college, but it was too expensive then. When I got to the city, a lot of people in my social and business lives were doing it.

It was part of being accepted, like drinking. It was there, and I did it along with everyone else.

It was a form of release at the end of the day. It didn't trouble me because it was illegal. As long as I wasn't selling it, I didn't feel I was committing a crime.

The first couple of years, I was snorting two or three grams a week, costing me $200 or $300, but I could afford it. I was making $50,000 in my job, and I have a considerable outside income, another $50,000.

The people I know are deep into six- and seven-figure incomes. When you make half a million a year, you can afford a cocaine life style. After a deal, you say, "Let's celebrate, get a couple of suites in a hotel, girls from an escort service, a couple of limos, a case of Dom Perignon and an ounce of cocaine." It's just part of that good life.

In 1982, I had a lot of business pressures. I wanted to leave the company I was with and start my own investment-consulting company. I was unhappy at work, and at the same time I became friendly with a group of people in the commodities exchange who do it in massive quantities.

I stopped buying a gram or two from friends and started to meet with real hardcore dealers. I needed larger and larger quantities—$2,000 a week. I could afford it, but it was hitting my savings, not coming out of my paychecks.

Last year, I also got married, and there was the pressure of work, and a fight with my landlord. Coke put me in a different world. I didn't care anymore. I was going downhill at work. All I was looking forward to was the next high.

I thought I was concentrating, but I wasn't. I'd go to Lutèce for a business luncheon and not eat a thing. There were a couple of deals that I definitely blew.

Last October, I confessed to my wife I was doing it in large quantities. I went to a psychiatrist and stopped for two months. Then it started again, worse than ever. I felt wired, but not in a frenzied condition. My hands shake, and you're always blowing your nose; it's like having a chronic cold.

I was spending money faster than I was making it. In the last year and a half, it cost me more than $100,000. Emotionally, it was tearing me apart. I was losing my temper, losing my shrewdness. I was talking too much when I should have been discreet. I tortured my wife—started fights with her just for the fun of it.

Sometimes I was so high I'm lucky I didn't kill myself by stepping in front of a bus.

A JOB ONCE A WEEK

A 35-year-old who grew up in Little Italy and the East Bronx.

I come from a good family. My father was a postman; my brothers and sisters all have good jobs.

When I was 13, a friend had some heroin. He asked if anyone wanted to get high. It was a big thing back then. I said, "I'll try." I mainlined, and I've been screwing up ever since.

My parents were immigrants. They didn't know anything about drugs, and they didn't realize I was screwing around until I got arrested for burglary when I was 16.

All in all, I spent about 10 years in prison, for robberies and burglaries. I used to push drugs, and I made $1,000 a week. But I would spend it all on heroin

I'm married and have two sons, 12 and 7. My wife doesn't know what I'm doing. I never go into the house high, and she never sees my arms. She thinks I'm straight and that I'm a cabby.

I got out of prison about a year ago, after four years for armed robbery. Heroin is costing me about $60 a day. I'm shooting five or six bags.

To pay for it, I pull a job once a week, usually a stickup. Most of the time I don't even know what I'm doing. I wake up and find I have $3,000 or $4,000 in my pocket. Then the picture would come back to me that I stuck somebody up.

My parole officer never looks at my arms. He asks if I'm working and says keep looking. They don't care, as long as you come in and keep the appointments.

It's a bitch out there, getting a job. Certain jobs you have to be bonded. With my record, I can't even get a super's job. I want to stop, but I don't know how. I've been trying to get into a methadone program, but they say come back in three or four weeks, and they still ain't got no room

It's a hell out there. I get so depressed that instead of looking for a job, I buy a bag of that poison.

TAKES THE TENSION OFF

A 35-year-old woman with two children who has always lived in Harlem.

I started messing with drugs when I was 15. It was the last day of school in Washington Irving High School, and a friend gave me a snort of heroin. "Take a blow, you're going to love the high," she told me. And she was right.

When I was 17, I dropped out of high school and got a job in the post office. I worked there for about a year, when I found another way of making money bagging heroin.

You can make about $100 a day in one of the mills. And the bosses always have some cocaine to keep you perky and to stop you from dozing off because of the heroin fumes.

It's hard to get those jobs in the mills, and it cost me $100 to $150 a week to get heroin. I'm on welfare, but that's not enough. I get money in various ways, sell pills, make a heroin run for someone else and get paid by the customer. The one thing I won't do is prostitute myself. I also won't sell drugs to any children.

I've only been arrested once, I was with three other people when the cops caught us shooting up in a hallway. I've tried going cold turkey, but it doesn't work. I have a lot of problems, pressures, finding enough money to raise my kids. If I can't handle something, I have to get high. It takes the tension off of me.

I have this fantasy that someday there will be detoxification centers where you can kick the habit and get good medical atten-

tion and then they help you find a good job. That's why so many of us hang out on the streets—because we have no jobs.

ALL GONE UP MY NOSE

A 22-year-old fruit and produce wholesaler in Brooklyn. He is married and has two children, and he says he is planning to seek help in a therapeutic program.

My first contact with drugs was while I was a student at Madison High School. Back then it was pot and ludes. After I graduated and started making some money, I had friends in business and in nightclubs who had cocaine connections.

All the rich people, the politicians and the showd-biz people were using coke. I was just a working kid, so it was a big thing for me to try something that was a rich man's high.

About a year and half ago, it got to be a habit for me. I had extra money and time to do it. If there was pressure at work, I'd run and get a gram of coke. I never cheated on my wife, but cocaine became my lover.

In the last six months, it's become unbearable. I've become paranoid. I can't go out of my house without looking behind me to see if I'm being followed. I break out in a cold sweat. I think people are watching me in my living room, that someone will jump through the window and take my cocaine.

I smoke an occasional joint, but nothing helps. I can hardly sleep. I go to work without sleeping, come home to get more cocaine to wake myself up.

The general situation with coke is very bad. You can get it in Flatbush, Bensonhurst, all over Brooklyn, not just Manhattan. Kids are copping half a gram for $40. It's cheaper than its ever been. Maybe it started out as a rich man's high, but gradually it will be a welfare high.

I make about $30,000, but over the last year I spent about $50,000 on cocaine. I've gone through most of my savings and borrowed from all the people I know. It's all gone up my nose and through my brain.

INTO TOTAL REVERSE

A 26-year-old secretary who grew up in Tenafly, N.J., attended a junior college and has been living in Manhattan for the last six years.

I was going out with an older man, about 35, and his entire group was into coke. We used to go to bars on the East Side. They'd hand you a vial, you'd go to the ladies room and snort out of the vial. My boyfriend was paying for it, but when we broke up, I got in touch with his dealer.

At first, I was able to handle it recreationally, only on weekends, and I didn't have constant cravings. Then it got worse. I needed a gram a day. I was paying $100 a gram, but I was such a good customer my dealer lowered the price to $90. My net pay was $260 a week, and I was spending $100 a day. I used a credit card to draw $2,500 from a bank and sold jewelry left to me by my grandmother for $7,000.

In the beginning, it was social. I'd love to go out, gab away, meet people. It made me feel confident, euphoric, that I could conquer the world.

Then it went into total reverse. I couldn't go out, I couldn't walk in the street. I felt everyone was looking at me through the window in my apartment, that the neighbors were spying on me. I really became a wackadoo.

I've lived in the Gramercy Park area and the Upper East Side, and coke is all over. I'm living with someone now, and I'm in a therapy program, and I hope I've licked the problem. But most of the tenants in my building, all they talk about is drugs. They say my floor has got the best drugs in the building. Now that I'm off drugs, I've probably got dealers living right next to me.

CENTER OF EVERYTHING

A 32-year-old buyer in the garment center. She attended private schools while growing up in Brooklyn and in Mercer County, N.J., and graduated from the University of Miami. Trying to relieve the anxieties of cocaine use, she suffered an overdose of sedatives and entered a rehabilitation program.

In 1981, everybody started doing coke—in homes, in limousines on the way to theater. The first time I tried it was on July 4, 1981, while watching the fireworks on the West Side. It's strange to say it now, but at first I didn't like it.

Six months later I was in Florida, and all my dates were using it. I tried it again, and what I did like about it was that it gave me the energy to dance until 4 in the morning.

The next time I danced with cocaine was in June 1982, when I met my future husband. We used it once a month, on the anniversaries of our first meeting. My husband had been a cocaine dealer for many years. He started selling coke when he needed money to complete his doctorate, but once he saw how easy it was to make money selling coke, he dropped out of the doctoral program.

When we decided to get married, he got a legitimate job. But as I starting using it more and more, I enjoyed the high. I'm a very up person, and it sped me up. It gave me more security—an "I don't give a damn" attitude.

By March 1983, I was using it every day. when we got married in September, I stopped. My husband said, 'I'm not in the business; I don't want you involved in it.' As a substitute, I started drinking, but I missed coke. I had been used to living alone, total independence, never having to answer to anybody. Now here somebody was invading my space.

Last November, I made connections with people in the garment center. I couldn't resist the high coke gave me. When I did coke, I was the center of everything. I put everything, on the back burner. I forgot about everybody and everything. In one month, I did $4,600 worth, two to four grams a week. I'd phone a dealer, and the coke was delivered to my door. Because I paid out of my savings, my husband had no idea what I was up to.

But my life was becoming totally uncontrollable. It was an effort to get up in the morning to do a food shop. I always had dinner on the table when my husband came home. But those last few hours before he came home, when I stopped using coke, were the most horrible of my life. That crash was the worst thing I've ever been through.

DEAD TIRED

A 42-year-old who was paroled last October after serving six years in prison for shooting a man during a quarrel in a bar. He is living in the Yorkville section of Manhattan.

When I was 19, I was a doorman on Park Avenue and doing fairly well. A friend bought a $5 bag of heroin, and four of us tried it. We all thought we could handle it. We all thought we were pretty clever. Once I started using it, it got heavier and heavier, and I didn't know I was hooked.

I lost my job and started stealing little things, first $5 from my mother or from someone else in the family. When I was 20, I got arrested for armed robbery and served four years.

Since then, I've also been arrested for breaking into cars and boosting out of supermarkets. I've never been able to hold a full-time job, because getting enough money for heroin is a full-time occupation. I'd occasionally spend 60 or 90 days in jail, and clean up my habit for a brief time.

When I got out of prison last October, three days after I got home I started using heroin again. I was bored. There was nothing to do and I couldn't resist it. I told my parole officer, and he said go into a methadone program or go back to prison for four years.

I've been on methadone since December, and that takes care of my heroin problem. But I still need something, so I'm using coke. I'm shooting it. Coke allows me to escape momentarily. It's not a habit. It's something to do, instead of sitting around, thinking of my miseries.

Coke costs me $100, sometimes as much as $300. I get $108 every two weeks from welfare.

I pay for it by breaking into cars. I don't want to do anything violent. I walk around town at night, looking for cars with open doors. I'll take a tape cassette, a radio or whatever is there.

I wouldn't be doing this if I could get a decent job and there was no coke around. I know my head is in a garbage can, but I can't stop.

NEGOTIATING WORLD ORDER IN THE MIDDLE EAST: REMARKS BY HON. PHILIP C. HABIB

Mr. DENTON. Mr. President, my colleagues know that Hon. Philip C. Habib, former Ambassador, former Under Secretary of State for Political Affairs, and former Presidential representative in the Middle East, is one of our country's finest, most respected, and most astute diplomats. Probably no one who has served in our Government in recent years better understands the nature and problems of the Middle East. Although the problems in that region are far from resolved, no one has had more success than did Secretary Habib in defusing the tensions and promoting understanding among its countries and people.

I regret, and I am sure that many Americans regret, that Secretary Habib is no longer on active service with our Government. It is clear, however, that his retirement from active service has in no way diminished his ability to think clearly about the difficult problems of the Middle East.

On May 20, 1984, he delivered the commencement address at the Fletcher School of Law and Diplomacy, which is probably our finest graduate school of international affairs. The school was marking its 50th anniversary year, and Ambassador Habib's presentation was part of its project on "Negotiating World Order."

The Fletcher School prides itself in being an institution that trains professionals for the service of our country,

so it was particularly appropriate that its commencement speaker this year was a man who epitomizes professionalism in the Foreign Service. The quality of his remarks was up to the occasion, and I believe that my colleagues would benefit from the opportunity to read them. We should all heed Secretary Habib's reminder of the responsibilities and opportunities that face U.S. policy in the Middle East.

Mr. President, I ask unanimous consent that the text of Secretary Habib's 1984 commencement address at the Fletcher School of Law and Diplomacy, "Negotiating World Order in the Middle East," appear in the RECORD immediately following my remarks.

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

NEGOTIATING WORLD ORDER IN THE MIDDLE EAST

(By Philip C. Habib)

The Fletcher School, in celebration of its 50th Anniversary, has been pursuing the project "Negotiating World Order." I am pleased to have been asked and to accept the opportunity to add to those deliberations. Therefore my remarks on this occasion will be in that context.

The foundation and fundamental element of U.S. foreign policy is the search for peace. A just peace will be enhanced by a system of orderliness in the relations between nations as they settle upon ways to deal with their differences short of war or other resort to the use of force.

Nowhere in the world is the challenge to peace and orderliness in international relations more striking or more demanding of imagination and effort than in the Middle East. For decades we have seen the search for peace frustrated by the recurrence of hostilities. The cycle of crises, near-wars, small wars and regional conflagration has been broken intermittently by efforts to find a better way of dealing with the issues at stake. Truces, cease-fires, dis-engagement agreements, unwritten arrangements, accords and formal treaties have been used with lesser or greater success from time to time. But the path to a more comprehensive settlement, capable of lasting for the foreseeable future at least, has been blocked at various stages.

The study project at Fletcher has identified a number of "levels" of international order. Namely, principles, embodying beliefs of what is possible and acceptable in the world; norms or standards of behavior expressed in terms of rights and obligations; rules involving specific prescriptions and prohibitions regarding actions; and procedures concerning diplomatic or institutional practices to aid in making or implementing decisions.

In an ideal situation it is possible to conceive of achieving each of these "levels," separately or in combination. There is no contradiction in these terms with the search for peace in the Middle East. They can make up the foundation, the content, and the end result of negotiations. Understandings, agreements, or formal treaties can encompass the principles, the standards, the rules and the procedures agreed upon. There can even be room for some ambiguity, so that differences of pride and cultural reference can be bridged without formal acknowledgment.

In seeking to deal with the problems of war and peace in the Middle East, the starting point lies in the need for a valid peace process. Negotiating orderliness presupposes a formula for bringing about negotiations between the parties involved. This has not been an easy task, which accounts for the frequent use of indirect negotiations through a third party. Negotiations are made easier to the extent that the issues are clearly identified and accepted, and preconditions are avoided. Insistence upon the prior acceptance of proposals or positions which are palpably and recognizably unacceptable by one party or another guarantees an end before the beginning of a negotiating process. Negotiations are equally difficult to achieve under circumstance in which any of the parties to the dispute undertake actions which call into question the readiness for serious negotiation on the issues involved.

In the present circumstances, and as evident in recent events, the problems which plague us in the Middle East are of two types. First, there is the crisis situation, as exemplified in the recent events in Lebanon and the war between Iraq and Iran. Second, there is the long-term problem centered around the Arab-Israeli dispute and involving the search for a just peace between the antagonists.

In a region in which crises are endemic there is the constant danger of escalation into regional conflict and beyond. There is also the reality of a given crisis working against any attempt at establishing or revitalizing a peace process.

Thus, the hostilities in Lebanon, which were devastating of life and treasure in and of themselves, also brought an abrupt halt to efforts to build upon success of Camp David. So too, the danger of the spread of the war between Iraq and Iran, with the possibility of superpower action, also detracts from the concentration of effort and attention which is required if a peace process directed at the Arab-Israeli problem is to get underway.

When a crisis of the dimension of that which arose in Lebanon occurs, the first moves should be in the direction of establishing a state of relative tranquility. Thus, in Lebanon, we sought to achieve a cease-fire, to bring about the withdrawal of external forces, to restore Lebanon's sovereignty within its internationally recognized borders, and lastly to arrange that Lebanese territory would not be used as a base for hostile actions against its neighbors—in particular, Israel.

These were valid objectives. Although given at least lip service by all those involved, they have not been achieved to any substantial degree. But they remain valid today and would be a contribution to peace in the area.

In the autumn of 1982 it appeared that progress was being made toward the achievement of these objectives. There was a cease-fire that gave some promise of holding, a disengagement of forces began, the siege of Beirut was lifted, almost 15,000 Palestinian and Syrian combatants withdrew from Beirut, and Lebanese presidential elections were held.

Attention turned to revitalizing the peace process. President Reagan set forth a U.S. view of what might be done in this regard. His proposals were intended to bring about indirect negotiations on the relevant issues, in the first instance with the participation of the U.S., Israel, Egypt, Jordan and Palestinian representatives. The linkage to the Camp David accords and accepted U.N. Security Council Resolutions was clear and the issues had been established over time. They included security within recognized borders for Israel, transition arrangements regarding autonomy and the land on the West Bank and Gaza, the Palestinian question, and a formula for dealing with all the issues in the framework of peace for the longer term.

Circumstances changed, the situation in Lebanon heated up, objections had time to multiply and the environment which had appeared to favor a peace process deteriorated to the point where no progress was possible. The hiatus in the peace process returned and it is probable that revitalization of the process will not occur in 1984. The prospect needs to be kept alive by judicious measures which keep the U.S. engaged, but in preparation for the next stage rather than in expectation of any early breakthrough. This can be done through normal diplomatic channels.

The Reagan initiative of September 1982 is moribund, but its elements can still be made responsive to the issues and to the interests of the parties involved. Whether they can be taken up in one form or another next year will undoubtedly be affected by the political and electoral results which are in the making this year in Israel, the United States and certain of the Arab states.

Progress toward a just peace and order in the Middle East requires negotiation. No one among the antagonists is likely to achieve a predominant position by force of arms which would allow for a dictated settlement. Successful negotiation in such circumstances calls for compromise by those involved.

In all of this, the United States has a critical responsibility and a unique role. There is no way that a hands-off approach can serve our interests, the interests of our allies and the commitments we have made to our friends in the area. The unique role which is ours combines the need to be both catalyst and mediator. Whether the goals are pursued on a step-by-step basis or whether there is a move toward a comprehensive settlement, the catalytic role of the United States is called for. We are in a position to get the peace process back on the front burner. No one else can do that—not the United Nations, not the Soviets, not the non-aligned, not any likely combinations of interests.

Not every crisis in the Middle East falls into this category. In any move to bring about a negotiated settlement of the Iraq-Iran war, for example, our role would be in support of the efforts of others. So far, such efforts as the offer of mediation by the Islamic Conference have been unsuccessful and that war with all its consequences gets increasingly troublesome.

When the process of resolving the Arab-Israeli confrontation shows signs of renewed life the U.S. in the role of mediator can help to develop the basis for compromise. The ability to deal justly with both sides to the dispute is not and should not be lost, despite some views to the contrary borne out of frustration and past disappointment. We have lost neither our credibility nor our moral authority. We only lose them when we refrain from exercising our capacity for righteousness.

Theodore Roosevelt once said if he had to choose between peace and righteousness, he would choose righteousness. That was not a vote for war. It was a dedication to do the right thing. The right thing is that which is based upon the principles and ethical stand-

ards which we stand for as a nation and as a people.

The promise of peace and order out of negotiations in the Middle East is not so ephemeral that we can neglect our role. The benefits are of such value that they call for persistence and imaginative participation.

We cannot allow the ugly hand of terrorism to distract our diplomacy. Nor can we allow obstinacy or rejectionism to deplete the possibilities for compromise. Our actions must not diminish our ability to resolve problems. In that regard, proposals to move our embassy in Israel to Jerusalem are signularly ill-timed to say the least.

With modern communication and transportation facilities, the practice of diplomacy can range over wider areas than ever before. The Arab-Israeli confrontation occurs in an area that can be traversed in a short time. Differences between nations can be explored in a matter of hours, the search for common ground and compromise can be conducted with equal speed, and solutions be consolidated without delay.

In all of this, the formulation and execution of American policy is constitutionally assigned to the President. We look to him and his advisors to set the course, with the checks and balances inherent in the legislative process and in public attention. This is best achieved when the Congress, the special interest groups, the media, and the people as a whole are sufficiently aware of our national interests, our purposes, and how we intend to pursue them. When given enough information on an international issue, the American people in the mass will generally come down on the right side and they know how to make their opinions known and effective. As stated, by the right side, I mean that which is consistent with our vision of how nations should deal with each other in peace and harmony; consistent with what we stand for as a nation; consistent with the kind of order which we would like to see around us and in which we could participate fully.

SENATOR DOMENICI RECEIVES NATIONAL DISTINGUISHED CONGRESSIONAL SERVICE AWARD

Mrs. KASSEBAUM. Mr. President, I rise today to acknowledge and commend one of our colleagues and one of the Nations most respected spokesmen on Federal and congressional budget policy and process today.

Yesterday, Senator PETE V. DOMENICI, chairman of the Senate Budget Committee, of which I am a member, was awarded the National Distinguished Congressional Service Award by the American Association for Budget and Program Analysis. The AABPA, a group of fiscally responsible professionals feel, as I and I am sure many of my colleagues do as well, that Senator DOMENICI has proven through steadfast commitment and dedication that the budget process can work to bring about a sound economic policy for our country. Others who Senator DOMENICI joins in receiving this award include, Dr. Charles Schultz, Dr. Alice Rivlin, Dr. Joseph Wholey, Dr. Allen Schick, and Congressmen Robert Giaimo and Richard Bolling, a few among the many widely respected individuals honored by the AABPA.

Throughout his 4 years as chairman of the Senate Budget Committee, Senator DOMENICI has worked consistently and conscientiously toward tackling the serious budget problems facing our country. His skillful negotiations with the White House and the Congress have given to us and to our Nation the realization that Federal restraint with regard to spending and taxation can be achieved. His ability to work with Congress brought about budget policies never before believed possible—the actual limiting and reduction in the size of the growth in Federal spending.

In my opinion, this outstanding award could not have gone to a more deserving individual.

OMNIBUS WATER RESOURCES DEVELOPMENT

Mr. ABDNOR. Mr. President, yesterday and today, the House of Representatives is debating H.R. 3678, the omnibus water resources development bill.

While a number of provisions in this legislation are not as fiscally responsible as I believe necessary to secure White House approval, passage by the House should be taken as a giant, constructive step toward securing the first omnibus water bill in over 8 years.

Mr. President, enactment of water resource development legislation this year is critical. There are a great many independent voices who agree with this evaluation, and a large number of them have written the majority leader urging action on S. 1739, the Senate version of the omnibus bill.

I ask unanimous consent that the letter of the '84 Water Resources Action Coalition be printed in the RECORD at this point.

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

'84 WATER RESOURCES
ACTION COALITION,
Washington, DC, June 20, 1984.

Hon. HOWARD H. BAKER, JR.,
U.S. Senate,
Washington, DC.

DEAR SENATOR BAKER: The organizations listed below urge the leadership of the United States Senate to schedule floor consideration now of S. 1739, the Water Resources Development Act.

It is imperative that critical water resources projects authorized by the legislation be completed without further delay. The absence of legislation authorizing new construction has caused an unfortunate failure to start any major projects in the past 14 years, a situation that must be corrected in order to meet the vital needs of the Nation's economy and security.

The Senate Committees on Environment and Public Works, Energy and Natural Resources, and Finance have completed action on the bill, which now stands ready for Senate floor consideration.

While the organizations listed below have individual differences with respect to S. 1739, we are confident that broad support now exists for floor action, given the thorough consideration of the Senate committees. Therefore, in light of the important need for legislation and the comprehensive treatment of the bill in the committees, we respectfully urge you to schedule S. 1739 for immediate full Senate consideration.

Alameda County, California; American Association of Port Authorities; American Consulting Engineers Council; American Farm Bureau Federation; American Society of Civil Engineers; American Soybean Association; ARMCO, Inc.; Associated Builders and Contractors, Inc.; Associated General Contractors of America; Association of Metropolitan Water Agencies; Bechtel Power Corporation; Brown & Root, Inc.; Building and Construction Trades Department, AFL-CIO; CH2M HILL;

County of Orange California; Delaware River Port Authority; Eastern Coal Transportation Conference; The Fertilizer Institute; Hampton Roads Maritime Association; Harris County, Texas; Inland Rivers, Ports and Terminals, Inc.; International Brotherhood of Electrical Workers, AFL-CIO; International Brotherhood of Painters and Allied Trades, AFL-CIO; International Union of Operating Engineers, AFL-CIO; Interstate Conference on Water Problems; Laborers' International Union of North America, AFL-CIO; Mining and Reclamation Council of America; National Association of Dredging Contractors;

National Association of Stevedores; National Association of Urban Flood Management Agencies; National Association of Wheat Growers; National Coal Association; National Constructors Association; National Council of Farmer Cooperatives; National Utility Contractors Association; National Water Resources Association; National Waterways Conference; New York City Department of Ports and Terminals; New York State Office; Northwest Inland Waterways Association;

PRC Engineering; The Philadelphia Maritime Exchange; Philadelphia Port Corporation; Port Authority of Houston; Port Authority of New York and New Jersey; Port of Los Angeles, California; Port of Seattle, Washington; Port of Wilmington, Delaware, San Bernardino County, California; Sheet Metal Workers' International Association, AFL-CIO; South Jersey Port Corporation; United Brotherhood of Carpenters and Joiners of America, AFL-CIO; Upper Mississippi River Basin Association; Virginia Port Authority; Water and Wastewater Equipment Manufacturers Association; Water Resources Congress.

Mr. ABDNOR. Mr. President, now that the House has taken up the omnibus bill, the Senate should do likewise quickly as possible. I for one believe Senate passage of S. 1739 can be accomplished when we return following the July recess and I intend to do everything possible to assist the majority leader in whatever way is necessary to schedule S. 1739 for floor action. I ask my colleagues to cooperate with me in this endeavor, and to advise me of amendments to S. 1739 which they feel must be presented on the floor.

Mr. President, this bill has been reviewed and reported by three Senate committees: Environment and Public

Works; Energy and Natural Resources; and Finance. Furthermore, the Appropriations Committee has issued report language supporting enactment of water resource authorizing legislation this year.

We can make passage of an omnibus bill a reality, Mr. President, and, again, I intend to do everything possible to accomplish that goal as soon as possible.

DIALECT IS DIAGNOSTIC

Mr. HEFLIN. Mr. President, Adm. Freeman H. Cary, the physician for the Capitol, has sent me an article that appeared in the Annals of Internal Medicine, June 1984, by Dr. John F. Burnum, M.D., of Tuscaloosa, AL, which I find most interesting on folk medical language.

I ask unanimous consent that his article, which appeared in the Annals of Internal Medicine, be printed in the RECORD.

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

DIALECT IS DIAGNOSTIC

(By John F. Burnum, M.D.; Tuscaloosa, AL)

(Folk medical language, as spoken in western Alabama, contains medical dialect terms that have an ancient lineage, with structure and meaning very similar to those of their earliest roots. The dialect has previous medical meanings and is used with astonishing accuracy by patients. Terms and phrases are often diagnostic as well as colorfully descriptive. An appreciation of medical dialect makes practice more fun, history taking and diagnosis easier, and lessens misunderstandings with patients. It sharpens the physician's senses to every level of what patients feel and say, verbal and otherwise. An appreciation of dialect heightens respect for patients and gives the physician a sense of continuity with cultures and ages past. Understanding and respect for medical dialect can be a powerful aid to patient care.)

Medical care begins with taking the patient's history, with communication. Patients often express themselves in unscientific folk talk that I had always considered quaint and picturesque, but of little practical value in medical dialogue. I was wrong. In my study of the folk medical language spoken by patients in western Alabama, I found that medical dialect words and phrases have ancient origins and precise medical meanings that are close to those of their etymons. They are colorful and expressive and are used with astonishing accuracy by patients. The phrases and words are alone often diagnostic of the patient's condition.

ORIGIN AND MEANING OF THE DIALECT

My respect for medical dialect began when I saw a patient said to be having a *drawing spell*, which was hyperventilation. A standard meaning of draw is to inhale.[1] Patients with hyperventilation have trouble breathing in; they cannot draw in a satisfying deep breath. The condition is not simply a matter of excessive breathing, as the word hyperventilation indicates. A *drawing spell*, therefore, is a more accurate term than hyperventilation and is virtually specific in western Alabama of this diagnosis; patients with shortness of breath from heart or lung failure do not complain of drawing spells.

Soon after, I saw a patient with a blotchy, purplish discoloration of the skin from circulatory insufficiency who was said to be *purple pieted. Pieted or pieded* derives from pie or magpie (a mottley, splotchy colored bird), and originally from *pika* (the Sanskrit word for the Indian cuckoo) [1]. Imagine, Sanskrit being spoken in rural Alabama. I have been a devotee of patient language ever since.

The etymology of the medical words spoken by patients explains the words' uncanny accuracy and appropriateness. *My feet are strutted* means they are tight and swollen. Strut, Old English *strutian*,[2] has an origin in common with cholesterol. *Stereos* is the Greek term for hard or solid.[2] Cholesterol was first found in gallstones; thus *chole-stereos*, the hard solid substance in bile. In a similar fashion, but with an unrelated word, patients may say that their arms are *corded*, a stiff, bound tight sensation. A patient who had hypokalemic paralysis was said to *gape* for breath The patients had fish-mouth agonal breathing; gape. Old Norse *gapa*, means to open the mouth wide. The *gapes* in the 19th century novels of Jane Austen meant a fit of yawning.[2] *My knee is quickie* means that the knee is sensitive and has sudden sharp pains. *Quick*, Old English *cwic*, means alive or living and is a good Teutonic Elizabethan word: the "quick and the dead" in the Apostle's Creed, and in *Hamlet* (end of Act II) "tent him to the quick." *Quick with child* is to be pregnant, and *the quick* is the sensitive flesh under our nails.[3, 4]

Grandpa is stubborn means that he is constipated. Stubborn derives from stub the stump of a tree that unyielding part that is fixed in the ground. [1, 5] What could be more expressive? (The origin of stubborn is unclear to some etymologists.[4])

Patients with *those old leg rickets* have restless shaky legs. Richitis means an inflammation of the spine, rickets,[2] that causes the patient to be rickety, unstable, and shaky. *Sprangle* is a beautiful word: *The pain sprangled out*, spread out over the chest. The word means to branch out,[6] as in a plant. In old Scottish and American dialect, it means to spring to get free: *The sheep sprangled away.*[3]

To persh (perish) *to death* means the patient is starving and wasting away and derives simply and exactly from the Latin *perire*, to come to nothing.[1] *Null*, from *nullus*, not any, is another good Alabama Latin word, meaning to sooth or diminish: [1] *The pain nulled down*, or *Give me some nulling medicine. Plum* is yet another Latin word used in the United States since at least 1787: *I am plum give out*, completely and utterly exhausted. It comes from *plumb*, lead, and *plumb bob*, the lead weight on the end of a line used to find the true vertical.[16]

I took with an agures chill is, of course, a redundancy and a variation of ague, a standard word for chill and fever.[6] An *agures chill* in Alabama, however, is a particularly violent chill and alerts the physician to the possibility of serious sepsis. A *nervous rigor* may be confused with a chill but is characterized by the patient alternately tensing and relaxing the muscles over the body, shivering, and the absence of fever; it is a type of anxiety attack. *Ramshack (my blood pressure runs up and ramshacks my nerves and my brain)* comes from ramshackle and ransack, from the Old Norse *rannsaka*, to pillage or throw into disarray.[1]

I ate a bait of peas means just what it says, I ate a portion of food, and is almost literal Anglo-Saxon *(bat*, food).[1] *Bate (the pain bates down)*, on the other hand, is short for abates. *Hark (he harked up phlegm)*, means to cough or clear the throat and is, I believe, a variation of *hawk*, which means the same and is imitative of the sound of this act.[3] Being *salivated* now means to be devastated by an illness, but in the last century it referred to the copious flow of saliva caused by mercury poisoning,[1] often due to overzealous purging with calomel. *Peart and pyert* are variations of pert, lively, in good health:[3] *She feels right peart today.*

A *pone* is a lump or swelling and is the Algonquian Indian word for a loaf of cornbread. [1] Patients from the South are frequently concerned about pones. In my experience pones are usually harmless accumulations of fat, particularly in women, behind the knees or in the axillae. Alabamians have not forgotten their Chaucer: *Hope me* means help me, just as Chaucer's *holpen* meant to help or heal.[7] Neither have they forgotten their Shakespeare: *Loss of courage* still means loss of sexual desire or potency.[1]

Both *smart* [6] and *sight*, [1] largely Southern dialect, indicate a considerable amount or good deal: *I drank a right smart of beer*, or *I have a sight of gas on my stomach.* Both *want to* [2] and *bad to*, more Southern talk, mean an inclination or tendency towards: *I want to be dizzy when I stand; I am bad to eat sweets. Sull* means to sulk or balk: *If I cross him he will sull up on me.* Sull was originally applied to animals and has been used for the last 100 years in the Midwest and South; [6] opossums sull when they play dead.

MISCOMMUNICATIONS

Words may mean one thing to the patient but something else to the physician, leading to dangerous misunderstandings on both sides. When patients say they are *deathly sick*, they mean they are nauseated. *Ill* means irritable or out of sorts, not sick as we think of it. *Hypertension* to the patient is not high blood pressure, but being tense and high strung. Unless physicians make it clear that we are referring to elevated blood pressure, the patient may fail to return for critical follow-up care. On the other hand, the diagnosis of *tension headache* by the physician is mistakenly equated with high blood pressure by the patient. *Low blood* is a common folk diagnosis for a vague admixture of low blood pressure, anemia, and lack of energy. Whatever the cause, low blood is highly resistant to treatment and is often associated with the *blind staggers*, dizziness or light headedness. The diagnosis of gastritis (*gas-stritis*) is especially satisfying to patients, because it confirms their own opinion that they suffer from gas.

MISSPELLINGS AND MISUSAGES

Some words have become misspelled and mispronounced. Having *prostrate* trouble is certainly more descriptive than having prostate trouble. *Highly seasonal foods upset me.* Hiatus hernia has become *hiatrus;* hysterectomy, *hysterecrum;* vagina, *regina;* grimace, *grimmich;* vomit, *vomic;* glucose, *gluco water;* oxygen, *octagen;* curious, *curous;* queer, *quare;* enema, *nema;* pus, *pulse;* and retch, *reach.* Throbs and tolerable have lost their r's and become *thobs* and *tolable.* The letter *r* is dropped frequently in Southern speech. It is fun to know that *groggery*, groggy, dazed and unsteady, comes from Old Grog, the name given to Admiral Edward Vernon, an English naval officer

who served rum to his crew and who wore a grogram coat, a material of that day.[1]

There may be grammatical errors. *Nauseous* has replaced nauseated nationwide: *I am nauseous.*

COLORFUL EXPRESSIONS

The medical vernacular is often vivid and expressive. The phrase *There won't nothing lay on his stomach* is more descriptive than is intractable vomiting. *I haven't seen anything yet* suggests fear of pregnancy as well as delayed menstruation. *My eyes glimmer and feel bleary* is as good as scintillating scotoma of megraine. Patients with dyspnea *hassle like a dog,* and those with emphysema *hunker down to breathe,* squat down and bend forward to better empty the lungs. *This rash terrifies me to death* means that the itching is tormenting the same idiom was used in Northamptonshire, England, in the mid-19th century.[3] *Trouble down there* is a delicate reference to the genital area. *My head rose* signifies a purulent middle-ear infection, and *shortness of the breast* is another term for dyspnea.

Patients with modern plumbing continue to say *I have to go outside too much or I have to be excused too much* instead of complaining of diarrhea, and for the same complaint, the say *My stomach is torn up.* Patients ask for *something to regulate the bowels,* never for medication for constipation. Our patients still hold the medieval belief that constipation is due to a malfunction of the liver, imbalance of humors, or lack of bile production, and thus complain when constipated of having a *torpid liver* or that the *liver is not kicking off just right* or that they need something to *touch the liver.*

DIAGNOSTIC TERMS

Just as chest pain describes as the feeling of an elephant sitting on one's chest strongly suggests myocardial infarction, colloquial expressions used by patients often have high diagnostic specificity. In addition to *drawing spells,* the diagnosis of hyperventilation and nervous tension (which merge into agoraphobia in some patients) is almost certain when the patient says *The air won't go down deep enough* or *The breath doesn't do me any good or doesn't satisfy me. That shot didn't do me any good* suggests drug dependency; the patient is explicitly telling us that he wants something to make him feel good, not merely to relieve pain.

Depression is a common diagnosis often missed in office practice. Twenty percent of my female patients and five percent of the men are depressed, but they rarely, if ever, complain of depression. Their opening complaint, however, is often diagnostic: I can't make myself go; I wake up in a dread; Seems like nothing don't satisfy me no more. Being familiar with these expressions allows the diagnosis to be made quickly and at considerably less cost than that for the cortisol suppression test (which has only 50% sensitivity).[8]

DISCUSSION

Medical dialect spoken by patients in Alabama is, broadly speaking, English in origin. Although most of the words are classifed in dictionaries as being archaic or obsolete, they are in fairly common use in rural areas and among less sophisticated people. Medical dialect should not be demeaned by being grouped with slang, psychobabble, or the grotesque neologisms and jargon of the soft sciences.[9] On the contrary, dialect expressions have an ancient lineage, have been spoken by entire cultures for generations, and have meanings that are very similar to those of their earliest roots. The dialects are, for the most part, used with exquisite appropriateness by patients and, if we but understand, mean exactly what they say. Once again, if we listen closely, the patient will tell us what is wrong.

Studying folk medical talk has added zest to my daily practice, made history taking and diagnosis easier, and lessened misunderstandings with patients. In addition to becoming familiar with the literal meaning of patients' words, I have become more sensitive to every level of what patients are feeling and saying, verbal and otherwise. Understanding and appreciation of medical dialect has increased my respect for patients and given me a satisfying sense of continuity with cultures and centuries past.

Like most human endeavors, medical care turns on communication, but communication may flounder because the patient and physician speak different medical tongues. It is the physician's responsibility, however, to understand the patient's language, not he ours. Medical dialects differ from region to region and subculture to subculture. Some physicians will have to be familiar with several different dialects; the task is compounded for foreign medical graduates.[10, 11] But learn we must. We do not and cannot care for the patient we do not understand.

FOOTNOTES

[1] *Webster's New International Dictionary of the English Language.* 2nd ed. Springfield, Massachusetts: G. & C. Merriam Company; 1945.

[2] MORRIS W, ed. *The American Heritage Dictionary of the English Language.* Boston: Houghton Mifflin Company; 1969.

[3] WRIGHT J. *The English Dialect Dictionary.* London: Henry Frowde; 1905.

[4] *The Compact Edition of the Oxford English Dictionary.* Oxford: Oxford University Press; 1971.

[5] KLEIN E. *A Comprehensive Etymological Dictionary of the English Language.* Amsterdam: Elsevier Publishing Company; 1966.

[6] CRAIGIE WA, HULBERT JR, EDS. *A Dictionary of American English on Historical Principles.* Chicago: The University of Chicago Press; 1938.

[7] SKEAT WW, ed. *The Complete Works of Geoffrey Chaucer.* London: Oxford University Press; 1931.

[8] BURNUM JF. Diagnosis of depression in a general medical practice: observations on "lack of pizzazz," the "blahs," and other complaints. *Postgrad Med.* 1982; 72:71-3, 76.

[9] SCRUTON R. Review of *The State of the Language. Lond Times Literary Suppl.* 22 Feb 1980.

[10] MILLWARD CM. Familiar English for foreign doctors. *N. Engl J Med.* 1970; 283:430-1.

[11] KIMBALL CP. Medicine and dialects [Editorial]. *Ann Intern Med.* 1971; 74:137-9.

PRODUCT LIABILITY ACT

Mr. HOLLINGS. Mr. President, on Saturday, June 16, the National Association of Attorneys General unanimously adopted a policy position opposing passage of S. 44, the Product Liability Act.

The NAAG is the latest major association of State government officials to go on record as overwhelmingly opposed to this ill-considered legislation. Other State groups which have refuted S. 44 include the National Governors Association, the National Conference of State Legislatures, and the Conference of Chief Justices.

I ask unanimous consent that the NAAG's resolution on product liability be printed in the RECORD. In doing so I also ask my colleagues to pay special attention to the reasons for the association's opposition to the bill. Not only does the NAAG express dismay about the bill's preemption of existing State and case law, it also bases its opposition on the weakening of consumer protection due to the standards set forth in the bill. The association shares my belief that S. 44 would shift the existing balance in product liability law in favor of manufacturers, thus denying legitimate victims of defective products just compensation for their injuries.

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

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL RESOLUTION ON PRODUCT LIABILITY

Whereas, Congress is considering passage of S. 44, the Product Liability Act; and

Whereas, the Act would preempt all state laws and civil actions against manufacturers and sellers for loss or damage caused by products; and

Whereas, the Act would eliminate strict tort liability actions against manufacturers for defective design or formulation and for failure to warn, and against product sellers in general, thereby shifting the costs and consequences of dangerous products from manufacturers and sellers to innocent consumers; and

Whereas, the Act would abolish any product liability action against a manufacturer or seller based on a breach of implied warranty;

Now, therefore, be it resolved, that the National Association of Attorneys General, in the interests of consumer protection, strongly opposes passage of S. 44, the Product Liability Act; and

Be it further resolved, that the Association urges Congress to defeat the Act; and

Be it further resolved, that the Association authorizes its Executive Director and General Counsel to transmit these views to members of Congress, the Administration, and other interested individuals.

TAMI DIANE MIDDLESWARTH

Mr. HOLLINGS. Mr. President, I rise today to call the Senate's attention to both a sad occasion and an inspirational event. It's sad because a wonderful little girl, Tami Diane Middleswarth, died of leukemia on Wednesday. It's a terrible thing whenever anyone loses their life, but it's particularly cruel when someone so young is taken from us. But in this personal tragedy, Mr. President, something positive has happened.

Not only was Tami a joy and inspiration to her parents, Warren and Diane Middleswarth of Charleston, SC, she was a joy and inspiration to anyone who had the opportunity to know her and what she has been through in these last months of her life. I did not know this young lady personally, but I am very familiar with her case, as are many others in Charleston and South Carolina. You see, Mr. President, in the personal tragedy of Tami and her family is triumph and hope. The way in which Tami and her family, but particularly Tami, dealt with the rav-

ages of this terminal condition presented a message that touches us all.

Tami had a dream to visit Sea World and Disney World. Friends of her family and coworkers of her father assisted in organizing her trip. When the community heard of the trip they rallied behind it. Money came in from everywhere. Businesses and individuals contributed. Tami's tragedy brought people together and caused them to stop and think. Tami had her dream come true about 2 months ago.

The community of Charleston was focused on the example of strength and courage that Tami and her parents offered. This remarkable little girl that lived so little of life taught many of us with many more years than her much about life. It's in her life and her battle that all of us can take hope. The love she demonstrated and hope she conveyed brought men and women from all walks of life together anc caused them to pause and think of life's deeper meaning.

Tami was truly a remarkable little girl in her own right, and that is something all of us should realize. But, Mr. President, the legacy that Tami leaves us for my community is equally remarkable and represents something of lasting value.

Mr. President, I ask unanimous consent that an article appearing in the June 29, 1984, Charleston News and Courier be printed in the RECORD.

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

7-YEAR-OLD LEUKEMIA VICTIM DIES

Tami Diane Middleswarth, a 7-year-old victim of leukemia, died Wednesday at her Summerville home, barely two months after fulfilling her dream of a trip to Sea World and Disney World.

"She was a fighter," said her father, Warren Middleswarth. "She never gave up, she just gave out."

Her condition had improved when friends of the family organized a vacation to Sea World and Disney World for her in May. But leukemia eventually took its toll.

"She had more guts than any one person, man or woman, I've ever known," Middleswarth said, "We asked if she was scared, and she would look you right in eye and say she wasn't afraid."

"Inwardly she knew what was happening," he said, "but I think she was trying to protect her mommy and daddy."

Tami's vacation was organized by one of Middleswarth's co-workers in May. "When she learned of it, she ran around telling the older children in the hospital she was going to Disney World," said her father, Warren Middleswarth.

Numerous firms and individuals donated services and money for Tami. "People have been calling from all over," said co-worker Robert Gatchel in May.

Sen. Strom Thurmond, R-S.C., called Gatchel to ask what he could do, and both Sea World and Disney World planned special activities for Tami's vacation, which was made possible by donations from Middleswarth's truck company, a hotel company, an airline, a mobile home company and several local grocery stores.

Middleswarth said he was overwhelmed by what people had done to help his family. "How could you ever find better, more good-natured people?" he asked in May.

Before she died, Middleswarth said Tami was "handling it like a champ."

"She told us . . . about what she wants to take when she goes to see Jesus," Middleswarth said.

"She touched a lot of people," he said, "Everybody she talked to said she was special, and I know she was."

The funeral will be at 11 a.m. Saturday in St. Luke's Lutheran Church. Burial, directed by Dyal Funeral Home, will be in Dorchester Memory Gardens.

Miss Middleswarth was born April 28, 1977, in Charleston, a daughter of Warren Lee Middleswarth and Diane Pollard Middleswarth. She was a first-grader at Knightsville Elementary School.

Surviving are her parents; a brother, Charles Pollard Middleswarth of Summerville; her grandparents, Gene S. Pollard and Wyllene Banks, both of Geneva, Ala., and Mr. and Mrs. William F. Middleswarth of Summerville; and two great-grandmothers, Ruby Ramsay of New Brockton, Ala. and Anna G. Frink of Summerville.

IN SUPPORT S. 2802, THE LEGAL FEES EQUITY ACT

Mr. DENTON. Mr. President, I am pleased to join my distinguished colleagues, Mr. THURMOND and Mr. HATCH, as a cosponsor of the Legal Fees Equity Act. The bill will establish guidelines for the awarding of attorney's fees in civil judicial and administrative proceedings against Federal, State, and local government defendants and will raise the compensation rates for attorneys representing indigent defendants under the Criminal Justice Act. The intent of the bill is to achieve a more equitable balance in compensation among the various attorneys litigating for or against the Government, defense attorneys paid under the Criminal Justice Act, and private attorneys receiving fees under civil fee-shifting statutes.

Mr. President, a number of Federal statutes provide that parties to civil suits and administrative proceedings against the United States, States, or local governments may, under appropriate circumstances, recover "reasonable attorneys' fees" from the government defendants. These statutes have, however, placed a great burden on the courts due to the lack of congressional guidance as to when an award of attorneys' fees is appropriate, or as to what constitutes a reasonable award. As a result, courts have reached conflicting interpretations of the civil fee-shifting statutes. In some cases the courts have used "multipliers' and "bonuses" to double, and even triple, the normal hourly rates of the prevailing party's attorney.

Legal Fees Equity Act will provide the much needed guidance to the courts and Federal agencies for the award of attorneys' fees pursuant to Federal statutes thereby reducing the current uncertainties and disparities reflected in the present decisions.

Specifically, the bill will:

Set a $75 per hour maximum rate for attorneys' fees awarded, and eliminate the use of bonuses and multipliers to escalate fee awards. This will compensate private attorneys' general at a level commensurate with, but still significantly higher than that of their government counterparts, but provide a reasonable incentive sufficient to attract competent counsel.

Allow recovery of attorneys' fees only when a party has prevailed on the merits of its complaint, or where the suit is concluded by a favorable settlement agreement.

Allow recovery of attorneys' fees only for work performed on issues on which the party prevailed.

Permit the reduction or denial of the amount of fee awards, for example, where a party has unreasonably protracted the litigation; where the services provided were excessive with regard to the nature of the controversy; or where the fee award would unreasonably exceed the hourly salary of a salaried attorney.

Provide that monetary judgments be reduced, but not more than 25 percent, by the amount of the attorneys' fees allowed in the proceeding. Exceptions are allowed for suits under certain provisions of the Equal Access to Justice Act, suits for recovery of disputed taxes, or in cases of undue hardship.

Establish certain procedural requirements for attorneys' fee applications, including a 30-day time limit after final judgment for submitting fee applications, and require courts and agencies to develop additional guidelines.

Clarify the circumstances in which attorneys' fees may be awarded when a claim becomes moot or the party refuses to accept a reasonable settlement offer.

Another important aspect of the bill will provide a greater balance between the high hourly rates of compensation for private attorneys who sue the Government in a civil proceeding and the much lower hourly rates of compensation for attorneys who represent indigent criminal defendants in proceedings under the Criminal Justice Act.

Specifically, the bill will:

Double the hourly rate of compensation, from $30 per hour for time in court and $20 per hour for out-of-court time to $60 and $40 per hour, respectively.

Double the maximum allowable compensation for various judicial proceedings. The new limits would be $2,000 per attorney for felony cases, $800 for misdemeanor cases, and $500 for posttrial and parole revocation proceedings.

Mr. President, I welcome the guidance and reform which the Legal Fees Equity Act offers. I urge my colleagues to join me in cosponsoring the bill.

THE OUTLOOK ON NUCLEAR POWER

Mr. HEFLIN. Mr. President, there has been many hours of debate in this body concerning the use of nuclear power as an energy source. No doubt there will be many more; for the United States, indeed the entire world, stands at a nuclear power crossroads. The direction we choose will have far-reaching implications.

Therefore, I wish to share with my colleagues a recent speech made by Dr. Lynn Weaver, dean of the School of Engineering of Auburn University entitled "The Outlook for Nuclear Power: Is it Still an Energy Option in the United States?"

This speech has been recognized as one of the best treatments of the subject by Vital Speeches of the Day in the May 15, 1984, issue.

I congratulate Dr. Weaver on his scholarship, but more importantly I offer this speech as one of the best summaries of the current situation concerning nuclear power.

Therefore, Mr. President, I ask unanimous consent that Dr. Weaver's speech be printed in the RECORD.

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

[From Vital Speeches of the Day, May 15, 1984]

THE OUTLOOK FOR NUCLEAR POWER: IS IT STILL AN ENERGY OPTION IN THE UNITED STATES?

(By Lynn Weaver)

When I agreed to deliver a paper on "The Outlook for Nuclear Power" at this meeting, there was no indication that the subject would be so timely—or so complex. But as you know, if you have been following the developments at several nuclear plants under construction in the past two months, the debate over nuclear power has undergone a fundamental change. The questions being asked today are different not just in degree, but in kind from those that were being asked only a few years ago. For the first time, the principal criticisms of nuclear power are based not on hypothetical results of events that have never occurred; they are based on actual developments that have taken place at several construction sites around the country, and that have posed serious questions about the economics of nuclear power and the quality of its management and construction.

As always, the truth about nuclear power today is difficult to find. Most information on the subject, whether it is from industry, government, critics or the press, is incomplete and one-sided. And even the basic facts about issues that lend themselves to quantification, like the comparative cost of nuclear power, are often arguable and contradictory.

Let me take a minute to demonstrate the difficulty of placing nuclear power in its proper perspective today. 1984 marks the anniversary of two major events in the history of nuclear power development. Individually, each can be presented as a symbol of the role of nuclear power in the United States—yet they are totally contradictory.

Two decades ago this month, in March 1964, the Jersey Central Power & Light Company applied for a construction permit to build the Oyster Creek nuclear power plant, and the age of commercial nuclear power was born. Oyster Creek was the first nuclear plant planned by a utility strictly on the merit of competitive economics. Largely because of the potential for cost savings, U.S. utilities ordered 222 more unclear power plants over the next 10 years, making it one of the world's fastest growing industries, which has brought us billions of dollars in savings.

Alternatively, ten years ago, Public Service Indiana ordered two nuclear units that it called Marble Hill. For several years, while many other nuclear plants ordered around that time were being canceled, Marble Hill was the last order for a nuclear plant in the United States that was still under construction. Earlier this year, over a decade after the plant was originally announced, the utility had to cancel Marble Hill because of the financial drain caused by its construction. One unit was little more than half completed, and the other only one-third, but the utility had already spent more than $2.5 billion on the project, which now has little chance of ever generating a single kilowatt-hour. To many observers, this cancellation—along with order problems that were being faced by several nuclear plants under construction—symbolized a closing curtain on the age of nuclear power in the United States. So from that perspective, 1984 is not an anniversary of the beginning of the nuclear age, but the beginning of the end.

How can government officials and the public, who will ultimately determine the fate of nuclear power, make sense of these conflicting views? Much of the problem of sorting out the reality of nuclear power is a matter of perspective. As a nation we tend to focus on short-term crises and solutions, not the long-term strategies that are necessary to take us beyond the age of inexpensive fossil fuel. Today I would like to discuss one long-term perspective: to examine the status of nuclear power today, to describe the obstacles that it must overcome to make any additional contribution to U.S. energy supply beyond the plants that are already "in the pipeline," and to make some specific recommendations that should help bring nuclear power back into a realistic long-term perspective.

What is the situation of nuclear power in the United States today? In short, its role has become a prominent one. Since 1973 the amount of electricity generated by nuclear energy in the United States has increased by more than 260 percent, bringing the 1983 contribution up to more than 360 billion kilowatt-hours. The nuclear capacity operating in the country today, about 80 generating stations, contributes more than 13 percent of our national electric power supply, and equals our entire national output in the years after World War II. With another 50 units under construction, nuclear power will provide upwards of 20 percent of all the electricity that we use in the country by the turn of the century.

Economically, the original hopes of Jersey Central Power & Light two decades ago and of other utilities that followed in its footsteps have largely been fulfilled. The Oyster Creek plant, for example, went into commercial operation in 1969, only six years after its original public announcement. Though the plant is about one-half the size that is common today, it has saved its customers more that $725 million on their electric power bills compared with other fuels that would have been used.

Most other nuclear plants that have gone into operation in the past 20 years have also demonstrated the ability of nuclear power to generate relatively inexpensive electricity. An industry survey of utilities last year found that the average cost of generating a kilowatt-hour of electricity with nuclear energy was 10 percent cheaper than coal, and less than half as expensive as oil. A study by Science Concepts has reported that over the past decade the American public has saved between $30 billion and $40 billion because of nuclear power. Those savings continue to mount by between $4 billion and $11 billion a year, depending on the percentage of oil and coal that would otherwise be used to generate power in the place of nuclear energy.

As we can see in retrospect, the most important contribution of nuclear power has not simply been in cost savings. More fundamentally, nuclear power has offered the country a new domestic source of energy at a time when it was critically needed. As the United States recognized the need to turn away from oil and natural gas as fuels for major new electric power commitments, nuclear energy was proving its ability to carry more of the load. Because of nuclear power, the country has been able to maintain a diversified source of fuels for new electric power capacity, allowing us to move beyond oil and gas without having to rely almost totally on coal. The importance of this contribution—of offering an alternative to fossil fuels and beginning our transition to other sources of energy—has largely been overlooked in the debate about specific issues related to nuclear power.

The growth of nuclear power over the past 10 years has also been integrally connected to the unique importance of electricity. Since the oil embargo of 1973, the special role of electric power in our society has become all the more evident. As a nation we have rapidly been shifting away from the direct burning of oil and other fuels to the increased use of electricity, particularly in our industries. From 1973 to 1983, because of economic downturns and a new level of emphasis on energy conservation, our total use of energy in the United States declined by about 6 percent. Our use of direct fuels—that is, of all energy except electricity—dropped by a total of 17 percent. But our use of electric power *increased* by more than 25 percent. In the residential, commercial and industrial sector alike, we cut back on our use of non-electric energy, but demanded more electricity.

The significance of this increase in electric power becomes clearer when we examine another important trend line. At the same time that our use of electric power grew by 25 percent, the Gross National Product increased by 22.5 percent. The relationship between these two trends has remained close even through high inflation and high interest rates, our economic recession of the early 1980s, and most recently our economic recovery. Last year, as the most recent example, real GNP grew by 3.3 percent, and electricity use grew by 3.6 percent. Though as much as one-third of that growth in electricity use may have been the result of more severe weather in 1983 than in 1982, two-thirds is clearly attributable to our economic recovery and growth. And

once again, no other energy form had such a close connection with the GNP: our overall use of energy declined by more than 1 percent in 1983, and our use of non-electric forms of energy dropped by 2.7 percent. Our increasing demand for electric power over the past decade has been met in large part by the 50 nuclear plants that have gone into operation since the 1973 oil embargo, and it will continue to be met by the 50 that are still under construction. Nuclear-generated electricity has become one of the basic props supporting our entire national economy.

If the importance on nuclear power is formidable so are the problems that it has encountered. Some of those problems reflect unrealistic expectations on the part of the utility industry; others are the result of sweeping changes in our society that nuclear managers could not control and could not have been expected to foresee. But collectively these problems raise legitimate questions about the outlook for nuclear power after the completion of the plants that are already under construction.

The biggest uncertainty now facing nuclear power is the trend of cost overruns, delays and quality assurance problems at plants under construction. The developments at several plants being built in recent months appear to have had a major effect on the attitudes of the financial community, much of the press, presumably public utility commissioners and other government officials, and even the utility industry itself. The Chairman of a large nuclear utility in the Southeast told Time magazine his view of nuclear power after all of these developments: "No utility executive in the country would consider ordering one today—unless he wanted to be . . . committed."

What has brought nuclear power to this state? There is no simple answer. But the over-riding factor seems to have been the economic environment in which utilities were trying to plan and build. The generation of nuclear plants being completed today has been victimized by all of the traumas that our entire economy has experienced over the past dozen years. And because nuclear plants are capital-intensive, they are particularly sensitive to any major changes in the economy, in interest rates, in inflation, in the financial health of the utility, or any major delay in construction for whatever reason. And the plants now being completed have seen them all.

One utility now completing a nuclear power plant, Detroit Edison, has published a chronology of its Fermi-2 unit that shows the history of management decisions and of events in the outside world that have had a major impact on the plant. Let me summarize that chronology, as an example of the environment that utilities building nuclear plants have been operating in over the past dozen years:

In 1968 the area around Detroit was rapidly growing, and both the steel and automobile industries were planning major expansions. The utility's projections indicated that it would need a major new power plant in operation by 1974 to meet the rising demand. Based on the experience of nuclear plants until that time, Fermi 2 was expected to go into operation in 1974 and to cost about $230 million.

In 1971 a Federal court ruled that the Atomic Energy Commission was not properly implementing the National Environmental Policy Act. Work on Fermi 2 had to be partially suspended until new environmental procedures could be developed, and until the utility could complete a major new report on the environmental effects of the plant.

The licensing logjam prevented the plant from getting its construction permit until 1972, 30 months behind its original schedule.

In 1973 the demand for electricity in the area increased by more than 14 percent, making the plant all the more urgently needed. Within two years, though, the effects of the oil embargo and the double-digit inflation left Detroit with an 18 percent unemployment rate. In 1974 sales of electricity dropped by more than 5 percent, fuel costs rose 83 percent, the Public Service Commission granted a rate increase of less than half of what the company requested, and the utility had to stop work on Fermi 2 and other construction projects because of its financial crisis.

When construction resumed in 1977, after the area's economy began recovering, work was being done in what the utility described as an "environment of constant change." There had been four government regulations on nuclear power in 1970. That had grown to 108 by 1973, 277 in 1975, and 784 in 1978. This rapid increase in regulation has continued throughout the construction of the project: in 1967-68 the government's regulatory agency had a staff of 464 and issued 38 construction permits and three operating licenses. By 1973-74, the staff numbered 1,536 and issued a total of 64 permits and licenses. In 1981—admittedly, after Three Mile Island—the staff had grown to 3,331 employees—and it issued a total of four operating licenses and no construction permits.

In 1979 the accident at Three Mile Island resulted in a licensing "pause" and a 500-page action plan that the NRC issued to all nuclear plants.

So Fermi 2 is now close to operation—at a cost of $2.7 billion, as of August 1983. The increased costs beyond the original estimate break down this way; $684 million for regulatory compliance; $218 million for changes caused by Three Mile Island; $906 million because of licensing delays, new regulations and the 1974 shutdown; and $430 million in escalation in labor and materials. By Detroit Edison's accounting, then, 90 percent of the additional cost was outside of its control. In November, the utility raised the cost estimate for Fermi 2 to $3.08 billion.

All of the plants now being completed have had to contend with the economic gyrations of the 1970s and the explosion in regulatory requirements. So we could expect that any nuclear plants that are ordered in the future and constructed in periods that are more stable will be built more quickly and more inexpensvely than this troubled generation.

This does not mean that the industry has been blameless. One of the primary causes of the delays and the cost increases among plants under construction was the accident at Three Mile Island and the implementation of new operating requirements based on lessons learned at TMI. Though it is fair to say that the Three Mile Island accident helped demonstrate that nuclear plants are indeed designed to protect the public from almost any event that could take place in a reactor, it also revealed some serious shortcomings in the operation and management of nuclear plants. For years many industry spokesmen had been fond of describing nuclear power as "just another way of boiling water." The TMI accident and some of the problems that have materialized since then, I believe, indicated that they really believed what they said.

If casual attitudes by utility management did contribute to the quality and cost problems that nuclear power has experienced, it seems safe to say that those attitudes will be quite different in the future. Three Mile Island, Marble Hill, Zimmer and other economic calamities have shown the industry that the biggest risk of nuclear power is to their own financial health and their standing with their rate payers. No utility is likely to make such a commitment again without fully recognizing the unique technical and managerial requirements of building and operating a nuclear power plant.

The industry's responses to these nuclear developments have indicated that it is indeed recognizing their lessons. The establishment of the Nuclear Safety Analysis Center and the Institute for Nuclear Power Operations showed a new dedication to safety and operating quality, and the broadening of INPO's charter to include plants under construction reflects a new level of awareness of quality assurance demands.

Despite all the lessons that have been learned about the importance of firm controls to contain costs and to assure quality during construction, these problems will be with us for several more years. About 50 plants of this generation are still under construction, and it seems inevitable that additional problems will surface as they are completed and begin to go into operation. One of the most important facts that the country needs to keep in mind is that however serious these construction setbacks may appear, they are short-term problems. And they are relatively minor in the long-term perspective of our more basic needs: assuring our economic growth and planning for a future energy system that is not so heavily dependent on fossil fuels.

Let us assume that the industry can overcome the construction problems that have recently materialized. These problems are not inherent in the technology, as the operating record of earlier nuclear plants in the United States and of more than 200 nuclear plants in other countries can testify. What then are the long-term issues that will determine the future of nuclear power?

First and foremost, nuclear licensing and regulation. The industry may occasionally overstate the degree of unnecessary or counter-productive requirements from the NRC, but its basic point is arguable: that the current licensing process makes planning impossible. By 1982 the NRC was issuing almost 2,000 new Regulatory Guides a year. A major licensing reform that makes the process more predictable without sacrificing safety or public participation, like the Department of Energy's bill that is now pending in Congress, is essential if the country is to have any additional benefit of nuclear power in the decades to come.

The nation's program to manage high-level radioactive waste needs to show greater progress and results if the public's confidence in the entire nuclear fuel cycle is to be improved. The technical concept for storing high-level nuclear waste in stable geological formations like salt has been recognized by the scientific community around the world for three decades. There is broad agreement that our current plans for storing radioactive waste are prudent and safe, but unfortunately the continuing policy debate seems to be whether this approach will be *perfect*. Any proposed action in a long-term program can be second-guessed and fine-tuned as new information material-

izes, but it seems clear that we now have enough data in hand to move ahead confidently without becoming paralyzed by the need for perfection. Congress's action in December 1982 was a major step forward, in that it formulated a specific waste management strategy with objectives and schedules. But many of its milestones were unrealistic, and the program seems to have slipped by several years in its first year of implementation. The Department of Energy needs to gain firmer control of this process, even if it means seeking modification in Congress, and to demonstrate for the public that a long-term nuclear waste management program is being competently implemented.

Even beyond the immediate construction problems that many utilities have encountered, the economics of nuclear power remains a legitimate question. The biggest variable in predicting comparative costs is not the capital cost of the nuclear plant, but the lifetime fuel cost of a coal or oil plant. When fossil fuels begin increasing significantly in price—which is only a matter of time—nuclear electricity will offer a major cost savings. The safety of nuclear power plants—in terms of both their low-level radiation and the hypothetical effects of major accidents—also remains a major issue that will shape the long-term future of the technology. But as the years of operation mount up, it becomes clearer that this is largely an issue of emotion and public perception, and not a major substantive concern. Counting commercial nuclear power plants operating in the United States and 24 other countries, and counting the experience of power reactors that propel submarines and surface ships in the U.S. Navy, we have now accumulated nearly 6,000 reactor-years of operation. With such a record nuclear power can no longer be considered an experimental technology; it has proven its safety in a vast range of governmental philosophies, utility styles and approaches, geographical conditions and other variables. Its health and safety impact is equal to or less than other energy sources that we routinely accept. While the public should never be led to believe that there are no risks from nuclear power, the level of risk should not be an obstacle to its use. It appears that current work being completed on the "source term" used by regulators to calculate public health risks from radiation accidents may demonstrate that we have generally overstated the potential health effects of nuclear plants.

By far the most important issue—and in many ways the cloudiest—is the future need for nuclear power. Does the country need to address all of these problems, or can we manage without growing amounts of nuclear energy?

For nuclear plants that are already in operation or under construction, the answer is clear: our growing demand for electricity, combined with the recent strategy of utilities to avoid ordering additional capacity of any type, means that we will need additional capacity in the years to come. The Department of Energy last year predicted that even if utilities complete all the capacity that they now have under construction or planned, the country would need to build an additional 232 gigawatts of electric power plants before the end of the century to meet a 3 percent annual growth rate in demand. The nuclear plants now operating and being built will clearly be necessary to meet our growing electric power needs.

But what about the contribution of nuclear power beyond the plants that are already under way? Unlike most other industrialized countries, the United States could indeed allow nuclear power to fade away temporarily as a source of new electric capacity in the next several decades, because of our abundant supplies of coal.

This strategy clearly has its drawbacks. For one, we would be depending almost entirely on coal for our future central-station electric power, and as we are learning coal is hardly a problem-free fuel. This path would also increase our demand for all fossil fuels, further competing with developing countries for the world's finite supplies. And it would most likely lead to ever-greater energy costs in the United States, as the price of fossil fuels increases and there is no alternative to hold it in check.

Nevertheless, that appears to be the path that the United States is currently on. Because of the obstacles now facing nuclear power, the industry and the government alike appear to be losing their interest in additional nuclear capacity beyond the plants already ordered.

I believe those of us in energy and engineering should worry that this attitude represents a short-term perspective that could pose serious long-term problems. The primary motivating forces among utilities, after the problems they have faced over the past decade, is avoiding any long-term commitments or other potentials for financial surprises. And the motivating force in government appears to be the need to reduce funding, along with a commitment to the free market in determining energy policy. As a result, the general national attitude seems to be that coal and other traditional fuels can fill our needs for the next several decades, and after that the United States will see the revival of nuclear power as a major energy source in the 21st Century. This philosophy is often described as a belief in "the nuclear imperative."

This logic needs to be closely examined. It seems inarguable that there will be a need for additional nuclear power in the decades ahead. Virtually every knowledgeable forecast of future energy production and use recognizes that the rising demand for electricity will require a continuing increase in our use of nuclear power. The 1983 growth in electric power demand, if projected to the year 2000, would lead to an 80 percent increase in the amount of electricity used in the country. Few observers believe that coal can economically or environmentally increase its contribution that massively.

The flaw in the laissez-faire attitude toward nuclear power today is that when the need returns, the country may well have lost its ability to fill it. As we have learned painfully in recent years, nuclear power is a complex undertaking. It requires a sophisticated infrastructure of industry and regulators, a large pool of expert engineers and technicians, managers knowledgeable about the importance of strong controls and quality assurance, and an array of support programs, from environmental consultants to spent fuel managers. If the country allows nuclear power to fade away as a credible energy option—as I believe we may be doing—there is no "imperative" that can make it suddenly reappear a decade or two down the road.

A successful nuclear power program is largely dependent on a single resource, the human resource. It needs a community of thoroughly trained engineers and technicians to design, operate, manage and regulate every element of the overall nuclear fuel cycle. Even the current number of nuclear plants operating and under construction may well suffer shortages of skilled professionals over the course of their lifetime, if more students are not attracted to nuclear and related engineering curricula. A number of universities have abandoned programs in nuclear engineering. If this trend continues, we will be hard pressed to provide the necessary engineering talent.

When the country recognizes that it needs to expand its nuclear power capacity years from now, skilled manpower shortages will not be the only serious obstacle. The industrial base of designers, manufacturers and builders may have dispersed. The regulatory system for new nuclear plants will have to be re-invented. And there may be little institutional memory of many of the basic lessons that we have learned over the past quarter of a century, including the demands of quality and safety in designing, building and operating nuclear plants. A long gap in the evolution of nuclear power in the United States could mean that we may end up making some of the same mistakes a second time, at a time when nuclear power is all the more urgently needed. Even a willingness to import nuclear technology in the future does not solve these problems; you cannot import sound regulation or sophisticated mangement.

This is the basic nuclear power challenge facing the government and industry. If they believe that there will be an important need for growing amounts of nuclear-generated electricity in the decades to come, they need to accept the responsibility to keep the option alive without a significant gap in its development. This means not only dealing more forcefully with the issues that were described above, such as licensing and waste managment; it also means taking steps to assure a continuity of knowledge, skills, procedures and traditions. It means shoring up our national efforts to deal with the long-range problems that may serve as obstacles to nuclear power, including perhaps such actions as improving support for nuclear and related engineering programs to assure a steady stream of qualified manpower, refining the regulatory procedures and approving designs for standardized plants; developing a partnership between government and industry to assure a continuity of trained management, workers and regulators; and forging a national commitment to an additional nuclear plant, perhaps jointly owned by government and industry, to provide a testing ground for the lessons we have learned and a trace of continuity between the nuclear generation of the past and that of the future.

The "imperative" of nuclear power is only an imperative of need. It is not self-fulfilling. The long-range outlook for its additional contribution is up to the decision-makers and the public, and the decisions that are made in the next several years—before the last nuclear plants under construction are completed—could have major implications for decades into the future. As more than 300 nuclear plants in operation around the world prove day in and day out, nuclear power has the potential to provide a major amount of our electric power safely and economically, for decades to come. But whether it will—its real outlook—is up to us.

SENATOR ROTH'S REMARKS BEFORE THE AIR FORCE SYSTEMS COMMAND HEADQUARTERS

Mr. RUDMAN. Mr. President, on June 6, the chairman of the Governmental Affairs Committee, Senator ROTH, made a very significant speech before the Air Force Systems Command. I ask unanimous consent that Senator ROTH's speech be printed in the RECORD.

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

SPEECH BY U.S. SENATOR WILLIAM V. ROTH, JR.

General Marsh, Distinguished Representatives of both the Air Force Systems Command and American Industry: it is indeed an honor and a pleasure to be here with you this afternoon.

I believe I can say, without fear of exaggeration, that the future defense of this land—in fact, the very peace and stability of the Free World—lies in a very important way in your hands.

I say this, because in my judgement, there is today a very real question as to whether the West has the will and the determination to meet the challenge of the East. The answer to that question rests, in large part, on whether the Free World can produce the necessary weapons at costs the Western democracies are willing to pay.

While most observers acknowledge the weapons of the West are qualitatively superior, it is also generally agreed that our conventional defenses are inferior to that of the East, particularly with respect to N.A.T.O. It is also thought that in the event of a conventional attack from the Warsaw Pact, we would quickly have to escalate to the use of nuclear weapons. In other words, our so-called "flexible response" no longer exists, if indeed it ever did. The Western conventional defenses are, in fact, inferior—even though the West spends more than the East in this regard.

The future success of our N.A.T.O. alliance depends upon our building a credible conventional defense, which, in turn, depends upon the so-called emerging technologies. The costs of these new weapons will be staggering; yet, have them we must, for there is a growing broad consensus on both sides of the Atlantic that the use of nuclear weapons is not a viable option. While a no "first use" declaration makes little sense under current conditions, we must nevertheless make our so-called "flexible strategy" viable by building a conventional defense that raises the threshold of nuclear war.

Well, how can this be done? It is this problem, that I should like to address, at least in part, this afternoon. Newsweek magazine recently called me a "Cheap Hawk," an appellation I like, as I do believe we must build up our defenses, but in doing so we must find ways to contain costs. With that in mind, I should like to propose two basic reforms.

First, there must be real arms cooperation between Western Europe and ourselves. Second, there must be a major reform in our own military procurement policy with respect to major weapons systems.

ARMS COOPERATION

For many years now, leaders on both sides of the Atlantic have agreed in principle on the necessity of an urgent and strong cooperative defense-industrial effort among the N.A.T.O. allies.

As one of the co-authors of an amendment (Roth-Nunn-Glenn) to the 1983 Defense Authorization Act urging such decisive action, I am frankly disheartened and alarmed at the lack of progress made in implementing such an effort.

In my opinion, we spend too much time preaching in public the virtues of cooperation, while in private we procrastinate about its implementation. Time, however, is a luxury N.A.T.O. can ill afford.

On paper, N.A.T.O. looks impressive. In terms of numbers of people under arms, and the total amount spent on defense, the West would appear to be more than adequate to meet the threat posed by the Warsaw Pact.

But statistics hide a grim reality. As a military force, N.A.T.O. actually functions as a loosely organizaed collection of 14 separate national defense efforts.

Each member determines what it will buy and when it will buy it. Levels of ammunition and other war reserves are set independently of total allied requirements. In fact, the N.A.T.O. Integrated Military Command commands very little that is integrated.

Consequently, N.A.T.O. forces are qualitatively uneven and quantitatively inferior to those of the Warsaw Pact. They have only a limited ability to rearm, repair, reinforce, support, supply or even communicate with one another.

The N.A.T.O. defense industrial base is fragmented into wasteful and duplicative national efforts. Each of the member nations tries to maintain some kind of defense industry, despite gross inefficiencies of scale.

Given these deficiencies and the comparative advantage enjoyed by the Warsaw Pact, N.A.T.O. must adopt and quickly implement a comprehensive "Resource Strategy." This would, of course, necessitate not only pooling the vast financial, technological and industrial resources already at hand, but cooperating more effectively in their defense efforts.

Cooperation rather than obstruction, action rather than procrastination is the path that must be followed.

In recent years, there has been some progress in enhancing armaments cooperation among the N.A.T.O. allies. Various memorandums of understanding between the U.S. and other N.A.T.O. countries have been agreed upon providing for coproduction or other forms of armaments cooperation. Within N.A.T.O., committees have been established to promote standardization, interoperability or commonality of weapons.

These are all welcome steps in the right direction. But these measures are either very limited in scope, or are essentially bilateral in nature. They do not fit into a comprehensive political or institutional framework. They are essentially piecemeal attempts to deal with the much larger problem: how to preserve the alliance by providing for our common defense at acceptable costs.

It is time to drop the "no trespassing" and "keep out" signs from our defense industrial policies. If the industrial democracies are going to preserve our shared values and way of life in the remaining years of this century, we must simply pull together.

There are three steps essential to real arms cooperation.

First, I believe it to be important that the Europeans rationalize their own arms procurement. Currently, it is characterized by the nationalism of the European members, whose needs do somewhat differ, and by the fact that the U.S. Department of Defense spends about four times more on research and development than all the other N.A.T.O. nations combined. Both these problems must be addressed by Europe as part of the so-called economic decline of Western Europe.

Secondly, there must be a transatlantic dialogue at the political level on how we might rationalize and restructure the nation's role, missions and industrial focus in the armament field. Dave Abshire as our ambassador to N.A.T.O. is leading this fight to develop what he calls a resource strategy.

Thirdly, we need industry-to-industry cooperation. The creation of the Council on Transatlantic Defense Cooperation is a step in that direction. John Culver, author of the Culver-Nunn Amendment, has led that development. Bill Whitehurst and myself have agreed with John to create a bi-partisan joint Congressional Caucus to support transatlantic arms cooperation.

The Roth-Nunn-Glenn Resolution calls for arms cooperation and it is the law of the land. However, if the concept is to become a reality, if it is to be fleshed out, we shall need your help in developing the consensus necessary for real arms cooperation. It will not be simple; it will not be easy. But, if we are to develop a new conventional arms defense based on the new technologies, arms costs must be contained through cooperation. Failure to do so risks the Atlantic Alliance, which has kept the peace for 35 years.

REFORM OF THE PROCUREMENT PROCESS

The second reform that I believe to be essential is the reform of our own military procurement process, particularly with respect to major weapons systems.

The present system is not satisfactory and its failures are eroding the consensus necessary for a strong defense. Already there have been serious efforts, even in the Senate to cut defense spending to "zero" growth, such as in the K.G.B. or Kassebaum, Grassley and Biden amendment. I need not review in detail these deficiencies for these charges are very well known. But factors like unconscionable charges for spare parts, "gold-plating", lack of competition and schedule "stretchouts" have plagued the acquisition process and given rise to charges of waste and mismanagement. These are not new; they did not rise with this administration or even with the last.

A recent report by the G.A.O., however, dramatically illustrates the problem. G.A.O. reviewed the Defense Department's budget procedures for its major weapons programs so as to provide an assessment of the realism of the Department's five year projection of funding requirements. The G.A.O. looked at the actual versus planned costs for 97 major weapons between the years 1963 and 1983. It found that Congress consistently had to provide substantially greater appropriations than anticipated for weaponry—an average of 32 percent or more! It also found out that even with the additional funding, the quantities of weapons which DOD is actually able to buy is consistently less than originally planned. In fact, since 1970 this pattern of receiving more money and purchasing fewer quantities of weapons has gotten worse and in the 13 year time period between then and now, DOD has never once been able to purchase the planned quantities.

These figures indicate that our acquisition process is in a serious state of disrepair, soaking up even the sizeable increases in funding which have occurred over the last three years and producing far less than we had hoped. We are buying less but continuing to spend more.

It is my firm conviction that the problem calls for major corrections. It is not enough to deal with it piecemeal; we must look at the very acquisition process itself. Frankly, part of the problem is that the Pentagon tries to micro-manage and fails to macro-manage. In other words, I am concerned that the services become so involved in details of military production that it becomes part of the problem. Presumably, the contractor is hired because he is an efficient producer and should not need constant government intervention. The government gets bogged down with so many details that it fails to ensure its procurements are cost-effective.

It is because of these considerations that I believe we should seriously consider shifting the responsibility for acquisition management from the military services to a centralized, civilian-operated acquisition agency that would report to the Secretary of Defense.

How would such a proposal help improve the management of the acquisition process? For one thing, a well-trained civilian would be assigned responsibility on a long-term basis for the performance and cost of a major weapon program. That individual would be held accountable for the cost increases and technical problems; similarly, that person could be rewarded for the successes of a program.

That certainly wasn't the case 14 years ago when Gilbert Fitzhugh, Chairman of the President's Blue Ribbon Defense Review Commission, poignantly remarked: "There is nobody that you can point your finger to if anything goes wrong and there is nobody you can pin a medal on if it goes right, because everything is everybody's business and . . . what is everybody's business is nobody's business." That characterization holds equally true today.

From all available evidence, it would appear that our procurement workforce today is not trained adequately, often does not have the experience necessary to deal effectively with complex weapon sysems and is frequently shifted in and out, from job to job. What results is a workforce that does not have sufficient familiarity with the systems and programs it manages and cannot be made to account for the results of their actions. "It didn't happen on my watch" is a phrase all too often heard.

The fault lies not so much with individual project managers and contracting officials—most of whom are devoted, hard-working individuals who do the best they can—but with the system itself.

Any system that assigns as many as 9 or 10 officers to manage the different stages of a multiyear procurement is asking for trouble, and trouble is just what we're getting.

Consider the following facts: The C-5 cargo plane has had nine different program managers during its problem-plagued lifetime; the project managers for the Army's Hellfire and Pershing II missiles, the Multiple Launch Rocket System and the Viper rocket have had an average tenure of only two years.

Since it takes a manager at least a year to master the ins and outs of a complex project, it's hard to escape the conclusion that these weapon programs are being managed at least half the time by people who don't really know what they are doing.

Moreover—according to a recent report by the Pentagon's Inspector General—there are serious shortcomings in the training of the Defense Department's 26,000 procurement specialists. Fully 67 percent of the senior and intermediate-level contracting personnel surveyed had not completed "mandatory" training requirements.

Interservice rivalries and military service domination of acquisition also makes it difficult—if not impossible—to implement uniform department-wide policies for procurement or to pursue potentially money-saving acquisition strategies such as joint service purchasing of weapons. A 1983 G.A.O. report noted, for example, that there has never been a successful joint procurement program between the services—one that could help assure substantial commonality among systems and achieve significant cost savings. The report also noted that the services have different organizational arrangements, standards, data requirements, manuals, provisioning procedures, military specifications and occupational skills in their acquisition systems. Even nomenclature and application of Department-wide requirements are different between the services.

Our current military service dominated acquisition system results, I am sad to say, in a confusing morass of different procurement organizations and policies, high turnover of personnel, poor training and experience for the government's workforce and almost no accountability for the success or failures of weapons programs.

In my judgement, a centralized civilian acquisition agency in DoD would help ensure the continuity of key personnel, reduce duplication and ultimately result in greater savings.

Furthermore, procurement is a business function, not a military one. Taking it out of the hands of the services would free up valuable military personnel to do the work they're trained to do: formulating military strategy, planning for contingencies and developing requirements for weapons to meet the nation's defense needs.

Under this proposal, the military would continue to perform the military functions of identifying threats, developing requirements for weaponry to fight those threats and commanding combat units. Only the management of the actual acquisition process would be changed.

The agency would be staffed by a highly-trained, well-paid cadre of civilian professionals similar, in some ways, to Foreign Service Officers. Unlike career military officers, these civilians would not be subject to rotation, but rather would devote their careers to the procurement process. They would also be fully accountable for the success or failure of the particular program for which they have been assigned. Finally, as a condition of employment, these civilian professionals would have to agree not to accept employment from a defense contractor for an extended period of time—say, 5 to 10 years—after leaving the government.

There is no doubt in my mind that this kind of proposal—this kind of reform—will encounter very stiff opposition, particularly from within the military services. This idea, however, is hardly unprecedented: similar systems like those emplaced in countries like Great Britain, Canada and West Germany have worked well and could serve as potential models.

I would also call your attention to the fact that the Grace Commission's "Task Force Report on the Office of the Secretary of Defense" has strongly suggested that DoD initiate a program to modernize, streamline and consolidate the total acquisition/procurement process. In the Commission's estimation, "the installation of consolidated management of the weapons acquisition process holds the potential of saving many billions, perhaps even tens of billions of dollars annually in the aggregate, from better decision making" (p. 143).

Support for such a civilian procurement agency is growing. Only last week, former Secretary of Defense Melvin Laird wrote me a letter which, among other things, stressed the point that our present procurement policies—dominated as they are by the military services—are seriously deficient and in need of major overhaul.

I believe everyone here would admit that some reform of the system is necessary. Where we might differ is on the degree and the extent to which reform is carried out. But, reform—in one form or other—is certainly mandated.

The current political climate suggests that reform might very well be imposed from without or from above. Presently, there are some 150 pieces of legislation before Congress dealing with spare parts. What this suggests is that American industry is neither "policing itself" nor exhibiting a large degree of "industrial statemanship." We are not suggesting that American industry be denied a profit; we are only demanding that it be a fair and justifiable profit. I have every reason to believe that American industry will meet this challenge of industrial leadership. You have displayed it in the past; I am confident you will display it in the future. What this country doesn't need is punitive legislation!

Furthermore, the current political climate suggests an absence of dialogue between all parties concerned. We need to communicate more with one another. We need your inputs, your recommendations and suggestions.

Today, as you know, is the 40th anniversary of the allied landings on the Normandy beaches. I suggest we can learn much from the cooperation between industry, the military and the congress that helped make that historic event so successful.

Let us show the American public and our allies that through cooperation we can rebuild our Nation's defenses efficiently and effectively to meet the challenges of today.

Thank you.

THE LEGAL FEES EQUITY ACT

Mr. HATCH. Mr. President, in July of 1981, the Constitution Subcommittee began a series of hearings to examine the degree to which recent Federal statutes and court opinions have subjected States and municipalities to growing liabilities for awards of attorney fees. Several leading State and local officials testified about the deleterious effects to these unanticipated liabilities. One State attorney general, for instance, noted that: "States * * * have shown that they have paid sometimes 10 times as much money to pay off these attorney fee awards than they had to pay to satisfy the monetary judgments entered in favor of the actual plaintiffs." Hearings on S. 584 and S. 585, Subcommittee on the Con-

stitution, 97th Congress (1st Session 561 (1981)). At the same time, officials in the Reagan administration undertook a review of the need for some standards to govern the award of attorney fees under numerous statutes which, under broadly defined circumstances, shift the entire expense of litigation to the State, local, or Federal Government defendant. The legislation, which I am sponsoring, the Legal Fees Equity Act, is the product of careful study to develop uniform standards for setting fees at levels sufficient to attract competent counsel without granting windfalls to lawyers.

This careful study has shown that standards for determining eligibility for and the amount of attorney fees awarded against Government parties have varied widely from court to court and State to State. This has often resulted in the award of excessive fees. For example, some courts have even used "multipliers" to double or triple an attorney's customary hourly rate when computing the amount of a fee award. These inconsistent and troublesome results are primarily due to the ambiguity of fee-shifting statutes which provide no uniform standards for the award of attorney fees to a litigant who prevails to some degree in litigation against a government. Judicial and administrative officers are simply left without adequate guidelines in the law to fashion uniform and fair awards.

The clear disparities in attorney fee policies are made evident by comparing the lack of definition in Federal fee-shifting statutes governing in civil proceedings with the harsh strictures of the Criminal Justice Act [CJA]. Under the CJA, attorneys who defend indigent criminal suspects have received the same rates—$20 an hour for time expended on a case out of court and $30 an hour for time spent on a case in court—since 1970. From 1970 to 1982 alone, the consumer price index rose from 116.3 to 289.1—1967 equals 100. Because simple equity demands a reduction in the discrepancy between the awards granted private attorneys who sue governments in civil cases and the awards granted private attorneys who represent indigent criminal defendants, the Legal Fees Equity Act doubles the hourly rates compensable under the CJA.

Thus, the Legal Fees Equity Act is needed to provide standards and procedures for awarding attorney fees in proceedings against the United States as well as State and local governments in cases where Federal statutes allow such awards. In addition, this legislation will double the current fees for attorneys who defend indigents in criminal trials and receive compensation under the Criminal Justice Act.

Since first established by the Supreme Court in 1796, *Arcambel* v. *Wiseman*, 3 Dall. 306 (1796), the basic rule in America for the compensation of counsel has been that each party to a judicial proceeding is expected to bear the cost of his own litigation. The Supreme Court ruled in *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 240 (1974), that Federal courts lacked power to create exceptions to this rule by awarding fees to attorneys who undertook to enforce certain important rights. Alyeska makes it clear, however, that Congress may create exceptions to the traditional American rule by statute.

Since 1974 Congress has enacted over 129 fee-shifting statutes. These statutes authorize recovery of attorney fees in cases against State and local governments as well as the Federal Government. Most of these statutes simply grant the court discretion to award reasonable attorneys' fees to the prevailing plaintiff in a suit against a government. These enactments offer little or no guidance as to the limits of judicial discretion, the standards for determining a reasonable fee or the degree of success necessary to satisfy the prevailing requirement. Accordingly, the amount and complexity of litigation to determine the amount of counsel fees under these fee-shifting statutes has increased dramatically. In 1980 alone, the Supreme Court issued nine opinions on the award of attorney fees. That same year, the Fifth Circuit decided over 50 reported cases on counsel fees.

The Supreme Court reacted to this veritable flood of litigation with the comment that "a request for attorneys fees should not result in a second major litigation." *Hensley* v. *Eckerhart*, 103 S.Ct. 1933, 1941 (1983). In that same case, Justice Brennan argued that litigation over attorney fees "serves no productive purpose, vindicates no one's civil rights, and exacerbates the myriad problems of crowded appellate dockets." (Id. at 1950.) A hint of the Supreme Court's frustration with the absence of adequate legal standards governing the award of reasonable fees emerges later in Justice Brennan's concurrence: Ultimately—the fee shifting statute's—straightforward command is replaced by a vast body of artificial, judgmade doctrine, with its own arcane procedures, which, like Frankenstein's monster, meanders its well intentioned way through the legal landscape leaving waste and confusion—not to mention circuit splits—in its wake. (Id. at 1951.)

Not only has the absence of standards for the award of attorney fees clogged the courts, it has also led to exorbitant fee awards. A recent request for fees in Massachusetts is an example of this problem. A zoning law was declared unconstitutional after a lengthy series of appeals. The attorney, who is also a full-time law professor, requested $331,441 in fees at an effective hourly rate of $412.50 an hour for his services. The Washington Post issued the following commentary on that case:

> High-priced lawyers are just charging much too much—to the point of caricature—and the folks expected to pay their fees should put an end to the practice. Just because well-heeled private clients dole out huge sums doesn't mean that the public should be equally generous. The "prevailing wage" approach that government uses when it is buying services—which is the essence of Professor Tribe's claim—has a superficial appeal. But on closer inspection it reveals elements of a gigantic rip-off. * * * Lawyers—even civil rights lawyers—need at least as much wage restraint as others when it comes to billing the government.

The Post might also have asked how an hourly rate of $412.50 can be justified alongside the limits of $20 per hour imposed on attorneys relying on the Criminal Justice Act.

In the absence of adequate computation standards, attorney fee awards have also been subject to the criticism that the award is disproportionate to the degree of success achieved in the underlying case. For instance, in *Skoda* v. *Fontani*, 646 F.2d 1193 (7th Cir. 1981), the plaintiff was awarded $1 in damages, but the attorney fee award was awarded over $6,000. In *Rivera* v. *City of Riverside*, 679 F.2d 795 (9th Cir. 1982), the plaintiff was awarded $33,000 in damages, but the attorney fee award was nearly a quarter of a million dollars. The National Association of Attorneys General recently completed an exhaustive report on the award of attorney fees under the fee-shifting statute most often employed against State and local governments. This report gives a comprehensive overview of the problems created by the lack of adequate standards for the award of attorney fees. I would urge each of my colleagues to read this report.

The overall purpose of this proposal is to provide the courts and Federal agencies with greater guidance in implementing Federal fee-shifting statutes. This bill would not deny fees to prevailing attorneys, but would set standards and procedures to ensure that such fees are "reasonable." An important element of the standards proposed by this legislation is a cap of $75 per hour on attorney fees awarded against the Government in civil judicial or administrative proceedings. This $75 per hour fee cap is the same rate established in the recently enacted Equal Access to Justice Act, 28 U.S.C. 2412(d) and 5 U.S.C. 504(b). The bill would, therefore, allow courts to compensate private attorneys at a level commensurate with, though still higher than, that received by the Government attorneys they oppose.

In the absence of adequate statutory guidance, some courts have used bonuses and multipliers extensively to

escalate awards. Multipliers were justified as compensation for litigating a particular complex case, as a reward for high quality work by the attorney, or as an offset for the riskiness or contingency of the case. In the recent Supreme Court case of *Blum* v. *Stetson*, — U.S. — (Mar. 21, 1984) (slip op. No. 81-1374), found that these justifications for multipliers "do not withstand examination." (Id. at 9.) The complexity of a case will be reflected in the number of hours expended in preparation. The quality of an attorney's work will be reflected in the customary hourly rate used to compute his award. Contingency is an element of every case brought under these fee-shifting statutes because they require a litigant to prevail in order to qualify for an award. This "prevailing" requirement was enacted by Congress to discourage frivolous or meritless suits. Granting a bonus for risky cases would be at odds with Congress' intent to award fees only for meritorious suits. Thus, where bonuses are used to compensate attorneys who are handling complex or novel cases, the net result is to inflate compensation which has already been adequately provided. Bonuses for contingency defeats a primary purpose of only compensating litigants for meritorious suits. Consistent with the Stetson case, this bill would eliminate the use of multipliers and bonuses in an effort to avoid absurdly high awards.

The bill is intended to apply to all awards of attorney fees against the United States and any State or local government. Its provisions apply to, and modify, all Federal fee-shifting statutes, but do not supersede more restrictive criteria contained in other statutes. This includes awards made under the Equal Access to Justice Act, except certain specified provisions of that act.

Federal fee-shifting statutes generally contain language indicating that such awards are available only to "prevailing parties." Ambiguities have developed concerning when a party has adequately prevailed so as to come within the statutes. For example, *Nadeau* v. *Helgemoe*, 581 F.2d 275 (1st Cir. 1978), adopted a standard which held that if a party had succeeded "on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit, "while *Taylor* v. *Sterrett*, 640 F.2d 663 (5th Cir. 1981), held that a party must have been "successful on the central issue as exhibited by the fact that he has acquired the primary relief sought."

The Legal Fees Equity Act, which I am proposing, clarifies this standard by requiring that a party prevail on the merits in order to obtain an award of fees. The bill's standard is neither as lenient as the "some benefit" test nor as strict as the "central issue" test. The relief sought must be "significant," not merely of "some benefit." Moreover an award of attorney fees may not be obtained prior to a final judgment. This latter requirement is not meant to be read so as to preclude interim awards where Congress has authorized them in the various fee-shifting statutes. Neither is the requirement of final disposition intended to preclude recovery of attorney fees where settlement is reached prior to judgment. Such settlements are generally desirable and so long as it can be shown that the party has prevailed on the merits of the relief sought an award of attorneys' fees may still be obtained.

Where a settlement offer is made by government officials and refused by the plaintiff who is unable thereafter to do any better at final judgment, this bill would deny the recovery of attorney fees for services performed subsequent to the refused offer. Such a provision will encourage government officials to make responsible settlement offers and urge complainants to give those offers meaningful consideration. Of course, where refusal is reasonable under the circumstances this provision would not apply.

The bill also provides that the amount of any judgment awarded against the United States, or against a State or local government shall be reduced by the amount of the attorney fees, not to exceed 25 percent of the judgment. This provision ensures that prevailing parties will pay part of their legal expenses from any monetary award. This subsection of the bill is not applicable to specific sections of the Equal Access to Justice Act, to certain tax cases or where it would result in undue hardship to the party.

Due to the protracted nature of some litigation, a claim may be rendered moot by State or Federal legislation enacted prior to judicial resolution of the conflict. Under existing case law such a turn of events would not preclude a recovery of attorneys' fees where a court determined that the case was a catalyst for the legislative change. See, e.g., *Maher* v. *Gagne*, 448 U.S. 122 (1980). This judicial doctrine, however, involves the courts in the rather difficult and unpredictable process of determining that a particular court action was the catalyst for a legislative enactment. As my colleagues understand, legislators rarely have the same things in mind when voting for a particular bill. A judicial inquiry into legislative motives is difficult at best. The Legal Fees Equity Act provides a standard for determining when a case provides such a catalyst by requiring that the litigation be a "material factor" in the legislative change. This provision would permit legislators and other State officials to proceed with policy changes without fear of incurring costly litigation expenses because some pending suit peripherally relates to their actions.

Finally, the bill contains several other provisions for timely application and uniform procedures to be followed in seeking recovery of attorney fees. The provisions of this bill would apply to all cases commenced subsequent to enactment as well as to those commenced prior to enactment respecting that amount of the attorney fees and expenses incurred following the date of enactment.

Mr. President, the sparsity of guidance given by the terse language of the myriad fee-shifting statutes is perhaps itself sufficient evidence that some clear standards are necessary to govern the award of attorney fees. Moreover the need to provide greater balance between the attorney fees policies applicable to lawyers representing indigent criminal defendants and those applicable to lawyers who sue governments civilly argues for the Legal Fees Equity Act.

Along with a copy of the Legal Fees Equity Act, I ask that the report of the National Association of Attorneys General, and the Washington Post editorial from December 16, 1983 be included in the RECORD following my remarks.

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

[Report to Congress—From the National Association of Attorneys General]

CIVIL RIGHTS ATTORNEY'S FEES AWARDS ACT OF 1976

FOREWORD

. . . [O]ne of the least socially productive types of litigation imaginable [is] appeals from awards of attorney's fees . . .

Ultimately, § 1988's straightforward command is replaced by a vast body of artificial, judge-made doctrine, with its own arcane procedures, which like a Frankenstein's monster meanders its well-intentioned way through the legal landscape leaving waste and confusion (not to mention circuit-splits) in its wake.

Hensley v. Eckerhart, 103 S. Ct. 1933, 1944, 1951 (1983) (Brennan, Marshall, Blackmun, and Stevens, JJ., concurring in part and dissenting in part).

The only truly consistent thread that runs through federal court decisions on attorney's fees is their lack of consistency.

[I]nordinately high fee awards in some cases, and the absence of a coherent rationale for justifiably large awards in other cases, have lent support to the sentiments of the Italian proverb that "a lawsuit is a fruit tree planted in a lawyer's garden."

Berger, *Court Awarded Attorney's Fees: What is "Reasonable"?*, 126 Pa. L. Rev. 281, 292 (1977).

As the foregoing comments suggest, courts and commentators alike have become critical of attorney's fees litigation. Since passage of the Civil Rights Attorney's Fees Awards Act of 1976, one constant voice expressing concern has been that of the National Association of Attorneys General, which has continuously monitored the implementation and effect of the Act. On the basis of its collective experience, the Asso-

ciation has become increasingly concerned that the Act, as interpreted and applied by the courts, is operating contrary to its original purpose. Rather than simply facilitating access to the courts for disadvantaged victims of civil rights violations, a purpose that the Association wholeheartedly endorses, the Act has had the unintended effects of encouraging frivolous noncivil rights claims, deterring settlement of meritorious claims, awarding fees to plaintiffs who do not actually prevail, conferring unreasonable "windfall" fees on plaintiffs' counsel, draining public treasuries, and fostering an avalanche of litigation on attorney's fees that threatens to bury the underlying civil rights claims that the Act was intended to vindicate.

In this report, the Association outlines and documents these adverse and unintended applications of the Act and recommends the enactment of statutory standards that would restore the Act to its original purpose, provide needed guidance to the courts and the bar, and mitigate the possibility of abuse. In particular, the Association recommends that the Act be amended to apply solely to true civil rights cases; to define "prevailing party" in a realistic manner; to restore and guide judicial discretion to award or deny fees; to provide workable standards for computing a "reasonable" fee; to impose a ceiling on the hourly rates at which attorneys may be compensated; to prohibit the award of "bonuses" in excess of reasonable compensation for time reasonably spent by prevailing counsel; and to provide additional incentives for settlement.

This report begins with an outline of the Association's findings and recommendations, which is followed by a discussion and analysis of the basis for each finding and recommendation. After documenting the magnitude of the problem created by the lack of coherent and workable standards (Finding and Recommendation No. 1), the report makes specific findings and recommendations concerning the scope of the Act (Finding and Recommendation No. 2), the standard for determining a party's eligibility for fees (Findings and Recommendations Nos. 3, 4, and 5), and the standard for calculating a "reasonable" attorney's fee (Findings and Recommendations Nos. 6, 7, and 8). Finally, the report discusses the adverse impact of the Act on the process of dispute resolution both in and out of court, and recommends how that problem could be alleviated by legislative reform (Finding and Recommendation No. 9).

The various recommendations contained in this report are not intended to discourage or inhibit victims of civil rights violations from redressing their grievances through litigation. Rather, the intent of these recommendations is to turn the focus of civil rights litigation away from fee disputes and return it to the aggrieved parties whose rights the Act was intended to vindicate. This report does not take issue with the Congressional determination that a public entity that violates a person's civil rights should be burdened with having to pay attorney's fees necessary to prove such a violation. However, the process for awarding fees, the amounts of fees awarded, and the underlying claims must be viewed in light of the purposes of the original Act. As indicated by the findings contained in this report, the Act is operating contrary to its original purposes. Legislative action, along the lines recommended in this report, is urgently needed.

RESOLUTION

In plenary session on June 25, 1983, the Association adopted the following resolution:

Whereas, litigation under the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988, is expanding at an alarming rate with further expansion in the future a near certainty; and

Whereas, lack of meaningful standards to determine what is a "reasonable" attorney's fee in any given case consistently results in exorbitant court-ordered fee awards paid from public treasuries of state and local governments and creates additional problems for public defendants; and

Whereas, cases decided under the Fees Act frequently involve the characterization of parties as "prevailing" for purposes of collateral attorney's fees requests when, in fact, they have not prevailed in any meaningful sense on the merits of their claim; and

Whereas, the reported Fees Act opinions so narrowly circumscribe the ability of lower courts to determine when special circumstances exist that justify outright denial of requested fees that the discretion expressly contemplated by the Fees Act itself can rarely be exercised at all; and

Whereas, a special subcommittee chaired by Attorney General Kenneth Eikenberry has studied abuses under 42 U.S.C. § 1988 and has compiled its findings into [this] Report;

Now, therefore, be it resolved, that the National Association of Attorneys General:

1. Urges the Congress to adopt legislation that will eliminate these and other related problems that have resulted from abuses under 42 U.S.C. § 1988;

2. Commends Attorney General Eikenberry and members of the Subcommittee for the diligent work on this matter and adopts the Report as part of the Association's policy position; and

3. Authorizes its General Counsel to transmit these views to the appropriate members of the Administration and Congress.

INTRODUCTION

A. Purpose of the Civil Rights Attorney's Fees Award Act

The Civil Rights Attorney's Fees Awards Act of 1976 was passed in direct response to the Supreme Court's decision in *Alyeska Pipeline Service Co. v. Wilderness Society,* 421 U.S. 240 (1975), which held that federal courts do not have the power to award attorney's fees to a prevailing party without express statutory authorization.[1] Prior to *Alyeska,* federal courts had been awarding attorney's fees to the prevailing party in civil rights cases on the theory that, in bringing such cases, plaintiffs serve in the capacity of "private attorneys general," seeking to vindicate constitutional rights, not for themselves alone, but also for the benefit of others similarly situated. By holding that the federal courts lack authority to award fees under such circumstances, *Alyeska* "created anomalous gaps in our civil rights laws," which the Act was intended to fill.[2]

The Act was thus intended to remove financial barriers that would otherwise prevent access to the courts by disadvantaged plaintiffs acting in the role of private attorneys general, by affording successful civil rights plaintiffs "the opportunity to recover what it costs them to vindicate these rights in court." [3] Such a measure was viewed as desirable in order to enforce "major civil rights laws," [4] protecting the most "basic" and "fundamental" civil rights.[5]

As a "narrowly drawn" response to *Alyeska,*[6] the Act was not intended as a wholesale abrogation of the "American Rule" that each party must bear its own litigation costs. Rather, it was viewed by its proponents as "only a first step and a rather limited and cautious one." [7] The proponents of the Act repeatedly emphasized its limited purpose by reiterating that the Act was not intended to "aid [ ] lawyers," [8] encourage meritless litigation,[9] or provide "windfalls" to prevailing counsel.[10] Rather, Congress stressed the Act's relatively moderate approach of authorizing courts, in their discretion, to award a "reasonable" attorney's fee to prevailing parties in certain civil rights cases, in contrast to that of more liberal statutes providing for mandatory fee awards or awards to nonprevailing parties.[11]

B. Good intentions gone away: A need for legislative action

As will be shown in this report, the good intentions of Congress outlined above have not been realized. Rather than simply facilitate the vindication of meritorious civil rights claims, as Congress intended, the Act has operated to foster a flood of litigation on the entitlement to and amount of attorney's fees. Rarely has a federal statute had the immediate and explosive impact on litigation involving state officials as has this Act. Particularly after *Maine v. Thiboutot,* 488 U.S. 1 (1980),[12] it has become routine for all governmental litigation—from the most complex class actions for institutional reform to the most commonplace complaints for state judicial review of administrative decisions—to include requests for attorney's fees under the Act. Not surprisingly, the soaring number of attorney's fees claims is reflected in the burgeoning amount of litigation engendered by the Act itself.

These developments are both undesirable and unnecessary. One can hardly conceive of a less socially valuable use of resources than fees litigation.[13] State and federal taxpayers are now routinely subjected to the spectacle of publicly-funded counsel making claims for fees to be paid by publicly-funded agencies, defended by publicly-funded attorneys general, and decided by publicly-funded courts. While no single participant in these exercises is exclusively responsible, it is the Association's firm belief that the lack of statutory standards governing the application for and adjudication of fee awards has unnecessarily encouraged unreasonably high requests, stymied settlement efforts, forced these matters into litigation, and permitted inconsistent, excessive, and ever-escalating fee awards. This chain of events has caused an outcry by the bench, the bar, and the tax-paying public for legislative reform.

The Association therefore urges the Congress to enact clear standards of eligibility for and computation of fee awards under the Act, in accordance with the recommendations contained in this report. Provision for such standards would render the application of the Act more consistent and, hence, more reasonable, to the mutual benefit of civil rights plaintiffs, state taxpayers, and the judiciary. Greater certainty would promote settlement, reduce fee litigation, and thereby permit counsel and the courts to devote more attention to substantive matters.

Footnotes at end of article.

The Association wishes to emphasize that it endorses the salutary purpose of the Act and is committed to the Act's concept of reasonable fees to prevailing parties in civil rights cases. The recommendations contained in this report are intended to further the Act's original purpose while eliminating its unintended and undesirable side-effects.

FINDINGS OF THE ASSOCIATION

Finding No. 1: Litigation under the Fees Act is expanding at an alarming rate with further expansion in the future a near certainty.

Finding No. 2: The Act, as interpreted and applied by the courts, makes attorney's fees available not only in civil rights cases but in virtually all cases against state and local governments or officials.

Finding No. 3: Cases decided under the Fees Act frequently involve the characterization of parties as "prevailing" for purposes of attorney's fees awards when, in fact, they have not prevailed, in any meaningful sense, on the merits of their claims.

Finding No. 4: In cases where the requesting party has, in fact, prevailed to some extent, attorney's fees awards under the Act are frequently disproportionate to the degree of success actually achieved.

Finding No. 5: The Fees Act, as interpreted and applied by the courts, makes the award of fees to a prevailing party virtually mandatory, thereby eliminating the "discretion" expressly granted to the courts by the Act.

Finding No. 6: Lack of meaningful standards for determining what constitutes a "reasonable" attorney's fee in any given case results in inconsistent and often excessive fee awards and makes it difficult to settle claims for attorney's fees.

Finding No. 7: Courts routinely make "bonus" awards or apply "multipliers" to the hourly rates set for prevailing counsel, resulting in grossly inflated awards constituting a "windfall" to prevailing counsel.

Finding No. 8: In applying the Fees Act to prevailing parties represented by publicly-funded salaried attorneys, courts normally award fees based on hourly rates charged by private counsel, resulting in windfalls that substantially exceed the actual cost of the litigation.

Finding No. 9: The Fees Act affects the process of legal dispute resolution in a way that is unfair to public defendants and that further burdens the courts by:

A. making it more desirable for plaintiffs to commence litigation, rather than settle disputes informally;

B. making it more advantageous for plaintiffs to continue litigation rather than settle where any meritorious claim is presented;

C. making it less desirable, once litigation is underway, for public defendants to alter challenged laws, administrative regulations, or official positions in any way that favors the plaintiffs;

D. making it less desirable for public defendants to litigate those close issues that should be litigated; and

E. making it difficult for plaintiffs and defendants to settle claims for attorney's fees.

RECOMMENDATIONS OF THE ASSOCIATION

Recommendation No. 1: The Congress should amend the Act, as specified in the further recommendations enumerated hereunder, to provide clear and precise standards governing eligibility for and computation of attorney's fees awards under the Act.

Recommendation No. 2: The Congress should amend the Fees Act to apply only to civil actions to redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage, of any right secured by a provision of the Constitution of the United States or an Act of Congress providing for individual civil rights of citizens or of all persons within the jurisdiction of the United States.

Recommendation No. 3: The Congress should amend the Fees Act to require that, in order to be eligible for a fee award, a party must clearly and substantially prevail on the merits of each issue or claim as to which fees are being sought.

Recommendation No. 4: The Congress should amend the Fees Act to require that courts apportion the amount of fee awards to the degree of success actually attained by the prevailing party.

Recommendation No. 5: The Congress should amend the Fees Act to provide expressly that a court may deny fees where, in the court's view, denial is appropriate, including, but not limited to, cases in which the court determines:

A. that the defendant's position was substantially justified or advanced in good faith; or

B. that an award of fees would not further the substantive purposes of the Act.

Recommendation No. 6: The Congress should amend the Fees Act to provide that the prevailing party shall not be awarded fees in excess of $75 per hour.

Recommendation No. 7: The Congress should amend the Fees Act to prohibit the award of bonuses or multipliers in excess of compensation at a reasonable hourly rate for the number of hours reasonably spent by prevailing counsel.

Recommendation No. 8: The Congress should amend the Fees Act to provide that, where the prevailing party is represented by a publicly-funded legal services organization, courts should compute a reasonable hourly rate for such counsel based on the actual costs of the litigation to the organization, including the proportion of the attorney's annual salary and of the organization's annual overhead attributable to the number of hours reasonably spent on the case.

Recommendation No. 9: The Congress should amend the Fees Act to provide that the court shall deny attorney's fees to a prevailing party, where it determines:

A. that the lawsuit was brought principally for the purpose of obtaining attorney's fees; or

B. that the prevailing party rejected an offer of judgment made pursuant to Rule 68 of the Federal Rules of Civil Procedure, or a cognate state rule of procedure, that was more favorable than the relief ultimately granted by the court, in which case no fees shall be awarded for the services rendered after the date of the offer.

DISCUSSION OF FINDINGS AND RECOMMENDATIONS

Finding No. 1: Litigation under the Fees Act is expanding at an alarming rate with further expansion in the future a near certainty.

Since the inception of the Act in 1976, litigation on eligibility for and computation of attorney's fees has mushroomed. The number of reported cases involving attorney's fees is tremendous. West's annotations to 42 U.S.C. § 1988 now fill 179 closely printed pages.[14] A computer search for cases arising under § 1988 revealed almost 3,000 federal and state decisions as of December 1983. The advance sheets routinely report numerous attorney's fees cases each week; and the Supreme Court decides fee cases every term, while declining to review many more. Indeed, in just one month in 1980, the Court rendered six major attorney's fees decisions.[15]

This explosion of fee litigation has engendered numerous law review articles,[16] and several treatises on the subject,[17] as well as a bi-monthly newsletter designed to keep attorneys apprised of current developments in the area of attorney's fees.[18] As noted by Lloyd Cutler,[19] in his Foreword to a recent three-volume treatise on court-awarded attorney's fees, this Act and other similar fee-shifting statutes "have created a new field of law that has grown so fast and become so complex that it has baffled the efforts of courts and lawyers to comprehend and apply it."

The vast amount of litigation on attorney's fees has led the courts to complain that "the fee proceedings have become the main event rather than the side show" such that "the [attorney's fees] tail is wagging the [civil rights] dogs."[20] The Supreme Court has added its voice to this mournful chorus, recently stating that "a request for attorney's fees should not result in a second major litigation."[21] Other concurring and dissenting justices in the same case characterized fee litigation as "one of the least socially productive types of litigation imaginable" and bemoaned the fact that "[s]uch appeals [from fee awards], which greatly increase the costs to plaintiffs of vindicating their rights, frustrate the purposes of § 1988."[22] Those justices went on to state that:

Congress enacted § 1988 . . . not to spawn litigation, however interesting, over [attorney's fees]. . . . In systemic terms, attorney's fees appeals take up lawyers' and judges' time that could more profitably be devoted to other cases, including the substantive civil rights claims that § 1988 was meant to facilitate.

Ultimately, § 1988's straightforward command is replaced by a vast body of artificial, judge-made doctrine, with its own arcane procedures, which like a Frankenstein's monster meanders its well-intentioned way through the legal landscape leaving waste and confusion (not to mention circuit-splits) in its wake.[23]

As the above quotation indicates, the flood of litigation under § 1988 has done little to resolve the many questions arising from its implementation. Very few hard and fast rules have developed, and conflicts exist not only among circuits but often among the district courts or panels of a single circuit.[24] As a result of this continuing confusion, litigation in this area will undoubtedly continue to expand. For example, as indicated by the numerous lower-court majority and dissenting opinions citing or "explaining" *Hensley v. Eckerhart*,[25] the Supreme Court's latest "pronouncement" on § 1988, that case, like many of its predecessors, has apparently raised as many questions as it has answered.

Apparently, the confusion over the proper interpretation and application of § 1988 can be resolved only by the Congress. As noted by one commentator,

Because [fee-shifting] is contrary to two hundred years of experience in American federal courts, the cases have been difficult for lawyers and judges alike. Understanding has not been materially helped by Congress which has frequently passed attorney fee provisions with . . . only minimal or inconsistent direction how the measures are to be interpreted and applied.

Derfner & Wolf, *supra* at ix. Only by setting clear statutory standards for the application of the Act can the rising tide of needless litigation be stemmed.

Recommendation No. 1: The Congress should amend the Act, as specified in the further recommendations enumerated hereunder, to provide clear and precise standards governing eligibility for and computation of attorney's fees awards under the Act.

Finding No. 2: The Act, as interpreted and applied by the courts, makes attorney's fees available not only in civil rights cases but in virtually all cases against state and local governments or officials.

The proponents of § 1988 touted the Act, as its name implies, as a measure designed to protect "basic" and "fundamental" civil rights by encouraging private enforcement of our "major civil rights laws," including § 1983.[26] Although there is strong evidence that Congress viewed § 1988 as a civil rights measure,[27] the Supreme Court subsequently held in *Maine v. Thiboutot* that fees are available not only in civil rights cases but in any action under § 1983, which the Court construed to include cases arising under *any* federal statute or constitutional provision.[28] In response to the state's argument that such a construction is contrary to legislative intent, the Court suggested that "[t]hat argument . . . can best be addressed to Congress, which, it is important to note, has remained quiet in the face of our many pronouncements on the scope of § 1983." [29] In his dissenting opinion in *Maine v. Thiboutot,* Justice Powell predicted that the Court's decision would "dramatically expand the liability of state and local officials and may virtually eliminate the 'American Rule' in suits against those officials." In Justice Powell's prescient view, the

[P]ractical effect [of the majority opinion] means that state and local governments, officers and employees now face liability whenever a person believes that he has been injured by the administration of *any* federal-state cooperative program, whether or not that program is related to equal or civil rights.

. . . [I]ngenious pleaders may find ways to recover attorney's fees in almost any suit against a state defendant.[30]

Even at that time, Justice Powell observed that "[t]here is some evidence that § 1983 claims already are being appended to complaints solely for the purpose of obtaining fees in actions where 'civil rights' of any kind are at best an afterthought." [31]

Unfortunately for state governments and their taxpayers, Justice Powell's prediction has now become a painful and expensive reality. Fees are now routinely sought and awarded in even the most routine state court reviews of administrative agency decisions, having little or no bearing on civil or equal rights. For example, the Supreme Judicial Court of Massachusetts ruled that a plaintiff who succeeded in obtaining a reversal of an administrative decision, thereby obtaining $250 toward the purchase of a washing machine, was entitled to attorney's fees under § 1988. The court reasoned that since the plaintiff's complaint contained a claim, not reached by the court, that the regulation in question violated the Equal Protection Clause of the United States Constitution (by discriminating between those who have broken-down washing machines and those who have none), a claim which the court viewed as "substantial," the action was one to enforce the provisions of § 1983, thereby invoking the fee-shifting provisions of § 1988.[32]

The *Stratos* case illustrates another related problem that has arisen under § 1988. Relying on statements in the legislative history of the Act that, in cases containing both § 1983 and non-§ 1983 claims, if the § 1983 claim meets the "substantiality" test articulated in *Hagans v. Lavine,* 415 U.S. 528 (1974), then attorney's fees may be allowed even though the court declines to enter judgment for the plaintiff on that claim,[33] courts have often awarded fees where the § 1983 claim is weak, but not "obviously frivolous," "absolutely devoid of merit," or "wholly insubstantial." [34] As noted by Justice Rehnquist in his dissenting opinion in *Hagans,* the substantially test is met whenever the "plaintiff is able to plead his claim with a straight face." [35] The effect of that test is therefore to stand the concept of federalism on its head by "federalizing" nearly all claims against state or local officials.[36]

The application of the substantiality test to § 1988 means that plaintiffs can recover fees under § 1988, even when they lose on their federal civil rights claims. For example, in *Seals* v. *Quarterly County Court,* 562 F.2d 390 (6th Cir. 1977), the district court had ruled in plaintiff's favor on state law grounds but had ruled *against* him on his § 1983 claim. Nevertheless, the Sixth Circuit held that plaintiff was entitled to fees under § 1988, since his claim under § 1983 was "substantial."

Clearly, in enacting § 1988, Congress did not intend to encourage litigants to pad their meritorious state law complaints with weak or meritless civil rights claims, in order to obtain fees under § 1988. Yet, that is the net effect of the case law discussed above. Congress must therefore act to clarify its original intent that § 1988 be used to enforce our most basic and fundamental civil rights. The Association is concerned that the statute not be revised so as to impair individuals seeking full redress for violations of their civil or equal rights. However, the Association believes that a restoration of the scope of the Act to pre-*Thiboutot* coverage is necessary.

In so acting, Congress will be able to answer a number of nagging questions concerning the proper scope of the statute: should it apply to cases brought by corporations or other business entities? Should it apply to all cases raising constitutional questions? One case that raises these questions and has already sparked considerable public criticism is *Grendel's Den* v. *Larkin,* No. 77-3418-T (D. Mass.). In that case, Harvard Law School Professor Lawrence Tribe is seeking almost $350,000 in attorney's fees and costs for his successful efforts to obtain a liquor license for a restaurant in Harvard Square. Although the Supreme Court's decision on the merits of that case was based on the Due Process and Establishment Clauses of the United States Constitution, it is unlikely that this liquor license matter is the type of case that Congress had in mind when it enacted § 1988 as a means of protecting disadvantaged victims from violations of their most basic human rights.[37]

Recommendation No. 2: The Congress should amend the Fees Act to apply only to civil actions to redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage, of any right secured by a provision of the Constitution of the United States or an Act of Congress providing for individual civil rights of citizens or of all persons within the jurisdiction of the United States.

Finding No. 3: Cases decided under the Fees Act frequently involve the characterization of parties as "prevailing" for purposes of attorney's fees awards when, in fact, they have not prevailed, in any meaningful sense, on the merits of their claims.

Although the Act expressly provides that only a "prevailing" party may be awarded fees, the application of this provision by the courts to cases where parties have not prevailed in any meaningful sense has effectively eliminated the prevailing party requirement, contrary to the express language of the statute and the underlying Congressional intent. In numerous cases where judgment was rendered for the defendant, courts have nevertheless viewed the plaintiff as a prevailing party for purposes of § 1988 fee awards. For example, in *NAACP v. Wilmington Medical Center, Inc.,* 689 F.2d 1161 (3rd Cir. 1982), *cert. denied,* 103 S. Ct. 1499 (1983), the district court dismissed plaintiffs' claims against the state and federal defendants and, after trial, held that plaintiffs had failed to prove discrimination by the Wilmington Medical Center and accordingly entered judgment for the defendants and denied plaintiffs' request for fees. On appeal, the Third Circuit reversed the denial of fees, stating that "[t]he fact that a judgment was ultimately entered in favor of [the defendant] does not make the plaintiffs any less the prevailing party.[38] The court ruled that plaintiffs had "prevailed" since they had obtained "some of the benefits sought by the litigation," even though the actual "benefits" obtained, by means of an agreement between the state and federal defendants, had been vigorously but unsuccessfully *opposed* by the plaintiffs in the litigation.[39]

Similarly, in *Dayan v. Board of Regents,* 620 F.2d 107 (5th Cir. 1980), the Fifth Circuit affirmed the district court's ruling for the defendant on the merits, that the defendant's "rational procedural policy violates neither the First Amendment nor the Fourteenth Amendment to the United States Constitution," yet also affirmed an award of fees to the plaintiffs on the ground that they had obtained "substantial voluntary relief as a direct result of their lawsuit."[40] Another example of an award of fees to a losing party appears in *Ross v. Horn,* 598 F.2d 1312 (3rd Cir. 1979), *cert. denied,* 448 U.S. 906 (1980), in which the appellate court remanded the case for a redetermination of plaintiffs' eligibility for fees while, at the same time, affirming the district court's holding that the procedures employed by the defendant in processing suspected unemployment fraud cases adequately protected plaintiffs' statutory and constitutional due process rights.

In a number of cases, plaintiffs have been awarded fees where the benefits sought in their complaint were obtained by legislative action before a final judicial decision could be rendered on the merits. For example, in *DeMier v. Gondles,* 676 F.2d 92 (4th Cir. 1982), plaintiffs who voluntarily dismissed their claim after the state legislature enacted a statute that achieved the object of the suit were awarded fees, even though other complaints may have contributed to the change in policy[41]

A striking example of the inequities that can result is *Institutionalized Juveniles v. Secretary of Public Welfare,* 568 F. Supp. 1020 (E.D. Pa. 1983). There, defendants had prevailed in the United States Supreme Court on what the District Court recognized were the central issues of the case. *Secretary of Public Welfare v. Institutionalized Juveniles,* 442 U.S. 640 (1979). Nonetheless, the District Court awarded almost $90,000 in

fees, including a 50 percent multiplier, based on its view that various regulatory and statutory changes during the period of litigation provided some of the plaintiffs with some of the benefits they sought. An appeal is pending.

Although the legislative history of § 1988 indicates that the term "prevailing party" is to be read broadly to include cases that end in a consent decree or out-of-court settlement, "none of the cases cited in the House or Senate Reports involves a fee award in the context of such a remote and extra-judicial resolution of a lawsuit as legislative preemption."[42] Furthermore, even if such a result had been intended by the enactors of § 1988, the problems involved in determining whether and to what extent a particular lawsuit acted as a "catalyst" for legislative change, make the application of the "prevailing party" standard to cases mooted by legislative action judicially unworkable. Since legislators act from multifarious motives, it is difficult, if not impossible, to determine the impact, of a particular lawsuit on a legislative body as a whole.[43] Moreover, as recognized by one court, even attempting to make such a determination "might constitute an impermissible inquiry into legislative motive."[44]

Cases resolved by settlement present similar problems. For example, in *Young v. Kenley*, 641 F.2d 192 (4th Cir. 1981), the Fourth Circuit reversed a denial of attorney's fees to a plaintiff who alleged discrimination in the denial of a position for which she had never even applied. Once plaintiff applied for the position, after being urged to do so by the defendants and the district court, she passed the required test and was given the position in question, and the case was settled on that basis. Over the strong dissent of Justice Rehnquist, joined by Justice O'Connor, the Supreme Court denied a petition for a writ of certiorari on the prevailing party issue.[45] In his dissent from the denial of certiorari, Justice Rehnquist suggested that an award of fees in such circumstances "seems largely to disregard th[e] central purpose of § 1988 [—] * * * to 'enforce' the civil rights laws or to * * * promote[] their policies for the benefit of the public at large," and indicated that fees should not be awarded "if the discernible benefit was conferred gratuitously by the defendant or was taken simply to avoid further litigation expenses."[46] Nevertheless, on remand, the district court ultimately awarded fees in an amount exceeding $30,000.

Thus although Congress stressed that § 1988, unlike other more liberal fee provisions, was intended to apply only where a party has "prevailed,"[47] that intent has been undercut by subsequent court decisions construing the term "prevailing" so broadly as to include cases where the party awarded fees has actually lost the case on the merits or failed to succeed in any meaningful sense. Congress must therefore reassert its initial intent in a manner that will prevent such perversions of the statute's seemingly straightforward prevailing party requirement.

Recommendation No. 3: The Congress should amend the Fees Act to require that, in order to be eligible for a fee award, a party must clearly and substantially prevail on the merits of each issue or claim as to which fees are being sought.

Finding No. 4: In cases where the requesting party has, in fact, prevailed to some extent, attorney's fees awards under the Act are frequently disproportionate to the degree of success actually achieved.

In many cases, large amounts of fees have been awarded, despite the fact that the plaintiff received only nominal relief on the merits. For example, in *Skoda v. Fontani*, 646 F.2d 1193, 1194 (7th Cir. 1981), the court held that plaintiffs, who won a jury verdict of only one dollar on their civil rights claim, for which they had claimed $200,000 in damages, were "prevailing parties," contrary to the district court's conclusion. On remand, the district court reluctantly awarded plaintiffs $6,086.12 in fees and costs.[48] Similarly, in *Milwe v. Cavuoto*, 653 F.2d 80, 83-84 (2d Cir. 1981), the court held that "the one dollar assessed against [the defendant] on plaintiff's constitutional claim would be sufficient to support an award of fees under the Act."

Another case in which the amount of fees awarded was grossly disproportionate to the degree of success on the merits in *Rivera v. City of Riverside*, 679 F.2d (9th Cir. 1982), in which the Ninth Circuit found no abuse of discretion in the district court's award of $243,343.75 in fees incurred in obtaining a jury verdict of $33,350. An even more extreme example of a court's failure to proportion a fee award to the degree of success obtained is the decision reached in *Haygood v. Younger*, No. S-75-738LKK (E.D. Cal. 1983), a case in which plaintiff alleged illegal confinement in a state prison. The complaint named sixteen defendants and alleged nineteen separate causes of action. After five years of pre-trial proceedings, eleven defendants were dismissed or granted summary judgment, and seventeen causes of action were dismissed. Three defendants were granted a directed verdict after the plaintiff's case in chief. The jury returned a verdict of $640 against one of the remaining defendants and $1,450 against the other. The plaintiff then sought $75,968.75 in attorney's fees. Included was a demand for $17,831.25 in "paralegal fees" for assistance claimed to have been provided by the plaintiff's inmate advisor. The defendants' request for discovery and for an evidentiary hearing to contest the fee request were both denied by the court. The court then awarded $45,383.17 in attorney's fees, including $9,900 in paralegal fees for the inmate advisor. The award was apparently reduced from the amount originally requested only because counsel's representation had been of poor quality and the hours claimed had been "padded."

The effect of such decisions is to encourage civil rights plaintiffs to pad their complaints with multiple, meritless claims, "secure in the knowledge that any tactic reasonably related to his cause will be compensable."[49] Not only is the "penalty" incurred by the defendant in such cases disproportionate to the jury inflicted, but such results also operate to the disadvantage of plaintiffs (as opposed to their counsel). Plaintiff's counsel, who can expect to be compensated for time spent on *all* claims, if he prevails to any extent, has no incentive to settle a case in the early stages of litigation, but rather is encouraged to litigate every claim to the maximum extent. Aggrieved plaintiffs are thereby deprived of the benefit of an early settlement, and courts, as well, are subjected to congested dockets.[50]

The Supreme Court's recent decision in *Hensley v. Eckerhart*, 103 S. Ct. 1933 (1983), directing the lower court to reconsider the amount of its fee award in light of the extent of success achieved by the plaintiffs, is a step in the right direction, but it will not resolve all of the problems discussed above and may raise additional ones. For example, it remains to be seen how the lower courts will resolve the apparent contradiction between the Court's directive that, in cases where plaintiffs only partially succeed, the "results obtained" may warrant a downward adjustment in the amount of fees awarded,[51] with its caveat that "[w]here a plaintiff has obtained excellent results . . . the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit."[52] Rather than "clarify the proper relationship of the results obtained to an award of attorney's fees," as the *Hensley* case purports to do,[53] it will undoubtedly generate further litigation on what constitutes an "unrelated claim" or "excellent results."[54] As stated by Justice Brennan in his concurring and dissenting opinion in *Hensley*, "Regular appellate scrutiny of issues like those in this case . . . generates a steady stream of opinions, each requiring yet another to harmonize it with the one before or the one after."[55] Indeed, in post-*Hensley* cases in the lower courts, *Hensley* is relied upon by fee applicants and opponents alike and is cited in both majority and dissenting opinions,[56] indicating that additional legislative guidance is needed on the propriety of apportioning the amount of fees awarded to the degree of success attained by the prevailing party.

Recommendation No. 4: The Congress should amend the Fees Act to require that courts apportion the amount of fee awards to the degree of success actually attained by the prevailing party.

Finding No. 5: The Fees Act, as interpreted and applied by the courts, makes the award of fees to a prevailing party virtually mandatory, thereby eliminating the "discretion" expressly granted to the courts by the Act.

The proponents of the Fees Act emphasized the discretionary nature of the Act, which expressly provides that "the court, *in its discretion, may* allow the prevailing party . . . a reasonable attorney's fee" (emphasis added), and contrasted that Act with other statutes *requiring* that fees be awarded to a prevailing party.[57] However, the Senate Report suggested that, in exercising their discretion, courts should apply the standard articulated by the Supreme Court in *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968), i.e., that a prevailing party "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust."

That standard, which has become known as the *Newman* standard, "was initially used by the courts to explain or justify the *mandatory* imposition of fees."[58] Application of such a standard is appropriate where the purpose of the fee provision is "to *encourage* suit or to provide an *incentive* to litigate,"[59] not where the provision in question was enacted "mainly for the purpose of preventing the cost of litigation from *deterring* a suit."[60] Since the purpose of § 1988, as articulated by its proponents, was not to encourage litigation, but rather "to insure the high cost of litigation does not bar the federal court to citizens who seek to enforce their rights under our civil rights laws,"[61] the rationale underlying the *Newman* standard is inapplicable to § 1988.

Despite the incompatibility of the *Newman* standard with the overall purpose of the Act, and although Congress chose not to use the *Newman* language in § 1988,[62] most courts, in reliance on the Senate

Report, interpret § 1988 in a manner contrary to its express language.[63]

The practical effect of the application of the *Newman* standard to § 1988 is to make the award of fees to a prevailing party mandatory, since courts have rejected virtually every "special circumstance" profered by defendants as a justification for denying fees.[64] Among the special circumstances that have been rejected by appellate courts as rendering an award of fees unjust are defendants' good faith,[65] defendants' reliance on previous court orders or government regulations,[66] that defendants' refusal to expend funds was based on lack of legislative appropriation,[67] that defendants were compelled by law to engage in the challenged conduct,[68] that plaintiff received only nominal damages,[69] that the fee award would be paid by a public entity and would thereby impair that entity's ability to provide further services,[70] that plaintiffs were able to afford counsel,[71] that plaintiffs refused to settle,[72] and that the suit did little or nothing to further civil rights.[73] Even the fact that the plaintiff committed perjury during trial has been rejected as a special circumstance justifying a denial of fees.[74]

As a result, one judge has described the application of the special circumstances exception by the courts as

[R]ender[ing] [the exception] in effect a nullity. This interpretation is reminiscent of the passage wherein Macbeth remarked, "Life is but a walking shadow; . . . a tale told by an idiot, full of sound and fury, signifying nothing."[75]

Moreover, where fees are awarded despite the fact that, for example, the defendant acted in good faith, the plaintiff obtained only nominal damages, and the action did nothing to further civil rights, "a question arises as to what goals of the Attorney's Fees Act, if any, are being furthered."[76] In such cases, "the only true victor may be the plaintiff's attorney."[77]

Furthermore, given the prospect of a mandatory fee award if he prevails, plaintiff's counsel has no incentive to enter into a pretrial settlement. The more time he spends on the case, the higher his potential fee award. The motivation to proceed to trial is therefore enhanced, and the incentive to settle, diminished.[78]

Therefore, in order to restore the judicial discretion expressly intended by the Act, but virtually eliminated in its application, Congress should amend the Act to specify circumstances in which the courts' discretion may be exercised to deny fees. Such an amendment would not only further the original purpose of the Act, but would also be consistent with the standard applicable to fee awards against federal defendants under the Equal Access to Justice Act, which expressly provides that fees are *not* to be awarded when the government has demonstrated a substantial justification for its position.[79] Since the purpose of the Equal Access to Justice Act, as set forth in its legislative history,[80] is parallel to that of the Fees Act, there is no reason why state and local defendants should not share the protection, enjoyed by federal defendants under the Equal Access to Justice Act, from the imposition of unjust awards of attorney's fees.

Recommendation No. 5: The Congress should amend the Fees Act to expressly provide that a court may deny fees where, in the court's view, denial is appropriate, including, but not limited to, cases in which the court determines;

A. that the defendant's position was substantially justified or advanced in good faith; or

B. that an award of fees would not further the substantive purposes of the Act.

Finding No. 6: Lack of meaningful standards for determining what constitutes a "reasonable" attorney's fee in any given case results in inconsistent and often excessive fee awards and makes it difficult to settle claims for attorney's fees.

At the time Congress enacted the Fees Act, the pertinent House and Senate Reports indicated that the appropriate standards for determining what constitutes a reasonable fee are those contained in *Johnson* v. *Georgia Highway Express,* 488 F.2d 714 (5th Cir. 1974).[81] Both the House and Senate reports expressed confidence that the application of those standards would "result[] in fees which are adequate to attract competent counsel, but which do not produce windfalls to attorneys."[82]

That hope has not been realized. As early as 1977, one commentator noted that "[t]he only truly consistent thread that runs throughout federal court decisions on attorney's fees is their lack of consistency."[83] The situation is no better today. Some courts, finding the *Johnson* criteria too subjective and imprecise, have applied different approaches to computing a reasonable fee, most notably the lodestar approach, first articulated in *Lindy Brothers Builders, Inc.* v. *American Radiator & Standard Sanitary Corps.,* 487 F.2d 161 (3rd Cir. 1973) (*Lindy I*), in which a reasonable hourly rate is multiplied by the number of hours reasonably spent to produce a lodestar figure, which may then be adjusted upward and downward depending on additional factors not applied in determining reasonable hours and rates.[84] Still other courts have adopted a hybrid approach, combining the lodestar method with the *Johnson* criteria.[85] With different approaches being applied by different circuits and even by various courts within each circuit, parties litigating cases under § 1988 are subject to different approaches and, hence, different results. Courts disagree on what factors should be applied, how they should be applied, and even what they mean. Opposite holdings have been made on virtually every aspect of fee computation.[86] As a result, in cases decided between 1974 and 1979, hourly rates awarded to civil rights attorneys varied by 685 percent.[87]

As noted by one commentator, the adverse effects of this confusion are several:

First, it inevitably results in unfairness to both attorneys and litigants. . . .

A second consequence of the chaotic state of the law is an excessive amount of litigation concerning the proper fee amount. . . .[88]

A third consequence of the existing state of the law is the arbitrary and haphazard allocation of legal resources . . .

Finally, the high degree of subjectivity involved in most fee decisions is unhealthy for both the legal profession and for the conduct of litigation . . .[89]

Although, "[i]deally, . . . litigants will settle the amount of a fee,"[90] this "ideal" cannot be realized where the parties have no way of estimating how much a court would award in a particular case.

Finally, the most significant adverse effect of the various methods presently employed to calculate the amount of fee awards under the Act is that the awards generated by the application of those methods cannot be characterized as "reasonable," in any conceivable sense of that term. The state of New York, for example, is currently appealing two cases in which the combined fee awards exceed $2 million. The cumulative effect of such awards on public treasuries is devastating. The state of Washington, for example, currently has pending against it over $8 million in attorney's fees claims. The state of Florida paid nearly $2.6 million in court-awarded attorney's fees during 1983 alone, and fee awards in recent years in that state have equalled roughly 80 percent of *all* substantive civil rights judgments against the state. Although the numbers are smaller, the state of Kansas has paid more in attorney's fees awards during the past three years than it has for all other settlements and judgments of any kind during that same period.

The escalating amount of fee awards has evoked harsh criticism from the judiciary, the press, and the public, as well as from many attorneys. In response to a survey of attorneys and federal judges, conducted by the Federal Judicial Center, 111 of 184 respondents agreed with the statement that "attorneys in class action suits [including civil rights actions] often reap 'windfall profits.' "[91] Judges also agreed, at a ratio of nearly three to one, that "fee abuses are a serious problem."[92] Concluding that "[t]he feeling that attorneys reap exorbitant fees appears to run deep," Professor Arthur Miller noted that "current attempts to reform the fee awards standards may be a logical response to a problem widely thought to exist by the judiciary, and many attorneys, as well as by the press and the public."[93]

Since the courts have thus been unable to arrive at consistent and workable standards for computing a "reasonable" fee under the Act, Congress should amend the statute to eliminate the chaos that is undermining its effective implementation. One partial solution that would eliminate much of the confusion and, at the same time, avoid blatantly excessive fees, would be for Congress to set a maximum hourly rate at which counsel may be compensated, as Congress was careful to do in the Equal Access to Justice Act, where the federal treasury was at risk.[94] In order to avoid disparate treatment for state and local treasuries, Congress should afford them the same protection. Other specific amendments are recommended later in this report.

Recommendaton No. 6: The Congress should amend the Fees Act to provide that the prevailing party shall not be awarded fees in excess of $75 per hour.

Finding No. 7: Courts routinely make "bonus" awards or apply "multipliers" to the hourly rates set for prevailing counsel, resulting in grossly inflated awards constituting a "windfall" to prevailing counsel.

The awarding of "bonuses" over and above the "lodestar" amount (reasonable number of hours spent times reasonable hourly rate) has become commonplace under § 1988.[95] This growing practice has netted spectacular fee awards in many cases, far in excess of the reasonable value of the services rendered. For example, in *Bolden v. Pennsylvania State Police,* 491 F. Supp. 958 (E.D. Pa. 1980), an employment discrimination case, the court increased the basic fee by 50 percent, converting an $88,450 award into $132,675 (the total award, including $6,685 for law student services and $12,612.50 for preparation and litigation of the fee application, came to over $151,000). Although the court noted that the legal issues in the case were not particu-

larly novel, it awarded the 50 percent bonus on account of the "excellent quality" of the legal work and the case's advancement of civil rights.[96] Similar results were reached in the New York case of *Population Services International v. Carey,* 476 F. Supp. 4 (S.D.N.Y. 1979), in which a bonus of $23,240 was added to a base award of $46,760, because the attorneys demonstrated a "high degree of skill and comprehensive research." Presumably counsel's research would have already been reflected in the number of hours billed, and the attorneys' skill would be reflected in their hourly rates, making a further bonus superfluous. In *Vecchione v. Wohlgemuth,* 481 F. Supp. 776 (E.D. Pa. 1979), the court doubled the lodestar amount to account for delay in payment, the quality counsel's work, the case's furtherance of civil rights and defendants' bad faith. The resulting award exceeded $207,000.[97]

The concept of such bonuses or multipliers is nowhere mentioned in the Act. The legislative history, while citing a few cases in which minimal bonuses or multipliers were awarded,[98] falls far short of evincing clear Congressional support for the use of bonuses in computing fee awards. Rather, the concept of bonus awards is entirely a judicial creation, conceived in contexts that are entirely inapposite to the application of § 1988.

The concept originated in antitrust cases resulting in the creation of an equitable fund out of which both plaintiffs and their counsel recover.[99] In awarding fees in such cases, "the court exercises its equitable jurisdiction over the relationship between an attorney and his amorphous client." [100] The rationale for fee awards in such cases is one of quantum meruit—"the members of the [benefited] group should pay 'compensation as was reasonable'. . . to the attorney representing their interests." [101] Under that theory, bonus awards make sense and are easily implemented, particularly where the case has created a large monetary fund out of which the award will be paid.

By contrast, fee awards under § 1988 are paid by the defendant *in addition to* any other judgment against him. Since the defendant is not the one who *benefited* from the action, the quantum meruit theory cannot be used to justify inflation awards in such cases. Nor can a bonus in such cases be characterized as part of the defendant's equitable "punishment" for legal wrongs against the plaintiffs, since, under § 1988, unlike in the antitrust cases, fees must be paid in *addition* to the compensatory relief on the merits, rather than out of it.[102]

An additional significant difference between fee awards in antitrust cases and those in § 1983 actions is that, in the latter, the fee award must be paid by a state or other public entity rather than by a private defendant. The state, unlike a private defendant, is a representative of the public interest; and the taxpayers who ultimately bear the burden of such awards are not guilty of any wrongdoing. Extra caution is therefore warranted in assessing the amount of the award so as not to disrupt state and local governments or unduly reduce the amount of money available for other public purposes. Since the rationales underlying bonus awards have no application in the context of § 1988, the adoption of this mechanism into the calculation of fees under § 1988 is not warranted.

Moreover, bonus awards are entirely inconsistent with the purposes of § 1988. First of all, bonuses are, by definition, "windfalls" to plaintiff's counsel, since bonuses are awarded in addition to "compensation of [Plaintiffs] legal expenses," which is all that Congress intended to provide.[103] As noted by one court, "multiplying the number of hours properly spent times a reasonable hourly rate is sufficient to serve [the] goal" of attracting competent counsel.[104] Anything more than that is simply "unearned personal gain at the public expense[105] or, in other words, "windfall."[106]

Second, even where some rationale is given for awarding a bonus, the *amount* of the bonus awarded is entirely arbitrary,[107] thus violating Congress's mandate that fee awards be "reasonable." Even courts that have endorsed the use of bonuses have commented on the subjectivity of arriving at a precise amount.[108] As noted by one court, the use of bonuses is an "open-ended device" that "is able to undo in a twinkling . . . all of the careful calculations" involved in setting the lodestar amount.[109] The arbitrary nature of such awards is exacerbated by the fact that a difference between a bonus, of, *e.g.,* 10 percent and one 25 percent can result in a difference of hundreds of thousands of dollars in a protracted case.

The lack of consistency and predictability of bonus awards is directly contrary to Congress's purpose of ensuring uniformity and consisistency in fee awards.[110] Furthermore, as a practical matter, the unpredictability of bonus awards makes it difficult for the parties to settle fee claims, since the prospect of bonus awards makes it impossible to estimate, with any degree of accuracy, the total amount of fees a court would be likely to award in a particular case.[111] Finally, the exorbitant fee awards that result from the use of bonuses certainly cannot be characterized as "reasonable" in amount.[112]

An examination of the justifications offered by courts in support of bonus awards reveals that those justifications are, in fact, fallacious and inconsistent with the overall purposes of the Act. The primary justification used to support bonus awards is that a bonus is necessary to account for the contingent nature of success, often termed the "risk of loss" or the "contingency factor." The roots of this concept can be found in the contingent fee agreements that often obtain between tort plaintiffs and their attorneys. In those circumstances, a contingent fee arrangement has "an economic rationale: it compensates plaintiff's lawyer for his services as an entrepreneur who bears the risks of litigation."[113] By taking a number of cases on a contingency basis, plaintiff's counsel can use the large fees recovered in successful cases to cover the losses he incurs in unsuccessful ones. Such arrangements thus have the purpose and effect of financing not only meritorious but also losing cases.[114]

However, such a purpose and effect are entirely inconsistent with those of Congress in enacting § 1988. Congress intended the Act to encourage and provide compensation only for *meritorious* cases,[115] certainly not for losing cases,[116] nor even for cases that have a reasonable chance of success but do not ultimately succeed.[117] In fact, Congress intended the Act to *deter* meritless suits.[118] As the Supreme Court said recently with respect to another fee statute, "One might well imagine the surprise of the legislators who voted for this section as an instrument for deterring meritless suits upon learning that instead it could be employed to fund such suits."[119]

As pointed out by one commentator, ignoring the contingency factor is more consistent with Congressional intent: "Putting the lawyer to the risk in close cases helps weed out meritless claims . . . [and] provide[s] a desirable check on the . . . increase in court docket congestion."[120] Moreover, "[i]f [unsuccessful] litigation is to be subsidized, one may well ask why the subsidy should come from the defendant in another case."[121]

Contingency bonuses have the further untoward effect of rewarding, and hence encouraging, marginal claims to an even greater extent than clearly successful ones, since the amount of a contingency bonus varies inversely with the strength of plaintiff's claim.[122] Awarding bonuses on this basis is patently unfair to defendants, since such award have the converse effect of forcing defendants to pay higher attorney's fees where they had a strong, but ultimately unsuccessful, defense than where violations of plaintiffs' rights were clear from the outset.[123] Such awards cannot serve to deter egregious civil rights violations by potential defendants, one of the subsidiary purposes of the Act,[124] since defendants are "penalized" only where it is unclear, prior to litigation, that their conduct is, in fact, illegal.[125]

Finally, to the extent that contingency bonuses are intended to protect plaintiffs' counsel against the risk of nonpayment for their services, such bonuses are particularly inappropriate where plaintiffs are represented by a legal services organization that never receives payment from its clients and whose funding is not contingent on whether it prevails in individual cases. Such attorneys "cannot truly be said to have undertaken a risk of no remuneration."[126] As aptly stated by one commentator:

"If an organization is not permitted to charge its clients for its services . . . what does that organization *risk* in undertaking representation in one of the few types of cases which permit recovery of a fee? . . . [L]itigation which permits the collection of a fee by a federally funded legal services organization is actually the most lucrative type of litigation available to such organizations.[127]

Nor can contingency bonuses to legal services attorneys be justified on other grounds. Such bonuses cannot operate as an incentive for such groups to take more civil rights cases,[128] since an Internal Revenue Service ruling prohibits public interest law firms seeking tax-exempt status from "us[ing] the likelihood or probability of a fee award as a consideration in its selection of cases."[129] Furthermore, no additional incentive is needed to induce such organizations to take on such cases, since "[t]hese organizations exist to represent groups like the [plaintiff] class, with constitutional claims at the cutting edge of the law." [130] Nor should contingency bonuses be used as an indirect means of funding legal services organizations.[131] This Act was not intended for that general purpose,[132] but rather, only to finance *successful civil rights* cases, and there is no guarantee that bonuses received by legal services organizations will be used for that limited purpose. Thus, contingency bonuses to legal service attorneys, which serve none of the purposes of § 1988, must be characterized as impermissible windfalls to such organizations.

Other rationales, in addition to contingency, used by the courts to justify bonus awards include the complexity of the case and the quality of the services provided by plaintiffs' counsel. Since the complexity of the case increases the number of hours reasonably spent, and the quality of represen-

tation increases the reasonable hourly rate used to compute the lodestar amount, a bonus supplementing the lodestar based on the factors necessarily constitutes a windfall, which should be disallowed.[133]

A bonus based on benefits obtained by the plaintiffs in the underlying case is also contrary to the purposes of the Act and unfair to the defendants. The basic fee award is designed to compensate plaintiffs to whatever extent that they prevail.[134] A party who fully prevails will receive compensation for all time reasonably spent in doing so and, accordingly, will receive a higher fee than one whose success is limited.[135] An additional bonus for success can only constitute a windfall. Moreover, the amount of a bonus based on results is likely to be arbitrary, particularly in nonmonetary cases where the results are difficult to translate into quantitative terms.[136] Finally, a court that has just ruled in plaintiff's favor might be inclined to reemphasize the importance of its ruling by rewarding plaintiff again, by way of a bonus, for his "outstanding" success. Such a bonus is unfair to defendants, since they have already "paid" for the results of their wrongdoing via the relief awarded against them on the merits. To "punish" them again by supplementing the fee award is contrary to the compensatory, nonpunitive purpose of the Act. Eliminating such bonuses would eliminate this subjective element of fee awards.[137]

For all of the reasons discussed above, bonus awards are inconsistent with the purposes of § 1988. Rather than merely compensate plaintiff's counsel for their legal expenses in prosecuting a particular civil rights case, all that the act intended, bonus awards constitute windfalls to plaintiff's counsel, a result that Congress expressly intended to avoid. Therefore, Congress should amend the Act to prohibit the use of bonuses or multipliers in computing a fee award.

Recommendation No. 7: The Congress should amend the Fees Act to prohibit the award of bonuses or multipliers in excess of compensation at a reasonable hourly rate for the number of hours reasonably spent by prevailing counsel.

Finding No. 8: In applying the Fees Act to prevailing parties represented by publicly-funded salaried attorneys, courts normally award fees based on hourly rates charged by private counsel, resulting in windfalls that substantially exceed the actual costs of the litigation.

In computing a "reasonable" attorney's fee for prevailing counsel, most courts have applied the market rates charged by private law firms to their fee-paying clients, even where the attorney seeking fees has not actually incurred the high costs ordinarily associated with private practice. For example, in a case now pending before the District Court of Massachusetts, a law professor employed by Harvard University at an annual salary of $70,000 and having minimal overhead expenses seeks to be compensated at the rate of $275 per hour (plus a bonus of 50 percent), a rate higher than those charged by even the most high-priced private firms in the area.[138]

In *Dennis* v. *Chang*, 611 F.2d 1302 (9th Cir. 1980), attorney's fees were awarded in four civil rights actions in which a nonprofit legal aid society, partially funded by the state of Hawaii, represented the prevailing plaintiffs. The Ninth Circuit specifically rejected the argument that the legal aid society should be reimbursed only for its actual costs in litigating the case. Rather, the court concluded that the fee award should be based upon rates charged by private Honolulu attorneys. Similarly, in *Stenson* v. *Blum* No. 81-7385 (2d Cir.), *cert. granted*, 103 S. Ct. 2426 (1983), the Second Circuit affirmed an award of fees to a publicly-funded legal services organization, at the rate of $95 to $105 per hour, "the rate[s] charged for similar work by [private] attorneys of like skill in the area." Those cases are not atypical.[139] However, as a few courts and commentators have recognized, awarding fees to legal services attorneys at "market" rates "constitute[s] a substantial windfall for the organizations involved" and therefore should not be permitted under § 1988.[140]

A proper determination of what constitutes a "reasonable" hourly rate for legal services attorneys must begin with an examination of the language of the Act and its legislative history. The Act itself provides some guidance by authorizing the award of "a reasonable attorney's fee *as part of the costs.*" The legislative history also repeatedly equates attorney's fees with the costs of litigation and emphasizes that the Act is intended to reimburse plaintiff's counsel for the "cost" of vindicating plaintiff's civil rights in court.[141]

The legislative history further indicates that the Act was intended primarily to encourage *private* attorneys to take civil rights cases,[142] although the House Report indicates, in a footnote, that "a prevailing party is entitled to counsel fees even if represented by an organization."[143] Thus, the legislative history falls far short of mandating that legal services attorneys be compensated at "market" rates. Moreover, even if Congressional endorsement of the market-rate system could be inferred form the legislative history, the escalating rates that have resulted from its application require a reexamination of that system in light of the overall purposes of § 1988.[144]

What the legislative history does unequivocally demonstrate is Congress's intent that, however fees are computed under the Act and to whomever they are awarded, the amount of such fees should not be such as to constitute a windfall to prevailing counsel.[145] A close examination of the market-rate system of computing hourly rates for legal services attorneys reveals that it is contrary to that clear legislative intent.

As a few courts and commentators have recognized, assigning "market" rates to legal services attorneys presents difficult, if not insurmountable, problems. First of all, to state the obvious, there is no true "market" for the services of legal services attorneys, since they receive no fees from their clients. Particularly since minimum fee schedules may no longer be used,[146] rates vary widely within communities and even within individual law firms,[147] depending on factors having no necessary relationship with the value of the services rendered or the experience and skill of the attorneys involved, for example, the attorney's relationship with a particular client, what that client can afford to pay, the firm's overhead expenses, and how much profit the firm desires to make.[148] Since such factors are unrelated to the value of a legal services attorney's services in a particular case, assigning such an attorney a rate based on these factors is patently unreasonable and inconsistent with the legislative purpose of compensating civil rights attorneys only for the value of their services in a particular case.

More significant, in light of Congress's clear intent to avoid windfalls, is the fact that rates determined in this manner are likely to far exceed the legal service organizations' actual costs, since such rates are computed on the basis of the high overhead expenses and profit margins of private firms, which are not shared by legal services organizations.[149] Any such excess is obviously a windfall to such organizations.[150] Particularly where the party paying the fee is a state government, "the difference, if any, between the 'market value' fee and the 'compensation' fee would be better spent in remedying [the civil rights violation that gave rise to the action]."[151]

Although the market-rate system may have been adopted in order to *avoid* treating legal services organizations any differently from private attorneys,[152] that system, in effect, gives such publicly-funded counsel an unfair advantage over their private counterparts. As noted by one commentator:

"Requiring district courts to award identical gross fees to private and organizational counsel, notwithstanding the greater litigation expenses incurred by private counsel, would effectively award a higher return of profit to organizational counsel. Such a rule would lead a court to arbitrarily increase an otherwise reasonable award of attorney's fees simply because plaintiff's counsel happened to be employed by a legal services organization."[153]

Such disparate treatment is not only unfair to the litigants on both sides of civil rights cases, but is also directly contrary to "the spirit of 'reasonableness' which is the heart of section 1988. * * * Legal services organizations, along with their counterparts in private practice, are not entitled to anything more than a reasonable fee under section 1988."[154]

In order to avoid windfalls to legal services attorneys, a few lower courts have adopted an alternative method of computing hourly rates for legal services organizations, based on the actual litigation expenses of such organizations. Rather than arbitrarily assigning "market" rates to such attorneys, hourly rates are computed according to the hourly wages of the attorneys involved plus the percentage of the annual overhead of the organization attributable to the number of hours reasonably spent by the organization's attorneys on the case.[155]

This cost-based method has the advantages of more accurately reflecting the actual costs of vindicating a plaintiff's rights in a particular case, without compensating plaintiff's counsel for overhead and other expenses not actually incurred.[156] Such a system is consistent with the factors enumerated in *Johnson* v. *Georgia Highway Express* and endorsed by the Congress. An individual attorney's salary presumably reflects his relative skill and experience within the organization.[157] Other pertinent factors, such as the novelty and complexity of the case, would still be reflected in the court's consideration of the number of hours reasonably spent. Moreover, it must be remembered that the *Johnson* criteria were intended only as guidelines and were *not* meant to be applied so as "to make the prevailing counsel rich.[158]

In addition, a cost-based system is actually easier to administer than the more subjective and essentially arbitrary market-rate system.[159] The information needed to compute rates on this basis, i.e., attorneys' salaries and organizational overhead, is readily available, since legal services organizations are required under the Legal Services Cor-

poration Act[160] to report such information as a condition to their receipt of federal funding. By contrast, under the market-rate system, prevailing counsel have the substantial burden of producing detailed and case-specific affidavits from community lawyers of similar experience and other expert testimony in order to establish an appropriate market rate for their services.[161] Furthermore, the objectivity of such information will facilitate settlement of fee claims by such organizations.

In sum, a cost-based system for determining reasonable hourly rates for legal services attorneys is consistent with the language and intent of the Act and is certainly preferable to the subjective and inflationary market-rate analysis currently applied by most courts. Under a cost-based system, legal services attorneys would receive full compensation for the cost of vindicating their clients' rights. They should not and cannot reasonably expect to receive more. Accordingly, Congress should amend the Act to provide that fee awards to salaried publicly-funded attorneys be computed on the basis of their actual costs.

Recommendation No. 8: The Congress should amend the Fees Act to provide that, where the prevailing party is represented by a publicly-funded legal services organization, courts should compute a reasonable hourly rate for such counsel based on the actual costs of the litigation to the organization, including the proportion of the attorney's annual salary and of the organization's annual overhead attributable to the number of hours reasonably spent on the case.

Finding No. 9: The Fees Act affects the process of legal dispute resolution in a way that is unfair to public defendants and that further burdens the courts by:

A. making it more desirable for plaintiffs to commence litigation, rather than settle disputes informally;

B. making it more advantageous for plaintiffs to continue litigation rather than settle where any meritorious claim is presented;

C. making it less desirable, once litigation is underway, for public defendants to alter challenged laws, administrative regulations, or official positions in any way that favors the plaintiffs;

D. making it less desirable for public defendants to litigate those close issues that should be litigated; and

E. making it difficult for plaintiffs and defendants to settle claims for attorney's fees.

Throughout this report, a recurring theme has been the adverse effect of various aspects of the Fees Act, as interpreted and applied by the courts, on the process of settling disputes. Because of the courts' liberal construction of "prevailing party" combined with their rejection of virtually all circumstances justifying the denial of fees, plaintiffs with any colorable claim are encouraged to commence suits, rather than attempt to resolve disputes informally, and to continue to litigate every claim, secure in the prospect of a substantial fee award as long as they prevail on any issue or succeed in obtaining some benefit after the commencement of litigation. Moreover, the longer the litigation continues, the higher the award the plaintiffs can expect to receive.

Conversely, defendants are discouraged from informally resolving disputes for fear that their actions will confer prevailing party status on the plaintiffs, virtually guaranteeing liability for fees. Public defendants are discouraged, however, from litigating cases where they have a strong defense, since in such cases, if plaintiffs ultimately prevail, defendants are forced to pay for both sides of the litigation plus a "contingency bonus" based on plaintiffs' high risk of loss.

Furthermore, because of the absence of uniform standards for calculating a "reasonable" fee award, plaintiffs and defendants have difficulty setting fee claims without litigation. Plaintiffs are further encouraged to litigate their claims for fees, since the cost of fee litigation is also charged to the defendants.

The net result of these incentives and disincentives is to deter plaintiffs from settling meritorious cases but to encourage defendants to settle close cases where they have a strong, but possibly unsuccessful, defense. Many of the foregoing recommendations, if adopted by the Congress, would partially alleviate these skewed and undesirable effects of the Act. However, in order to further encourage settlement, where appropriate, and thereby reduce unnecessary litigation, to the mutual benefit of all parties and the courts, additional reforms are necessary.

In order to encourage pre-litigation settlement, plaintiffs should be precluded from receiving fees where it can be shown that the litigation was commenced primarily for the purpose of obtaining attorney's fees.[162] Such a denial would be warranted where, for example, plaintiffs made no attempt to resolve the dispute informally prior to litigation or filed suit despite defendants' willingness to settle the matter informally.

Once litigation is commenced, settlement could be encouraged by precluding an award of fees to plaintiffs who reject an offer of judgment made pursuant to Rule 68 of the Federal Rules of Civil Procedure and subsequently obtain a less favorable judgment from the court. Although some courts have construed Rule 68 to require the denial of attorney's fees in such circumstances,[163] other courts have disagreed.[164]

The denial of fees incurred after the rejection of a settlement offer that turns out to be more favorable than the relief eventually obtained from litigation would "work to further the legitimate concerns of judicial economy and efficiency without discouraging attorneys from pursuing civil rights litigation."[165]

Recommendation No. 9: The Congress should amend the Fees Act to provide that the court deny attorney's fees to a prevailing party, where it determines:

A. that the lawsuit was brought principally for the purpose of obtaining attorney's fees; or

B. that the prevailing party rejected an offer of judgment made pursuant to Rule 68 of the Federal Rules of Civil Procedure, or a cognate state rule of procedure, that was more favorable than the relief ultimately granted by the court, in which case no fees shall be awarded for the services rendered after the date of the offer.

CONCLUSION

The Association's recommendations are designed to further the original purposes of the Fees Act while eliminating some of the serious problems that have arisen from its application. In general terms, the major problem with the Act, as presently implemented by the courts, is the lack of uniform and easily applied standards of determining eligibility for fees and for computing the amount of a reasonable fee in particular cases. Absent such standards, state and local governments are faced not only with high and occasionally exorbitant fee awards, but also with the burden and expense of opposing excessive and unjustified claims for fees. Without clear standards, such opposition inevitably takes the form of complex and protracted litigation over fees, which further saps the resources of state and local governments, to the detriment of all parties, the courts, and ultimately, the public, the Act's intended beneficiaries. Legislative reform, along the lines recommended by the Association, is therefore urgently needed.

ABOUT THE ASSOCIATION

The National Association of Attorneys General was founded in 1907 for the purpose of fostering communication of legal developments and cooperative legal actions among the states' chief legal officers and their staff attorneys.

The Association staff compiles and disseminates information on legislative, agency, and judicial developments that have an impact on state legal affairs, and provides research and technical assistance to the offices of Attorneys General. The Association handles hundreds of information requests each month from the offices of Attorneys General, members of Congress, officials of the federal government, and the public. Information clearinghouses are maintained in ten substantive areas: antitrust, commerce, consumer protection, charitable trusts and solicitations, bankruptcy, criminal justice, corrections, and institutional confinement, energy, environment, and medicaid fraud. In addition, the Association has been fortunate to obtain under the Intergovernmental Personnel Act (IPA), the services of two senior attorneys from the Department of Justice to assist state Attorneys General in the areas of management and information systems, and Supreme Court advocacy.

The Association operates an extensive continuing legal education program in numerous substantive law areas attended by Attorneys General, Assistant Attorneys General, and other state and local government officials.

The Association publishes five monthly reports of significant state and federal legal developments and legislative activities, as well as A-G Report, which focuses on the activities and responsibilities of Attorneys General. These publications are available to the bar and the public.

The full Association meets twice yearly, in June and in December, at which time it receives recommendations from the committees and subcommittees, and thereafter debates and decides what action the Association shall take on litigation, legislation and policy issues. The autonomy of each Attorney General is carefully protected and the influence of the Attorneys General working within the Association is targeted at those issues on which there is unanimous or nearly unanimous support.

The Association's staff works with numerous committees and subcommittees of the Congress in implementing the Association's policy positions by coordinating testimony of Attorneys General and providing such committees with the views of the Association on particular issues. In addition, we work closely with numerous state, local, and other associations on national issues of mutual concern.

Each spring, Attorneys General meet in Washington, D.C., with the President, Vice President, U.S. Attorney General, and chiefs of the antitrust, civil rights, criminal, and lands and natural resources divisions of the Department of Justice, the Chief Jus-

tice of the United States, House and Senate Judiciary Committee chairmen, and other key members of the Administration and Congress.

There are seven former Attorneys General who now serve in the Congress. Senator Jeff Bingaman (D-N.M.) was elected in November 1982 and joins Senators Slade Gorton (R-Wash.), Warren Rudman (R-N.H.), John Danforth (R-Mo.), Thomas Eagleton (D-Mo.), and Robert Stafford (R-Vt.), as well as Rep. Jim Jeffords (R-Vt.).

There are 10 Governors who are former Attorneys General: Governors Richard Bryan (D-Nev.), George Deukmejian (R-Calif.), Toney Anaya (D-N.M.), Mark White (D-Tex.), and Bill Clinton (D.-Ark.), William Allain (D-Miss.), William Brennan (R-Me.), Bruce Babbit (D-Ariz.), Alan Olson (R-N.D.), and William Janklow (R.-S.D.).

FOOTNOTES

[1] *Id.* at 269.

[2] S. Rep. No. 1011, 95th Cong., 2d Sess. 1,4(1976), *reprinted in* 1976 U.S. Code Cong. & Ad. News 5908.

[3] 121 Cong. Rec. 26806 (1975) (remarks of Sen. Tunney); H.R. Rep. No. 1558, 95th Cong., 2d Sess. 2 (1976).

[4] 122 Cong. Rec. 33314 (1976) (remarks of Sen. Abourezk), 35116 (remarks of Rep. Anderson).

[5] 121 Cong. Rec. 26806 (1975) (remarks of Sen. Tunney); 122 Cong. Rec. 31472, 33314 (remarks of Sen. Kennedy), 35115 (remarks of Rep. Anderson), 35124 (remarks of Rep. Railsback), 35126 (remarks of Rep. Fish), 35127 (remarks of Rep. Holtzman) (1976).

[6] 122 Cong. Rec. 35126 (remarks of Rep. Kastenmeier) (1976).

[7] *Id.*

[8] 122 Cong. Rec. 33314 (remarks of Sen. Kennedy), 35127 (remarks of Rep. Jordan) ("This is not a food-stamp bill for lawyers. It is not going to work that way."), 35128 (remarks of Rep. Seiberling) ("not a lawyers' bill") (1976).

[9] 121 Cong. Rec. 26806 (1975) (remarks of Sen. Tunney) ("Bill would do nothing to encourage frivolous or bad faith litigation"); 122 Cong. Rec. 35127 (remarks of Rep. Jordan), 35128 (remarks of Rep. Seiberling) (1976); H.R. Rep. at 7.

[10] H.R. Rep. at 9; S. Rep. at 6.

[11] H.R. Rep. at 6-9; 122 Cong. Rec. 35155-17 (remarks of Rep. Anderson and Rep. Railsback), 35122-23 (remarks of Rep. Seiberling) (1976).

[12] In that case, the Supreme Court construed 42 U.S.C. §§ 1983 and 1988 to apply to actions to enforce rights secured by any federal statute and ruled that such actions could be brought in state as well as federal courts.

[13] *See Hensley* v. *Eckerhart*, 103 S. Ct. 1933, 1944 (1983) (Brennan, Marshall, Blackburn, and Stevens, JJ., concurring in part and dissenting in part) (referring to fees litigation as "one of the least socially productive types of litigation imaginable").

[14] 42 U.S.C.A. § 1988 (West 1981) at 155-305 and (West Supp. 1983) at 13-48.

[15] *Maher* v. *Gagne*, 448 U.S. 122 (1980); *Maine* v. *Thiboutot*, 448 U.S. 1 (1980); *Roadway Express, Inc.* v. *Piper*, 447 U.S. 752 (1980); *New York Gaslight Club* v. *Carey*, 447 U.S. 54 (1980); *Hanrahan* v. *Hampton*, 446 U.S. 754 (1980); *Supreme Court of Virginia* v. *Consumers Union*, 446 U.S. 719 (1980).

[16] *See, e.g.*, Note, *Awards of Attorney's Fees in the Federal Courts*, 56 St. John's L. Rev. 277 (1982) (citing numerous other articles on the subject); *see also* Fioretti & Convery, *Attorney's Fees Under the Civil Rights Act—A Time for Change*, 16 J. Mar. L. Rev. 261 (1983).

[17] E. Larson, *Federal Court Awards of Attorney's Fees* (1981); H. Newberg, *Public Interest Practice and Fee Awards* (1981); M. Derfner & A. Wolf, *Court Awarded Attorney Fees* (1983).

[18] *Attorney Fee Awards Reporter* (Harcourt Brace Jovanovich).

[19] L. Cutler, *Foreword* to Derfner & Wolf, *supra* at vii.

[20] *Mills* v. *Eltra Corp.*, 663 F.2d 760, 761 (7th Cir. 191) (186 hours devoted to case on the merits and over 350 hours on the fee portion).

[21] *Hensley* v. *Eckerhart*, 103 S. Ct. 1933, 1941 (1983).

[22] *Id.* at 1944 (Brennan, Marshall, Blackmun, and Stevens, JJ., concurring in part, dissenting in part).

[23] *Id.* at 1950-51.

[24] *Compare, e.g., New York Association for Retarded Citizens v. Carey*, 711 F.2d 1136 (2d Cir. 1983) *with Stenson v. Blum*, No. 81-7385 (2d Cir. 1982), *cert. granted*, 103 S. Ct. 2426 (1983); *compare also National Association of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319 (D.C. Cir. 1982), *with Environmental Defense Fund, Inc. v. EPA*, 672 F.2d 42 (D.C. Cir. 1982), *and Jordan v. United States Department of Justice*, 691 F.2d 514 (D.C. Cir. 1982).

[25] 82 *Shepard's United States Citations* (Supp. No. 6) at 308 and (Supp. No. 7) at 96.

[26] *See* floor debates and House and Senate reports cited in introduction, *supra*.

[27] *See Maine v. Thiboutot*, 488 U.S 1, 25-26 (1980) (Powell, J., dissenting); Comment, *The Scope of the Civil Rights Attorney's Fees Awards Act After Maine v. Thiboutot, Maher v. Gagne, and Supreme Court of Virginia v. Consumers Union*, 66 Iowa L. Rev. 1301, 1311-13 (1981); Case Comment, *Statutory Non-Civil Rights Violations of Section 1983 and Awards of Attorney's Fees After Maine v. Thiboutot*, 61 B.U.L. Rev. 1069, 1086-89 (1981).

[28] *Id.* at 4-9.

[29] *Id.* at 8.

[30] *Id.* at 22, 24.

[31] *Id.* at 24.

[32] *Stratos v. Department of Public Welfare*, 387 Mass. 312 (1982). Although the court viewed the claim as "substantial" under the "painstakingly minimal standard of substantiality defined in *Hagans v. Lavine*," *id.* at 319, it expressed doubt that plaintiff could have actually prevailed on his equal protection claim, given the minimal level of scrutiny applicable to classifications drawn by law or government practice where, as here, no suspect classification or fundamental right is involved. *Id.* at 318.

[33] H.R. Rep. at 4 n. 7. It should be noted that the test of "substantiality" articulated in *Hagans* was developed for purposes of federal *jurisdiction* and is therefore ill-suited to determining whether a party has prevailed on the merits. See M. Derfner & A. Wolf, *Court Awarded Attorney Fees*, ¶ 12.01 (1983).

[34] *Hagans* v. *Lavine*, *supra* at 536-43; *see Stratos*, *supra* at 319.

[35] *Id.* at 564.

[36] *See* M. Derfner & A. Wolf, *Court Awarded Attorney Fees* ¶¶ 12.01-03 (1983).

[37] *See* 122 Cong. Rec. 35122 (1976) (remarks of Rep. Drinan, sponsor) (Act passed to encourage enforcement of civil rights by " 'private attorney[s] general' advancing the rights of the public at large, and not merely some narrow parochial interest").

[38] *Id.* at 1167.

[39] *Id.* at 1167-68

[40] *Id.* at 108 (emphasis omitted).

[41] *See also Armstrong v. Reed*, 462 F. Supp. 496 (N.D. Miss. 1978) (where state statute was amended while case was pending, judgment entered in state defendants' favor, but fees awarded to plaintiffs since they "accomplished their goal"); *Coalition for Basic Human Needs v. King*, 691 F.2d 597 (1st Cir. 1982) (the First Circuit reversed the district court's denial of fees and awarded approximately $15,000 to the plaintiffs, based on their "success" in obtaining a short injunction pending appeal of a lower court denial of a requested preliminary injunction, even though the actual benefits, appropriation of welfare funds were conferred by the state legislature, not by the defendants or the court, even before the injunction went into effect).

[42] *Cicero v. Olgiati*, 473 F. Supp. 653, 655 (S.D. N.Y. 1979).

[43] M. Derfner & A. Wolf, *Court Awarded Attorney Fees* ¶ 9.02 (1983).

[44] *Bly* v. *McLeod*, 605 F.2d 134, 138 n. 6 (4th Cir. 1979), *cert. denied*, 445 U.S. 928 (1980).

[45] *Kenley* v. *Young*, 455 U.S. 961 (1982).

[46] *Id.* at 967.

[47] *See, e.g.*, H.R. Rep. at 6-7. *Compare, Vermont Low Income Advocacy Council, Inc.* v. *Usery*, 546 F.2d 509, 36 A.L.R. Fed. 519 (2nd Cir. 1976), applying stricter test under attorney's fees provision of the Freedom of Information Act (FOIA), 5 U.S.C. § 522 (a)(4)(E) under which "court may assess against the United States reasonable attorneys fees . . . in any case . . . in which the complainant has substantially prevailed".

[48] 519 F. Supp. 309 (N.D. Ill. 1981).

[49] Fioretti & Convery, *Attorney's Fees Under the Civil Rights Act—A Time for Change*, 16 J. Mar. L. Rev. 261, 278 (1983).

[50] *Id.*

[51] *Id.* at 1940.

[52] *Id.*

[53] *Id.* at 1939.

[54] *See id.* at 1950 (Brennan, J., concurring in part and dissenting in part).

[55] *Id.* at 1951.

[56] *See* 82 *Shepard's United States Citations* (Supp. No. 6) at 308 (Supp. No. 7) at 96.

[57] *See* H.R. Rep. at 8. Approximately half of the federal fee-shifting statutes are mandatory. M. Derfner & A. Wolf, *Court Awarded Attorney Fees* ¶ 5.02 [2] (1983); *see, e.g.*, Age Discrimination in Employment Act of 1967, 29 U.S.C. § 626(b); Truth in Lending Act, 15 U.S.C. §§ 1640(a), 1667b(a), 1667d(a), 1681n, 1681o, 1961e(d); Civil Service Reform Act of 1978, 5 U.S.C. § 5596(b)(1)(A)(ii); Right to Financial Privacy Act of 1978, 12 U.S.C. § 3417(a)(4).

[58] Derfner & Wolf, *supra* at ¶ 10.01 (emphasis added). *See, e.g., Hutchinson v. William C. Barry, Inc.*, 50 F. Supp. 292, 298 (D. Mass. 1943).

[59] Derfner & Wolf, *supra* at ¶ 10.01.

[60] *Id.* (emphasis added).

[61] 122 Cong. Rec. 31471 (1976) (remarks of Sen. Mathias). *See also* 122 Cong. Rec. 31472 (remarks of Sen. Kennedy), 35118, 35128 (remarks of Rep. Seiberling), 35126 (remarks of Rep. Fish) (1976); H.R. Rep. at 1, 2-3, 6; S. Rep. at 2, 3, 6.

[62] *Compare, e.g.*, the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, 15 U.S.C. § 2310(d)(2), which provides as follows:

"If a consumer finally prevails . . . he may be allowed by the court to recover . . . attorney's fees . . ., unless the court in its discretion shall determine that such an award of attorney's fees would be inappropriate."

[63] Fioretti & Convery, *Attorney's Fees Under the Civil Rights Act—A Time for Change*, 16 J. Mar. L. Rev. 276 (1983).

[64] Derfner & Wolf, *supra*, at ¶ 10.02[3] (1983); Fioretti & Convery, *supra* at 276; *Judicial Discretion and the 1976 Civil Rights Attorney's Fees Awards Act: What Special Circumstances Render an Award Unjust?*, 51 Fordham L. Rev. 320 (1982).

[65] *See, e.g., Supreme Court of Virginia v. Consumers Union*, 446 U.S. 719, 739 (1980); *Hutto v. Finney*, 437 U.S. 678, 693 (1978); *Nadeau v. Helgemoe*, 581 F.2d 275, 280 (1st Cir. 1978); *Holley v. Lavine*, 605 F.2d 638, 646 (2d Cir. 1979), *cert. denied*, 446 U.S. 913 (1980); *Bills v. Hodges* 628 F.2d 844, 847, (4th Cir. 1980); *Ellwest Stereo Theatre, Inc. v. Jackson*, 653 F.2d 954, 956 (5th Cir. 1981); *Haycraft v. Hollenbach*, 606 F.2d 128, 132 (6th Cir. 1979); *Bond v. Stanton*, 630 F.2d 1231, 1234 (7th Cir. 1980); *Pickett v. Milam*, 579 F.2d 1118, 1121 (8th Cir. 1978); *Seattle School District No. 1 v. Washington*, 633 F.2d 1338, 1349 (9th Cir. 1980), *aff'd*, 102 S. Ct. 3187 (1982); *Love v. Mayor*, 620 F.2d 235, 236 (10th Cir. 1980).

[66] *See, e.g., Crosby v. Bowling*, 683 F.2d 1068, 1072-73 (7th Cir. 1982); *Johnson v. Mississippi*, 606 F.2d 635, 637 (5th Cir. 1979).

[67] *See, e.g., Coalition for Basic Human Needs v. King*, 691 F.2d 597, 602 (1st Cir. 1982).

[68] *See, e.g., Ellwest Stereo Theatre, Inc. v. Jackson*, *supra* at 956.

[69] *See, e.g., Skoda v. Fontani*, 646 F.2d 1193 (7th Cir. 1981).

[70] *See, e.g., Morrison v. Ayoob*, 627 F.2d 669, 673 (3rd Cir. 1980), *cert. denied*, 449 U.S. 1102 (1981).

[71] *See, e.g., Entertainment Concepts, Inc. v. Maciejewski*, 631 F.2d 497, 507 (7th Cir. 1980), *cert. denied*, 450 U.S. 919 (1981).

[72] *See, e.g., Coop v. City of South Bend*, 635 F.2d 652, 655 (7th Cir. 1980).

[73] *See, e.g., Concerned Democrats v. Reno*, 689 F.2d 1211 (5th Cir.), *rev'g* 493 F. Supp. 660 (S.D. Fla. 1980).

[74] *Price v. Pelka*, 690 F.2d 98 (6th Cir. 1982).

[75] *Connor v. Winter*, 519 F. Supp. 1337, 1348 (S.D. Miss. 1981) (Cox, J., dissenting).

[76] Fioretti & Convery, *supra* at 277.

[77] *Id.*

[78] Fioretti & Convery, *supra* at 277.

[79] 5 U.S.C. § 504(a)(1); 28 U.S.C. § 2412 (d)(1)(A). Congress created this exception as a "safety valve" to preclude fee awards when the federal government "advance[ed] in good faith the novel but credible extension and interpretations of the law that often underlie vigorous enforcement efforts." S. Rep. No. 253, 96th Cong., 2d Sess. 7 (1980). *See also, Vermont Low Income Advocacy Council, Inc. v. Usery, supra*, at 36 ALR F. at 525, 526. (FOIA attorney's fees would not be awarded if the government's withholding of information "had a reasonable basis in law").

[80] *See* Pub. L. No. 96-481, § 201, H.R. Rep. No. 1418, 96th Cong., 2d Sess. 5 (1980), *Reprinted in* 1980 U.S. Code Cong. & Ad. News 4984 (purpose of Act is to remove the financial deterrent to litigation against the United States).

[81] S. Rep. at 5; H.R. Rep. at 8-9. The twelve *Johnson* factors, similar to those contained in the American Bar Association's Code of Professional Responsibility, are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the attorney's customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

[82] S. Rep. at 5; *see also* H.R. Rep. at 8-9.

[83] Berger, *Court Awarded Attorney's Fees: What Is "Reasonable"?*, 126 U. Pa. L. Rev. 281, 283-93 (1977).

[84] *See, e.g., Furtado v. Bishop*, 635 F.2d 915, 920 (1st Cir. 1980); *Northcross v. Board of Education*, 611 F.2d 624 (6th Cir. 1979), *cert. denied*, 447 U.S. 911 (1980); *Copeland v. Marshall*, 641 F.2d 880 (D.C. Cir. 1980) (*Copeland III*).

[85] *See, e.g., Copper Liquor, Inc. v. Adolph Coors Co.*, 684 F.2d 1087 (5th Cir. 1982); *Anderson v. Morris*, 658 F.2d 246 (4th Cir. 1981); *Avalon Cinema Corp. v. Thompson*, 689 F.2d 137 (8th Cir. 1982).

[86] M. Derfner & A. Wolf, *Court Awarded Attorney's Fees* ¶ 16.01 (1983).

[87] Comment, *Calculation of a Reasonable Award of Attorneys' Fees under the Attorneys' Fees Awards Act of 1976*, 13 J. Mar. L. Rev. 331, 378 (1980).

[88] West's annotations to 42 U.S.C.A. § 1988, concerning guidelines and determinations of a "reasonable" fee, now fill 44 closely printed pages. 42 U.S.C.A. § 1988 (West 1981) at 221-58, (West Sup. 1983) at 29-39.

[89] Berger, *supra* at 283-93.

[90] *Hensley v. Eckerhart*, 103 S. Ct. 1933, 1941 (1983).

[91] A. Miller. *Attorney's Fees in Class Actions* (Federal Judicial Center 1980) at 300.

[92] *Id.* at 306.

[93] *Id.* at 301.

[94] 5 U.S.C. § 504(b)(1)(A); 28 U.S.C. § 241(d)(2)(A) (setting a maximum hourly rate of $75). The Association is sensitive to inflation's effect on the adequacy of an hourly rate and suggests that this should be adjusted periodically.

[95] Leubsdorf, *The Contingency Factor in Attorney Fee Awards*, 90 Yale L.J. 473 (1981).

[96] *Id.* at 965-66. Presumably the purpose of *any* fee award under § 1988 is the advancement of civil rights.

[97] *Id.* at 795-800. *See also, e.g., Stenson v. Blum*, No. 81-7385 (2d Cir. 1983), *cert. granted*, 103 S. Ct. 2426 (1983) (affirming 50 percent bonus); *Graves v. Barnes*, 700 F.2d 220 (5th Cir. 1983) (approving multiplier of 2); *Louisville Black Police Officers Organization, Inc. v. City of Louisville*, 700 F.2d 268 (6th Cir. 1983) (approving 33⅓ percent enhancement); *Manhart v. City of Los Angeles*, 652 F.2d 904 (9th Cir. 1981); *vacated and remanded on other grounds*, 103 S. Ct. 2420 (1983) (approving increments of 75 and 30 percent); *Rajender v. University of Minnesota*, 546 F. Supp. 158 (D. Minn. 1982) (multiplier of 3); *Wells v. Hutchinson*, 499 F. Supp. 174 (E.D. Tex. 1980) (multiplier of 2); *West v. Redman*, 530 F. Supp. 546 (D. Del. 1982) (multiplier of 1.75).

[98] S. Rep. at 6. Those cases were cited as examples of the application of the proper criteria for determining a reasonable fee. Congress nowhere expressly endorsed or even mentioned the use of bonuses.

[99] *See, e.g., Lindy I*, 487 F.2d 161 (3rd Cir. 1973); *Lindy Brothers Builders, Inc. v. American Radiator & Standard Sanitary Corp.*, 540 F.2d 102 (3rd Cir. 1976) *(Lindy II); City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974).

[100] *Prandini v. National Tea Co.*, 557 F.2d 1015, 1020 (3rd Cir. 1977).

[101] *City of Detroit v. Grinnell, supra* at 469; *Lindy I, supra* at 165.

[102] *See* Berger, *Court Awarded Attorneys Fees: What Is "Reasonable"?*, 126 U. Pa. L. Rev. 281, 317-18 (1977); *see also Hutto v. Finney*, 437 U.S. 678, 695 (1978) (fee award under § 1988 *not* intended to "compensate the plaintiff for the injury that first brought him into court").

[103] *See* S. Rep. at 6 ("counsel . . . should be paid, as is traditional with attorneys compensated by a fee-paying client, 'for all time reasonably expended on a matter' ").

[104] *Oliver v. Kalamazoo Board of Education*, 576 F.2d 714, 716 (6th Cir. 1978).

[105] *Northcross v. Board of Education*, 611 F.2d 624, 638 (6th Cir. 1979), *cert. denied*, 447 U.S. 911 (1980).

[106] *Id.; see also* Berger, *supra* at 292, 317-18, 324 n. 167; Rowe, *The Legal Theory of Attorney Fee Shifting: A Critical Overview*, 1982 Duke L. J. 651, 675.

[107] *See* Berger, *supra* at 290.

[108] *See, e.g., National Association of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319, 1382 (D.C. Cir. 1982) (amount of bonus "inherently imprecise"); *Foster v. Gloucester County Board of Chosen Freeholders*, 465 F. Supp. 293, 302 (D. N.J. 1978). *See also* M. Derfner & A. Wolf, *Court Awarded Attorney Fees* ¶ 16.05[1] (1983).

[109] *Swicker v. William Armstrong & Sons, Inc.*, 484 F. Supp. 762, 777 (E.D. Pa. 1980).

[110] *See* 122 Cong. Rec. 35118, 35122 (1976) (remarks of Rep. Seiberling); H.R. Rep. at 1.

[111] For example, in *Brewster v. Dukakis*, 544 F. Supp. 1069 (D. Mass. 1982), plaintiff's counsel sought fees of $1.2 million, including a 100 percent bonus. Following litigation of the fee claim, the district court awarded $386,204, including a 10 percent bonus. If bonuses were not available, the gulf between what plaintiffs were seeking and what defendants were willing to pay would have been much narrower and settlement much more likely.

[112] The size of such awards has brought harsh criticism from members of the public as well as the bench and bar. *See* Berger, *supra* at 292 and n. 55; *Alpine Pharmacy, Inc. v. Charles Pfizer & Co.*, 481 F.2d 1045, 1050, (2d Cir.), *cert. denied*, 414 U.S. 1092 (1973) ("lucrative fees involved in recent class actions may evoke public acceptance of an Italian proverb, 'A lawsuit is a fruit tree planted in a lawyer's garden' ").

[113] Leubsdorf, *supra* at 480.

[114] *Copeland III*, 641 F.2d 880, 913 (D.C. Cir. 1980) (Wilkey, J. dissenting); Leubsdorf, *supra* at 474 ("The current theory of contingency bonuses implies that lawyers and clients should be made as willing to bring a feeble suit as a promising one"); *id.* at 491-92.

[115] 122 Cong. Rec. 35118 (remarks of Rep. Seiberling) ("provide for . . . compensation . . . in meritorious cases"), 35127 (remarks of Rep. Jordan) ("access to the system of justice to everyone . . . if he does, in fact, have a meritorious claim"), 35128 (remarks of Rep. Seiberling) ("meritorious . . . deserving cases") (1976).

[116] 121 Cong. Rec. 26806 (1975) (remarks of Sen. Tunney) ("act would do nothing to encourage frivolous litigation").

[117] *Furtado v. Bishop*, 84 F.R.D. 671, 677 (D. Mass. 1979) ("There must be an element of reason; the fee must not be such as to encourage the overpressing of marginal claims"), *rev'd*, 635 F.2d 915 (1st Cir. 1980); H.R. Rep. at 6-8.

[118] S. Rep. at 5; *Christianburg Garment Co. v. EEOC*, 434 U.S. 412, 419-20 (1978).

[119] *Ruckelshaus v. Sierra Club*, 103 S. Ct. 3274, n. 6 (1983).

[120] Note, *Promoting the Vindication of Civil Rights Through the Attorney's Fees Awards Act*, 80 Colum. L. Rev. 346, 375 (1980).

[121] Leubsdorf, *supra* at 488-89.

[122] *See, e.g., City of Detroit v. Grinnell Corp., supra* at 471 ("[t]he greater the probability of success . . . the less this consideration should serve to amplify the basic . . . fee"); *Prandini v. National Tea Co., supra* at 1020.

[123] Leubsdorf, *supra* at 488-89.

[124] *See, e.g.*, 122 Cong. Rec. 31471 (1976) (statement of Sen. Scott) (Act will help eradicate discrimination); S. Rep. at 5 ("fee awards . . . secur[e]) compliance with [civil rights] laws"); *Copeland III, supra* at 986.

[125] Rowe, *supra* at 656, 676, n. 115; Leubsdorf, supra at 490; Note, *Promoting the Vindication of Civil Rights Through the Attorney's Fees Awards Act, supra* at 375; *Hughes v. Repko*, 578 F.2d 483, 491 (3rd Cir. 1978) (Garth, J., concurring).

[126] *Vecchione v. Wohlgemuth, supra* at 795.

[127] Comment, *Calculation of a Reasonable Award of Attorneys' Fees Under the Attorneys' Fees Awards Act of 1976*, 13 J. Mar. L. Rev. 331, 369-70 and n. 189 (1980). *See also* Rowe, *supra* at 670.

[128] *Cf. Rodriguez v. Taylor*, 569 F.2d 1231, 1245, (3rd Cr. 1977), *cert. denied*, 436 U.S. 913 (1978).

[129] Rev. Proc. 75-13, § 3, 1975-1 Cu. Bull. 662.

[130] *NYSARC v. Carey*, 711 F.2d 1136, 1154 (2d Cir. 1983).

[131] *Compare Copeland III, supra* at 899 *with id.* at 920 n. 32 (dissent).

[132] *See* Comment, *Calculation of a Reasonable Award of Attorneys' Fees, supra* at 362-63, 395.

[133] *See* Leubsdorf, *supra* at 487; Berger, *supra* at 317-38.

[134] *See Hensley v. Eckerhart*, 103 S. Ct. 1933, 1940 (1983).

[135] *Id.*

[136] Berger, *supra* at 316.

[137] *Id.* The purpose of this and other recommendations contained in this report is to make the process of awarding fees more objective. If these recommendations are implemented, courts would be liberated from engaging in this unnecessarily subjective process, since more claims for fees could be settled and those that reached the courts could be resolved by the application of objective and easily applied criteria.

[138] *Grendel's Den v. Larkin*, No. 77-3418-T (D. Mass.). *See also Johnson v. Snyder*, 470 F. Supp. 972 (N.D. Ohio 1979); *Pugh v. Rainwater*, 465 F. Supp. 41 (S.D. Fla. 1979); *Pennsylvania v. O'Neill*, 431 F. Supp. 700 (E.D. Pa. 1977), *aff'd mem.* 573 F.2d 1301 (3rd Cir. 1978) (fees awarded to law professors at "market" rates).

[139] *See also, e.g., Rodriguez v. Taylor*, 569 F.2d 1231 (3rd Cir. 1977), *cert. denied*, 436 U.S. 913 (1978); *Lund v. Affleck*, 587 F.2d 75 (1st Cir. 1978).

[140] *NYSARC v. Carey*, 711 F.2d 1136 (2d Cir. 1983). *See also Ramos v. Lamm*, 713 F.2d 546 (10th Cir. 1983); *Copeland III*, 641 F.2d 880 (D.C. Cir. 1980) (Wilkey, J., dissenting); *Copeland v. Marshall*, 594 F.2d 244 (D.C. Cir. 1978) (*Copeland I*); *Greenspan v. Automobile Club*, 536 F. Supp. 411 (E.D. Mich. 1982); *Glover v. Johnson*, 531 F. Supp. 1036, 1039-44 (E.D. Mich. 1982); *Page v. Preisser*, 468 F. Supp. 399 (S.D. Iowa 1979); *Alsager v. District Court*, 447 F. Supp. 572, 577-80 (S.D. 1977); Comment, *Calculation of a Reasonable Award of Attorney's Fees Under Attorney's Fees Awards Act of 1976*, 13 J. Mar. L. Rev. 331, 378-400 (1980).

[141] 122 Cong. Rec. 31471 (remarks of Sen. Mathias), 31472 (remarks of Sen. Kennedy), 35118 (remarks of Rep. Seiberling), 35126 (remarks of Rep. Fish) (1976); H.R. Rep. at 1, 2-3, 6; S. Rep. at 2, 3, 6. *See also Alsager v. District Court, supra* at 577 ("Nothing . . . indicates that the purpose of the statute was other than *reimbursement* for costs and time spent."); *Page v. Preisser, supra* at 402-03.

[142] *See* H.R. Rep. at 2-3.

[143] H.R. Rep. at 8 n. 16.

[144] *See Copeland III, supra* at 908, 910 (dissent) ("path of attorney's fees [under market-rate system] . . . is Up, Up, and Away! . . . [S]pecific situations which arise in future cases will sometimes bring to light deficiencies in the general rules laid down in the past . . .").

[145] *See* H.R. Rep. at 9; S. Rep. at 6.

[146] *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975).

[147] *See Copeland III, supra* at 910 n. 3, 924 (dissent) ("'going hourly rate'. . is itself an artificial construct").

[148] Comment, *Calculation of a Reasonable Award of Attorney's Fees, supra* at 385; *Copeland III, supra* at 914, 924-25 (dissent).

[149] *See NYSARC v. Carey, supra* at 1150.

[150] Such a windfall cannot be justified as enabling legal services organizations to undertake other civil rights cases, *cf. Palmigiano v. Garrahy*, 616 F.2d 598, 602 (1st Cir.), *cert. denied*, 449 U.S. 839 (1980); *Copeland III, supra* at 899, since the Act was not intended to serve that purpose, however benevolent.

[151] *Glover v. Johnson, supra* at 1044.

[152] *See, e.g., Palmigiano v. Garrahy, supra* at 601.

[153] Comment, *Calculation of a Reasonable Award of Attorney's Fees, supra* at 398.

[154] *Id.* at 395.

[155] *See NYSARC v. Carey, supra* at 1150-52; *Glover v. Johnson, supra* at 1044; *Alsager v. District Court, supra* at 579; *Page v. Preisser, supra* at 402.

[156] *See Page v. Preisser, supra* at 401.

[157] *Rodriguez v. Taylor, supra* at 1248.

[158] *Johnson v. Georgia Highway Express*, 488 F.2d 714, 719 (5th Cir. 1974).

[159] *See Copeland III, supra* at 925-28 (dissent).

[160] 42 U.S.C. § 2996h(c)(1); 45 C.F.R. § 1602.

[161] *See* Berger, *supra* at 324; Comment, *Calculation of a Reasonable Award of Attorney's Fees, supra* at 385; *National Association of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319, 1325 (D.C. Cir. 1982) ("Setting a prevailing hourly rate

has proven more difficult than perhaps may have been contemplated.").

[162] *Cf., e.g.,* 42 U.S.C. §3612(c), precluding an award of fees which the lawsuit is "brought principally for the purpose of gaining attorney fees."

[163] *See, e.g., Fulps v. City of Springfield,* 715 F.2d 1088, 1092 (6th Cir. 1983); *Walters v. Heublein, Inc.,* 485 F. Supp. 110, 113 (N.D. Cal. 1979); *Jones v. Federated Department Stores, Inc.,* 527 F. Supp. 912, 920-21 (S.D. Ohio 1981); *Scheriff v. Beck,* 452 F. Supp. 1254 (D. Colo. 1978). *See also,* Note, *Rule 68: A "New" Tool for Litigation,* 1978 Duke L.J. 889, 899-90. A proposed amendment to Rule 68 is presently being considered, which would expressly provide that fees should be denied in such circumstances. 98 F.R.D. 361-67 (1983).

[164] *See, e.g., Chesny v. Marek,* 720 F.2d 474 (7th Cir. 1983); *Greenwood v. Stevenson,* 88 F.R.D. 225 (D. R.I. 1980).

[165] *Waters v. Heublein, Inc., supra* at 114-15; *see also* Committee Note to Preliminary Draft of Proposed Amendment to Rule 68, 98 F.R.D. at 366 (1983).

[From the Washington Post, Dec. 16, 1983]

ATTORNEY'S FEES

Professor Laurence Tribe of Harvard Law School won a big constitutional case against the Commonwealth of Massachusetts and is therefore, by federal statute, allowed to collect "reasonable" attorney's fees from the loser. But the state is refusing to pay his $332,000 bill, which is based in part on an hourly rate of $275. No wonder. That's a pretty hefty fee for a moonlighting academic who wins a liquor license case. Yes, a liquor license.

Prof. Tribe, with two assistants, represented a restaurant in challenging a state statute that granted churches and schools a veto power over liquor license applications by nearby businesses. After three years he won decisively in the Supreme Court, arguing that this delegation of a governmental licensing decision to a private party, particularly a religious organization, violated due process and the establishment clause of the First Amendment. Under a 1976 federal statute, attorneys who win constitutional and civil rights cases against governments can request the court to make the losing defendant pay "reasonable" attorney's fees. The purpose is to promote vindication of those rights.

Prof. Tribe can command high fees from his paying clients (many are not) because he is an eminent constitutional scholar and a highly creative and successful advocate. Billing $275 per hour, he argues, is consistent with top wages in Boston law firms, is much less than in the priciest New York or Washington firms, and is much less than he himself has charged some affluent clients. Prof. Tribe also argues that the 50 percent "tip" he applied to the itemized bill is both legal and perfectly reasonable given the complexity of the constitutional theories involved, the risk of losing and the time he's waited to receive any compensation at all.

That's beside the point. High-priced lawyers are just charging much too much—to the point of caricature—and the folks expected to pay their fees should put an end to the practice. Just because well-heeled private clients dole out huge sums doesn't mean that the public should be equally generous. The "prevailing wage" approach that government uses when it is buying services—which is the essence of Prof. Tribe's claim—has a superficial appeal. But on closer inspection it reveals elements of a gigantic rip-off.

Public works cost too much in part because the Davis-Bacon Act effectively requires union-scale wages. Medical costs soar in part because doctors have dominated service and price decisions. There's news every week of some windfall for a government consultant or defense contractor. For all these groups, government should refuse to bolster inflated wages and profits. Sorry, Prof. Tribe. Lawyers—even civil rights lawyers—need at least as much wage restraint as others when it comes to billing the government.

Mr. DENTON. Mr. President, I am pleased to join my distinguished colleague from Utah [Mr. HATCH], as an original cosponsor of the Legal Fees Equity Act. The bill would establish guidelines for the awarding of attorneys' fees in civil judicial and administrative proceedings against Federal, State, and local government defendants, and would raise the compensation rates for attorneys representing indigent defendants under the Criminal Justice Act. The purpose of the bill is to achieve a more equitable balance in compensation for the various attorneys litigating for or against the Government, defense attorneys paid under the Criminal Justice Act, and private attorneys receiving fees under civil fee-shifting statutes.

Mr. President, a number of Federal statutes provide that parties to civil suits and administrative proceedings against the United States, States, or local governments may, under appropriate circumstances, recover reasonable attorneys' fees from the Government defendants. Those statutes have, however, placed a great burden on the courts because of the lack of congressional guidance about when an award of attorneys' fees is appropriate, or about what constitutes a reasonable award. As a result, courts have reached conflicting interpretations of the civil fee-shifting statutes. In some cases, the courts have used multipliers and bonuses to double, and even triple, the normal hourly rates of the prevailing party's attorney.

The Legal Fees Equity Act would provide the much needed guidance to the courts and Federal agencies for the award of attorneys' fees pursuant to Federal statutes, thereby reducing the current uncertainties and disparities.

Specifically, the bill would:

Set a $75 per hour maximum rate for attorneys' fees awarded, and eliminate the use of bonuses and multipliers to escalate fee awards. That will compensate private attorneys general at a level commensurate with, but still significantly higher than, that of their Government counterparts, but provide a reasonable incentive sufficient to attract competent counsel.

Allow recovery of attorney's fees only when a party has prevailed on the merits of his complaint, or where the suit is concluded by a favorable settlement agreement.

Allow recovery of attorneys' fees only for work performed on issues on which the party prevailed.

Permit the reduction or denial of the amount of fee awards in cases where, for example, a party has unreasonably protracted the litigation, the services provided were excessive with regard to the nature of the controversy, or the fee award would unreasonably exceed the hourly salary of a salaried attorney.

Provide that monetary judgments be reduced, but not by more than 25 percent, by the amount of the attorneys' fees allowed in the proceeding. Exceptions are allowed for suits under certain provisions of the Equal Access to Justice Act, in suits for recovery of disputed taxes, or in cases of undue hardship.

Establish certain procedural requirements for attorneys' fee applications, including a 30-day time limit after final judgment for submitting fee applications, and require courts and agencies to develop additional guidelines.

Clarify the circumstances in which attorneys' fees may be awarded when a claim becomes moot or the party refuses to accept a reasonable settlement offer.

Another important provision of the bill would provide a greater balance between the high hourly rates of compensation for private attorneys who sue the Government in a civil proceeding and the much lower hourly rates of compensation for attorneys who represent indigent criminal defendants in proceedings under the Criminal Justice Act.

Specifically, the bill would:

Double the hourly rate of compensation from $30 per hour for time in court and $20 per hour for out-of-court time to $60 and $40 per hour, respectively.

Double the maximum allowable compensation for various judicial proceedings. The new limits would be $2,000 per attorney for felony cases, $800 for misdemeanor cases, and $500 for post-trial and parole revocation proceedings.

Mr. President, I welcome the guidance and reform that the Legal Fees Equity Act offers. I urge my colleagues to join me in cosponsoring the bill.

Thank you, Mr. President.

ALEUT RESIDENTS

Mr. STEVENS. Mr. President, in today's Anchorage Daily News, there is an article discussing the Aleut residents of the remote Pribilof Islands in the Bering Sea. In that article, Mrs. Alice Herrington, president of Friends of the Animals, is quoted attacking the ancestry and lifestyle of the Pribilovians.

The history of the Aleuts on the Pribilofs is a story of brutalization, subjugation, misuse, and terror. Few people have suffered greater domination—first at the hands of the early Russian settlers in Alaska and then at the

hands of our own Government, which interned the Aleuts during World War II.

Mr. President, racial prejudice of the kind espoused by Mrs. Herrington is most cruel when directed against a people who are trying desperately to chart a new course of self-sufficiency. The Pribilof Islands are 150 miles off the western shores of Alaska; the climate and the living conditions are extremely harsh. Congress has encouraged the Pribilovians to strike out on their own and create, for the first time, a private economy based on fishing. These efforts will take time, and for now, the only source of employment on the Pribilofs is the fur seal harvest, which Mrs. Herrington opposes on humanitarian grounds. Mrs. Herrington has called for expulsion of the Pribilovians from their native land if necessary to stop the harvest. This expatriation would destroy the Aleuts of the Pribilofs; it would be cultural genocide.

Mr. President, there is no evidence that indicates that the decline in the fur seal herd is in any way linked to the harvest on the Pribilofs each spring. The fur seal population in the North Pacific exceeds 1 million animals. The people—the Aleuts—of the Pribilofs deserve an apology, and I call on my colleagues to join me in denouncing the racially charged comments of Alice Herrington and to demand that she retract those comments and apologize for making them.

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

[From the Anchorage Daily News, June 29, 1984]

CONSERVATIONIST CLAIMS ALEUT ISLANDERS RICH AND RUSSIAN

REMARKS GREETED BY SCORN, RIDICULE AND AMAZEMENT

(By Richard Mauer)

In a statement mailed to news organizations around the country, the head of an animal protection organization characterizes the residents of the remote Pribilof Islands as college-educated Wall Street whizzes who have become wealthy through congressional largess.

Alice Herrington, president of Friends of Animals Inc., also said the residents of the islands—once the captive labor force of the czars—are today indistinguishable from modern Russians.

"You could drop any of them into Moscow and they'd blend into the scene there," Herrington said in a telephone interview from her Neptune, N.J., headquarters.

Friends of Animals, a national organization that claims 125,000 members—"very few in Alaska, I regret to tell you," said Herrington—is campaigning to stop the commercial seal kill on St. Paul Island.

St. Paul is located 750 miles southwest of Anchorage in the Bering Sea.

In its press release, the organization said the islanders no longer need the money from the seal harvest. "These Americans are now fully in the mainstream of American life, complete with college educations and a firm and fast understanding of the stock market which reportedly is swelling rapidly their $39.5 million tax gift," the press release said.

Herrington's remarks have been greeted by scorn, ridicule and opened-mouth amazement by Alaskans familiar with the harsh life on St. Paul, where a 1984 government report said the purchasing power of its 600 residents was 48 percent of the national average, where most of the working population is unemployed most of the year, where the average income in 1982 was $7,400 when the Alaska average was $16,600 and the U.S. average was $11,100, where census figures show that overcrowded housing is chronic, where power rates went up 237 percent last year, where a recent study involving 193 people found only three had four years of college, where the census found the median years of schooling completed by adults was 9.2 compared with 12.5 for the nation, and where high school students travel 750 miles to attend school.

"From the kinds of things she's been saying, one would think she's been smoking peyote," said Larry Merculieff, president of Tanadgusix Corp., the St. Paul village corporation.

"I find her statements horrendous," said Douglas Veltre, an anthropology professor at Anchorage Community College who has studied Aleut life in Alaska for more than 15 years.

Herrington and Friends of Animals have tried to stop deer hunting in the Florida Everglades and sought an end to the use of animals in laboratory experiments.

Herrington's latest effort is to oppose the four-nation Fur Seal Convention, which since 1911 has controlled the exploitation of hundreds of thousands of seals that come to breed annually on the Pribilof Islands off Western Alaska.

The convention expires in October, but the four signatories—the United States, Soviet Union, Japan and Canada—are negotiating a renewal, said Ray Arnaudo, a Pacific fisheries expert in the State Department.

Inquiries about the convention have been coming in from Congressional offices, Arnaudo said, a sign that intense lobbying is under way.

That doesn't please Merculieff.

"It makes everyone on the island angry that people who just totally don't understand the situation have a voice heard throughout the United States and we don't have a similar capability," Merculieff said. "It's amazing to us that they're given any credibility whatsover."

The statement by Friends of Animals criticized federal fisheries officials for saying the harvest protects the seal population by outlawing sealing on the high seas.

"Another of the bureaucrat's ploys is that the kill must continue to provide employment for the Americans who live on the Pribilof Islands, which ignores the fact that these 600 people have been given $39.5 million of our tax dollars since 1971," the organization said.

The statement goes on to describe the Pribilof residents as "primarily of Russian extraction and culture with a touch of Aleut blood. . . "

Though the statement doesn't say where the $39.5 million was obtained, Herrington said the money was appropriated by Congress for "their private corporations which were formed under the Alaska Native Claims Settlement Act" of 1971.

The only such corporation on St. Paul is the Tanadgusix Corp. The neighboring island of St. George has the St. George Tanaq Corp., but there is no commercial sealing there.

"I think the Pribilovians now have no longer any interest (in the harvest) because they are such a rich people," Herrington said. "The kill is not of economic importance."

She said she got her figures by "talking to people," though the only person she cited as a source is Merculieff.

According to government figures, the Tanadgusix Corp. of St. Paul received $3 million in 1971 as part of its share of the settlement of Native land claims in Alaska.

The corporation's net worth was listed last September as $7.5 million, with a large portion of those assets tied up in land on the island.

According to attorney Tony Smith, who represents Tanadgusix, the only other major cash infusion from the federal government into Tanadgusix amounted to $2.1 million for the sale of the island's famous bird cliffs to the Interior Department. Not all of that money has been transferred.

Neither payment could be considered a gift, Smith said. One was for the settlement of aboriginal land claims, the other for selling a valuable piece of real estate.

The people on both Pribilofs shared an $8 million judgment against the federal government last year as a settlement for nearly a century of unjust and dishonorable treatment.

St. Paul is also the beneficiary of a $12 million economic development trust fund. The trust was funded by Congress last year when the government abandoned its 115-year domination of the island and pulled out of direct management of the seal harvest and the operation of most of the functions on the island—the roads, utilities and jobs that went with them.

"In the government pullout, we inherited facilities in extreme disrepair," Merculieff said. "We don't have stockbrokers and we don't participate in the stock market—we don't have such a luxury. It is expected that the cash settlement, if used extremely wisely and only for critical needs, will last three years.

"If we're not successful in getting our economic strategy together in the next three years, we may as well buy one-way tickets for everyone on the island," Merculieff said.

"Any job created this summer is going to allow the people to pay their bills this winter. The fur seal harvest is the linchpin of all this. It employs 81 people throughout the community."

Herrington said she couldn't cite any anthropological sources for her comments on the ethnic background of the Pribilof residents, though she said a National Geographic article once referred to them as "Russian-Aleuts."

She said she bases her statements on two visits to the island in the 1970s.

Merculieff said Herrington's trips are vividly recalled and have become part of local folklore.

"The last exchange we had with her was about four or five years back. She said that God may be a walrus, and forever more everyone remembers her.

"The one thing she has consistently maintained over the years is that the people should be moved en masse to the mainland," Merculieff added.

The Aleuts still carry some aspects of Russian culture—all have Russian last names and the Russian Orthodox Church is a focal point of the island. "There's no question

that people have Russian blood in them from the time the Russans raped the Aleut women, but there's also no question in my mind that we're full-fledged Americans and distinctly Aleut and proud of both," Merculieff said.

Veltre, the anthropologist, said it is unlikely the Aleuts on the Pribilofs have a high percentage of Russian blood.

"To say these people can be dropped into Moscow and be lost in the crowd is biologically untrue and culturally untrue," she said.

The Friends of Animals position contrasts with other conservation organizations' including the Sierra Club and the Wildlife Federation, which have supported a controlled harvest.

Greenpeace, the worldwide environmental organization, opposes the seal kill in principle but believes it should be allowed to continue for a time to stave off economic disaster for the Aleuts, according to Vivia Boe, the organization's international seal project coordinator.

"We feel quite a bit of sympathy for the Aleuts in the drastic change that's going on," she said. "The last thing they need now is a lot of pressure and a lot of decisions made for them."

Greenpeace is exploring the possibility of finding volunteers with expertise in enterprises other than sealing who might be willing to help the Aleuts develop an alternative economy. For now, the seal hunt represents an important psychological link to their past, Boe said.

"They are afraid of stepping into the future right now," she said. "There's a lot of social problems and a lot of alcoholism. Their social and cultural problems were not being addressed. They've felt that people cared only about seals, not about them."

PORTRAIT OF THE LATE SENATOR HENRY M. JACKSON

Mr. STEVENS. Mr. President, in presenting the Medal of Freedom to Helen Jackson on behalf of our colleague, the late Senator Henry "Scoop" Jackson, the President made a number of laudatory remarks about the contribution Scoop made to this country. During these remarks, the President endorsed a proposal to make room for a portrait of Senator Jackson among those of Senators Taft, LaFollette, Calhoun, Webster, and Henry Clay in the reception room where members of the public are greeted. I, as well, would like to add my voice to those in support of this expression of our respect and admiration for my friend, Scoop.

We could not ask for a finer greeting committee.

SOUTH CAROLINA PARTICIPANTS IN THE YOUTH FOR UNDERSTANDING EXCHANGE PROGRAM

Mr. THURMOND. Mr. President, for the past 33 years, Youth for Understanding [YFU], one of the largest and most distinguished international exchange organizations in America, has administered an excellent program designed to provide our Nation's high school students the opportunity to visit other countries for several months as exchange students.

I am pleased that Youth for Understanding has chosen 14 South Carolina high school students to participate in this outstanding program in order to gain a firsthand perspective and knowledge of other cultures; to acquire language skills; and to make friends overseas. After meeting with some of the YFU students, I was impressed with their quality of character and personality. They appear to be exceptionally good students who will represent the Palmetto State and our Nation well in foreign lands.

Mr. President, I know that my colleagues in the Senate would want to join me in congratulating these fine individuals, and I ask unanimous consent that the name, high school, and hometown of each student, and the country that they will be visiting, be included in the RECORD.

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

SOUTH CAROLINA STUDENT PARTICIPATION 1984–85

Name and address	High school	Country	Program	Scholarship
Marion Bacot, Lake City, SC	Lake City High School	Netherlands	Year	
Melissa Camp, Lancaster, SC	Lancaster High School	Germany	Summer	
David Carroll, Spartanburg, SC	Spartanburg High School	Japan	Summer	YFU General Scholarship.
Kimberly Cobb, West Union, SC	Walhalla High School	Germany	Year	Congress-Bundestag Winner.
Michael Cooter, Greenville, SC	James L. Mann High School	Japan	Summer	Japan/U.S. Senate Scholarship.
Jessica Deysach, Columbia, SC	Dreher High School	Japan	Summer	National Council for Social Studies Scholarship.
Elijah Gardner, Gaffney, SC	Spartanburg Day School	Japan	Summer	YFU General Scholarship.
April Lambour, Greenwood, SC	Greenwood High School	Netherlands	Summer	
Elizabeth Lear, Chesterfield, SC	Chesterfield High School	Japan	Summer	Japan/U.S. Senate Scholarship.
Mariana Lowry, Rock Hill, SC	Northwestern High School	Germany	Year	Congress-Bundestag Winner.
Trey Mevers, Charleston, SC	Porter Gaud High School	Japan	Summer	
Lorenzo Sampson, Charleston, SC	Burke High School	Mexico	Summer	YFU General Scholarship.
Cynthia Snoke, Columbia, SC	Heathwood Hall Episcopal	Germany	Year	Congress-Bundestag Winner.
Karla Whitlock, Columbia, SC	Cardinal Newman High School	Netherlands	Summer	Warner Lambert Scholarship.

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

The PRESIDING OFFICER (Mr. KASTEN). 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.

EXTENSION OF ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that the time for morning business be extended to 12 o'clock under the same terms and conditions.

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

Mr. BAKER. 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.

Mr. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. BAKER. Yes, Mr. President; I am happy to yield.

SENATE SCHEDULE

Mr. BYRD. Mr. President, I wonder if the majority leader could give us his insight into the schedule he contemplates for the rest of the day—hopefully no necessity for tomorrow—and what he might see as the program for the first day or second or third upon the Senate's return after this recess.

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

Mr. President, as for today, we are waiting really for the House to send to us the conference report on bankruptcy and the debt limit. It is my understanding that it may be a while yet before we get either one of those measures, so I would caution Senators to assume that we may be in most of the day today and most of that time waiting for the House of Representatives.

In addition to that, Mr. President, if it can be worked out, the leadership on this side would like to take up a concurrent resolution to accompany the deficit reduction conference report. It

is my understanding that negotiations are still under way as to the substance of such a concurrent resolution and the outcome of those negotiations is now uncertain. But I would like to take that up as soon as we receive word that the parties are willing and as soon as the minority leader would be agreeable to doing so.

I think we will be out today, Mr. President. I cannot say that with certainty, of course, but I believe we will. If I were guessing now I would guess 6 o'clock or thereabouts.

AGENDA BEGINNING JULY 23

When we return on July 23, Mr. President, it would be the intention of the leadership on this side to ask the Senate to give first priority to the consideration of any and all of the regular appropriation bills that may be available to us. In that connection, Mr. President, today's calendar shows that we have three supplementals; we have now done energy, water and HUD; we have sent Commerce, State, Justice to conference. It is our hope that we will have an agriculture bill out of committee and here and available when we return, and I anticipate that that would be the first of the appropriation bills that we will be able to reach when we return, the agriculture appropriations bill. We have done legislative; foreign assistance has been reported in the Senate, but we have not received that measure from the House. It would not be the intention of the leadership on this side to turn to that appropriations bill until we do have a companion House measure.

Mr. President, I am also advised that Treasury-Post Office will be available perhaps during the first week when we return.

So we will probably have the agriculture appropriations bill and Treasury-Post Office the first week, and that would be a full week I anticipate. But, in any event, first priority will be given to appropriation bills. Other appropriation bills that must be dealt with are the D.C. appropriations bill, Milcon, Interior, and I have already mentioned foreign assistance and the general supplementals.

Mr. President, in addition to appropriation bills, it would be the hope of the leadership on this side that we could do a few other things in July during those 3 weeks we will be in session and before we go out for the Republican National Convention. The things I have on my list are the Wilkinson nomination, RCRA, the highway bill, R&D antitrust, title IX, the Grove City matter, a banking bill which has now been reported by the committee, and product liability. It is unlikely that we will get all of those things in 3 weeks, but that is the list that I have prepared at this time.

Mr. BYRD. I thank the distinguished majority leader. Can he indicate what progress may be made or is in the making, shall I say, with reference to the bankruptcy conference report and the debt limit?

Mr. BAKER. Yes, Mr. President. I checked with our Parliamentarian who, in turn, checked with the House Parliamentarian, I believe, a little while ago. It appeared that the rule reported on yesterday by the Rules Committee dealing with the debt limit was being debated. I believe that, contrary to the announcement made last evening that the House would go first to the bankruptcy conference report, they laid that aside in order to debate the rule on debt limit and that has not yet been concluded.

So, based on that, I guess we are going to be into the afternoon before we get bankruptcy and later than that before we get the debt limit.

Mr. BYRD. Does the distinguished majority leader have anything at this point with reference to the conference report on DOD authorization and also with reference to the conference report on the budget measure?

Mr. BAKER. Mr. President, the last report I had from those two conferences was favorable. The distinguished chairman of the Armed Services Committee indicated to me yesterday that he thought they were making good progress or were in the range of a settlement on all issues, and that is most encouraging. I do not know how long it will take. I do not assume they are going to get done today.

On the conference report on the budget, the chairman has indicated to me that he has presented to the House conferees a proposal for a range of numbers on the remaining issues in disagreement, that is the DOD part, and the House has not agreed to that but they have not yet rejected it, I understand.

So I do not believe either conference will be meeting today, but I would anticipate that we will be able to finish both of those conferences in July.

I should have added that to the list, Mr. President, I will now. We will do any conference reports that we receive during that period and, most particularly, DOD and the budget. It is the intention of the leadership on this side to do both of those conference reports and complete action on those measures.

Mr. President, I included on that list that I gave for July the Wilkinson nomination. There will be adequate notice given to all parties, because I know it is a controversial nomination. But it is the intention of the leadership on this side to try to reach the Wilkinson nomination during those 3 weeks and to proceed to conclusion. What I mean by that is I feel we have begun it and we owe the obligation to finish it and the leadership on this side will go to cloture if necessary in order to conclude debate on that nomination during July.

Mr. BYRD. Mr. President, does the distinguished majority leader intend to have a provision in the adjournment resolution for this upcoming break which will provide for a callback, if necessary, of the House and Senate, a callback to be made by the leadership of the Senate and the House of Representatives?

Mr. BAKER. Mr. President, I am advised that will be in the adjournment resolution which will be originated with the House. The language has become very standard now, if we go out for any period of time. It calls for the callback of the Congress when the majority leader and the Speaker concur in that call, and after consulting with the minority leader in both houses I am advised that will be in the House resolution.

Mr. BYRD. Mr. President, I thank the distinguished majority leader for his responses to the questions.

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

RECESS UNTIL 12:40 P.M.

Mr. BAKER. Mr. President, it is 20 minutes to 12 now. What we are doing really is waiting for the House of Representatives in two cases, and waiting for negotiations on the concurrent resolution in the other.

I do not know of any good purpose to be served now by remaining in session. I believe the best thing we can do at this point, if the minority leader concurs, would be to recess. I would not like to recess too long. But I have in mind, say, until 1 o'clock.

The minority leader and I have conferred privately. He has suggested a recess for 1 hour, which is a good arrangement. Mr. President, I concur in that.

I now ask unanimous consent that the Senate stand in recess for 1 hour.

There being no objection, the Senate, at 11:41 a.m., recessed until 12:40 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. KASTEN].

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BAKER. I thank the Chair.

Mr. President, I do not yet have a report from the House of Representatives on their progress on the matters that we have to deal with this afternoon. I will attempt to gain some information in just a moment.

In the meantime, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, I wish to announce that the House of Representatives just passed the debt limit measure by a vote of 208 to 202. I anticipate we will have that measure probably about 2 o'clock or 2:30, I am told.

The House will next go to the bankruptcy conference report, I am advised.

EXTENSION OF TIME FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I ask unanimous consent that time for the transaction of routine morning business be extended for 15 minutes under the same terms and conditions.

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

THE CALENDAR

Mr. BAKER. Mr. President, there are a few items in the file of business which may be transacted routinely which are cleared on this side. If the minority leader is agreeable, I would like to work through those and see if we can proceed to the consideration of any or all of those items.

Mr. BYRD. Mr. President, I will be happy to work with the majority leader in taking up the items.

Mr. BAKER. I thank the Senator.

SUPPORT FOR THE INITIATIVES OF THE CONTADORA GROUP

Mr. BAKER. Mr. President, first, I would ask the minority leader if he is prepared to go to Calendar Order No. 968, House Concurrent Resolution 261.

Mr. BYRD. Yes, Mr. President, we are ready on this side.

Mr. BAKER. Mr. President, in view of that, I ask that the Senate now turn to the consideration of Calendar Order No. 968.

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

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 261) expressing support for the initiatives of the Contadora group and the resulting agreements among the Central American nations.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 261) was agreed to.

The preamble was agreed to.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TECHNICAL CORRECTIONS TO THE HOUSING AND URBAN-RURAL RECOVERY ACT

Mr. BAKER. Next, Mr. President, I would propose to ask the Senate to turn to the consideration of Calendar No. 1034, if the minority leader does not object.

Mr. BYRD. Mr. President, I do not object.

Mr. BAKER. I thank the minority leader.

Mr. President, I ask the Chair to lay before the Senate Calendar Order No. 1034.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 2819) to make essential technical corrections to the Housing And Urban-Rural Recovery Act of 1983.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. GARN. Mr. President, the bill before the Senate makes essential technical amendments to the Houseing and Urban-Rural Recovery Act of 1983 which was passed as a part of the so-called housing—IMF package last November. These amendments are limited to corrections in that legislation which for purely technical reasons do not reflect the agreed upon intentions of the Banking Committee and which create a current problem in an operating program. These amendments have been unanimously approved by the Banking Committee members by a telephone poll completed on June 27, 1984. These amendments are necessary and I believe noncontroversial. I hope my colleagues will quickly accept them as such and send the bill to the House. I ask unanimous consent that a brief summary of the provisions be included in the RECORD following my statement. I also ask that a statement regarding rural rental housing projects with State assistance be included in the RECORD.

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

(See exhibit 1.)

EXHIBIT 1

SUMMARY OF TECHNICAL CORRECTIONS

SECTION 1. CLARIFICATION OF COMMUNITY DEVELOPMENT AREA-WIDE BENEFIT EXCEPTIONS

It is the intent of Congress that the Community Development Block Grant program should be focused on activities that directly benefit low and moderate income persons or in areas where low and moderate income persons reside. The Housing and Urban-Rural Recovery Act of 1983 contained an exception provision for grantees with no areas in which the populations is predominently of low and moderate income. The exception was stated in such a way that could inadvertently result in fewer rather than greater numbers of low and moderate income persons being served.

This amendment corrects that provision by adopting a standard in place in HUD regulations which grants the exception to a jurisdiction with so few areas in which 51 percent of persons are of low or moderate that it would be inappropriate to address the needs of its low and moderate income residents only in those areas.

SECTION 2. STATE ADMINISTRATIVE EXPENSES

Some States have reported expected difficulty in operating the new Rental Rehabilitation Grant program due to a lack of State funds for administration. This amendment allows States to pay the expenses of this program out of the administrative allowance of the State Community Development Block Grant (CDBG) program just as entitlement cities and urban counties are allowed to.

States may deduct up to $102,000 from the yearly Community Development Block Grant to cover the costs of administering both State CDBG and the State Rental Rehab program. 50 percent of additional costs may be paid out of CDBG funds limited to 2 percent of the CDBG grant.

SECTION 3. STATE RENTAL REHAB ACTIVITIES IN NONALLOCATED UNALLOCATED AREAS

States were inadvertently prevented from conducting rental rehabilitation program activities in areas other than cities or urban counties such as counties or townships. This amendment corrects the statute to include any areas of the State which do not receive a direct allocation of rental rehab funds from HUD.

SECTION 4. USE OF VOUCHERS FOR PERSONS DISPLACED BY RENTAL REHAB ACTIVITIES

It was the intent of Congress that persons of low and very low income be eligible to receive a housing voucher if they are displaced by activities under the Rental Rehab Grant Program. Due to an oversight during redrafting, the eligibility of persons between 50 and 80 percent of median income was omitted. This amendment reinstates the eligibility of low income persons for assistance if they are displaced.

SECTION 5. DELETION OF EXTRANEOUS SENTENCE

The final draft of the Housing and Urban-Rural Recovery Act contained an extraneous sentence in Section 474 (Cancellation of liquidation of new communities program). This sentence, which called for the delay of regulations limiting the use of housing assistance to only U.S. citizens and other specified resident, was not part of any agreement between parties to the housing bill negotiation. This amendment deletes that sentence.

SECTION 6. RURAL HOUSING

Title V, The Rural Housing Admendments of PL 98-181 contained a requirement that not less than 40% of subsidized homes in the Sec. 502 proclaim nationwide and 30% in each state should be available only for occupancy by very low income families. The Farmers Home Administration has further required that a running ratio of 40% of the subsidized home loans kept in each county

office. This regulation has caused operating difficulties in many areas. Some county offices have apparently stopped making home loans to low income families while only loans to very low income families are processed.

Section 6(1) of this amendment creates a setaside of 40% of funds for subsidized home loans to very low income families.

Under section 6(2) not less than 30% of funds allocated to States are required to be set aside for use only by very low income families. This requirement does not preclude FmHA from pooling and reallocating any unused funds from such a state set aside so long as the funds remain available only for very low income families.

SECTION 7. TRANSITION FOR CONDO CONVERSION RESTRICTIONS

Restrictions on FA mortgage insurance for apartments being converted to condominiums were passed in the November housing bill. Administrative difficulties have made it necessary to enact transition provisions.

This amendment allows applications for mortgage insurance to be processed and approved that were made before April 20, 1984 when notified field offices of the new restrictions.

SECTION 8. SETTLEMENT OF OUTSTANDING URBAN RENEWAL PROGRAMS

A new subsection was added to the Housing & Community Development Act of 1974 by last year's legislation which was intended to allow recipients to retain income from outstanding urban renewal projects if it is used under the current community development block grant program. This amendment clarifies that provision by referring to an appropriate part of the statute and to "local public agency" which in some cases was the original recipient.

SECTION 9. NEIGHBORHOOD DEVELOPMENT DEMONSTRATION

The Housing and Urban-Rural Recovery Act of 1983 included a Neighborhood Development Demonstration. Up to two million dollars was authorized to fund the program. This amendment clarifies that funds appropriated for fiscal year 1984 as part of the Secretary's Discretionary fund of the Community Development Block Grant program to carry out this purpose are available under the specific terms of the authorization statute.

STATEMENT REPLACING RURAL RENTAL HOUSING PROJECTS WITH STATE ASSISTANCE

PL 98-181 contained provisions in Title V encouraging the Farmers Home Administration to work with State or private housing assistance programs when approving development applications under the Sec. 515 program. It is the intent of Congress that nonfederal rental assistance in tandem with Sec. 515 financing be encouraged to the fullest extent possible.

As an example of a State assistance program, the New York Division of Housing and Community Renewal (DHCR) has a program which will supply rental assistance to very poor families who cannot afford the project rents even in an FmHA Sec. 515 project with 1% interest financing. This rental assistance would be tied to the project for five years.

The statute requires that an adequate rental market exists for the project at the end of the state subsidy period. This can be determined by an analysis of current Census or other available data trended ahead to ascertain the pool of likely renters that could afford the project rents without State rental assistance.

New York has provided an outline of a procedure which seems to meet the objectives of this approach which follows this statement. The Committee expects that FmHA will take this proposal into consideration in order to develop workable guidelines for determining feasibility.

The Committee has two additional concerns with FmHA proposed policy regarding project size and the existence of other subsidized housing in a project market area. FmHA should not set arbitrary limits on the number of units in a project regardless of demonstrated need. Secondly, FmHA should not reduce project size on the basis of other existing assisted units being present in a trade area if there is a demonstrated need for additional units. Projects planned for the area under other programs should of course be taken into account.

DHCR PROPOSED FEASIBILITY REVIEW

Overview: DHCR proposes in reviewing project feasibility that FmHA continue to use the basic procedure outlined in the regulations however supplemented by additional market analysis information provided by DHCR.

It is suggested that for purposes of the Rural Rental Assistance Program that FmHA and DHCR formalize both the procedure and format of the rental housing market analysis prescribed in FmHA Instruction 1944-E, Exhibit A-6. Futhermore, this basic process should be strengthened to respond to the dual feasibility requirements of the recently passed legislation as well as the prescription for economic justification stated in Exhibit 6, which is: "The economic justification for the housing and the size of the project should be based primarily upon the housing need and demand from eligible prospective occupants who are permanent residents of the community and its surrounding trade area."

Specifically DHCR proposes to provide a projection at the end of the subsidy term of the housing need and demand from eligible prospective occupants in the project trade area.

This information would enable FmHA to evaluate with much higher confidence the future feasibility of a proposed project.

The strengthened procedure would not only meet the legislative intent but could replace or supplement use of the formula required by the June 1, 1984 memorandum to the New York State Director.

Steps

1. Analyze project economics (i.e. O & M, utilities, rents) from pre-application to determine the income prospective tenants would have to have to afford to live in the proposed housing.

2. Identify the boundaries of the trade area surrounding the project site.

3. Use data available from the 4th Count Census Summary (i.e. household income, size and type, etc.) to determine the size and profile of the pool of eligible prospective occupants.

4. Analyze the profile by comparing it to the rental housing survey and adopt a capture rate [market absorption rate] providing a relationship to expected demand.

5. Determine on the basis of the subsidy threshold the feasibility of the project with available state subsidy.

6. Trend the project economics ahead to the end of the subsidy period.

7. Project to the end of the subsidy period the size and profile of the pool of prospective eligible tenants.

8. Determine using the adopted capture rate the feasibility of the project under Interest Credit Plan II (e.g. without state subsidy).

Mr. HEINZ. Mr. President, I would like to comment briefly on the bill now before the Senate which make essential if fundamentally technical corrections to the House and Urban-Rural Recovery Act of 1983.

As you will recall, that bill was passed in the closing days of the first session of the Congress. We faced serious time constraints in order to complete a final bill. Despite such pressure, the Senate is to be congratulated on the fine piece of legislation that was produced. However, under such pressure, minor errors and oversights were made. The impact of one such oversight, however, is not minor. Indeed it will have dramatic ramifications for a number of counties in Pennsylvania, as well as others in New York, Maryland, Illinois, Delaware, Michigan, Wisconsin, and Ohio.

A provision in the technical amendments bill, now before the Senate will correct this problem. I refer to the section of the bill which amends section 105(c)(2)(b) of the Housing and Community Development Act of 1974.

The 1983 legislation ensures that at least 51 percent of all community development block grant funds are used to benefit low- and moderate-income persons, and requires that areawide activities be located in neighborhoods where a majority of the residents are of low and moderate income. The law does, however, recognize that some cities and counties receiving block grant fund may have no areas with a majority of low- and moderate-income households. In such circumstances, section 105(c)(2)(b) provides that such city or county target their funds to those areas with the highest concentration of low- and moderate-income persons, and limit activities only to those areas in the upper one quartile of concentrated areas. This provision in fact attempted to incorporate current regulatory policy, with one critical oversight.

Here is the situation.

Current HUD regulations apply not only to those jurisdictions having no areas with a majority of low- and moderate-income residents, but also include grantees with few such areas. By inadvertently dropping the word "few," the new law makes it unrealistic for many low density cities and counties to concentrate their funds in a handful of census block groups with 51 percent lower income residents. I have been assured by those reponsible for drafting this legislation in the closing days of the last session, that this was indeed an oversight.

It is important to note that without this technical change, fewer low- and moderate-income persons will actually

benefit from community development block grant funds. In Bucks County, PA, for example, only 14 percent of the county's low- and moderate-income population will be served under these provisions. If the change I am proposing is made, 40 percent of the low- and moderate-income population will be able to benefit. The situation is more dramatic in the neighboring county of York, where only 2.5 percent of the county's total low- and moderate-income population will be served if the law is left unchanged.

In response to this problem, I introduced legislation, S. 2359, earlier this year along with my distinguished colleagues, Senators RIEGLE, SARBANES, LEVIN, ROTH, D'AMATO, PERCY, LAUTENBERG, DIXON, and MATHIAS, which corrects this situation. This legislation has been strongly supported by the National Association of Counties. Language to this effect has been incorporated under section 1 of the legislation now before us.

Let me also emphasize the urgency of this bill. Several counties have already begun their 1984 program years and must make funding decisions within an unrealistic set of constraints. Although, I fully understand that our action today must be followed by that of our colleagues in the U.S. House of Representatives, I am confident that they will take up this issue swiftly, subsequent to our action.

I appreciate the support this bill has received from the chairman of the Banking Committee, my fellow Banking Committee members, and I look forward to support from the Senate as a whole on this issue.

Mr. SARBANES. Mr. President, I want to make clear that one of the purposes of section 109 of the Housing and Urban-Rural Recovery Act of 1983, which we are now amending, is to allow cities to retain the proceeds from the sales of urban renewal properties improved with funds received from the urgent needs and financial settlement grants programs. Under this language, cities may recycle these proceeds into eligible community development activities.

Mr. GARN. Yes, it was the intent of Congress in the 1983 act to accomplish just that objective. Section 8 of this bill would simply clarify the statutory language to accomplish that end.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there is no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 2819) was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2819

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

SECTION 1. Section 105(c)(2)(B) of the Housing and Community Development Act of 1974 is amended to read as follows: "(B) in any metropolitan city or urban county having no areas meeting the requirements of subparagraph (A) or so few such areas that it would be plainly inappropriate to address the needs of its low- and moderate-income residents by limiting activities to such areas, the area served by such activity has a larger proportion of persons of low and moderate income than not less than 75 per centum of the areas in the jurisdiction of the recipient".

SEC. 2. The second sentence of section 106(d)(3)(A) of the Housing and Community Development Act of 1974 is amended by inserting after "under this title" the following: "or section 17(e)(1) of the United States Housing Act of 1937".

SEC. 3. The second sentence of section 17(e)(1) of the United States Housing Act of 1937 is amended by striking out "in cities with populations of less than fifty thousand" and inserting in lieu thereof "in areas of the State which do not receive allocations under subsection (b)".

SEC. 4. The first sentence of section 8(o)(3) of the United States Housing Act of 1937 is amended—

(1) by striking out "or" before "(B)"; and

(2) by inserting before the period at the end thereof the following; ", or (C) a family which is determined to be a lower income family at the time it initially receives assistance and which is displaced by activities under section 17(c)".

SEC. 5. The third sentence of section 474(e) of the Housing and Urban-Rural Recovery Act of 1983 is repealed.

SEC. 6. Section 502(d) of the Housing Act of 1949 is amended by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) not less than 40 per centum of the funds approved in appropriations Acts under this section shall be set aside and made available only for very low income families or persons; and

"(2) not less than 30 per centum of the funds allocated to each State under this section shall be available only for very low-income families or persons.".

SEC. 7. Section 234(k) of the National Housing Act is amended—

(1) by striking out "or" before "(3)"; and

(2) inserting immediately before the period at the end thereof the following: ", or (4) before April 20, 1984 (A) application was made to the Secretary for a commitment to insure a mortgage covering any unit in the project; (B) in the case of direct endorsement, the mortgagee received the case number asssigned by the Secretary for any unit in the project; or (C) application was made for approval of the project for guarantee, insurance, or direct loan under chapter 37 of title 38, United States Code".

SEC. 8. Section 112(c) of the Housing and Community Development Act of 1974 is amended—

(1) by inserting "or local public agency" after "unit of general local government" each place is appears;

(2) by striking out "may" and inserting in lieu thereof "shall"; and

(3) by striking out "subsection (a)" and inserting in lieu thereof "section 103(b) of this Act, as it was in effect prior to the effective date of section 301 of the Housing and Community Development Amendments of 1981,".

SEC. 9. Section 123(g) of the Housing and Urban-Rural Recovery Act of 1983 is amended by adding at the end thereof the following: "In addition, amounts appropriated for fiscal year 1984 under section 107 of the Housing and Community Development Act of 1974 to carry out a neighborhood development demonstration shall be available to carry out the demonstration program under this section.".

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

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SPANISH-AMERICAN WAR VETERANS DAY

Mr. BAKER. Mr. President, next I have cleared on this side Calendar Order No. 1040, if the minority leader can clear that.

Mr. BYRD. Mr. President, that measure has been cleared.

Mr. BAKER. Mr. President, I ask the Chair to lay before the Senate Calendar Order No. 1040.

The PRESIDING OFFICER (Mr. DENTON). The clerk will report.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 293) to designate July 17, 1984, as "Spanish-American War Veterans Day."

The joint resolution (S.J. Res. 293) was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution and preamble are as follows:

S.J. RES. 293

Whereas approximately three-hundred and ninety-two thousand citizens of the United States volunteered for active military service in the Spanish American War;

Whereas the Spanish American War Veterans patriotically served the Nation during a war, which marked the emergence of the United States as a world power;

Whereas there are twenty-six surviving Spanish American War veterans, who range in age from ninety-eight to one-hundred and eight years old; and

Whereas July 17, 1984, is the eighty-sixth anniversay of the surrender of Santiago: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That July 17, 1984 is designated "Spanish American War Veteran Day" and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate ceremonies and activities.

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

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AFRICAN REFUGEES RELIEF DAY

Mr. BAKER. Mr. President, finally, I will say to the minority leader that Calendar Order No. 1041 is cleared on this side.

Mr. BYRD. Mr. President, Calendar Order No. 1041 is cleared on this side also.

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate Calendar Order No. 1041.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 604) to designate July 9, 1984, as African Refugees Relief Day.

The PRESIDING OFFICER. The joint resolution is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 604) was ordered to a third reading, was read the third time, and passed.

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

Mr. BYRD. Mr. President, I moved to lay that motion on the table.

The motion to lay on the table was agreed to.

AGRICULTURAL STABILIZATION AND CONSERVATION COMMITTEE ACT

Mr. BAKER. Mr. President, would the minority leader be prepared now to go to Calendar Order No. 1020?

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

Mr. BAKER. Mr. President, I ask the Chair to lay before the Senate Calendar Order No. 1020.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1643) to strengthen the operation of the Agricultural Stabilization and Conservation Committee system, and for other purposes.

AMENDMENT NO. 3375

(Purpose: To modify the provisions governing local committees and the effective dates)

Mr. BYRD. Mr. President, I send to the desk an amendment on behalf of Mr. ZORINSKY and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. ZORINSKY, proposes an amendment numbered 3375.

Mr. BYRD. 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 1, line 4, strike out "1983" and insert in lieu thereof "1984".

On page 2, strike out lines 6, 7, and 8 and insert in lieu thereof the following: "ing: 'The county committee for a county, by majority vote, may petition the Secretary to change the number of local areas in the county, and the Secretary shall make such change as petitioned by the county committee, except that any such change may not result in the number of local areas in a county exceeding the number of such areas in the county on December 31, 1980.';".

On page 2, lines 12, 13, and 14, strike out "Each local committee shall meet not less than four times annually, the meetings to be held on different days of the year." and insert in lieu thereof "Each local committee shall meet (1) one time each year, and (2) at the direction of the county committee, with the approval of the State committee, such additional times during the year as may be necessary to carry out this section. Notwithstanding section 388 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1388), the Secretary may not provide compensation or payments to a member of a local committee under such section for work performed at, or travel expenses incurred in attending, more than four meetings of such committee in any year. The meetings of a local committee shall be held on different days of the year.".

On page 2, line 18, strike out "(A)" and all that follows through "(B)" on line 19 and insert in lieu thereof a comma.

On page 3, lines 7 and 8, strike out "and the management of land, water, and related resources" and insert in lieu thereof "programs".

On page 3, line 9, strike out "timely" and insert in lieu thereof "in a timely manner".

On page 3, line 13, strike out "1984" and insert in lieu thereof "1985".

On page 3, line 16, strike out "1984" and insert in lieu thereof "1985".

On page 3, strike out lines 17, 18, and 19 and insert in lieu thereof the following: "(c) If a change in the number of local administrative areas in a county under section 8(b) of the Soil Conservation and Domestic Allotment Act under the amendment made by subsection".

On page 3, line 22, strike out "to be designated" and all that follows through "Act" on line 24.

On page 4, line 1, strike out "the" and insert in lieu thereof "a".

On page 4, line 2, strike out "1984" and insert in lieu thereof "1985".

On page 4, line 3, strike out "increases" and insert in lieu thereof "increase".

On page 4, line 4, strike out "so designated".

On page 4, line 7, strike out "1984" and insert in lieu thereof "1985".

On page 4, line 19, strike out "1984" and insert in lieu thereof "1985".

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

The amendment (No. 3375) was agreed to.

STRENGTHENING THE ASCS COMMITTEE SYSTEM

Mr. HELMS. Mr. President, those of us who represent States with strong agricultural interests are well acquainted with the Agricultural Stabilization and Conservation Committee system. These committees are comprised of men and women who serve their fellow farmers in helping to administer our agricultural programs. Community committees are elected by participating farmers in relatively small subcounty areas, such as townships, where farmers know each other and committee members can respond quickly to individual inquiries. These community committee members elect the members of their ASC county committee which represents all farmers in that county.

In my own State of North Carolina approximately 3,000 dedicated farmers serve on almost 1,000 community committees to make this system work. That figure does not include the 300 others who serve on our county committees. These people are the grassroots organization that helps our agricultural programs stay in touch with the farmer. Without this network all across the country most producers would have no contact with the administration of the programs that affects their livelihoods.

S. 1643, as amended, will help to ensure that this valuable resource, our ASC committee system, is preserved and strengthened. The bill will accomplish this in several ways. Most importantly, it gives the farmers of a county—through the county committee—a say in how many local community committees there will be in that county. Under the bill, a county committee, by majority vote, may petition the Secretary of Agriculture to change the number of local administrative areas in the county which are represented by a community committee. The Secretary would have to make the changes petitioned by the county committee except that the number of local areas in a county under such a change could not exceed the number of such areas in the county on December 31, 1980. This provision will ensure that there is local support for reducing the number of community committees before such action is taken.

The bill also increases the elected term of service of community committee members from the current 1-year term to a 3-year term. The community committees will benefit from the experience its members will derive during this longer period of service. Futhermore, the 3-year term may encourage more farmers to become involved with the ASC committee system. I understand that the Department of Agriculture estimates that by conducting the elections every 3 years instead of each year, a savings will be realized over current law of approximately $6 million for each year that community committee elections are no longer required.

S. 1643 will also increase the pay scale of members serving on both community and county committees to a level more which closely reflects a reimbursement of the time they spend away from their farm operations at

ASC committee meetings. Although most, if not all, of the committeemen I have talked with would gladly serve in their capacity without compensation, the service these farmers render to the Nation is important enough to warrant the minimal expese.

The bill for the first time spells out the duties of the community committees and specifies that they are to meet at least one time each year and such additional times, as directed by the county committee with the approval of the State committee, as may be necessary to carry out their functions. The bill also provides, however, that compensation and travel expenses will not be paid for more than a total of four meetings of the community committees in any year.

Mr. President, the contributions of thousands of men and women who serve on local ASC committees are largely unheralded. Even though they fulfill their responsibilities without fanfare, the farmers of this country know who they are and the unquestioned importance of their work. I am proud to urge the passage of this bill, with the amendment, so that our ASC committee system will continue to remain strong and viable in the future.

Mr. ZORINSKY. Mr. President, the bill, S. 1643, approved by the Senate today will assure that county and community committees, which are selected under established procedures provided by the Soil Conservation and Domestic Allotment Act, will continue to function on the same basis as they did prior to December 31, 1980.

Joining me in cosponsoring this legislation are Senators PRYOR, PRESSLER, ANDREWS, BAUCUS, BENTSEN, COCHRAN, DIXON, EXON, HEFLIN, LEAHY, SARBANES, SASSER, and HUDDLESTON.

A similar bill has been introduced in the House of Representatives by Congressman CHARLES ROSE. I am hopeful that any differences between the bill passed today and the House version of the legislation may be resolved and that the bill may be sent to President Reagan for his signature soon after the July recess.

I want to thank the Members of this body for their support of this measure which will assure the continuation of a grassroots contribution in the development and administration of farm programs.

Mr. President, for 50 years now, the farmer elected committee system has played an important role in administering the commodity stabilization program as well as the price support program for our Nation's farmers. This system achieves an extremely worthwhile goal, putting the administration of farm programs in the hands of those who are best equipped to handle the task.

We have seen these different committees adjust through the years to a variety of new and often innovative agriculture programs. In my home State of Nebraska, as in other States, they operate within the local communities to inform their neighbors about farm programs and help see that these programs are administered with fairness and equity.

Unfortunately, recent activities of top level USDA officials have created doubts and uncertainties about the role of these committees. The efforts on the part of the Reagan administration to reduce the number of the local committees and to downgrade their role fully justifies action of the Congress to clarify existing law.

The late Senator Allan Ellender, longtime chairman of the Senate Agriculture Committee, characterized the ASCS committee system as "the greatest demonstration on a mass scale of the application of the democratic process to an economic problem ever conducted by any government at any time."

In 1933, when the Congress and the Roosevelt administration came to the rescue of a prostrate agricultural industry, there were differences of opinion on how to carry out the programs to be authorized in the new legislation. The problem was how a program of economic aid that would touch every farmer in the country could be administered without hordes of bureaucrats descending upon the land.

One suggestion, which was rejected, was that a county farm program administrator be appointed to be advised by a committee of farmers selected by himself.

The eventual decision was that farmers themselves should elect committees to administer the programs at the county and community levels. The system was established as a result of the Agricultural Adjustment Act of 1933 and later renewed and amended in the Soil Conservation and Domestic Allotment Act of 1938, and subsequent statutes.

First known as AAA committees, the farmer elected committees later were renamed PMA committees and more recently, ASCS committees.

The committees have been utilized in administering the stabilization programs for the basic commodities, the cropland diversion, set-aside, payment-in-kind, and other production adjustment programs, and at times the sugar, wool, and other commodity programs.

From time to time, attempts have been made to eliminate or scale down the use of the farmer committees. In 1953, for example, it was proposed that the committees have a merely advisory function to ASCS county office managers selected by USDA in Washington. This was rejected along with limitations on the length of service of county and community committeemen.

Since 1933, the farmer elected system has helped in the administration of commodity stabilization and price support programs totaling more than $100 billion, along with major acreage diversion and soil conservation programs.

These ASCS committees—community and county—have maintained through the years the capability to adjust to changing economic conditions and to the differing farm programs that Congress passed to meet them. They have the experience and capability to administer with fairness and equity any new farm program that Congress may adopt.

Beginning with the enactment of the Agricultural Adjustment Act of 1933, the placing of responsibility for the local administration of farm programs upon farmers themselves has been a cardinal principle. These committee members are more important than ever before. At a time when further program adjustments may be necessary to provide farmers with the prices and income needed to stay in business we have experienced leadership. Moreover, we have leaders in these committees who have firsthand information of farmer problems that may be unique to the local area in which they reside.

I urge the administration of President Reagan to utilize these committees to the fullest extent in the implementation of agricultural production adjustment, price support and conservation programs toward the objective of strengthening the Nation's agriculture.

Mr. President, it has been my privilege to have had the opportunity to consult with the leaders of the National Association of Farmer Elected Committeemen and the affiliated Nebraska Association of Farmer Elected Committeemen in drawing up this legislation.

The leadership of these associations has asked me to extend to the Senate their sincere appreciation for the action taken here today.

Mr. HUDDLESTON. Mr. President, S. 1643 is legislation designed to improve the operation of the agricultural stabilization and conservation committee system.

I was pleased to join Senator ZORINSKY in introducing this important legislation, and wish to take this occasion to commend Senator ZORINSKY for his leadership in working to strengthen the ASC committee system.

For over 50 years, the ASC committees have been responsible for administering the farm programs at the local level. They have performed this function with fairness and equity under a variety of programs and economic circumstances. Their function remains as important today as it was when the

ASC committee system was established in 1933.

Unfortunately, at various times over the years, and again recently, attempts have been made to eliminate or scale down the use of the local committees. Therefore, it is important that action be taken to ensure that farmer elected committeemen with firsthand knowledge of local problems will continue to be fully utilized in administering the farm programs, at the county and community level.

S. 1643 will achieve that objective by making a number of changes in the law to require the continued operation and use of ASC committees and clarify the role of the committees.

Senator ZORINSKY has developed an amendment to S. 1643 relating to the establishment of local administrative areas and the meetings of ASC local committees, as well as incorporating several technical and conforming changes. The revisions made by the amendment do not affect the purposes of the bill.

I urge my colleagues to join me in supporting the amended bill.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment and the third reading of the bill.

The bill (S. 1643), as amended, was ordered to be endorsed for a third reading, was read the third time, and passed, as follows:

S. 1643

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Agricultural Stabilization and Conservation Committee Act of 1984".

LOCAL COMMITTEES

SEC. 2. (a) The fifth paragraph of section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) is amended by—

(1) inserting, after the third sentence, the following: "The county committee for a county, by majority vote, may petition the Secretary to change the number of local areas in the county, and the Secretary shall make such change as petitioned by the county committee, except that any such change may not result in the number of local areas in a county exceeding the number of such areas in the county on December 31, 1980.";

(2) striking out "annually" in the fourth sentence;

(3) inserting, after the fourth sentence, the following: "Each member of a local committee shall be elected for a term of three years. Each local committee shall meet (1) one time each year, and (2) at the direction of the county committee, with the approval of the State committee, such additional times during the year as may be necessary to carry out this section. Notwithstanding section 388 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1388), the Secretary may not provide compensation or payments to a member of a local committee under such section for work performed at, or travel expenses incurred in attending, more than four meetings of such committee in any year. The meetings of a local committee shall be held on different days of the year."; and

(4) inserting after the eighth sentence, the following: "The local committees in each county shall (1) in counties in which there are more than one local committee, serve as advisors and consultants to the county committee; (2) periodically meet with the county committee and State committee to be briefed on farm program issues; (3) communicate with producers within their communities on issues or concerns regarding farm programs; (4) report to the county committee, the State committee, and others on changes to, or modifications of, farm programs recommended by producers in their communities; and (5) perform such other functions required by law or as the Secretary may specify. The Secretary shall ensure that the information regarding changes in the Federal laws in effect with respect to agriculture programs and in the administration of such laws, are communicated in a timely manner to the local committees for areas that contain farmers who might be affected by such changes.".

(b) The amendments made by subsection (a) of this section shall take effect on January 1, 1985, except that the amendments made by clauses (2) and (3) of subsection (a) shall not apply with respect to the term of office of any member of a local committee elected before January 1, 1985.

(c) If a change in the number of local administrative areas in a county under section 8(b) of the Soil Conservation and Domestic Allotment Act under the amendment made by subsection (a)(1) of this section will increase the number of the county's—

(1) local administrative areas, and

(2) local committees,

any member of a local committee elected before January 1, 1985, shall serve the unexpired portion of the member's term following such increase as a member of the local committee for the local administrative area in which such member resides.

COUNTY COMMITTEES

SEC. 3. Effective January 1, 1985, the first sentence of the fifth paragraph of section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) is amended by—

(1) inserting "and as otherwise directed by law with respect to other programs and functions," after "Alaska,"; and

(2) inserting a semicolon and "and the Secretary may utilize the services of such committees in carrying out other programs and functions of the Department of Agriculture" before the period at the end thereof.

SALARY AND TRAVEL EXPENSES

SEC. 4. Effective January 1, 1985, section 388 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1388) is amended by—

(1) adding, at the end of subsection (b), the following: "In addition, the Secretary shall provide compensation for members of such county committees, and to members of local committees of farmers within a county, for work actually performed by such persons in cooperating in carrying out the provisions of such Acts; and such persons shall be compensated for such work (1) in the case of persons who are members of local committees within a county, at a rate (per hour of work actually performed) not less than the rate for grade GS-9 in the General Schedule set out in section 5332 of title 5 of the United States Code, as adjusted to an hourly rate; and (2) in the case of persons who are members of county committees, at a rate (per hour of work actually performed) not less than the rate for grade GS-11 in the General Schedule set out in section 5332 of title 5 of the United States Code, as adjusted to an hourly rate."; and

(2) adding, at the end thereof, a new subsection (c) as follows:

"(c) The Secretary shall make payments to members of local, county, and State committees of farmers to cover the expenses for travel incurred by such persons (including, in the case of members of local and county committees, travel between their homes and the local county office of the Agricultural Stabilization and Conservation Service) in cooperating in carrying out the provisions of the Acts in connection with which such committees are utilized. Such travel expenses shall be paid in the manner authorized, under section 5703 of title 5 of the United States Code, for the payment of expenses and allowances for individuals employed intermittently in the Government service. No part of such travel expense payments may be deducted from the Soil Conservation payments, parity payments, or loans, or other payments under such Acts.".

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

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

The motion to lay on the table was agreed to.

NATIONAL SCHOOL-AGE CHILD CARE AWARENESS WEEK

Mr. BAKER. Mr. President, may I inquire, was House Joint Resolution 544 cleared on the minority leader's side?

Mr. BYRD. Mr. President, that has been cleared on this side.

Mr. BAKER. I ask unanimous consent that the Senate turn to consideration of House Joint Resolution 544.

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

The clerk will state the resolution by title.

The legislative clerk read as follows:

A House joint resolution (H.J. Res. 544) to designate the week beginning September 2, 1984, as "National School-Age Child Care Awareness Week".

The PRESIDING OFFICER. Without objection, the joint resolution will be considered as having been read the second time

Is there objection to the present consideration of the joint resolution?

There being no objection, the joint resolution (H.J. Res. 544) was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

Mr. BAKER. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I inquire of the distinguished minority leader about two other calendar items—House Joint Resolution 555,

and House Joint Resolution 566. Have they been cleared for action?

Mr. BYRD. Mr. President, those resolutions have been cleared on this side.

SPACE EXPLORATION DAY

Mr. BAKER. I ask that the Senate turn to consideration of House Joint Resolution 555, which is now at the desk.

The PRESIDING OFFICER. Is there objection?

There being no objection, the clerk will state the resolution by title.

The legislative clerk read as follows:

A House joint resolution (H.J. Res. 555) to designate July 20, 1984, as "Space Exploration Day".

The PRESIDING OFFICER. Without objection, the joint resolution will be considered as having been read the second time by title.

Is there objection to the present consideration of the joint resolution?

There being no objection, the joint resolution (H.J. Res. 555) was considered, ordered to a third reading, read the third time, and passed.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

NATIONAL NEIGHBORHOOD HOUSING SERVICES WEEK

Mr. BAKER. Mr. President, I ask that the Chair now turn to the consideration of House Joint Resolution 566, to designate the week beginning October 7, 1984, "National Neighborhood Housing Services Week."

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

The legislative clerk read as follows:

A House joint resolution (H.J. Res. 566) to designate the week beginning on October 7, 1984, as "National Neighborhood Services Week."

The PRESIDING OFFICER. Without objection, the joint resolution will be considered as having been read the second time by title.

Is there objection to the present consideration of the joint resolution?

There being no objection, the joint resolution (H.J. Res. 566) was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the joint resolution was agreed to.

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

The motion to lay on the table was agreed to.

AUTHORIZATION OF TESTIMONY BY STAFF OF SENATOR MATHIAS

Mr. BAKER. Mr. President, I have a resolution in behalf of the distinguished minority leader and myself with respect to testimony by a member of the Senate staff. I send the resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection? Without objection, the resolution will be stated by title.

The legislative clerk read as follows:

A Senate resolution (S. Res. 419) to authorize the testimony by staff of Senator MATHIAS.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. BAKER. Mr. President, on June 15, 1984, the Senate agreed to Senate Resolution 406, which authorized five members of the staff of Senator CHARLES McC. MATHIAS, JR., to testify before a Federal grand jury in the District of Maryland in response to a request from the U.S. attorney for that district. The U.S. attorney has now requested the testimony of one former member of Senator MATHIAS' staff as part of that matter. At Senator MATHIAS' request, this resolution would authorize the former employee and any additional employees on Senator MATHIAS' staff to testify before the grand jury and in any subsequent proceedings concerning all matters that are not privileged.

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

The resolution (S. Res. 419) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, follows:

S. RES. 419

Whereas, the United States Attorney for the District of Maryland has informed Senator Mathias that a former member of his staff may have information relevant to a Federal grand jury investigation in the District of Maryland of possible violations of Federal statutes;

Whereas, the United States Attorney has requested that that former member of Senator Mathias' staff provide testimony to the Federal grand jury;

Whereas, the former staff member who may have relevant information is Sandra Loomis;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that the testimony of employees of the Senate concerning information acquired in the course of their official duties is needful for use in any court for the promotion of justice, the Senate will take such action thereon as will promote the ends of justice consistently with the privileges and rights of the Senate: Now, therefore, be it

Resolved, That Sandra Loomis and any additional members of Senator Mathias' staff whose testimony is requested in this matter are authorized to testify before the Federal grand jury in the District of Maryland and in any further proceedings in this matter except concerning matters for which a privilege from testifying should be asserted.

Mr. BAKER. I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

ESTABLISHING A TASK FORCE ON ORGAN PROCUREMENT AND AN ORGAN PROCUREMENT AND TRANSPLANTATION REGISTRY

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2048.

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

Resolved, That the bill from the Senate (S. 2048) entitled "An Act to provide for the establishment of a Task Force on Organ Procurement and Transplantation and an Organ Procurement and Transplantation Registry, and for other purposes", amendments:

Strike out all after the enacting clause and insert:

TITLE I—ORGAN PROCUREMENT ACTIVITIES

SEC. 101. Part H of title III of the Public Health Service Act is amended to read as follows:

"PART H—ORGAN TRANSPLANTS

"ASSISTANCE FOR ORGAN PROCUREMENT ORGANIZATIONS

"SEC. 371. (a)(1) The Secretary may make grants for the planning of qualified organ procurement organizations described in subsection (b).

"(2) The Secretary may make grants for the establishment, initial operation, and expansion of qualified organ procurement organizations described in subsection (b).

"(b)(1) A qualified organ procurement organization for which grants may be made under subsection (a) is an organization which, as determined by the Secretary, will carry out the functions described in paragraph (2) and—

"(A) is a nonprofit entity,

"(B) has accounting and other fiscal procedures (as specified by the Secretary) necessary to assure the fiscal stability of the organization,

"(C) has an agreement with the Secretary to be reimbursed under title XVIII of the Social Security Act for the procurement of kidneys,

"(D) has procedures to obtain payment for nonrenal organs provided to transplant centers,

"(E) has a defined service area which is a geographical area of sufficient size which (unless the service area comprises an entire

State) will include at least fifty potential organ donors each year and which either includes an entire standard metropolitan statistical area (as specified by the Office of Management and Budget) or does not include any part of such an area,

"(F)(i) except as provided in clause (ii), has a Board of Directors which includes—

"(I) members who represent hospital administrators, neurosurgeons or neurologists, intensive care or emergency room nurses, tissue banks and voluntary health associations in its service area and the general public residing in such area, and

"(II) from each transplant center in its service area which has with the organization arrangements described in paragraph (2)(G), a surgeon who has practicing privileges in such center and who performs organ transplant surgery,

"(ii) in the case of an organization which is an organization which was in existence on the date of the enactment of this section and which on that date was engaged in the procurement of organs, establishes an advisory board for organ procurement which will be an advisory board to its Board of Directors, which will include the representation prescribed by clause (i), which will have authority to establish policy for the procurement of organs and the other functions described in paragraph (2), and which will have no authority over any other activity of the organization, and

"(G) has a director and such other staff, including the organ donation coordinators and organ procurement specialists necessary to effectively obtain organs from donors in its service area.

"(2) An organ procurement organization shall—

"(A) have effective agreements, to identify potential organ donors, with a substantial majority of the hospitals and other health care entities in its service area which have facilities for organ donations,

"(B) conduct systematic efforts, including professional education, to acquire all useable organs from potential donors.

"(C) arrange for the acquisition and preservation of donated organs and provide quality standards for surgery performed to acquire organs,

"(D) arrange for the appropriate tissue typing of donated organs,

"(E) have a system to allocate donated organs among transplant centers and patients according to established criteria,

"(F) provide for the transportation of donated organs to transplant centers,

"(G) have arrangements to coordinate its activities with transplant centers in its service area,

"(H) participate in the United States Transplantation Network established under section 372,

"(I) have arrangements with tissue banks for the retrieval, processing, preservation, and storage of tissues as many be appropriate, and

"(J) evaluate annually the effectiveness of the organization in acquiring potentially available organs.

"(c)(1) For grants under subsection (a) there are authorized to be appropriated $4,000,000 for fiscal year 1985, $8,000,000 for fiscal year 1986, $12,000,000 for fiscal year 1987, and $16,000,000 for fiscal year 1988.

"(2) There are authorized to be appropriated for fiscal years 1989 and 1990 such sums as may be necessary to continue grants for the initial operation or expansion of organ procurement organizations which received initial grants for such purpose under subsection (a) in fiscal year 1987 or 1988.

"UNITED STATES TRANSPLANTATION NETWORK

"SEC. 372. (a) The Secretary shall by contract provide for the establishment and operation of a United States Transplantation Network which meets the requirements of subsection (b) and which will assist organ procurement organizations in the distribution of organs which cannot be placed within the service areas of the organizations and facilitate the matching of organ donor and organ recipients, especially individuals whose immune system makes it difficult for them to receive organs. The amount provided under such contract in any fiscal year may not exceed $2,000,000. Funds for such contracts shall be made available from funds available to the Public Health Service from appropriations for fiscal years beginning after the date of the enactment of this section.

"(b)(1) A United States Transplantation Network shall carry out the functions described in paragraph (2) and shall—

"(A) be a private nonprofit entity which is not engaged in any activity unrelated to organ procurement, and

"(B) have a board of directors which includes representatives of organ procurement organizations described in section 371, transplant centers, voluntary health associations, and the general public.

"(2) A United States Transplantation Network shall—

"(A) maintain a national list of individuals who need organs,

"(B) provide, through the use of computers and in accordance with established criteria, a national system to match organs and individuals included in the list,

"(C) maintain a twenty-four-hour telephone service to facilitate matching organs with individuals included in the list,

"(D) adopt and use standards of quality for the acquisition and transportation of donated organs,

"(E) prepare and distribute, on a regionalized basis, samples of blood sera for individuals, included in the list, to facilitate matching the compatibility of organ donors and organ recipients, especially individuals whose immune system makes it difficult for them to receive organs,

"(F) coordinate, as appropriate, the transportation of organs for organ procurement organizations to transplant centers,

"(G) provide information to physicians and other health professionals regarding organ donation, and

"(H) collect, analyze, and publish data concerning organ donation and transplants.

"SCIENTIFIC REGISTRY

"SEC. 373. The Secretary shall, by grant or contract, develop and maintain a scientific registry of the recipients of organ transplants. The registry shall include such information respecting patients and transplant procedures as the Secretary deems necessary to an ongoing evaluation of the scientific and clinical status of organ transplantation. The Secretary shall prepare for inclusion in the report under section 376 an analysis of information derived from the registry.

"GENERAL PROVISIONS RESPECTING GRANTS AND CONTRACTS

"SEC. 374. (a) No grant may be made under section 371 or 373 or contract entered into under section 372 or 373 unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and shall be submitted in such manner as the Secretary shall by regulation prescribe.

"(b)(1) considering applications for grants under section 371, the Secretary shall give priority to any applicant which has a formal agreement of cooperation with all transplant centers in its proposed service area, and the Secretary shall give special consideration to organizations which met the requirements of section 371(b) before the date of the enactment of this Act. In considering such applications the Secretary shall not discriminate against an applicant solely because it provides health care services other than those related to organ procurement. The Secretary may not make a grant for more than one organ procurement organization which will serve the same geographical area.

"(2) A grant for planning under section 371 may be made for one year with respect to any organ procurement organization and may not exeed $100,000.

"(3) Grants under section 371 for the establishment, initial operation or expansion of organ procurement organizations may be made for three years. No such grant may exeed $500,000 for any year and no organ procurement organization may receive more than $1,000,000 for initial operation or expansion.

"(c)(1) The Secretary shall determine the amount of a grant made under section 371 or 373. Payments under such grants may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants.

"(2)(A) Each recipient of a grant under section 371 or 373 shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(B) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant under section 371 or 373 that are pertinent to such grant.

"(d) For purposes of this part:

"(1) The term 'transplant center' means a health care facility in which transplants of organs are performed.

"(2) The term 'organ' means the human kidney, liver, heart, lung, pancreas, and any other human organ (other than corneas) included by the Secretary by regulation and for purposes of section 372 such term includes bone marrow.

"ADMINISTRATION

"SEC. 375. The Secretary shall, during fiscal years 1985, 1986, 1987, and 1988, establish in the Public Health Service and maintain an identifiable administrative unit to—

"(1) administer this part and coordinate with the organ procurement activities under title XVIII of the Social Security Act,

"(2) conduct a program of public information to inform the public of the need for organ donations,

"(3) provide technical assistance to organ procurement organizations receiving funds

under section 371, the United States Transplantation Network established under section 372, and other entities in the health care system involved in organ donations, procurement, and transplants, and

"(4) submit to Congress an annual report on the status of organ donation and coordination services and include in the report an analysis of the efficiency and effectiveness of the procurement and allocation of organs and a description of problems encountered in the procurement and allocation of organs.

"SEC. 376. The Secretary shall publish an annual report on the scientific and clinical status of organ transplantation. The Secretary shall consult with the Director of the National Institutes of Health and the Commissioner of the Food and Drug Administration in the preparation of the report. The Secretary shall make the report and other related information available to service benefit plans, health insurers, and other entities which are responsible for making payments for health care.".

TASK FORCE ON ORGAN TRANSPLANTATION

SEC. 102. (a) The Secretary of Health and Human Services shall establish a Task Force on Organ Transplantation. The task force shall conduct comprehensive examinations of the medical, legal, ethical, economic, and social issues presented by human organ procurement and transplantation.

(b) The task force shall be composed of twenty-two members appointed by the Secretary as follows:

(1) Nine members shall be appointed from physicians who are eminent in the various specialties of medicine related to human organ transplantation. Of the physicians, six shall be transplant surgeons.

(2) Three members shall be appointed from individuals who are not physicians and who represent the field of human organ procurement.

(3) Four members shall be appointed from individuals who are not physicians or scientists and who as a group have expertise in the fields of law, theology, ethics, health care financing, and the social and behavioral sciences.

(4) Three members shall be appointed from individuals who are not physicians or scientists and who are members of the general public.

(5) Three scientists or physicians who are eminent in the field of histocompatability.

No individual who is a full-time officer or employee of the Federal Government may be appointed to the task force. A vacancy in the task force shall be filled in the manner in which the original appointment was made.

(c) The task force shall, within six months of the date of its establishment, conduct a national conference to consider questions respecting—

(1) the equitable access by patients to organ transplantation,

(2) the allocation of donated organs among transplant centers and among patients equally medically qualified for an organ transplant, and

(3) payment for nonrenal organ transplantation.

Upon the completion of the conference the task force shall submit a report to the Secretary on the findings of the conference.

(d) The task force shall terminate upon the expiration of twelve months from the date of the report under subsection (c).

IMMUNOSUPPRESSIVE DRUGS

SEC. 103. (a) The Secretary of Health and Human Services shall make immunosuppressive drugs available, upon request and without cost, to transplant centers for use, in accordance with subsection (b), on an outpatient basis by individuals who have received an organ transplant at such centers. The Secretary shall allocate such drugs to centers in proportion to the number of organ transplants performed at the centers in the fiscal year preceding the fiscal year in which the drugs are to be made available. For purposes of this subsection, the term "transplant center" means—

(1) a health care facility in which at least 25 transplants of kidneys, pancreases, livers, or hearts, or any combination of such organs, are performed in any fiscal year, or

(2) in the case of a State in which there is no health care facility which meets the requirements of paragraph (1), the health care facility in the State which has performed at least 15 of the transplants described in paragraph (1) in the fiscal year preceding the fiscal year in which immunosuppressive drugs are to be made available under this subsection and which has performed in such preceding fiscal year the most transplants of the organs referred to in paragraph (1).

(b) A transplant center receiving immunosuppressive drugs under subsection (a) shall furnish such drugs, without charge, to outpatients who have received an organ transplant at such center on the basis of the center's determination of the patient's need for such drugs and the patient's inability to pay for such drugs through insurance coverage or other resources.

(c) The Comptroller General of the United States shall report to the Congress not later than December 31 of each year during which immunosuppressive drugs are made available under subsection (a) on the allocation of such drugs to transplant centers and the methods used by transplant centers to distribute such drugs to patients.

(d) The Secretary of Health and Human Services shall submit a recommendation to the Congress not later than October 1, 1985, respecting the feasibility and desirability of authorizing reimbursements under title XVIII of the Social Security Act for immunosuppressive drugs on an outpatient basis by individuals who have received organ transplants.

(e) To carry out subsection (a), there are authorized to be appropriated $10,000,000 for fiscal year 1985 and $20,000,000 for fiscal year 1986.

BONE MARROW REGISTRY DEMONSTRATION AND STUDY

SEC. 104. (a) The Secretary of Health and Human Services, acting through the Assistant Secretary for Health, shall, for purposes of the study under subsection (b), establish a bone marrow registry of voluntary donors of bone marrow. The Secretary shall assure that—

(1) donors of bone marrow listed in the registry have given an informed consent to the donation of the bone marrow; and

(2) the names of the donors in the registry are kept confidential and access to the names and any other information in the registry is restricted to personnel who need the information to maintain and implement the registry, except that access to such other information shall be provided for purposes of the study under subsection (b).

The Secretary shall establish the registry not later than twelve months after the date of the enactment of this section.

(b) The Secretary of Health and Human Services, acting through the Assistant Secretary for Health, shall study the establishment and implementation of the registry under subsection (a) to identify the issues presented by the establishment of such a registry, to evaluate participation of bone marrow donors, to assess the implementation of the informed consent and confidentiality requirements, and to determine if the establishment of a permanent bone marrow registry is needed and appropriate. The Secretary shall report the results of the study to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate not later than two years after the date the registry is established under subsection (a).

TITLE II—PROHIBITION OF ORGAN PURCHASES

SEC. 201. (a) It shall be unlawful for any person to acquire, receive, or otherwise transfer any human organ for valuable consideration and for use in human transplantation if the transfer affects commerce.

(b) Any person who violates subsection (a) shall be fined not more than $50,000 or imprisoned not more than five years, or both.

(c) For purposes of subsection (a):

(1) The term "human organ" means the human kidney, liver, heart, lung, pancreas, bone marrow, corneas, bone, and skin, and any other human organ or tissue included by the Secretary of Health and Human Services by regulation.

(2) The term "valuable consideration" does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

(3) The term "commence" means trade, traffic, or transportation between a place in a State and any place outside thereof or which affects such trade, traffic, or transportation.

Amend the title so as to read: "An Act to amend the Public Health Service Act to authorize financial assistance for organ procurement organizations, and for other purposes.".

Mr. BAKER. Mr. President, I move that the Senate disagree to the House amendments and agree to the conference requested by the House and the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer [Mr. DENTON] appointed Mr. HATCH, Mr. NICKLES, Mr. QUAYLE, Mr. KENNEDY, and Mr. PELL conferees on the part of the Senate.

UNANIMOUS-CONSENT AGREEMENT—S. 2713

Mr. BAKER. Mr. President, I now have one final unanimous-consent request to make and that will complete my file of items cleared with the exception of the Executive Calendar.

I ask unanimous consent, Mr. President, that the Committee on Armed Services be discharged from consideration of S. 2713, the Intelligence Au-

thorization Act for fiscal year 1985; that the referral of S. 2713 to the Committee on Foreign Relations terminate at the close of business today; that the bill be sequentially referred to the Committee on Armed Services at the end of the close of business today for the 30-day time period provided for in section 3(b) of Senate Resolution 400 of the 94th Congress, with the first day of such 30-day period being calculated based upon a filing date of S. 2713 by the Select Committee on Intelligence of May 24, 1984, and provided that if the Committee on Armed Services fails to report that bill within the 30-day time limit, such committee shall automatically be discharged from further consideration of the bill in accordance with section 3(b) of Senate Resolution 400.

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

Mr. BAKER. I thank the Chair.

EXECUTIVE CALENDAR

Mr. BAKER. Mr. President, there are a number of items on the Executive Calendar that appear cleared for action by unanimous consent on this side. I should like to inquire of the minority leader in two categories: first, nominations, if all or any part of those nominations appearing on today's calendar are cleared for action on his side and, second, whether or not any of the treaties on today's Executive Calendar are cleared for further consideration by him at this time.

Mr. BYRD. Mr. President, I will be able to get back to the distinguished majority leader shortly, but at this moment I cannot proceed.

Mr. BAKER. I thank the minority leader.

Mr. President, perhaps then it will be as well to suggest the absence of a quorum, and I do now suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AUTHORITY DURING ADJOURNMENT AND ORDER OF PROCEDURE ON JULY 23, 1984

Mr. BAKER. Mr. President, I anticipate that the House of Representatives will send us an adjournment resolution shortly, and it will be a little while yet before we can adjourn because we still have to deal with three items at least on this side: the debt limit, bankruptcy conference report, and the concurrent resolution. But in anticipation of that happy moment, I have a request I will put for the consideration of the minority leader that I believe he finds acceptable.

Mr. President, I ask unanimous consent that if the Senate adjourns today until Monday, July 23, 1984, as anticipated, messages from the President of the United States and the House of Representatives may be received by the Secretary of the Senate and appropriately referred, and that the Vice President, President pro tempore, and Acting President pro tempore may be authorized to sign duly enrolled bills and joint resolutions.

I further ask unanimous consent that when the Senate reconvenes on Monday, July 23, the reading of the Journal be dispensed with, no resolutions come over under the rule, the call of the calendar be dispensed with, and following the recognition of the two leaders under the standing order, there be a special order in favor of the Senator from Wisconsin [Mr. PROXMIRE] for not to exceed 15 minutes in length, to be followed by a period for the transaction of routine morning business not to exceed 1 hour in length with Senators permitted to speak therein for not more than 10 minutes each; provided further that the morning hour be deemed to have expired.

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

AUTHORIZATION FOR COMMITTEES TO FILE REPORTS

Mr. BAKER. Mr. President, I have one other request in the nature of a housekeeping arrangement. I ask unanimous consent that during the adjournment of the Senate over until July 23, 1984, committees may be authorized to file reports on Tuesday, July 17, between 9 a.m. and 2 p.m.

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

EXECUTIVE CALENDAR

Mr. BAKER. Mr. President, I renew my inquiry of the minority leader if there are any items on today's Executive Calendar that he is prepared to clear at this time.

Mr. BYRD. Mr. President, this side is prepared to clear Calendar Order Nos. 703, 704, and 705.

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

EXECUTIVE SESSION

Mr. BAKER. I ask unanimous consent that the Senate now go into executive session.

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

Mr. BAKER. Mr. President, I ask unanimous consent that the three calendar orders identified by the minority leader, to wit: 703, 704, and 705, may be considered en bloc.

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

The nominations confirmed en bloc are as follows:

IN THE AIR FORCE

The following-named officer for appointment to the grade of general on the retired list pursuant to the provisions of title 10, United States Code, section 1370:

Gen. James P. Mullins, 012-24-1664FR, U.S. Air Force.

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

To be lieutenant general

Maj. Gen. Marc C. Reynolds, 504-16-1608FR, U.S. Air Force.

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

To be general

Lt. Gen. Earl T. O'Loughlin, 382-26-5822FR, U.S. Air Force.

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

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

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, what we are doing right now is waiting for another nomination. We are still in executive session. As soon as we get that cleared I will go out of executive session and into legislative session.

I wish to do the concurrent resolution as soon as we can.

Mr. President, as soon as we can clear the one more nomination, which I think is now in the process, it will be my intention to ask us to go out of executive session. But if the Chair will indulge me for a moment, I shall make another check on that.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BAKER. Mr. President, I am advised that the nomination of June Q. Koch, of Maryland, to be an Assistant Secretary of Housing and Urban Development, has been cleared on both sides.

The minority leader has indicated through his staff that there is no objection to consideration of this nomination at this time.

Mr. President, I ask that the Chair lay before the Senate that nomination.

The PRESIDING OFFICER. The nomination will be stated.

HOUSING AND URBAN DEVELOPMENT

The legislative clerk read the nomination of June Q. Koch, of Maryland, to be an Assistant Secretary of Housing and Urban Development.

Mr. DOLE. Mr. President, if the Senator will yield, I thank the majority leader and minority leader for expediting this process, and I know Mrs. Koch will appreciate it.

Mr. President, I thank the Senator from Kansas and I thank all Members.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. BAKER. Mr. President, I move to reconsider the votes by which the nominations were confirmed.

Mr. EXON. Mr. President, I move to lay that motion on the table.

Mr. BAKER. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

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

Mr. BAKER. Mr. President, I believe that completes the action that we can clear on the Executive Calendar today.

LEGISLATIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

TECHNICAL AMENDMENTS IN THE TAX BILL

Mr. MELCHER. Mr. President, I take this time, at 1:30 this afternoon, to renew the comments I made at the opening of the session today, shortly after 10 a.m., to point out that the conference report on the tax bill we passed on Wednesday has flaws in it concerning imputed interest; and if it is not corrected, it will cause home sales, farm sales, ranch sales, and small business sales to be placed in jeopardy, in that the bill contains an increase in imputed interest rates from 9 to 15 percent.

The technical amendments contained in House Concurrent Resolution 328 would make a partial correction, but are not sufficient.

It is my hope that we could call up House Concurrent Resolution 328 and that, in a very short time, we could dispose of an amendment I would like to offer, to see whether or not the Senate would approve it, and we could have that correction made in the tax package.

We are not overly busy at this time. I see the majority leader on the floor. Perhaps he can give us some indication as to whether we might have House Concurrent Resolution 328 before us quite soon.

DEBT LIMIT EXTENSION

Mr. BAKER. Mr. President, the message from the House of Representatives was the debt limit extension; is that correct?

The PRESIDING OFFICER. It was.

Mr. BAKER. Mr. President, I am advised there is no objection on either side to proceeding to that matter at this time.

I ask the Chair to lay before the Senate the bill that was passed by the House of Representatives on that measure.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 5953) to increase the statutory limit on the public debt.

There being no objection, the Senate proceeded to consider the bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The majority leader.

Mr. BAKER. Mr. President, the distinguished Senator from Nebraska, Mr. EXON, had asked me if we could clear on this side the introduction of a concurrent resolution, and putting it on the calendar by unanimous consent. I am happy to announce to him at this time that I can clear that, and I am prepared to make that request, if he wishes me to do so.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. I thank my friend and colleague from the great State of Tennessee. I think I object just as he does to these last-minute crushes that we continually go through around here that I know causes the majority leader a great deal more concern than it does the Senator from Nebraska. I had this concurrent resolution prepared to be ready to be offered on the debt ceiling bill. I wanted to do that this whole last week. I wanted to do it yet this morning. I want to do it this afternoon.

Both the majority leader and the minority leader have appealed to me to restrain from offering this on the debt ceiling bill for reasons that come up on almost every debt ceiling bill that we ever take up here; that is, that the House is about ready to be dismissed, that we would prefer to have this by a voice vote. My position has been that when we accommodate others, we should be accommodated likewise.

I simply say to the majority leader, I appreciate more than he knows the courtesies that he has extended to this Senator and others over a very long period of time. So I appreciate his offering this. Before I would agree to that, which I would like to do, however, let us have a clear understanding of the ground rules on which we are proceeding. If the Senator from Nebraska does not offer the concurrent resolution on the debt ceiling bill, then, as I understand it, it has been agreed now that it would be bypassing the appropriate committee which would be Banking. It would be placed on the calendar, and is that the understanding that we are trying to come to? I ask the majority leader.

Mr. BAKER. Yes. Mr. President, I would prefer not to call it bypassing the committee because I talked to the distinguished chairman of the committee who agreed that this might be done. So the conclusion of the Senator is correct, however; that is, the effect will be to introduce this resolution at this time, and to place it directly on the calendar where it would end up as if it has been reported by committee.

Mr. EXON. I thank the majority leader. One more point: I think it is critically important that we take action on this. Is it also agreed—and do I have the commitment of the majority leader—that sometime during the period after we come back in the middle of July before we take our second adjournment for the Republican Convention that he will see to it that I have a chance to bring this matter up for discussion, debate, and a vote if necessary.

Mr. BAKER. Mr. President, that gets a little more difficult. Let me urge the Senator to understand what I am about to say, and understand my reasons for saying it. It is not said in any effort to try to diminish his position but rather to protect my own. I have had in the last 24 hours 16 requests to take up things in the 3 weeks between the two conventions. There is a long list of appropriation bills, and a long list of other measures. I will tell the Senator that I will do my best to sequence this in. But he is in a very favored position now by having this on

the calendar. I can assure him my best effort to get him a slot for the deliberations on this matter either during that period, or immediately after the Republican Convention. But I try desperately hard not to make commitments I cannot keep. I hope the Senator will give me the flexibility—having put it on the calendar, now giving him my pledge, and my best efforts to try to get it up for consideration at an appropriate time—to let us go forward on that basis.

Mr. EXON. Mr. President, maybe we can come to some kind of agreement.

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

The PRESIDING OFFICER (Mr. DANFORTH). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. EXON. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

The Senator from Nebraska.

Mr. EXON. Mr. President, during the last quorum call I had an opportunity to confer with my friend, the majority leader. I recognize the most difficult position that he is in.

Likewise, I think that he has recognized the most difficult position these kinds of arrangements put a Senator like myself in who happen to feel very, very strong on a particular issue. I was convinced that this concurrent resolution; which I am about to submit, would be entirely appropriate on the debt ceiling bill. It would be, and I was fully expecting a debate, if necessary, and a vote on it.

I simply say that I also recognize the most difficult position that the majority and the minority leaders have in a whole series of matters, and the difficult pressures that come from a whole series of Senators. Therefore, in an attempt to be cooperative, as I always try to be while pursuing the interests that I think are fundamental to the interests of my State and my constituents, I will be glad to come to some kind of an arrangement. I think it would be proper at this time, if the majority leader would simply verify the gentleman discussion that we have just had and the agreements that we have made, and at that time I would like to request that the majority leader allow me the opportunity to formally submit the concurrent resolution. I will make a talk on that at some appropriate time but I certainly do not wish to interfere with the expedited deliberations of the Senate that the majority leader is currently attempting.

Mr. BAKER. Mr. President, I am very grateful to the Senator from Nebraska. To repeat what I told him a moment ago, I regret that I cannot make an absolute commitment for those 3 weeks nor to a specific time because, as I told him in our private conversation, since yesterday, within the last 24 hours, I have had 16 requests for commitments to schedule things during the 3 weeks between the two conventions.

I hope for the right reasons, I decided yesterday that I am not going to do that any more. What I did instead was to give a list of items that the leadership in this side would try to schedule to the minority leader this morning.

I am perfectly willing to schedule this item during those 3 weeks if we can arrange it and, if not, then I pledge my best efforts to try to arrange a time after the Republican Convention to do it.

But I am deeply grateful to the Senator from Nebraska for understanding my special dilemma. If he is prepared to submit the concurrent resolution at this time, I am prepared to ask unanimous consent that it be placed on the calendar.

Mr. EXON. Mr. President, I thank the majority leader. I simply say that I will be here during the interval period between the two conventions. I will be available to bring this up. I will be reminding the majority leader that I am ready, willing, and able and if we ever have a single quorum call during that 2-week period I will be urging the majority leader to allow me to proceed.

(The remarks of Mr. EXON relating to the submission of Senate Concurrent Resolution 130 are printed later in the RECORD.)

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

The PRESIDING OFFICER. H.R. 5953.

Mr. DOLE. Mr. President, once again we have to tend to the housekeeping chore of raising the limit on the public debt. It is essential that we do this now because the Treasury Department estimates that the current limit on the public debt will be reached or exceeded by July 7. We will not be in session again before that date, so we really have no choice but to approve the resolution before us.

H.R. 5953 as passed by the House today increases the debt limit by just $53 billion. That should be enough to carry the Government's borrowing authority through the end of August, but because of our recess schedule, it means we would be obliged to raise the limit yet again before the August recess.

Mr. President, I do urge my colleagues to approve this bill. But I must say that we had hoped, based on my conversations with the chairman of the House Ways and Means Committee and others, that it would be possible this time to pass a long extension of the debt limit that would carry through June 1985. The Finance Committee reported such a bill in May. Unfortunately, it was not possible to agree to such an increase in the House, and once again we find ourselves putting Government operations on a short string.

We all know about the game of playing politics with the debt limit. Last year the Senate did some of that, and this year it seems to be the House that has its turn. On this side of the aisle we used to do a bit of that when we were in the minority, and I understand why the debt limit is seen as an attractive opportunity to make political points that otherwise might not get floor consideration. But there comes a time when the prolonged agony over the debt ceiling, of the repeated need for action, becomes counterproductive and an impediment to steady and responsible operation of the Federal Government. I for one believe that time has come, and I would hope we could work out some procedure to better regulate the debt limit process and give our friends in the Treasury Department a bit more credibility with the buyers of Government securities and our citizens more certainty that our obligations will be met on a regular basis.

Mr. President, H.R. 5953 would increase the debt ceiling by $53 billion to a level of $1.573 trillion. This amount, as I have indicated, should cover the Treasury Department through most of August.

Delaying this matter is pointless, because it just puts at risk our ability to meet essential obligations as they fall due. As early as July 9 the Government's ability to meet payments on Social Security checks might come into question, according to Secretary Regan. Government payrolls, unemployment benefits, and contractual obligations of the Government all could be affected. Clearly none of us wants this to happen. The responsible thing to is to pass this bill, then work to keep all appropriations bills within the bounds that Senate and House conferees on the budget have been discussing. Controlling spending, together with the tax reforms and entitlement changes in the deficit reduction bill we approved on Wednesday, is the way to have a real impact on the level of the public debt. And if we do more of the same next year, we may be faced with the pleasant surprise of having the public debt remain within the limit for some time to come.

DEBT CEILING

Mr. EXON. Mr. President, again the U.S. Senate is asked to increase the debt ceiling. Should the Congress continue to borrow from future generations to finance today's Government spending? I think not. We must take responsibility and make the tough decisions necessary to bring the Federal Government under fiscal discipline.

Increases in the debt ceiling are treated with nonchalance that is

shocking. The American people need to be reminded that current fiscal policy is piling debt upon debt upon debt. We have already rolled up nearly $1.5 trillion in accumulated national debt. This legislation increases that figure to $1.573 trillion. It took this Nation more than 200 years to accumulate $1 trillion in debt; that figure will double by 1986.

In 1971, each man, woman and child's share of the national debt was $1,966. By 1981, that figure more than doubled to $4,346. By 1986, it is expected to be $7,733. Clearly this trend cannot continue.

Each year a larger portion of the Federal budget is devoured by increased interest expense. In 1971, interest expense accounted for 7 percent of the Federal budget. Today that figure is 13 percent and by 1987 it will be a full 15 percent. To put this matter into perspective, fiscal year 1985's interest expense will exceed President Kennedy's entire 1963 budget.

I am gravely disappointed that the Senate has missed an excellent opportunity to make a major attack on future deficits and increases in the national debt. If you would look at the various budget alternatives, you would see that a majority of the Senate wants to do more than the recently adopted Rose Garden budget. While there were disagreements, the constant themes running through each plan are that spending cuts must exceed revenue increases, that entitlements must be controlled, and that defense spending must be at reasonable, controlled, and sustainable levels.

I, for one, did not believe that the differences between the various alternatives were irreconcilable. However, Presidential strong arm tactics prevented anything tougher than the Rose Garden plan from being accepted. I guess an economic crisis is nothing compared to a telephone call from Air Force One.

On Monday, we saw the price of this choice. The prime interest rate again moved upward to 13 percent. Since January, the prime has jumped 2 full points. If Congress continues down this Rose Garden path, the already uneven economic recovery may quickly turn to recession.

We were elected to make difficult decisions. I am unimpressed with the comments that nothing can be done because this is an election year. The American people want a solution to the deficit crisis. They will accept fair sacrifice today for a better tomorrow.

Our Nation cannot continue to rob from future generations. Fortunately, the battle is not over. In upcoming appropriations bills, I hope that this body can resist the temptation to treat spending bills in the usual fashion. Every expenditure must be suspect. I hope that we can parlay our modest deficit downpayment into something significant.

It is for these reasons, Mr. President, that I again oppose increasing the statutory debt limit.

RAISING THE NATIONAL DEBT CEILING

● Mr. HEFLIN. Mr. President, I rise today in opposition to extending the national debt ceiling beyond it's current level of $1.49 trillion. The inability and unwillingness of Congress to control annual expenditures compels me to oppose this extension. In my estimate, the debt ceiling acts as an important and perhaps the only, constraint on increased spending.

Each year, an ever-increasing portion of the Federal budget must be allocated to pay the interest on the national debt. According to the Congressional Budget Office, from 1975 to 1984 these payments as a percentage of the total Federal budget grew from 7 percent to 13 percent or $87 billion. This year alone, Americans will pay more than $126.6 billion in interest payments on the Federal debt. It is projected by the Congressional Budget Office that if interest rates continue at present levels, the cost of financing the public debt will rise by $56 billion between now and fiscal year 1986.

The Federal Government finances deficit spending in the same way as an individual or a corporation, by competing for available funds in the money market. Therefore, in borrowing to finance its deficit the Government competes with private borrowers who need funds to invest in such things as housing, productive capacity, expansion and new businesses. However, many private investors, unable to pay the high interest rates caused by the tremendous Federal demand for funds, will find themselves unable to obtain the funds they need to undertake investments. Due to their inability to compete with the Federal Government, they will find themselves crowded out of the financial market. During 1983, the Federal budget deficit took 35 percent of the total funds supplied to U.S. credit markets. Also, by adding the credit needs of Government sponsored agencies, this figure would be closer to 60 percent. And some predict that within 4 years two-thirds of all available credit in the United States will be used by the U.S. Treasury Department to fund the growing deficit. That leaves only one-third for homeowners, consumers, farmers, and small businessmen.

It is often stated that the national debt is principally and internally held debt. That is, taxes imposed to pay the national debt are collected from some Americans and paid to other Americans so that there is no actual loss of disposable income. This argument ignores the fact that foreign ownership of the national debt is now owed to interests beyond our borders—to foreign officials institutions and citizens of other countries. This is money being drained from the American people—not money being pumped back into our economy.

While Congress has made some progress this year toward reducing the Federal deficit over the next 3 years, the actual impact of these reductions on the deficit is minimal. Congress must face up to the economic realities and one way of doing this is by refusing to increase the debt ceiling. This is not a Democratic Party problem nor is it a Republican Party problem—it is an American problem. Not only is the size of the public debt the primary driver behind high interest rates, it also results in lowering the levels of investment in the productive future of our economy and reducing our ability to compete in foreign markets. I assert that the principals of sound financial management applicable to private households are equally applicable to the public household. Government debt is both unproductive and inflationary and it constitutes a burden passed to future generations. In the long run the only way it can be addressed is with an amendment to the Constitution requiring a balanced Federal budget. I call on this Congress to adhere to the current debt limit and stop deficit spending in order to lower interest rates and keep our economy moving.

Thank you, Mr. President.●

GAMBLING WITH THE NATION'S FUTURE

Mr. PROXMIRE. Mr. President, here we go again—raising the national debt by $53 billion this time. Last month, the Congress passed a temporary increase of $30 billion. Now we are being asked to throw another $53 billion into the pot, which will last another month or two.

Sooner or later, the Congress will have to stop dancing around this issue. No matter how many times we are asked to raise the ceiling, the national debt next summer will be about $1.752 trillion. That staggering sum is an increase of $232 billion over the present ceiling. I ask my colleagues to stop for a moment and consider the circumstances surrounding this increase.

Looking back at our financial history, the public debt has exploded during two recurring periods—wars and depressions. During wars, financial considerations go out the window as the Nation struggles to survive. During depressions, the Federal Government's revenues nosedive while expenses increase. In both periods the national debt takes a quantum leap upward.

We are not at war now and this Senator hopes that happy state continues. Nor are we in a depression. In fact, the economy is growing rapidly.

The joker, the wild card, is the skyrocketing national debt. We increased it $30 billion last month, and we may

add another $53 billion today. But by next summer, the Federal Government will be another $232 billion in debt.

Why is such borrowing so dangerous? Because we are running up debt as though we were in a war or a depression. During the 1960's, when we fought an undeclared war in Vietnam, the national debt increased from $291 billion at the beginning of 1960 to $367 billion at the end of 1969, an increase of $76 billion over the decade. We add that much to the debt now in less than 6 months.

During the 1970's, the debt started its upward climb. At the start of the decade, the national debt stood at $383 billion. By the end of 1979, it had increased to $834 billion, an addition of $451 billion. It increased an average of about $45 billion each year during the decade. At the time, I can remember thinking that those increases were intolerable.

Then came this decade and I discovered what the word "intolerable" really means. Between 1980 and 1985, we will add about $920 billion to the debt, a sum roughtly equal to all the debt incurred between the years 1789 and 1980. Think of that for a moment. In 5 short years, less than one term of office for a Senator, we will have added more to the debt than all the Presidents and all the Congresses before 1980. What an abysmal record.

Mr. President, every taxpayer will pay for our profligacy. Merely paying the interest on the $232 billion increase will cost about $23 billion a year. To put that figure in perspective, it exceeds the proposed budgets for the Departments of the Interior, Justice, and State with the National Aeronautics and Space Administration and the Environmental Protection Agency thrown in for good measure. Yet this money will not buy 1 acre of new parkland, bring one criminal to justice, or send one astronaut into orbit. That $23 billion measures the cost of our failure to balance the budget.

If the 1-year increase in the debt is frightening, the trend is truly horrifying. For decades, the national debt declined as a percentage of gross national product. Even though we often added to the debt during those years, the economy grew faster than our additions to the debt. In effect, we were able to pay off some of the debt incurred during the Great Depression and World War II through economic growth.

During the 1970's, this fortunate state of affairs ended. The percentage stayed in the mid- to high-20's throughout the late 1970's as the economy sputtered.

Then came the 1980's and that percentage started climbing by leaps and bounds. It will have increased to 41 percent by 1987 according to the administration's own estimates. We last saw the debt that large as a percentage of GNP in 1964 but then it was going down, not increasing.

The national debt will continue to grow faster than the economy even though the administration is assuming a sustained economic recovery. This expansion is already middle aged and I am not willing to assume that it will last until 1987.

What happens if we have a recession sometime within the next 2 years? Our willingness to raise taxes or cut spending would diminish while the deficit would head toward $400 billion a year. We would be facing an economic crisis as serious as the Great Depression.

The implacable law of compound interest would come into play in a big way. Paying the interest costs on the exploding debt would become an ever great burden. The easy way out of this crisis—easy for the Federal Government—would be to inflate the currency. But John Maynard Keynes pointed out that there is no surer or subtler means of undermining society than to debauch the currency—another name for inflation. That is the path we are following.

Mr. President, proponents of this legislation will argue that the Senate must act responsible and pass this bill. After all, they will argue, we cannot shut down the Federal Government. But by tolerating this increase in the debt they are risking something much more fundamental—the confidence and faith of the American people in their Government. I do not believe that taking this risk is acting responsibly so I will vote against this bill.

Mr. HATCH. Mr. President, my opposition to the so-called Omnibus Deficit Reduction Act is a response to several of its provisions which perpetuate erroneous fiscal policies. As a Member of the Senate for 8 years and of the Budget Committee for 6 of those years, I have witnessed several unfortunate trends in Federal fiscal policy.

Among the several negative tendencies which I have seen, and which I believe are perpetuated by this proposal, are: excessive Federal spending, particularly on domestic programs; a continued increase in the Nation's tax burden; and inadequate expenditure on our national defenses.

My solution to the economic problems caused by these trends would refuse to raise taxes once again and would more drastically restrain the growth in domestic spending, particularly in the open-ended entitlements programs. It is the rapid growth in this segment of spending, usually funded by increasing taxes, which is responsible for our large deficits. I also believe that national defense must continue to be funded at a level which overcomes years of neglect, and so would not attempt to reduce the deficit by once again reducing these programs critical to protecting all our benefits of American citizenship. At the same time, however, I would work to ensure that each defense dollar is effectively spent.

The significance of this growth in Federal spending is that we are reducing incentive in our economy by funneling ever greater numbers of dollars through Washington. This cross-subsidization, which is implicit in Federal domestic programs, discourages the initiative, innovation, and hard work necessary to keep our economy moving. While a certain amount of assistance and subsidy is appropriate for the permanently disadvantaged in our society, we should be careful not to remove the incentive which helps to rescue many people from the disadvantaged category and precludes many others from falling into this condition. We cannot see lower economic growth, lower productivity, and insufficient capital investment without questioning the role of Government spending in creating these problems. Those who seek a national industrial policy could start with getting the burden of Federal spending cross-subsidies off the back of the economy.

A second portion of the pending proposal increases taxes, based on the rationale that greater revenues will bring us closer to a balanced budget. This will not occur—increased taxes have failed to balance the budget in the past, and they are unlikely to do so in the future.

The results of our 1982 effort, the Tax Equity and Fiscal Responsibility Act or TEFRA, which raised taxes in an effort to bring us closer to a balanced budget are proof. We were promised at that time that a dollar's worth of tax increase would lead to the $3 worth of spending reductions. To me, at the time, this seemed a reasonable tradeoff in the necessary effort to reduce Federal spending, which I believe to be a better measure of the burden on our economy than any particular revenue level which may be achieved by the IRS. But, the unquenchable thirst of Congress for spending money on domestic programs actually prevented the tax increase of 1982 from having any deficit-reducing impact. It has been said for some time that an additional dollar of revenues in the hands of Congress means an additional $1 worth of programs. This was precisely the case with the 1982 tax increase. Current estimates claim that as much as $1.14 in additional domestic spending took place as a result of each dollar of tax increase in 1982.

I would not be surprised if much the same results from passage of this act. This time, under the Omnibus Deficit Reduction Act, taxes are raised by $51 billion over 3 years. The comparable hard domestic spending cuts—excluding such nebulous categories as offsetting receipts—are $15 billion in entitle-

ments and similar programs and an assumed $12 billion reduction in spending on discretionary domestic programs. That's a ratio of approximately $2 in tax increases for every $1 of spending cuts. How much of these savings will occur, however, is anybody's guess; but, I don't have a lot of confidence that we'll see too many of them.

Let me just suggest a pattern for what might occur. This act, for instance, legislates a 1-day delay in the payments of COLA's, or cost-of-living adjustments, to military retirees. That's supposed to save us $1.6 billion. Do you know what that provision really accomplishes? It simply pushes the payment of $1.6 billion into a subsequent fiscal year. Not real savings, if you ask me.

Likewise, we've been told that this act will also save $17 billion in reduced interest payments over 3 years. I have similar qualms about believing this estimate, for I fear we are going to see much higher interest rates than are assumed by these predictions. Unfortunately, in the year from July 1982 to July 1983, the Federal Reserve increased the money supply at a 13-percent annual growth rate. That is about five times as rapidly as it should have increased the money supply. The result of this surge has yet to be seen, or, more accurately, is just now beginning to be seen. The inflation rate for the first few months of this year is about 5 percent, already above the levels of the 2 previous years. In the second half of 1984 we can expect considerably higher inflation rates, and perhaps double-digit rates by the beginning of 1985. That should give us higher interest rates, and thus far less net interest savings than is the optimistic prediction of this act.

So, once again we will have the certainty of tax increases—$51 billion of them, as a matter of fact. But we have absolutely no guarantee of getting the predicted level of domestic savings; and, realistically, we have a very good chance of seeing little, if any, of those spending reductions. Sounds just like what happened with TEFRA, doesn't it?

My final concern is that we have once again provided insufficient funding for our national defense. The current insufficiency in our national defense programs was created, in large part, by years of neglect during the 1970's. The Congress, and various administrations, chose to focus on the political popularity of various defense issues rather than looking toward the real basis for defense spending—the Soviet threat and the problems we might face in various unstable areas of the world, particularly were those problems to be exploited by the Soviets. It would be nice to pretend, as some continue to do, that the requirements for maintaining the peace are not great, or, on the other hand, that we do not really have the resources to meet these requirements. The demands of peace and security are great; but we do have the resources to meet them—if we do not squander them elsewhere. It would also be nice to pretend, as some still do, that the growing Soviet threat and the threat of Communist subversion and guerrilla warfare throughout the world do not exist. It would be easy to pretend that the spreading Communist influence throughout the world is simply a matter internal to the nations involved—but it would be erroneous. To anyone who really looks, it is clear that the growing Soviet capability to project power around the world is not being created so the Soviets can defend their own borders.

I would have supported the level of defense spending in the President's original budget proposal. After all, for fiscal 1985, the recommended spending was only 1 percent above that proposed for fiscal year 1985 in the last Carter budget—and no one ever called Jimmy Carter a hawk.

The PRESIDING OFFICER. Is there further debate? If not, the question is on third reading and passage of the bill.

The bill (H.R. 5953) was ordered to a third reading, was read the third time, and passed.

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

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

The motion to lay on the table was agreed to.

Mr. EXON. Mr. President, I ask that the RECORD show that the Senator from Nebraska voted in opposition in a voice vote with regard to the debt limit.

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

Mr. DOLE. Mr. President, that was the debt limit we just passed?

The PRESIDING OFFICER. That is correct.

Mr. DOLE. Good; that just increases the debt limit $53 billion. That will get us through the first convention.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BAKER. Mr. President, there are two other items now to be dealt with that I am aware of, the conference report on bankruptcy, which has not yet reached us from the House of Representatives, and the concurrent resolution to accompany the budget reduction conference report. It is my hope that we can reach that concurrent resolution. Whenever the managers are ready, I am ready to do that.

I will suggest the absence of a quorum in a moment so that I can consult with the principals involved. I would suggest we get on with the consideration of that matter while we are waiting on the bankruptcy conference report.

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

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

The majority leader is recognized.

MAINTENANCE OF FEDERAL NUTRITION PROGRAMS

TO CORRECT TECHNICAL ERRORS IN ENROLLMENT OF H.R. 4170

Mr. BAKER. Mr. President, I have advised Senators of what I am about to do next, staff of the minority leader, the distinguished Senator from Ohio, the chairman of the Finance Committee, and others.

Mr. President, it is hoped by the leadership on this side that we can now go to a concurrent resolution to accompany the deficit reduction conference report. I am about to make a motion, Mr. President. I will say it is not my understanding that the motion will be quickly agreed to, but I think it is imperative that we get on with the business of trying to deal with that concurrent resolution.

I hope that Members will continue to negotiate and see if they can work out their differences.

At this time, Mr. President, I now move that the Senate proceed to the consideration of Calendar Order No. 36, Senate Concurrent Resolution 6.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

METRO: THE GREEN LINE—AND 101 MILES

Mr. MATHIAS. Mr. President, in today's issue of the Washington Post, there is an editorial entitled "Metro, the Green Line and 101 Miles." The editorial calls attention to the vote on the completion of the entire planned Metro system to the National Capital. I ask unanimous consent that the editorial be printed in the RECORD.

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

METRO: GREEN LINE—AND 101 MILES

Thanks to thoughtful approvals by House and Senate committees and an important decision by a federal judge, there is new hope for sensible, region-wide progress toward completion of the 101-mile Metro subway system as originally intended by Congress, past administrations and the participating state and local governments. With a Senate committee's vote yesterday, the appropriations measures in both Senate and House now contain language protecting completion of the full system against an effort by the current federal urban mass transportation administrator to limit construction to certain contiguous segments. And with court approval Tuesday, building of a long-delayed section of the Green Line can get going.

With similar bipartisan understanding and support for the language as forwarded for floor votes, commitments to those taxpayers in the region who have been paying their local shares and patiently awaiting subway service will not be shunted by federal executive fiat. This does not mean "haphazard construction," as transportation administrator Ralph L. Stanley charges in a letter to the editor today; Metro should continue to build segments that can proceed quickly and efficiently wherever they may be in the system.

The Green Line decision paves the way for construction of subway tunnels beneath the Anacostia River, with an eye toward the start of rail service in the early 1990s. An earlier federal court ruling had blocked construction of a Green Line section for more than two years.

There remains, of course, the matter of long-range money. Some form of regional revenue-raising for transportation is essential, and this is the challenge for the state and local leaders who have worked so well over the years to bring Metro to where it is now—and who are determined to maintain the 101-mile commitment on which this whole effort has depended all along.

Mr. MATHIAS. Mr. President, I think the editorial will be useful to Members of Congress who have to make a decision on this question in the weeks ahead. I hope they will all have an opportunity to read it and to consider it carefully.

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

Mr. METZENBAUM. I object, Mr. President.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk continued the call of the roll.

Mr. EXON. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

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

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

The majority leader.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, while we are waiting, there is one other matter that has been cleared all around, House Concurrent Resolution 332. It is a concurrent resolution dealing with Andrei Sakharov and the Helsinki Final Act.

Mr. President, I ask unanimous consent that the pending motion be temporarily set aside and that the Senate proceed to the consideration of House Concurrent Resolution 332; that no amendments be in order, and that there be a total of 10 minutes of debate to be equally divided, control of the time to be in the usual form, and that no other amendment, motion, point of order, or appeal will be in order prior to the disposition of House Concurrent Resolution 332.

Mr. LONG. Reserving the right to object, Mr. President.

The PRESIDING OFFICER. Is there objection?

Mr. LONG. I have no objection.

The PRESIDING OFFICER. Hearing none, it is so ordered.

SENSE OF THE CONGRESS WITH RESPECT TO STATUS OF ANDREI SAKHAROV AND YELENA BONNER

The PRESIDING OFFICER. The clerk will state the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 332) expressing the sense of the Congress that the Union of Soviet Socialist Republics should provide the signatories of the Helsinki Final Act with specific information as to the whereabouts, health, and legal status of Andrei Sakharov and Yelena Bonner.

The Senate proceeded to consider the concurrent resolution.

Mr. BAKER. Mr. President, I commend those who have brought this matter to the attention of the Senate. I support it fully and enthusiastically.

Mr. GRASSLEY. Mr. President, I would like to join my colleagues in support of House Concurrent Resolution 332 calling upon the Soviets to inform the signatories of the Helsinki accords of the whereabouts and condition of Andrei Sakharov and Yelena Bonner.

However, I am taking this opportunity to ask my colleagues to do more than pass a resolution. Senator METZENBAUM and I have introduced S. 2743, a bill which would rename, for Federal purposes, the portion of 16th Street between L and M Streets Andrei Sakharov Avenue.

This proposal emanated from a meeting of the International Parliamentary Group for Human Rights in the Soviet Union [IPG] and was suggested by a French parliamentarian. Attempts are being made in capitals around the world to carry out this same proposal.

At times the Soviet Government responds to world opinion. This legislation is a concrete step toward influencing the Soviets in that direction. Meaningful steps must be taken to save Sakharov or we could literally be talking his problem to death. I am urging my colleagues to join this effort and cosponsor S. 2743.

I ask unanimous consent that my recent remarks in support of S. 2743 before the District of Columbia Subcommittee of the Appropriations Committee be printed in the RECORD in full.

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

TESTIMONY OF SENATOR CHARLES E. GRASSLEY BEFORE THE DISTRICT OF COLUMBIA SUBCOMMITTEE OF THE APPROPRIATIONS COMMITTEE

Newspapers around the world have directed a pointed question to the leaders of the Soviet Union—"Where are the Sakharovs?"

That is a very good question.

The Soviet government has assured the world that Nobel Peace laureate, Andrei Sakharov and his wife, Yelena Bonner, are alive and well. The Soviets have not, however, permitted any independent confirmation of that claim, leading one newspaper to conclude, quite correctly, that, "The longer the Soviet government drags out the process, the more it encourages the suspicion that it is not merely playing with the Sakharovs and their well-wishers, but concealing a dark deed."

Last month I addressed a meeting of the International Parliamentary Group for Human Rights in the Soviet Union [IPG] where Sakharov's plight was discussed. At that time a French parliamentarian suggested a step we could take to dramatize our concern for the Sakharovs and, by implication, for many other victims of Soviet repression. His idea was to rename every street on which Soviets have a diplomatic facility in honor of Andrei Sakharov.

IPG members, an organization which currently consists of over 400 parliamentarians in 12 countries and I might add which includes all the D.C. Subcommittee members,

have taken this proposal and are pursuing it in their own countries.

Senator Metzenbaum and I believe that a gesture of this kind is precisely what is needed to demonstrate to the Soviets that we will not forget the Sakharovs. We have, therefore, introduced S. 2743 and S. Con. Res. 118, legislation that calls for renaming the streets in Washington and other cities where Soviet facilities are located "Andrei Sakharov Avenue."

We are particularly concerned here today with S. 2743 which just relates to the District of Columbia. The effect of this legislation would be to rename the length of 16th Street between L and M Streets—Andrei Sakharov Avenue.

Questions may be raised as to whether Congress possesses the authority to officially rename streets within the District of Columbia.

The United States Constitution empowers Congress "to exercise exclusive legislation" over the District of Columbia. U.S. Constitution art. 1, § 8, cl. 17. Congress' clause 17 authority is most often described as being as broad and complete as that of a State legislature with respect to its territory. e.g., *Capital Traction Company* v. *Hof*, 174 U.S. 1, 5 (1899). Also like a State legislature, clause 17 authority—the authority to name streets clearly being included—is fully delegable to a locally based government. *District of Columbia* v. *Thompson Co.*, 346 U.S. 100 (1953). At least some authority to name streets historically has been delegated to a local District government, and the Home Rule Act contains authority for street naming by the District of Columbia Council. District of Columbia Self Government and Governmental Reorganization Act of 1973, as amended, § 303, 87 Stat. 774 (Home Rule Act); see also, e.g., Act of March 2, 1983, 27 Stat. 534.

The Council has enacted legislation regarding the naming of streets pursuant to its Home Rule Powers Act of March 10, 1983, D.C. Law 4-201, D.C. Code §§ 7-451 et seq. The substance of S. 2743 clearly conflicts with the terms of the District act:

S 7-445. Use of living persons' names prohibited; use of deceased persons' names restricted.

No public space in the District shall be named in honor of any living person, or in honor of any person who has been deceased less than 2 years, unless the deceased person was a President or Vice President of the United States, a United States Senator or Representative, a Mayor of the District of Columbia, or a member of the Council of the District of Columbia. (Mar. 10, 1983, D.C. Law 4-201, § 405, 30 DCR 148.)

Nevertheless, the same cases that uphold the broad delegation of clause 17 powers also indicate that delegations of authority to the District necessarily may be revoked or superseded. *District of Columbia* v. *Thompson Co.*, 346 U.S. 100 (1953).

Clearly, Congress retained in the Home Rule Act sufficient authority to act even on strictly local matters as it sees fit, contrary local law notwithstanding:

RETENTION OF CONSTITUTIONAL AUTHORITY

Section 601. Notwithstanding any other provision of this Act, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by *enacting legislation* for the District on *any subject*, whether within or without the scope of legislative power granted to the Council by this Act, including legislation to *amend or repeal any law* in force in the District prior to or after enactment of this Act and *any act passed* by the Council.

Home Rule Act, § 601 (emphasis added).

S. 2743 conforms to the spirit as well as to the letter of Home Rule law: namely, that local matters be decided at the local level, but that matters implicating national interests and powers be determined by Congress. Congressional power over the District is dual in nature. On the one hand, Congress exercises national legislative powers over the District just as it does over the rest of the United States. At the same time, Congress has, by virtue of clause 17 plenary power, the ability to exercise local legislative powers within the District. *See, e.g., Neild* v. *District of Columbia*, 110 F.2d 246 (D.C. Cir. 1940). When Congress delegated authority to the D.C. Council in the Home Rule Act, that delegation was not unconditional. *See* S. Rep. 219, 93d Cong., 1st Sess. 4 (1973). No attributes of national powers were, or could be, delegated under clause 17. *Stoutenburgh* v. *Hennick*, 129 U.S. 141 (1889); *Home Rule Act* § 602 (a)(3)

Even though the naming of city streets generally may be a municipal matter, the naming of a prominent street in the Nation's Capital is of national significance. Here, the renaming of a portion of 16th Street not only would be a symbolic expression of national human rights ideals, but it also may be viewed as an exercise of the exclusive federal power to conduct foreign affairs.

Though the House of Representatives added report language to the D.C. Appropriations bill which calls for similar action of renaming 16th Street, I believe that in light of § 7-455 of the D.C. Code federal legislation must be passed if we are to accomplish our purpose. If S. 2743 were signed into law it would then supercede any conflicting D.C. law.

Yesterday Alexi Semyonov, Sakharov's stepson, announced that his parents' hunger strike began some 50 days ago. He indicated that the recently released photos of Dr. Sakharov are no proof that he is alive and that if he is living, Sakharov most likely is being force fed.

Dr. Bonner is going blind, and she is in heart failure. Outside communication has been refused to verify the Soviets claim that these courageous people are alive and well.

The Soviets must be made to understand and appreciate the West's concern over how the Soviet government treats its citizens.

By passing S. 2743, with each day's mail, Soviet officials will be confronted with the power of lives committed to principle.

The Sakharov's plight is a constant reminder of the fragile nature of freedom and of the ease with which a state can enslave its citizens.

We have not forgotten these noble souls and by including this proposal in the D.C. Appropriations bill next week, we will succeed in affirming the value of their lives and our commitment to their freedom.

Mr. LONG. Mr. President, may I inquire whether I am a sponsor of this concurrent resolution?

The PRESIDING OFFICER. This is a House concurrent resolution.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I hope the Senate will act promptly and affirmatively on the pending resolution. It seeks from the Soviet Union accurate, up-to-date information about the personal and legal status of Andrei Sakharov and Yelena Bonner.

I hardly need remind my colleagues of the things the Sakharovs stand for.

In awarding him the 1975 Nobel Peace Prize, the Nobel committee called Andrei Sakharov, "spokesman for the conscience of mankind." This is hardly a compliment lightly bestowed by this prestigious organization. But those of us who have followed Sakharov's life and career know how aptly it is summed up in those six words.

Andrei Sakharov's scientific genius and scholarship carried him to the pinnacle of power and luxury in the Soviet Union. He was willing to give all of it up, however, to follow his own conscience. In his judgment, privilege came at too high a price if it meant ignoring the oppression and misery of others. Nor was he willing to retreat to an academic ivory tower if it meant maintaining silence rather than telling the truth about the Soviet system as he saw it.

We all know what this has cost him. Today he is, to the best of our knowledge, 7 weeks into a hunger strike. I say "to the best of our knowledge" because for 7 weeks we have had no reliable information about his health or whereabouts. Nor do we know anything certain about the condition and circumstances of his wife and dedication coworker for human rights, Yelena Bonner. Both are in questionable health and unlikely to survive long without medical treatment.

The resolution now before the Senate has been adopted by the House of Representatives. It references the Helsinki Final Act and other international treaties to which the Soviet Union is signatory. In light of those obligations, it requests the Soviet Union to provide accurate information about the health and legal status of Andrei Sakharov and Yelena Bonner. In addition it asks that Yelena Bonner be permitted to leave the Soviet Union to seek medical treatment and that the Sakharovs be permitted to reside in the country of their choice.

Finally, the resolution urges the President of the United States and the other signatory nations to the Helsinki Final Act to protest the Soviet Union's refusal to provide information about the Sakharovs.

Such a resolution is fitting. Andrei Sakharov speaks not only for his conscience or that of the Soviet people, but to the conscience of all humankind. As such his fate is not an internal Soviet matter but the interest of all people who care about their fellowmen and women of the world.

I urge my colleagues to approve this resolution.

I appreciate the majority leader and the minority leader allowing this

matter to come before the Senate prior to the recess.

Mr. BAKER. Mr. President, there are a number of Senators who want a rollcall vote on this matter and I confess it would be unanimous, beyond a shadow of a doubt. But there are also Senators who are necessarily absent today who would want to vote for this concurrent resolution.

What I am going to propose that we do is agree to this concurrent resolution at this time, but I will not make a motion to reconsider. When we return, if it seems we should have a RECORD vote on this to show the unanimous support of the Senate by a formal rollcall vote, we can do that on a motion to table a motion to reconsider. So there will be no motion to reconsider at this point.

Mr. LONG. Will the Senator yield?

Mr. BAKER. Yes.

Mr. LONG. Mr. President, I am pleased to hear the Senator say that. As the majority leader knows, the Senator from Louisiana urged the majority leader that we should follow such a procedure if we want to pass this measure today. I think this measure does deserve the dignity of a rollcall vote. It is all right to say that the Senate is unanimous, but you can prove it when you have a rollcall vote to show every Senator who voted for the concurrent resolution.

I think this is one measure that all Senators would like to vote for. I suppose it would be necessary to give notice of a motion to reconsider. We will not let it go to the White House until we vote on it.

Mr. BAKER. Mr. President, what I will do after the concurrent resolution is adopted, if indeed it is—and I believe it will be—is I will then enter a motion to reconsider.

Mr. METZENBAUM. Mr. President, I think the majority leader has stated the situation very well because many of us feel very strongly about the Sakharov resolution. I particularly feel deeply concerned about it, having met with a number of parliamentarians from a number of nations throughout the world who indicated their concern about the failure of the Soviet Union to live up to the Helsinki accords. Their total concern about the Sakharovs is great.

As a matter of fact, it is interesting that in a meeting of the parliamentarians who came from about 12 nations throughout the world, a picture of Sakharov was flashed on the screen constantly. Throughout that meeting, it never left our concern.

I know that many Members of this body are anxious to vote for it. I want to be reassured and I think the majority leader can make it very clear in what he is saying, but I think it is necessary that the Soviet Union understand that all of us here feel there is indeed a strong sense of urgency and that every minute, every hour, every day that we fail to hear about the health and welfare and well-being of the Sakharovs is of concern to all of us who are Members of this body.

They should understand that our passage by voice vote is no less an indication of our strong commitment and concern about the subject and that the majority leader's action is predicated only on the fact that all of the Members of this body are anxious to vote for it and, by reserving his rights with respect to reconsideration, it is an indication of the total support that the U.S. Senate has concerning the well-being of the Sakharovs.

Mr. DODD. Will the majority leader yield?

Mr. BAKER. Yes, Mr. President, I yield.

Mr. DODD. Mr. President, I, too, commend the majority leader. He knows I felt, because we discussed it privately, that a rollcall vote would be of help. The distinguished Senator from Louisiana made that point. The actual vote in the House was 390 to 0. Those numbers serve as a significant addition to the wording of the resolution, adding to its import. I think what the majority leader has designed here is a very proper way for us to proceed. I thank him, I commend him for it.

Mr. BAKER. Mr. President, I am ready to proceed.

Mr. LONG. Mr. President, if there is any time left, I yield it back.

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

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

The resolution (H. Con. Res. 332) was agreed to. The preamble was agreed to.

Mr. BAKER. Mr. President, I enter a motion to reconsider the vote by which the resolution was agreed to.

The PRESIDING OFFICER. The motion is so entered.

Mr. BAKER. Mr. President, the effect of that will be now that the motion to reconsider will be preserved so that it may be called up at any time. I anticipate that will be done immediately after we return from the Fourth of July break and the Democratic National Convention.

MAINTENANCE OF FEDERAL NUTRITION PROGRAMS

TO CORRECT TECHNICAL ERRORS IN ENROLLMENT OF H.R. 4170

The Senate continued with consideration of the resolution.

Mr. BAKER. Mr. President, I continue to hope that we can dispose of the concurrent resolution relating to the deficit reduction package. I am also advised, however, that the bankruptcy conference report has now been completed in the House and should arrive here in the next few moments.

I say to my colleagues that as soon as that conference report arrives, unless we have worked out our problems on that concurrent resolution, it will be the intention of the leadership on this side to ask that we once again temporarily set aside the pending motion to proceed and take up that conference report.

Mr. President, I see the Senator from Ohio [Mr. GLENN] on the floor. I now yield the floor so he may proceed.

Mr. DOLE. Mr. President, will the Senator yield to me, first?

Mr. BAKER. Yes, Mr. President, let me yield to the chairman of the Finance Committee first.

Mr. DOLE. Mr. President, we are coming to some resolution of the concurrent resolution situation. I am not sure that will happen because of the different forces being as they are; some want more and some want less. I am anxious to get the concurrent resolution passed because there are a number of technical changes that I feel must be made. Hopefully, if we cannot resolve the so-called interest question, we can go ahead and pass the other parts and come back to that in July. I indicate to my colleagues that all this takes place, as far as the imputed interest is concerned, next January. But there are some technical changes that must be dealt with, should be dealt with, before we leave here.

I hope that my colleagues from Montana and Ohio, if we cannot work out the imputed interest problem, will let us proceed with all the other provisions, because the House is going to stay in session for a while to make certain we can complete action.

Mr. DANFORTH. Mr. President, may I ask a question of the Senator from Kansas?

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The majority leader.

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

The PRESIDING OFFICER. The motion to proceed with Senate Concurrent Resolution 6.

Mr. BAKER. I thank the Chair.

Mr. DANFORTH. Mr. President, I wonder if I may ask the Senator from Kansas about the concurrent resolution and what would happen as a matter of law if the Congress were not to adopt the concurrent resolution? Would this have any significant legal effect or cause any hardship to the ordinary American citizen?

Mr. DOLE. It could cause some hardship, Mr. President. The bill we passed, the $62 billion bill, will be signed in any event. We made a number of technical mistakes in the DISC area, in the pension area, in areas many people have concern with. We just do not want to hold up the entire bill because of some dispute

over imputed interest. What I would like to do in imputed interest is go back to present law on residences and farms. Some people do not want to do that. I hope we do not go off without action on the entire concurrent resolution.

Mr. DANFORTH. Mr. President, this bill was quite lengthy. I know the conferees spent many hours very late at night and the drafting work that was done also was done at very late hours by very tired people. It is natural when there is a tax bill that is this complex that there are problems which are created in the technical wording of the bill. It is my understanding that if we do not pass the concurrent resolution, the effect of that is to create great confusion in the administration of the tax laws by the Internal Revenue Service and, certainly, great confusion on the part of tax lawyers and tax accountants who are trying to plan on exactly what the law is going to be.

Mr. DOLE. Mr. President, let me respond.

There are a number of areas—there are certain life insurance provisions that should be corrected, distributions from top-heavy pension plans, depreciation in the real estate area, a transitional rule for the installment sale of cable business, market discount bonds, and a number of other clerical corrections in addition to the numerous technical changes made on the House side. As I understand it, there are veterans bonds provisions with respect to Alaska, Texas, and Wisconsin which must be corrected. Otherwise, a lot of veterans are going to be affected.

If we cannot work it out, these necessary corrections will not be made.

Mr. DANFORTH. The basic tax bill has been enacted, is that not correct, and therefore, that is going to be the law and the question is whether these technical problems are going to be corrected.

My own view is that it would be, I guess, a minor disaster but certainly a great inconvenience to a lot of people if it became the will of the Congress, imposed by one or two Senators, that we were not going to adopt this concurrent resolution. I think it would be inconceivable if one or two Senators were so determined to impose their own will to the letter on the Congress as a whole that they would not let the concurrent resolution go forward.

Mr. DOLE. That is the way some of our colleagues occasionally operate. They get your back against the wall when you are trying to go out and they get all the leverage. They know we cannot do anything about it. So, "If you want to play, you play my way."

What are we going to do about it? We cannot do anything about it. There are items that should be corrected that have not been cleared with the Senator from Ohio. If we had to clear everything with 100 Senators, we would never complete anything.

Mr. DANFORTH. Well, of course, Mr. President, we have gotten into that state, as the Senator from Kansas knows. There is nothing new about that, in the last week or so of Congress before we adjourn. But I think it is absolutely necessary to pass this concurrent resolution. I know that there are Senators who have already left and there are Senators who are anxious to leave.

It seems to me that this is must legislation. My hope is that we would wait here as long as we have to in order to get the job done. If we have to wait through the Fourth of July through the Democratic Convention, let us do it. But I think it would be irresponsible not to pass the concurrent resolution.

Mr. DOLE. Mr. President, let me say to my colleague that we thought we had worked out some provisions that cost about $100 million. The chairman of the Committee on Finance made a judgment that it was fair, agreed to by the ranking member, but not agreed to by the Senator from Ohio. But he has precedence. He has the power. He can say, "You're not going to bring it up."

That is not the way we ought to run the Senate, Mr. President, but he will be able to do it, he has done it for a long time and I do not blame him for continuing. It gives him a lot of power in the last hours of the recess. But he has that right.

Mr. MELCHER. Will the Senator yield?

Mr. DANFORTH. The Senator from Missouri has the floor.

Mr. MELCHER. Will the Senator from Missouri yield?

Mr. DANFORTH. No, Mr. President.

The PRESIDING OFFICER. The Senator from Missouri has the floor. Let us please have order.

The Senator from Missouri.

Mr. DANFORTH. Mr. President, let me ask the chairman this: There have been a number of columns written in the recent past about why some Members of the Senate are leaving this body.

I think there is a great sense of frustration on the part of people who have been here a long time about working in the Senate. I have heard that expressed not only by people who have been here a long time and have been more or less ground down by the agonies, particularly of the last few weeks before adjournment, but by younger and more junior Senators as well. I wonder if the Senator from Kansas has a view on this, because it seems to me that just this kind of thing is what makes it kind of a water torture operation in the last week or two of the Congress.

Mr. DOLE. I will not give the Senator my full view on it, but I will give him part of it. You know, my view is that if you have a problem, we ought to vote on it. But I guess any Member has the right around here, particularly in the closing hours before any recess to just bring us to a halt. The Senator from Ohio will not be satisfied with a vote. He wants his way or we do not vote at all. So we can inconvenience hundreds of thousands, millions of Americans because one Senator will not vote on what he thinks his views should be. I am willing to call up the resolution. The Senator from Montana has an amendment he is willing to offer and take a vote on it. He does not want to hold it up. But the Senator from Ohio does not play that way. It is either his way or we are not going to do anything. I think it is unfortunate but he has that right. I am just the chairman of the committee. It does not make any personal difference to me, but it affects a lot of people in this country. We believe the Finance Committee is made up of honest, objective persons. We have agreed to all these changes; the House conferees have agreed to all these changes; but the Senator from Ohio has not agreed to all these changes so we have to go to a higher power each time we make a judgment. Somehow we are not capable. The Senate Finance Committee, the members of the committee, and the House Ways and Means Committee cannot make a judgment until we clear it with the Senator from Ohio. If that is the way we are going to run the Senate, we can all play that game. I hope not, but we could all play it. So I would like to get on with it. It just happens the chairman of the Ways and Means Committee has a very important event occurring this week in his family; he would like to attend his daughter's wedding, but he cannot because he cannot leave until we finish action on this because there are some concerns that have yet to be addressed. I hope that we will maybe from time to time leave it to the judgment of the committee chairman. I do not believe I am trying to give anything away when I say we just ought to go back to present law on principal residences and farmland. We will work out later the business area that the Senator from Montana is concerned about. But that judgment is not good enough for the Senator from Ohio, so we have to back away and wait. I do not think we ought to run the Senate that way.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri had the floor and yielded the floor for a question. Does the Senator from Missouri seek to retain the floor?

Mr. DANFORTH. The Senator from Missouri has the floor and the Senator

from Missouri intends to keep the floor at least for the next few minutes.

I understand the problem the Senator from Kansas has. I think the Senator from Kansas has shown enormous patience; putting together a tax bill is very difficult. This bill was on the floor of the Senate for a long, long time. The bill was in conference, I think, for 3 weeks. Last week was maybe the most difficult week I have ever spent in the Senate. I know it was much harder for the Senator from Kansas because he was more deeply involved in it than anybody else. We worked in that tax conference until quarter after 5 in the morning on Saturday morning, and that was after a week in which every night was a late night on the defense authorization bill or on the tax conference.

I think the Senator from Kansas has done yeoman work. I do not know how it is possible to put together an agreement on a bill so long and so complicated unless there is some cooperation and some give-and-take on the part of all Senators. Certainly it is very difficult. But the way we run the rules around this place, it takes unanimous consent to do a lot of things. People can object to calling of quorum calls, and so on, and it is very easy for one Senator to stop things on the tracks. We have it now on a concurrent resolution which is necessary to clean up obvious defects in the tax bill. Well, if we are going to have the bill enacted into law with obvious defects, that is a serious mistake and a great burden to people, but that is the way it will be maybe.

This is not just a unique situation with the tax bill. I know that I have been working, for example, on a truck safety bill, and I thought it was totally noncontroversial. It is a bill that recognizes a problem in the country, and that is the number of serious accidents, the number of deaths that are caused by unsafe trucks. Trucks really have no standards now for cab safety; trucks have no rules for annual inspection; there is no safety fitness requirements for getting into the business of trucking.

We have these huge trucks, many of them in defective condition, barreling down the highways, and we have a little truck safety bill which is designed to improve the situation and make the highways safer for the American people, unanimously reported out of the Senate Commerce Committee, and we were hoping for action on the floor. Well, the Senator from Ohio has a hold on the bill.

That is his privilege, so we do not pass the bill. Maybe at some later date we will be able to do it.

But I simply want to express my respect for the Senator from Kansas, my respect for what he is doing, my admiration for the work of the Finance Committee and the Ways and Means Committee, and the conferees who have worked so hard on this bill, worked so hard to try to clean up the necessary flaws in something that is so complicated. I hope we will stay as long as necessary in order to get the job done.

Mr. DOLE. Will the Senator yield?

Mr. MELCHER. Will the Senator yield for a point?

Mr. DANFORTH. The Senator yields the floor.

Mr. DOLE and Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. DOLE. I will be happy to yield to the Senator from Montana for a question.

Mr. MELCHER. I thank the Senator from Kansas for yielding. I want to make this point: Without a correction on small business, it is going to mean that in the sale financed by the seller for his small business, the new imputed interest rates will apply. That would move it from 9 upward to 15 percent based on today's T-bill rate.

That is a tremendous increase, and it is going to mean that as long as that provision is law, there probably will not be the filling station or the hardware store or the mom-and-pop grocery store sold because the seller almost always has to assume part of that loan to make the sale. At 15 percent interest, sales of small businesses are impossible.

I do not think we want to get into that position. I only suggest that we ought to have some cap so that the smaller businesses will not be under the gun for however long that law should last.

Second, I would suggest that getting into the nightmare of interpreting "principal residence" is going to shut down a tremendous amount of housing sales because people do buy business condominiums—do buy second residences. Indeed, most of us have two residences, one in our home State and one in Washington. We would be faced with a situation where, if we could not finance part of the selling price, we would probably have a hard time selling one or the other home.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas does have the floor.

Mr. DOLE. I yielded. I just want the floor for a minute.

Mr. President, in response of the Senator from Montana, I understand his concerns. The Senator from Idaho [Mr. SYMMS] has concerns in a somewhat different area. He has introduced proposed legislation.

I say at the outset that this is a rather substantial provision we are talking about—$2.2 billion. We need to tighten up some areas, and this is one area recommended by the Treasury for tightening up. It does not take effect until January 1985. Maybe there should be some changes for certain sized small businesses. But the point is, based on conversations this Senator has had with the Joint Committee, my own staff, and others, it seems to me that the fairest thing to do at the present time, so that we can move ahead with this concurrent resolution, is to go back to present law on principal residences, and present law on farms. That is what I had proposed or hoped I might be able to offer a couple of hours ago, or a half hour ago. But then I learned that that did not satisfy everyone in the Chamber. In my view, if it does not satisfy, we should have a vote on it and get it out of here.

Mr. MELCHER. I agree.

Mr. DOLE. If it does satisfy, we should pass it.

We cannot satisfy everybody when we vote. A lot of Members left early, and who knows how many are here to vote?

In any event, we do not believe we have given away the store. We believe we have made a careful judgment.

The cost in my amendment, going back to present law, would be $100 million out of a $2.2 billion provision. The cost of amendments recommended by others is just about the same.

We have also promised Senator SYMMS, and I make the same promise to the Senator from Montana, that in the other areas, businesses and other residences—not principal residences, but vacation homes or condominiums owned by some persons—we would take a look at that.

We know that Treasury is opposed to what the Senator from Kansas suggests. But it occurs to me that if the Treasury wants to make changes, they can do it under present law. They have the authority. They can change the rate. As I look back, I think they wanted us to do what they did not want to do. They can take on all the realtors and the others who have an interest. I do not have as many people, so they can worry about that.

I hope the Senator from Ohio would let us bring up the bill. We do not have to satisfy every concern of the Senator from Ohio. Let us move on and bring this bill through.

As the Senator from Missouri pointed out, there are a number of people who would like to get this technical correction adopted. It means more veterans bonds to Texas, more veterans bonds to Wisconsin, more veterans bonds to the State of Alaska. It means some protection for Bonneville Power District. It means a lot for farmers and homeowners in different ways. So there is a whole host of things.

The bill consists of 1,309 pages. Maybe we should not make any errors. Maybe our staff should be perfect and

we should be perfect. We spent all night a couple of nights in the conference, and errors were made. We did not give the staff enough time. We hope we can do some today and some later in a technical corrections bill. But it is important that we pass this bill today.

I do not know how long the majority leader will permit us to work on this, but I hope we can reach some accommodation with the Senator from Ohio so that we can move it on. I guess we will have to have a recorded vote on the amendment of the Senator from Montana, but at least I hope to move it on, so that the House will take action on it before we adjourn. I believe they have done everything now, and they are waiting to return to this bill, as I understand it.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise to respond to the chairman of the Finance Committee, who I think was a little off base in indicating that the concerns that have been expressed by me come about by reason of my staff. Certainly, I consult with my staff, just as the distinguished Senator from Kansas consults with his staff, and I accept the responsibility for not permitting this bill to move forward at the moment.

I say to the manager of the bill that I have publicly, on many occasions, seen fit to commend him for his efforts in trying to close tax loopholes and in attempting to bring into the Treasury some needed dollars in order to balance the budget. So I am a little disappointed in his comments, but I recongnize that at the moment he is rather vexed and irritated. But be that as it may, I think we should put this matter in its perspective.

There are two parts to this concurrent resolution. One part has to do with a number of corrections and changes which are of a substantative nature, and the Senator from Ohio finds no objection to those parts of the bill; and, as the Senator from Kansas has indicated, if necessary, he would be prepared to separate the bill into two parts. I would not object to that. Nor would I object to the passage of that portion not having to do with imputed interest.

However, it is the imputed interest part that has to do with the real substance, the real guts of the concurrent resolution.

This is not a corrective amendment. This is not an amendment to help small homeowners. If anything, it would mean that every small homeowner in the future who bought a home in connection with which there was a matter of imputed interest would become responsible and liable to pay that interest, even though it was a gain.

Imputed interest means the difference between the actual interest paid and the interest the Treasury determines is the imputed rate or we in Congress determine to be the imputed rate.

What happened was that, in the conference committee and in the deliberations of the House and the Senate, some conclusions were reached with respect to the matter of imputed interest, and the real estate lobby suddenly woke up to what was going on.

The real estate lobby took a very thoughtful position and started jumping up and down and calling their Senators and Representatives and indicating that they did not want that to happen, and I understand that, except that they were looking out for their economic interests and were not looking out for the interests of the small home buyers, because they are not the ones who have to have a concern about the impact on the Federal Treasury.

They wanted the law to continue as at present, and the Treasury now uses a 9-percent imputed interest rate, which every thinking and knowledgeable person would have to agree is totally too low.

I do not disagree with the chairman of the Finance Committee when he says that the Treasury would like to have Congress do its work, and it is interesting to me that he points out that the Treasury opposes this particular matter that is pending before us today. But the fact is that they are not doing their work; and whether Congress does it for the Treasury or the Treasury does it, one way or the other it has an impact upon the Federal revenues unless we do something about it.

What we are talking about here this afternoon has to do with whether or not we are going to do something about it.

The chairman of the Finance Committee asks why I raise this issue and what right I have to raise the issue at the last minute. I have a very simple answer to him and to every other Member of this body, and it is this: Bring up the matters early, not in the closing hours of the session, and we will have no difficulty in voting on them.

What happens in the closing hours of every session is that we shoot through a lot of legislative proposals without any debate whatsoever, under a unanimous-consent agreement. Yes, indeed, I have seen fit to say that, in respect to many of them, I do not think they are for the betterment of the people of this country or the taxpayers or the consumers, or whomever; but I am not prepared to let it go through on the unanimous-consent calendar. It could have been and should have been brought up at an earlier point in the session.

As a matter of fact, it has become a rather routine procedure that we get to the tax bills, almost always, just before Congress is about to go out on a lengthy recess.

I do not do the scheduling of the calendar. The majority leader schedules the calendar, and the majority leader schedules the calendar on the basis of when the Finance Committee or some other committee has a bill ready to be brought to the floor.

So we find ourselves in these contentious positions at the close of sessions, just before we are ready to go on a recess.

Where have we come on this? The House sent over a concurrent resolution, and then that matter was referred to the committee.

To the best of my knowledge there were no public hearings, and I am not sure there was even a private hearing of the committee, but there are committee amendments which the manager of the bill is prepared to bring forth.

In the House matter and when it came over, it provided the limitations with respect to the refusal to use the imputed interest $250,000 as pertain to homes but not $250,000 in principal amounts but $250,000 mortgage amount.

I then discussed with the manager of the bill that if he wanted to provide these advantages and benefits I suggested to him yesterday that there be a limit on the first $100,000, a different figure for the second $100,000, and a different figure with respect to homes over $200,000.

I then suggested that there be two different figures with respect to farms below $500,000 and those over $500,000.

I did that yesterday afternoon in the middle of the afternoon during the bankruptcy conference, and I heard nothing further from the manager of the bill nor from anyone else until this morning when I was told what was going to transpire on the floor of the Senate.

At this point I indicated that I thought they had gone too far and it was a total victory for the real estate lobby and a defeat for the taxpayers of this country, a defeat for the Treasury itself, and a defeat for all people who will be buying homes in the future because they will become responsible for the imputed interest.

So then we went into some discussion, and finally I said to the manager of the bill, "I am willing to go along with what you are saying provided you put back the $250,000 cap and instead of the cap being at $250,000 mortgage, it be a $250,000 figure as far as the total value of the house is concerned."

At that point the manager of the bill indicated to me that he would go along with the $250,000 mortgage figure but not use it as the principal figure.

I hope that I have been correctly advised. As I now understand it, I think that there has been some modification with respect to the position of the manager of the bill on that subject and we very well may be in agreement.

But if we are not, then the Senator from Ohio does not have any intent to change his position regardless of such language as he or the Senator from Missouri might deem appropriate to use. I am doing what every Senator in this body has a right to do and maybe has an obligation to do, and that is I am using the rules of the Senate in order to see to it that the Treasury and the rest of the taxpayers of this country not be ripped off.

I am not saying that the manager of this bill has not made a deliberate effort and tried hard in order to come up with a decent product. But that does not mean that the Finance Committee is 100 percent right in all of its conclusions and that every other Member of this body does not have the right to put his view into the subject as well.

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

Mr. BENTSEN. Mr. President, I seek recognition.

The PRESIDING OFFICER. The Senator from Ohio has suggested the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENTSEN. 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 Senator from Texas is recognized.

Mr. BENTSEN. Mr. President, I have listened with a great deal of interest to the remarks of the Senator from Ohio. I understand his concern, and he has a right to do what he says he is doing.

But the trouble I see with his position is that he says, "Do not move until you have it fixed where I agree with it."

When we get into that kind of a situation, we should have the majority rule around here; it should be submitted to the Senate and we should vote on it.

We have had a lot of debate on this issue, with the debate last night, at which time the Senator from Montana discussed it at great length. Let me tell the Senate some of the things we did in this bill that affected real estate. We cut the provisions on real estate from 15 years to 18 years. We picked up a great deal of money and we faced the real estate lobby as we did that.

Let me say when we did it before and they cut it from 40 and 30 years back to 15 years, I opposed that and said we should stop at 20 years because they were getting just too sweet a deal and what we were going to have was buildings built all over this country that were not built for economic reasons but for tax reasons. That has come to pass.

Today in Houston, TX, they have in commercial buildings downtown a 28-percent vacancy rate. They have had all kinds of buildings, some of them without anyone occupying them. They were built for tax reasons. That should be corrected.

We have gone a long way to do that, taking the heat from the real estate lobby all the while. And we have done that in an election year. Political pundits always tell us you never raise taxes and never cut back on expenditures during an election year.

But that has been done; done by this Finance Committee, and done by the Ways and Means Committee. They have labored long and hard at it.

I can look through 1,300 pages and find something I do not agree with. But I do not believe I should be in a position, even though the rules allow me, to say: "You do not move. I've got you in the closing days of this session, and you cannot move unless you amend that to satisfy me."

I think if we get into that kind of a situation, it should be put to a vote of the majority of the Senate.

Now to get to this question of imputed interest, I think the chairman of the committee is absolutely right. The Treasury had every right and has the authority under the present legislation to raise imputed interest to reflect what is happening to the marketplace, and that is not unusual. That is frankly where I think we probably should have left it and, as I understand it, the Senator has a substitute amendment that will do just that type of thing.

The Treasury passed the dirty work to us. I frankly think it went too far in going to the 15 percent, and I notice the Senator comes back with a compromise talking about $250,000 insofar as that mortgage.

I understand the Senator from Ohio is talking about the possibility of putting $250,000 for the house. If he did not have a cliff effect on that, I think the Senator is really not arguing over a great deal.

But I also believe that it is one of those things that does not just have to be satisfactory to the Senator from Ohio.

I think that it is one of those things that we should put to the Senate. Let them determine. And if the Senator from Ohio prevails, that is fine. But I do not think he really should exercise the privilege in the closing days to "satisfy me."

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

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

Mr. DOLE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOLE. What is the pending business?

The PRESIDING OFFICER. The pending business is the motion to proceed to the consideration of Senate Concurrent Resolution 6.

Mr. DOLE. Mr. President, I understand now we have had a discussion. I have indicated and in fact shown the distinguished Senator from Ohio a modification that I think would satisfy his concerns, and I want to check to see that that modification is included in the technical amendment. I will now send the technical amendment to the desk.

The PRESIDING OFFICER. We are still on the motion to proceed.

Mr. DOLE. As I understand, there is no objection to the motion to proceed.

Mr. METZENBAUM. Mr. President, will the Senator from Kansas yield?

Mr. DOLE. I yield.

Mr. METZENBAUM. Mr. President, as I understand it, the Senator from Kansas is seeking some language having to do with this part of the $250,000 principal value of homes and the Senator is intending to include that as a part of his amendment, and that would then become a part of the concurrent resolution.

Mr. DOLE. Right. It would also include present law as far as farms is concerned. We would leave out the small business and try to settle that and have a hearing, as I promised the Senator from Montana and others, is July or August, to try to resolve that issue and also the issue of condominiums and other homes.

Mr. METZENBAUM. Condominiums and other homes would be left out?

Mr. DOLE. That is correct; just principal residences.

Mr. METZENBAUM. I have no problem. The Senator from Kansas and I are in agreement.

Mr. DOLE. Mr. President, let me thank the Senator from Ohio.

Also let me say that his staff member, Mr. Starr, has been a great help to us in the past couple of years.

Mr. METZENBAUM. I thank the Senator.

Mr. PRYOR. Mr. President, just to make certain about this—I had a glance a few moments ago at the lan-

guage the Senator from Kansas sent to the desk—are we talking about the language offered by the Senator from Kansas not being the mortgage or the amount of takeback, but the amount of money for the sale of property or the sale of the home; is this correct?

Mr. DOLE. That is correct.

Mr. PRYOR. That is under this proposal?

Mr. BENTSEN. Will the Senator yield?

Mr. PRYOR. Yes.

Mr. BENTSEN. Mr. President, I would like to also point out, you do not have the cliff effect in this. In other words, if you have a $300,000 house, the imputed interest would be——

Mr. DOLE. We believe that, on balance—again, I am relying on my staff, so I should not criticize anyone's staff, but all the experts on the joint committee and others, Treasury; and they may not be wild about this, but they are not opposing it—there will not be the cliff effect. It will be a blend. We believe it may reach pretty much the same result as we intended and as the Senator from Ohio intended.

Mr. PRYOR. Would the Senator from Kansas yield for another question?

Mr. DOLE. Yes.

Mr. PRYOR. The second part of this triad, I assume, would be that under the language of the Senator from Kansas, the farmland or the farm operations would have no cap. The cap would be removed, is that correct?

Mr. DOLE. That is correct. We go back to present law, which I want to do under principal residences. But we go back to present law on farm land.

Mr. PRYOR. And the third part of the triad would be on small businesses. There would be a $500,000 cap, is that correct?

Mr. DOLE. No; we do not do anything on small businesses. I want to indicate, as I said earlier, that I think when we get into depreciable assets we start having some problems. It is a $2.2 billion revenue saving we are giving up and $100 million of it is here. It is my understanding most of it comes in the sale of businesses. The principal residences and the farm land, that is not a big component of that $2.2 billion.

What I have suggested is not to get into that. I am not sure whether we have to have a cap. We could have some hearings in July or August and try to work it out at that time.

I have got to believe the biggest concern in this country is in the residential area, the sale of principal residences. We can address the other matters later.

Mr. PRYOR. Would the Senator from Kansas state, then, that it would be his opinion or would be even his commitment that during July we might have a hearing on the issue of the small business issue?

Mr. DOLE. I would say July or early August. We will get back the 23d, and we are here until the 10th. I have indicated, as I will indicate again to the Senator from Arkansas, that we certainly will do that. I have also indicated to a number who have an interest in the principal residence part, including realtors—and I like realtors; they are not so happy with me sometimes—that we will also look at the provision we are proposing to see if that is going to cause any problem.

Mr. PRYOR. That was my next question. I am hopeful that the Senator from Kansas will permit looking at the possibility of removing this. I do not want to slow down this show. I know there are probably 60 Members left here at 4:15 on the Friday afternoon before July 4. I do not want to slow down the operation, but I would like to ask the Senator from Kansas if we could have a hearing on the issue of the cap on the residences, the $250,000 principal, plus the issue of the small businesses. I think this should be resolved.

I want to compliment the Senator from Kansas for at least attempting to compromise this issue at this late hour after all of the work he and the other members of the tax conference have been involved with.

Mr. DOLE. I appreciate the Senator's work in the Finance Committee and his input during the conference. As he knows, there were a number of provisions he was concerned about that we were able to accommodate.

I would say to my colleagues that I think this is a fair resolution, at least today. This lets us take action on this part, on the principal residences. On the farmland, we reserve taking any action or changing anything as far as businesses are concerned or any other residence. I think that can be addressed in a hearing.

I would say that Treasury, I think, will go along with this amendment. I do not mean to indicate they were opposed to it. I think they liked what they suggested earlier, but they understood they have created a firestorm. Rightly or wrongly, everyone in this Chamber has heard from somebody about imputed interest. I have indicated to Treasury that we have to correct it. I thought the fairest thing to do, as far as the residences and farmland, is go back to present law because we understood that there was not much abuse in that area. It is 9 percent. Treasury can change the rate as they wish.

But, in any event, I hope we can work this out. I hope the Senator from Montana will not press us to a vote because this represents a solid victory to the Senator from Montana. I wish to congratulate him for calling this to our attention the other evening.

Mr. MELCHER. Will the Senator yield?

Mr. DOLE. I am happy to yield.

Mr. MELCHER. Will the effect of the chairman's amendment be immediate when signed into law?

Mr. DOLE. Pardon?

Mr. MELCHER. Will the effect of the chairman's amendment be immediate when signed into law?

Mr. DOLE. Yes.

Mr. MELCHER. Does the chairman intend to immediately cause anybody that is in the business of building condominiums for business purposes or vacation homes, when they are sold to be subject to the increase in rates if they are seller financed?

Mr. DOLE. The provision does not take effect until January 1, 1985. That gives us time to come back in July or August, and if we decide we want to make a change in that area, in my view, it can be done.

Mr. MELCHER. The point of my question—I will repeat the first question. Will the effect of the children's amendment be immediate when signed into law?

Mr. DOLE. Well, the answer is that current law applies. I assume current law is going to apply until 1985. So far as farm land is concerned, we are saying in this amendment we are going to go back to present law. As far as the principal residence is concerned, we are saying, if nothing else happens on January 1, it will be the modified provision.

Mr. MELCHER. So then the effect on other than principal residences would not be changed until January 1?

Mr. DOLE. That is right. I would indicate to my colleague from Montana that if he lets us proceed with this—and I know he has serious questions about small businesses—and I have the same concern, I might say to my colleague from Montana; there should be, I think, some relief for the small business, the gas station, the appliance store. I am not talking about big business. I am talking about somebody who lives up and down Main Street in Russell, KS, or in your hometown—is it Deer Lodge? That is where the Senator got all of those coupons from.

Mr. MELCHER. I will take that as my second home.

Mr. DOLE. Wherever they sent the Senator that withholding stuff; that was Deer Lodge.

Mr. MELCHER. Might I inquire of one more question of the chairman. Has the amendment been called up?

The PRESIDING OFFICER. The amendment has not been called up. The question is now on the motion to proceed. Is there any objection?

Mr. BAKER. Mr. President, if my ears do not deceive me, I think we are getting close to a place where we can deal with this, if I do not mess it up.

What we have before us is a motion to proceed to a Senate concurrent resolution which was to serve as the vehicle for adding the House concurrent resolution. What I would pose, if we are prepared now to deal with this matter substantively, is to withdraw that motion and ask unanimous consent that the Finance Committee be discharged from further consideration of House Concurrent Resolution 328, which is what came over from the House, and the Senate proceed immediately to its consideration.

Mr. DOLE. We have cleared that with Senator LONG.

Mr. BAKER. Mr. President, I make that request at this time.

The PRESIDING OFFICER. Is there objection?

Mr. BENTSEN. There is no objection.

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

The clerk will report.

The bill clerk read as follows:

A concurrent resolution (H. Con. Res. 328) to correct technical errors in the enrollment of the bill H.R. 4170.

The Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The question is on the resolution.

AMENDMENT NO. 3377

Mr. DOLE. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 3377 in the nature of a substitute.

The text of the amendment is printed in today's RECORD under "Amendments Submitted."

Mr. DOLE. Mr. President, let me quickly indicate for the RECORD what House Concurrent Resolution 328 contains.

House Concurrent Resolution 328 contains primarily technical and clerical corrections to the Deficit Reduction Act. It also deals with problems with the act that have come to our attention since the conference report was filed, the resolution made necessary by the tight timeframe under which the draftsmen were working so that the conference report could be filed by midnight Saturday, just 18 hours after the conference adjourned.

As adopted by the House, the concurrent resolution would modify the provisions of the conference agreement relating to the measurement of interest in deferred payment sales of property.

Under the resolution, as amended by the Senate, the interest rates for sales of principal residences, to the extent the purchase price does not exceed $250,000, and farm land would be governed by current law.

This amendment is a very simple modification to Code section 483 as amended by the Deficit Reduction Act.

Under the act as passed, the Treasury Department would be required to adopt new interest rates in applying section 483 to deferred payment transactions with unstated interest. This amendment provides that these new interest rates simply are not to apply to any sale of a principal residence costing less than $250,000 or to sales of farm land. Thus, current law with respect to the applicable interest rates would apply to these transactions.

The amendment, I would point out, applies to all principal residences costing less than $250,000, and on a prorata basis to more expensive houses, and to sales of farm land without regard to the size of the farm being sold. Thus, it goes much farther than other suggested amendments in preserving current law interest rates for farm land sales, and home sales subject to section 483. This amendment should resolve all of the concerns raised by Senators with respect to seller financing of farm sales and home sales.

The concurrent resolution also includes several clarifications of the tax-exempt bond provisions of the Deficit Reduction Act.

First, the resolution clarifies that in determining the annual volume of qualified veterans' bonds that a State may issue, certain periods and bond issues after 1978 and before June 22, 1984, are to be disregarded.

The resolution also clarifies the restriction on the volume of MCC's allowable to States with historically low mortgage bond issuance to ensure that bond authority that would otherwise go unused is not traded in to provide extraordinarily deep MCC subsidies.

A clarification is included to limit the maximum penalty for failure to make any report required with respect to MCC's to $2,000.

The concurrent resolution also clarifies that the non-Code bond rules of the conference agreement do not apply to bonds whose exemption is derived from a non-Internal Revenue Code Revenue Act within the jurisdiction of the Committees on Finance and Ways and Means.

Three provisions, agreed to by the conferees, were inadvertently omitted from the conference agreement. The concurrent resolution includes these three provisions. The provisions are:

First, the 5-year sunset on the conference agreement's exemption from the bill's Federal guarantee rules for the Bonneville Power Authority;

Second, the 3-year sunset on the authority granted to the Virgin Islands, American Samoa, and the District of Columbia to issue tax-exempt bonds; and

Third, a provision that the determination of whether a sufficient amount of rehabilitation to an existing facility has occurred to meet the requirements for tax-exempt financing is made on a project, rather than a building or structure, basis.

The concurrent resolution also contains several important technical amendments to the foreign provisions of the Deficit Reduction Act.

For example, the concurrent resolution clarifies the effective date rule of the resourcing provision to make clear that preenactment income is not subject to resourcing whenever it is paid out. This clarification is necessary to prevent retroactive application and to ensure that the bill does not apply to income earned before enactment or in years far in the past.

The concurrent resolution makes it clear that the separate foreign tax credit limitation for interest applies to loans to a foreign buyer to finance a purchase of a U.S. seller's goods, whether the foreign buyer is related or unrelated to the U.S. seller. This clarification makes it clear that taxpayers cannot avoid the effect of the rule by engaging in transactions with related parties.

The concurrent resolution also corrects an omission in the provision of the act repealing the 30-percent withholding tax on portfolio interest paid to foreign investors. The concurrent resolution adds language to insure that interest received or accrued on original issue discount obligations held by foreign corporations, as well as by nonresident aliens, will be free of the 30-percent withholding tax where other requirements for the exemption are satisfied. Thus, the concurrent resolution corrects a technical error and treats OID obligations held by nonresident aliens like identical OID obligations held by foreign corporations.

The concurrent resolution also clarifies that a foreign sales corporation organized in a U.S. possession may maintain its office there rather than in a foreign country. This correction will allow companies to benefit from the new provision, as Congress intended. The concurrent resolution also makes a number of other technical amendments to the new FSC provision.

The Senate version would also modify the resolution to include the following provisions:

The conference agreement provides specific statutory rules for determining the amount of any life insurance reserve which may be taken into account in computing the taxable income of an insurance company. One of the specific reserve computation rules agreed to by the conference committee was inadvertently omitted from the conference report. This omitted provision allow companies that have traditionally used the net level term method of computing reserves with respect to accident and health insurance contracts to continue to use that re-

serve method. The amendent would modify the concurrent resolution to include the provision agreed to by the conferees but omitted from their report.

Under present law, a 10-percent additional income tax applies to distributions prior to age 59½ to key employees under a top-heavy pension plan. The conference agreed to change this rule to apply the 10-percent tax to 5-percent owners of the employer without regard to whether the plan is top heavy. This change was inadvertently dropped from the conference report, and the amendment would restore it.

In agreeing to lengthen the depreciation period for real property other than low-income housing, the conferees also adopted a convention requireing that real property placed in service—or disposed of—in any month be treated as placed in service—or disposed of—in the middle of that month. The amendment would clarify that this mid-month convention does not apply to low-income housing and would set the effective date as the date of conference action.

The conferees adopted a provision under which the depreciation recapture rules regarding real and personal property override the installment sale rules. Except for sales pursuant to a contract binding on March 22, 1984, the provision applies to sales after June 6, 1984. The amendment would exempt from the provision certain installment sales of all or substantially all of the personal property of a cable television business.

A technical change is needed to coordinate the market discount bond provisions with the 6-month capital gains holding period. There are also several corrections of clerical errors.

That is the resolution that came from the House. That has been further amended with other technical changes, such as the interest rates for section 483.

Under present law, taxpayers can avoid imputing interest in the case of deferred payment sales of property if they state interest at a rate determined by the Treasury. Currently, that test rate is 9 percent. If they fail to state adequate interest, interest is imputed at a rate of 10 percent. Under the conference agreement, instead of periodic adjustment by Treasury, a formula is adopted under which the test rate is 110 percent of the relevant Treasury rate and the imputed rate is 120 percent of the relevant Treasury rate. As passed the House, these rates are lowered to 90 percent and 100 percent, respectively, in the case of the first $250,000 of principal amount of debt issued in connection with the sale of a principal residence or farm. The amendment would modify the concurrent resolution so that in the case of a principal residence to the extent the purchase price does not exceed $250,000 or farmland—with no dollar limitation—the interest rates would be computed under the procedures provided by present law.

LIFE INSURANCE RESERVES

The conference agreement provides specific statutory rules for determining the amount of any life insurance reserve which may be taken into account in computing the taxable income of an insurance company. One of the specific reserve computation rules agreed to by the conference committee was inadvertently omitted from the conference report. This omitted provision allows companies that have traditionally used the net level term method of computing reserves with respect to accident and health insurance contracts to continue to use that reserve method. The amendment would modify the concurrent resolution to include the provision agreed to by the conferees but omitted from their report.

DISTRIBUTIONS FROM TOP-HEAVY PENSION PLANS

Under present law, a 10-percent additional income tax applies to distributions prior to age 59½ to key employees under a top-heavy pension plan. The conference agreed to change this rule to apply the 10-percent tax to 5-percent owners of the employer without regard to whether the plan is top heavy. This change was inadvertently dropped from the conference report, and the amendment would restore it.

MIDMONTH CONVENTION FOR DEPRECIATION OF REAL ESTATE

In agreeing to lengthen the depreciation period for real property other than low-income housing, the conferees also adopted a convention requiring that real property placed in service—or disposed of—in any month be treated as placed in service—or disposed of—in the middle of that month. The amendment would clarify that this midmonth convention does not apply to low-income housing and would set the effective date on the date of conference action.

TRANSITION RULE FOR INSTALLMENT SALE OF CABLE BUSINESS

The conferees adopted a provision under which the depreciation recapture rules regarding real and personal property override the installment sales rules. Except for sales pursuant to a contract binding on March 22, 1984, the provision applies to sales after June 6, 1984. The amendment would exempt from the provision certain installment sales of all or substantially all of the personal property of a cable television business.

MARKET DISCOUNT BONDS

A technical change is needed to coordinate the market discount bond provisions with the 6-month capital gains holding period.

CLERICAL CORRECTIONS

Various clerical changes would be made.

Mr. DOLE. I ask adoption of the amendment.

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. As I understand it, I hope I am correct in what I understand, the amendment to the technical amendment that the chairman was describing on imputed interest is part of the amendment that he has now offered.

Mr. DOLE. That is correct.

Mr. MELCHER. I want to speak to that point, Mr. President.

The effect of the technical amendments before us is to change the imputed interest rates as they were passed in the tax bill, and to go back to existing law only on principal residences but not on small businesses or other residences such as vacation homes or business homes or condominiums. Both of these are problems for me, I think for quite a few others in this Chamber, and I think for millions of people in the country.

Present law for a small business sale that is seller financed is that the imputed interest would be 9 percent. Under the bill as passed with the technical amendments, it will be increased from 9 to 15 percent under present T-bills as of today.

A change from 9 to 15 percent on a seller-financed small business is a rather dramatic increase in interest rates, and hardly fits the idea that we want to encourage economic recovery. We want to hold down interest rate increases.

What we are doing by statute in this bill is changing imputed interest rates and tying them to T-bills on these seller-financed small businesses.

Let me give you an example. The filling station operator wants to retire, wants to sell his filling station, and in order to get it sold, he offers it for, let us say, $75,000. He agrees to finance a portion of that. Under this law he would have to sell it at 15 percent interest, or the Treasury would impute on today's T-bill markets an interest rate of 16½ percent. That sounds almost idiotic, and I guarantee you it is idiotic. Sadly, what is being attempted to be closed down in this bill is somebody selling a legitimate operation for whatever interest he can get the buyer to pay. Under present law, he would not be penalized. It would be 9 percent. That would be the imputed rate. Under the bill it must be 15 percent if the seller finances the sale.

If this bill passes, it is going to be 15 percent or else Treasury will impute 16½ percent under current T-bill rates. I do not think we should want to stop sales of small businesses. I shall offer an amendment to this particular

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section which will simply say that we are not going to interfere with the sales of real estate in small businesses up to $500,000.

Whatever the Treasury worries about on sales of businesses, where there might be some tax evasion, I doubt whether they are worrying about the grocery store, the filling station, or the hardware store. I do not think that is what they are worried about. And the amendment only deals with the real property. It does not deal with the equipment, or anything of that nature, which Treasury says sometimes is inflated in value and, therefore, is inflated to get a rapid writeoff of depreciation, or is inflated to gain some tax advantage.

Second, on the questions of personal, principal residence, that means that if you own two homes, and attempt to sell them, you would have to sell one on the basis of principal residence and one not on the basis of principal residence. I think it is an area we simply do not need to get into. For that imputes the interest on one at 9 percent and the other at 15 percent. And current law does not require that finding of principal residence so it is less abusive.

I hope that we do not want to shut down those people that are building vacation homes, attempting to sell them where they finance the sale or business condominiums where the seller is financing, and especially wants to finance the sale in order to get the property moved. By the same token, I hope we do not shut down the opportunity for those who already own such business condominiums or vacation homes from having to get into an imputed interest of 15 percent at today's current T-bill prices or else they have an imputed rate of 16½ percent.

I want to draw the attention of the Senate to an article that was in the Wall Street Journal yesterday. It is on page 8. It says, "Real Estate Syndicators Discount Impact On Most Investors of Tax Bill's Revisions." They are talking about the tax bill that has already been agreed to in the conference report.

So they are not talking about the subject matter we are talking about right now. But this term "real estate syndicators" is not a term with which I am familiar. But, at any rate, the story is familiar. It talks in a very familiar manner and it said, quoting a gentleman named Mitchell Hochberg, first vice president of VMS Realty, Inc., a real estate syndicator, he says:

"We're not particularly troubled" by the tax changes.

Syndicators believe they can offset the changes so that investors can end up with about the same tax benefits. Investors in VMS partnerships, who last year could deduct an average of $1.40 for every dollar invested in a partnership, would get deductions of $1.25 to $1.30 for every dollar, Mr. Hochberg said. Integrated Resources Inc., a real estate syndicator that offers deductions varying from less than a dollar to as much as $4.50 for every dollar invested, said that range won't change.

Mr. President, I only read those little quotes out of this story to indicate that the tax bill as passed does not upset whatever real estate syndicators and how they operate. I do not begrudge them that. They are in the business to build property and to provide their services. The additional property that they build I am quite certain is beneficial to the economic recovery.

I read it, Mr. President, not for criticism, but to point out that, strangely enough, in the same tax bill we have sought out some of the lower financed real estate sales and direct Treasury to soak a very high imputed interest rate on those transactions.

In order to avoid what clearly is an injustice and a mistake, I will offer an amendment to this particular section to make certain that the small businesses are included for real estate transactions up to $500,000 under existing law, and that we will not get into this quicksand of what is the principal residence.

AMENDMENT NO. 3378

(Purpose: To limit imputed interest rates for the sale or exchange of farms and ranches, or small businesses up to $500,000, or residential property up to $250,000)

Mr. MELCHER. Mr. President, I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER] on behalf of himself and Senators BAUCUS, HATFIELD, BOSCHWITZ, DIXON, DURENBERGER, JEPSEN, SYMMS, BOREN, and RANDOLPH, proposes an amendment numbered 3378.

Mr. MELCHER. 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 8, line 4, strike out paragraph (23) of the corrections to division 1—Tax Reform Act of 1984, and insert the following new paragraph:

(23) In section 483 of the Code (as added by a section 41(b) of the bill), redesignate subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively, and insert after subsection (d) the following new subsection:

"(e) Interest Rates in Case of Sale of Principal Residences or Farm Lands—

"(1) IN GENERAL.—In the case of any debt instrument arising from the sale or exchange to which this subsection applies, subsections (b) and (c)(1)(B) shall be applied by using, in lieu of the discount rates determined under such subsections, discount rates determined under subsections (b) and (c)(1), respectively, of this section as in effect before the amendments made by the Tax Reform Act of 1984.

"(2) sales or exchanges to which subsection applies.—This subsection shall apply—

"(A) to any sale or exchange by a person of real property to be used by the purchaser as a personal residence, but only to the extent that the sale price that the real property does not exceed $250,000.

"(B) to any sale or exchange by a person of land used by such person as a farm (within the meaning of section 6420 (C) (2)), and

"(C) to any sale or exchange by a person of real property pursuant to the sale or exchange of a business, but only to the extent that the sale price that the real property does not exceed $500,000."

Mr. BENTSEN. 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. MELCHER. 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. MELCHER. Mr. President, I have pretty well described what I am attempting to do, and I am not going to belabor it further except to take about 2 or 3 minutes to wrap up what I consider to be a terrible injustice.

Sometimes I think that those of us in Washington too often get enamored of the huge complexity of the Government and are too often misled in what is necessary for the various agencies. In this instance, we have the Internal Revenue Service and the Treasury Department continually badgering us on what is necessary in collecting interest on real estate transactions that are seller financed.

In the instance of so many of the sales that are going on right now at this time with climbing interest rates, seller-financed sales of property are extremely essential. Without that, you shut down so many of the sales that are being attempted. Realistically without seller-financed sales we are leaving those people high and dry.

Mr. President, I am not overwhelmed when the Treasury Department talks to us about imputed interest rates. To the extent that they are trying to close some loopholes on huge transactions, I shall bow to their judgment. But when they attempt to tell us that what happens on Main Street of America in the ordinary sales of real estate property, whether it is small business or homes for the ordinary seller, saying that that creates a tax evasion point, I beg to differ with them. But in order to concede their point that some of the large transactions, amounting to many millions of dollars, are designed for tax evasion, the amendment before us places a cap, which is not in present law, of $500,000 on the sale of the real estate

of a small business. In addition the amendment gets away from this never-never land of what the "principal residence" is.

That is all my amendment does, leave existing law alone except for further restraint. My amendment does maintain the $250,000 limitation on home sales that the chairman has in his but my amendment does get rid of the "principal residence" clause so that any residence—you would not have to argue with IRS over what the "principal residence" is—and thus my amendment on this point would have the same effect as present law.

Mr. President, I hope that we could consider what is the actual world out in our own States and the situation of sales and what the seller has to finance. I hope we can consider the harm of the imputed interest rates when raised to the extent that it would be on these residences and small businesses. I seek to avoid that but adopt caps on the amount; but on the rest retain present law as it is. That is my amendment. It avoids an increase of imputed interest rates.

Mr. President, I think I have said enough on the amendment to show it is necessary. I ask for the yeas and nays on the amendment.

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

The yeas and nays were ordered.

Mr. DOLE. Mr. President, I understand the concern of the Senator from Montana and I had hoped we would not have to proceed this far because there are just as many concerns on the other side. I do not know a way of resolving it, because if he wins, then I have problems with other people; if he loses, he is willing to accept that, I think, and will not hold up the resolution.

There are hundreds of thousands of people who are going to be affected if we do not pass this concurrent resolution. Again, I think we have indicated we think we have a pretty fair resolution. We do not have any impact until January 1985, we do not have to make any changes if changes should be made.

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

Mr. DOLE. Yes; I yield.

Mr. BAKER. Mr. President, I do not mean this to be facetious, but I think it is important. The Senator is absolutely correct, there are hundreds and thousands of people involved in the completion of this matter. I do not want my colleagues to take this wrong, but there are 100 people here involved, because I have been advised by the House—and I understand why—that they are not going to send us an adjournment resolution until we pass this concurrent resolution. For what that means, I believe them.

Mr. DOLE. Mr. President, I am going to move to table in a minute. I do not have any quarrel with the Senator from Montana, but I have to finish this resolution. The majority leader wants me to move. I think it is important that we do that. Therefore, I move that we lay the Melcher amendment on the table and I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BAKER. I announce that the Senator from South Dakota [Mr. ABDNOR], the Senator from North Dakota [Mr. ANDREWS], the Senator from Colorado, [Mr. ARMSTRONG], the Senator from Mississippi [Mr. COCHRAN], the Senator from Maine [Mr. COHEN], the Senator from Washington [Mr. EVANS], the Senator from Arizona [Mr. GOLDWATER], the Senator from Oregon [Mr. HATFIELD], the Senator from Nevada [Mr. HECHT], the Senator from Pennsylvania [Mr. HEINZ], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Iowa [Mr. JEPSEN], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Nevada [Mr. LAXALT], the Senator from Maryland [Mr. MATHIAS], the Senator from Idaho [Mr. McCLURE], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Oklahoma [Mr. NICKLES], the Senator from Oregon [Mr. PACKWOOD], the Senator from Illinois [Mr. PERCY], the Senator from South Dakota [Mr. PRESSLER], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Vermont [Mr. STAFFORD], the Senator from Alaska [Mr. STEVENS], the Senator from Idaho [Mr. SYMMS], the Senator from Texas [Mr. TOWER], the Senator from Virginia [Mr. TRIBLE], and the Senator from Connecticut [Mr. WEICKER], are necessarily absent.

Mr. INOUYE. I announce that the Senator from New Jersey [Mr. BRADLEY], the Senator from Arkansas [Mr. BUMPERS], the Senator from West Virginia [Mr. BYRD], the Senator from California [Mr. CRANSTON], the Senator from Arizona [Mr. DECONCINI], the Senator from Illinois [Mr. DIXON], the Senator from Nebraska [Mr. EXON], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Kentucky [Mr. HUDDLESTON], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Massachusetts [Mr. KENNEDY], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Vermont [Mr. LEAHY], the Senator from New York [Mr. MOYNIHAN], the Senator from Rhode Island [Mr. PELL], the Senator from Arkansas [Mr. PRYOR], the Senator from Tennessee [Mr. SASSER], the Senator from Mississippi [Mr. STENNIS], and the Senator from Massachusetts [Mr. TSONGAS], are necessarily absent.

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

The result was announced—yeas 30, nays 23, as follows:

[Rollcall Vote No. 189 Leg.]

YEAS—30

Baker	Garn	Mitchell
Bentsen	Gorton	Proxmire
Chafee	Grassley	Quayle
D'Amato	Hatch	Roth
Danforth	Inouye	Rudman
Denton	Long	Simpson
Dole	Lugar	Thurmond
Durenberger	Matsunaga	Wallop
East	Mattingly	Warner
Ford	Metzenbaum	Wilson

NAYS—23

Baucus	Domenici	Levin
Biden	Eagleton	Melcher
Bingaman	Glenn	Nunn
Boren	Hart	Randolph
Boschwitz	Hawkins	Riegle
Burdick	Heflin	Sarbanes
Chiles	Helms	Zorinsky
Dodd	Kasten	

NOT VOTING—47

Abdnor	Heinz	Packwood
Andrews	Hollings	Pell
Armstrong	Huddleston	Percy
Bradley	Humphrey	Pressler
Bumpers	Jepsen	Pryor
Byrd	Johnston	Sasser
Cochran	Kassebaum	Specter
Cohen	Kennedy	Stafford
Cranston	Lautenberg	Stennis
DeConcini	Laxalt	Stevens
Dixon	Leahy	Symms
Evans	Mathias	Tower
Exon	McClure	Trible
Goldwater	Moynihan	Tsongas
Hatfield	Murkowski	Weicker
Hecht	Nickles	

So the motion to lay on the table Mr. MELCHER's amendment (No. 3378) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion to lay on the table the amendment of the Senator from Montana was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, as far as I know there are no other amendments to the concurrent resolution.

Mr. President, I wish to clarify two provisions which have an impact on real estate transactions.

DEFERRED RENTS

It is expected that Treasury regulations will provide that lease will not be subject to the matching rule, the leveling rule, or the conversion rule of new section 467 of the Internal Revenue Code merely because there may be reasonable increases in the rent to be paid, provided such increases are wholly contingent and cannot be reasonably ascertained at the time the lease is executed.

RETROACTIVE ALLOCATIONS

In addition, it should be clarified that the midmonth convention described in the conference report with regard to retroactive partnership allocations is not intended to restrict the Treasury Department's discretion to provide a more flexibile convention by regulations where no abuse potential is present. For example, regulations could provide that, in nonabusive cases, any partner admitted to a partnership during a calendar month could, for purposes of the retroactive rules, be treated as having been admitted on the first day of such month.

Mr. President, I indicate to our colleagues that I appreciate their indulgence. I think we have a good resolution of the problem raised by many.

I indicate as I did previously to the Senator from Montana that we will have hearings on this. I think he does have a point in the small business provision.

I hope we pass the resolution.

The PRESIDING OFFICER. If there be no further debate on the substitute amendment, the question is on agreeing to the amendment of the Senator from Kansas.

The amendment (No. 3377) was agreed to.

THE IMPUTED INTEREST RULES

Mr. PRYOR. Mr. President, there was a very serious problem with the conference report on H.R. 4170, which the Senate approved yesterday, and I sincerely hope that it will be corrected by the Senate today. I'm referring to the so-called imputed interest rate rules contained in section 483 of the Internal Revenue Code.

These rules were put in the tax code to prevent the conversion of ordinary income on certain deferred payment transactions into capital gains, subject to a preferential tax rate, or in some cases a rollover of the gain completely.

Under present law, the imputed interest rate rules provide that if a deferred payment transaction has a stated rate of interest of 9 percent, then they will not come into play. If, however, an interest rate below that threshold is provided for, or if no interest rate is stated in the debt instrument, then a rate of 10 percent is imputed for income tax purposes.

These rules have worked, and have also given people the flexibility to structure transactions in a period of high interest rates. In particular, Mr. President, I'm concerned that a change in these rules will bring about a chaotic situation with regard to seller-financed property. As we all know, in the last few years a large portion of the real estate transactions in this country, rather single family homes or farms, have been sold using some type of seller financing. The availability of seller financing has enabled many people to sell homes, and other property, and without it I believe the real estate market would have literally been shut down. It's for this reason, Mr. President, that I believe the proposed changes in the imputed interest rate rules are wrong, and should be changed.

At the very minimum, we should enact the provisions of the technical corrections bill before us, but I sincerely believe that the provisions of this amendment—which retains present law—would be the better course to follow.

Under the conference report on H.R. 4170, the interest rates under section 483 would be increased to 110 percent of the applicable Federal rate—the so-called "safe harbor test"—and 120 percent of the applicable Federal rate for the imputed rate. At current T-bill and long-term bond rates, this could result in a dramatic increase in the imputed rates, and could jeopardize seller financing for transactions that occur after January 1, 1985, which is the effective date of the proposed change.

This amendment retains present law for personal residences of $250,000 or less, and also, for farms, regardless of the sales price.

Mr. President, this is a change that must be made. Although the effective date of the provision is not until the first of next year, we must act on it now. The real estate industry has come through a very difficult period, and I think it would be wrong to jeopardize one of the ways millions of Americans have been able to sell their homes. I hope the pending amendment is adopted, and I urge my colleagues to support it.

Mr. BOREN. Mr. President, I add my support to efforts of the Senator from Montana to increase the exemption from imputed interest provision to cover small businesses and farms.

It is my understanding that under present law, any deferred payment transaction that is covered by section 483 of the Internal Revenue Code, must state interest at least the safe-harbor simple interest rate fixed by regulation—which is about 9 percent—or interest is imputed at a higher compound rate of 10 percent. The conference report would increase the safe-harbor rate to 110 percent of an average yield on Federal obligations of similar maturity. If interest is not paid annually at least at this rate interest is to be imputed at a rate equal to 120 percent of the applicable Federal rate—or at the higher stated rate—and annually included in the income of the lender and deducted by the borrower.

If the conference report language was allowed to stand, this would be a real disincentive to people trying to sell their home or farm. Even with the $250,000 exception provided for residences, there would be many small businesses and farms who would still be caught under the new rule. In my home State of Oklahoma, the average selling price of a farm is around $319,300 thus not even the average price of a farm would be covered. It would be a terrible injustice to tie the hands of farmers and small businesses, especially when bankruptcies and forced sales are at an all time high. During the last 2 years, over 15,000 farmers with the Farmers Home Administration loans have been forced to liquidate.

In addition, with interest rates at 14 percent and higher, conventional loans are out of the question for most families. Seller-financing and below market loans have been the only way homes and small businesses have been sold in recent months, and the interest rate outlook does not appear to be getting any better.

I understand that the distinguished chairman of the Senate Finance Committee has worked out a compromise on this issue which would retain part of current law for residences and farms and ranches. I urge my colleagues to support this compromise which I believe to be fair.

Mr. BAUCUS. Mr. President, Wednesday night we approved the conference report on the Tax Reform Act. Because it is the first part of the overall deficit reduction downpayment package that we must enact in order to prevent interest rates from rising further, I voted to approve the conference report. Nevertheless, I strongly oppose section 41(b) of the report, which will have the effect of substantially increasing the interest rates some sellers must charge when they sell their homes, farms, small businesses, or ranches; at a time when interest rates have begun climbing again, such increases could be devastating.

Therefore, I support adoption of an amendment that immediately repeals section 41(b) insofar as it affects sales of homes, farms, small businesses, and ranches.

BACKGROUND

When someone sells property on a deferred basis, the principal he receives is treated as capital gain and the interest he receives is treated as ordinary income. Because capital gains are taxed at much lower rates than ordinary income, a seller may have a tax incentive to overstate principal and understate interest; when the property sold is depreciable property, the buyer may have a similar incentive, because he can take accelerated depreciation deductions—and in some cases an investment tax credit—based on the amount of the principal but not of the interest.

Mr. President, some time ago, Congress sought to limit the effect of these tax incentives by assuming, for tax purposes, that a deferred payment transaction includes a basic interest component. Specifically, Tax Code sec-

tion 483 directs the Treasury Secretary to issue regulations setting "safe harbor" and "imputed" interest rates; if the seller does not actually charge interest of at least the safe-harbor rate, he is assumed to have charged interest of the higher imputed rate. Currently, the safe harbor rate is 9 percent and the imputed rate is 10 percent. Therefore, if a seller doesn't charge interest of at least 9 percent, he is assumed, for tax purposes, to have charged interest of 10 percent.

THE ADMINISTRATION PROPOSAL

I am not aware of any abuses that are occurring under the current system, especially regarding sales of homes, farms, small businesses, and ranches.

But the administration apparently thinks there are abuses. In its most recent set of budget proposals, the Treasury Department said:

> We have seen a substantial number of recent transactions that exploit * * * the operation of section 483. In some cases a tax basis of more than five times the established fair market value of the property is claimed.

To eliminate this perceived abuse, the Treasury Department proposed revising section 483 so that the rate no longer is set by the Treasury Department, but instead "floats" along above the Treasury bill rate. Specifically, the safe-harbor rate will be 110 percent of the T-bill rate and the imputed rate will be 120 percent of the T-bill rate.

Eventually, this provision was included in both the House and Senate tax bills, and was adopted as section 41(b) of the Tax Reform Act.

ANALYSIS

Mr. President, it is clear, from the administration's original description of the problem it perceived, that the new imputed interest rate provision was aimed at big commercial developers who use sophisticated methods to maximize the tax shelter benefits of their transactions.

But the provision actually goes way beyond that. It affects ordinary homeowners, small businessmen, farmers, and ranchers who resort to seller-financing rather than bank financing. As a result, it has an especially harsh effect in the West, where interest rates generally are higher than elsewhere and where seller-financing is more heavily relied on.

Mr. President, the people I am talking about are not sophisticated developers engaging in elaborate tax scams. They are ordinary people who simply cannot sell their homes, farms, businesses, and ranches at prevailing market rates.

Under the section 41(b) provision, the Government tells these people that they either have to sell at prevailing rates or else suffer a tax penalty. Based on today's rates, this means that, instead of charging 9 percent they will have to charge about 15 percent.

This is an unnecessary, indeed counterproductive, intrusion. According to the National Association of Realtors, it could reduce home sales by 500,000 a year. At a time when increasing interest rates already are undermining the housing market, this would be devastating.

THE CONFERENCE REPORT

Unfortunately, the section 41(b) imputed interest rate provision slipped through the House, the Senate, and the conference committee without anyone discovering its potential impact on homes, small businesses, farms, and ranches.

Only after the conference committee had ratified the provision did I learn, from an article in the Wall Street Journal and from the National Realtors Association, that, unlike another related provision in the bill, the imputed interest rate provision contained no exception for principal residences, farms, and ranches. As soon as I learned this, there was an attempt to modify the conference report provision; unfortunately, it was blocked by one of the House conferees. Nevertheless, at the end of the conference on Friday night, I described the potential problem and urged my fellow conferees to reexamine the issue as soon as possible.

THE CONCURRENT RESOLUTION

At this point, as we consider a concurrent resolution that makes corrections in the conference report, it certainly seems appropriate to modify the imputed interest rate provision.

The House of Representatives has implicitly acknowledged this, by including, in its version of the concurrent resolution, a compromise provision that reduces the safe harbor and imputed interest rates, for homes and farms, from 110 and 120 percent, respectively, to 90 and 100 percent. Given current rates, this would mean that the new safe-harbor rate would be reduced from about 15 percent to about 12 percent but still would be substantially higher than the 9 percent it is now.

This compromise provision is an improvement over the conference report provision, and I understand that the National Association of Realtors supports it for that reason.

But why compromise? There is no good reason why the new provision should apply to homes, farms, small businesses, and ranches at all.

Therefore, I strongly believe that we should completely repeal the new provision insofar as it applies to principal residences, to farms and ranches, and to businesses worth less than $500,000. In other words, average homes, small businesses, farms, and ranches would remain subject to the current 9- to 10-percent rates, rather than the higher rates.

CONCLUSION

Mr. President, I think everyone has the same basic goal: to prevent tax abuses without disrupting ordinary transactions. To achieve this goal, we should simply admit that we made a mistake when we applied section 41(b) to homes, farms, small businesses, and ranches, and we should correct that mistake, immediately, by adopting both the Dole amendment and the Melcher amendment.

In addition, I would like to thank Senator MELCHER, who has worked hard to repeal section 41(b). He has led the fight on this issue, and deserves to be applauded for that.

ELECTRONIC FUNDS TRANSFER REQUIREMENT FOR PAYMENT OF CIGARETTE AND ALCOHOL PRODUCT EXCISE TAXES

Mr. DOLE. Mr. President, the Senator from Kansas wishes to take note of a provision included in the conference report on H.R. 4170, which the Senate passed just 2 days ago. That provision requires taxpayers who owed $5 million or more in excise tax on distilled spirits, wine, beer, or tobacco products during the preceding calendar year to pay that tax by means of electronic funds transfer to a Federal Reserve Bank.

The Senator from Kansas has also been made aware that the Treasury appropriations bill for 1985, which we may be considering today, includes a prohibition on the expenditure of Treasury Department funds "to implement changes" in the "mode of payment of excise taxes by law or regulations in effect on January 1, 1981." The conferees and the Committee on Finance were aware that language such as that included in the present appropriations bill has been in the law for several years. It was for this reason that a specific statutory provision was included in H.R. 4170.

The Senator from Kansas, as manager of H.R. 4170, states unequivocably that it is his view that the Congress in H.R. 4170, and not the Department of the Treasury has implemented the requirement of electronic funds transfer for certain persons liable for tobacco and alcohol product excise taxes. The cited provision in the appropriations bill has always been intended to prohibit the Treasury Department from implementing such a change. Because the Congress has implemented this change, the provision of the current Treasury Department appropriations bill should not be construed in a manner to restrict enforcement of the specific requirements of the Internal Revenue Code, as amended by H.R. 4170, that require payment of tax by electronic funds transfer.

COMPETITION IN CONTRACTING

Mr. BAKER. I want to commend the senior Senator from Maine for his efforts to improve the Federal procurement process. I believe that title VII

of divison b of the Deficit Reduction Act of 1984, which incorporates S. 338, the Competition in Contracting Act, takes great strides toward increasing the use of competition in Federal contracting and restricting noncompetitive—sole-source—contracting.

Mr. COHEN. I thank the majority leader, and would like to extend commendations to Senators ROTH, LEVIN, and CHILES, as well as Representatives BROOKS and HORTON, for their hard work and continuing support.

Mr. BAKER. I do, however, want to clarify one point. Under subtitle D, section 2741 of this title, which provides a statutory base for the General Accounting Office's bid protest system, the term "Federal agency" is defined as having the same meaning as that term has under the Federal Property and Administrative Services Act of 1949.

It is my understanding that, in choosing this particular definition, the conferees do not intend to increase the GAO's bid protest authority over the Tennessee Valley Authority beyond the extent that GAO currently has such authority.

Am I correct in my understanding of the conferees' intent?

Mr. COHEN. Yes, you are correct. The conferees do not intend to expand the current scope of GAO's bid protest authority with regard to the TVA.

Mr. ROTH. As chairman of the subconference which considered this title, I agree with the Senator from Maine that your understanding of the GAO's bid protest authority, as it applies to the TVA, is consistent with the conferees' intent.

Mr. BAKER. I thank the Senators for that clarification.

The PRESIDING OFFICER. If there be no further debate on the concurrent resolution, the question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 328) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, we have come at last to the end of a long and arduous and frustrating but ultimately successful effort to reduce the Federal budget deficit.

The Senate and the House have agreed to a package of spending cuts and tax adjustments which will reduce projected deficits by $140 billion over the next 3 years.

We have done what we said we would do, and what others said we would never do, particularly in an election year. We have made a downpayment on the deficit.

We have agreed to cut projected domestic spending by $50 billion between now and 1987. We have agreed to cut projected defense spending by $40 billion. And we have agreed to raise the level of Federal revenues by $50 billion over 3 years.

I think it is important that the American people understand what we have done and what we have not done in meeting this economic challenge.

We have not solved the problem of Federal deficits. Even with a $140 billion reduction package, we still face deficits that are unacceptably high, and we must address this issue again next year.

But we have also not conformed to the craven image of political expedience and election-year illusions which too many of our fellow citizens have come to expect of Congress.

With bipartisan consent, we have raised taxes in an election year. We have slowed the growth of both domestic and defense spending. We have defied the conventional wisdom that Congress could not summon the courage to act responsibly and effectively in a campaign year.

We have fulfilled a commitment made to the President, in the now-famous "Rose Garden agreement," that our deficit reduction program would rest on three pillars, that we would have meaningful restraint in domestic spending, defense spending, and tax increases alike.

I think Members of the Congress on both sides of the aisle and both sides of the Hill have reason to be proud of their role in fashioning this serious response to a serious challenge.

I wish to commend especially the respective chairmen of the Senate Committees on Appropriations, Budget, and Finance for their leadership in this important effort. Senators HATFIELD, DOMENICI, and DOLE are representative of the skill, tenacity, and fortitude which characterized so many people involved in this enterprise.

I would respectfully submit, Mr. President, that the Congress has proven its mettle today, that we have shown we are fully prepared to deal with significant economic issues, to deal with them successfully, to deal with them in a timely way.

I would suggest that those who have been waiting for the roof to fall in on Washington's resolve to put its financial house in order may have to wait a very long time. We have turned the corner, away from the profligacy which plagued us in times past and toward a policy of restraint.

I cannot predict how long these better angles of our nature will inspire our actions, but I do know that Americans have always risen to a challenge, and we as their representatives have done no more and no less.

I believe President Reagan is right when he says that continuing high interest rates are bolstered by nothing but a fear of the future. I believe we have made the future more secure by our action today, and I believe we have proven that the future is in responsible hands.

I also believe that, given this evidence, the burden of proof must lie now with those who make the financial decisions in this country and not simply with those of us who make the political decisions.

I believe the moderation of inflation, the moderation of economic growth, and the moderation of political wills which inspired this compromise today call for a moderation of interest rates as well.

The prime rate is 8 points lower today than it was when Ronald Reagan took office in 1981, but it is also nearly 8 points higher than the traditional measure of money's "real" cost—the inflation rate plus 3 percent—has been.

There is simply no good reason for the high interest rates which prevail in this country this year, and the action of Congress today is only one more powerful case for bringing it down.

Mr. President, that completes action now on the concurrent resolution.

BANKRUPTCY COURT REFORM—CONFERENCE REPORT

Mr. BAKER. Mr. President, I believe this has been cleared by the acting minority leader. I have consulted with both sides. Mr. President, I submit a report of the committee of conference on H.R. 5174 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5174) to provide for the appointment of U.S. bankruptcy judges under article III of the Constitution, to amend title 11 of the United States Code for the purpose of making certain changes in the personal bankruptcy law, of making certain changes regarding grain storage facilities, and of clarifying the circumstances under which collective-bargaining agreements may be rejected in cases under chapter 11, and for other purposes having met, after full and free conference, have agreed to recommend and do recommend to their respective House this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of today, June 29, 1984.)

Mr. THURMOND. Mr. President, 2 years ago, on June 28, 1982, the Su-

preme Court decided its now famous Marathon case regarding the constitutionality of the jurisdiction provisions of the 1978 Bankruptcy Reform Act. It is ironic, but perhaps fitting, that the conferees on the bankruptcy bill reached agreement exactly 2 years to the day from the date on which the Marathon case was decided. While I am sure that all participants in this lengthy process would have preferred to have enacted legislation long ago, I am extremely pleased that we have at last reached agreement and are about to place our Nation's bankruptcy system on a firm constitutional footing. I believe that the compromise bill that the conferees have worked out is a fair and workable one, and I am pleased to support it.

By way of summary, let me first say that the new bill to which the conferees agreed yesterday is very similar to the Senate substitute for H.R. 5174. Title I, dealing with the bankruptcy court system, is very similar to title I of the Senate bill, except in a few significant respects which I will describe in a moment. Title II, authorizing 85 article III judgeships on date of enactment, is identical to title II of the Senate substitute, except the conferees agreed that no more than 40 of the 85 judges authorized therein would be appointed prior to January 21, 1985. Of those 40 judges, 29 are to be district court judges and 11 are to be circuit court judges. Title III, making substantive changes in the Bankruptcy Code, is virtually identical to the Senate bill, except that certain provisions in the technical amendments subtitle have been deleted or compromised. Title III also contains the labor provisions agreed to by the conferees. There were, of course, no labor provisions in the Senate bill.

As I stated earlier, title I is, in overall terms, similar to title I of the Senate substitute. Certain significant changes have been made, and they are as follows:

The mandatory abstention provisions of the House bill are included in the bill. This would require a Federal court to abstain in a related proceeding based on State law if that proceeding can be timely adjudicated in State court. Also, this provision will not apply to pending cases.

The House language on the definition of core proceedings is utilized, with certain modifications to new subsections 157(b)(2)(B) and (O). These modifications exempt from the definition of core proceedings the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims for purposes of distribution in a bankruptcy case.

New language on the issue of jury trials is included. Section 1411 will now provide that this chapter of title 28 and title 11 do not affect a right to trial by jury under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim. This provision, however, will not be applicable to pending cases.

The language of the House bill regarding salaries of bankruptcy judges and magistrates has been included.

Provisions of the Senate bill regarding the use of bankruptcy judges as magistrates to handle bankruptcy cases or proceedings withdrawn by the district court have been deleted.

A compromise was reached regarding the extension of terms of existing bankruptcy judges. Their terms are to expire on October 1, 1986, or four years after the date of their last appointment to that office, whichever is later. Terms of part-time bankruptcy judges will expire two years after date of enactment.

A Senate provision regarding the setting of salaries of United States Attorneys and Assistant United States Attorneys was deleted.

Title II of the bill authorizes, on date of enactment, the appointment of 85 new article III district court and circuit court judges. These provisions are essentially identical to those of the Senate bill. The conferees, however, agreed that no more than 40 of these judges—29 district court judges and 11 circuit court judges—would be appointed prior to January 21, 1985. The remaining 45 judges would be appointed after January 21, 1985. Let me emphasize, however, that all 85 positions are authorized on date of enactment of this bill. The conferees have, however, simply reached a policy agreement regarding the number which may be appointed prior to January 21, 1985. Let me further clarify that, if all 40 judges are not appointed prior to January 21, 1985, the remainder will be included with the 45 judges to be appointed after that date. This title also contains certain other noncontroversial changes regarding retirement of Federal judges and their Federal insurance policies.

As I stated earlier, title III of the new bill is identical to title III of the Senate bill, with the exception of certain deletions and changes in the technical amendments subtitle and the addition of the labor language worked out in conference.

With regard to the labor provisions of this bill, let me first say that, were it not for the critical need to pass this bankruptcy bill, I could not have agreed to these provisions in subtitle J of this title. I believe that the Bildisco decision was correctly decided and did not require legislative action by Congress. Unfortunately, the House injected this issue into the bankruptcy debate very late in the process. They also made it quite clear that the bankruptcy bill, if there was to be one, would contain a labor provision acceptable to organized labor. After soundly rejecting my offer to delete the labor provisions of the House bill and the omnibus judgeship provisions of the Senate bill, the House conferees proceeded to work out with the Senate conferres a compromise on the issue of rejection of collective bargaining agreements in chapter 11 reorganizations. This compromise is, in my opinion, the fairest and most equitable one that could have been reached under the circumstances. It falls somewhere between the provisions of the National Bankruptcy Conference language originally contained in the Senate substitute and the Packwood amendment. Its procedures and standard are essentially the same as those of the Packwood amendment. Certain provisions were added, at the insistence of Senate conferees, to insure the flexibility and finality of the labor language. A provision was added, for example, to clarify that, should a judge fail to rule on an application for rejection within 30 days of the commencement of the hearing on such application, the debtor may unilaterally terminate or alter any of the provisions of the collective bargaining agreements pending the court's final ruling on the application. At that point in time, the debtor would essentially be in the same position he is now in under the Bildisco decision—that is he may unilaterally abrogate the contract pending the court's decision. The emergency relief provision suggested by the National Bankruptcy Conference has been included in this compromise. This provision would allow the debtor to come to the court for authorization, after a hearing, to make interim changes if such changes are essential to the continuation of the debtor's business or in order to avoid irreparable damage to his estate. This concept is a very important addition to the labor provisions and allows the necessary flexibility to prevent a debtor from being forced into liquidation. Another important difference between these provisions and those of the Packwood amendment is that they do not apply to pending cases and, therefore, should not affect pending litigation in any way.

Finally, I would like to comment on the language regarding the proposal which the debtor must make to the union and the refusal of the union to accept the proposal. Legitimate concerns have been raised regarding the broadness and vagueness of this language. I would hope that courts will interpret both provisions in the most practical and workable manner possible. The phrase "all of the affected parties" is obviously not meant to include any party which might conceivably be affected in any minor way, but is intended to encompass those parties directly affected. This phrase clearly includes, however, all nonunion employees of the debtor, whose interests should be as carefully considered by the court as those of any union employees. The requirement that the union refusal to accept the proposal be "without good cause" is obviously not intended to import traditional labor law concepts into a bankruptcy

forum or turn the bankruptcy courts into a version of the National Labor Relations Board. Again, the intent is for these provisions to be interpreted in a workable manner.

Mr. President, returning to provisions of title I of this bill, I would like to briefly discuss one final problem which the conferees have attempted to resolve. As I am sure my colleagues are aware, our most recent extension of the existing bankruptcy system expired on June 27 of this year. Obviously, the conferees had not agreed on a new bill by that point in time. We have attempted to address this problem by including in title I a final extension of the existing system to the date of enactment of this bill. Our intent is to continue the existing bankruptcy system and its current judges so that these judges will not be adversely affected in any way with regard to their salaries or continued Government service. Also, it is our intent that there be no question regarding the validity of their actions during this period of time.

Mr. President, this conference agreement was possible because of the hard work and outstanding dedication to the public interest demonstrated by the conferees and staff. As chairman of the conference, I want to highly commend all of them.

Among the Senate conferees, I want to thank Senators HATCH and SIMPSON for their active participation in the conference. They initiated many helpful suggestions which facilitated a resolution of difficult issues. Senator DOLE, the chairman of the Courts Subcommittee, and Senator GRASSLEY were cooperative throughout the process. I thank Senator EAST for his support.

Senator KENNEDY and the other minority members of the conference committee were also very helpful. In particular, I want to express my great appreciation to Senators DECONCINI, METZENBAUM, and HEFLIN, who worked as a mediating committee between the House and Senate. They were largely instrumental in achieving a final resolution of the major points of contention. Also, I am grateful to Senator HEFLIN for coauthoring with me the original Senate bill, S. 103

I enjoyed working with Chairman RODINO and the other House conferees, particularly Representatives JACK BROOKS, TOM KINDNESS, BOB KASTENMEIER, and MIKE SYNAR, and I commend them for their effective efforts. Messrs. FISH, SAWYER, LUNGREN, and MOORHEAD were very helpful in our deliberations. Indeed, Mr. SAWYER's help reminds us of how much he will be missed after his retirement. All of the others, including Representatives EDWARDS, SEIBERLING, HUGHES, GLICKMAN, and MORRISON, were cooperative. Although he was not an official conferee, Minority Whip TRENT LOTT used his good offices to facilitate agreement.

Mr. President, I would be remiss if I failed to mention the dedicated staff people who worked with the Senate conferees. My counsel, Sally Rogers, demonstrated great expertise, initiative and fairness throughout. She did as good a job as I have ever seen a staff member do in reconciling differences. Vinton D. Lide, the chief counsel to the committee, and Deborah K. Owen, our general counsel, provided their customary invaluable assistance in coordinating the efforts of the staff and ensuring the smooth operation of the conference.

Staff representing other members of the conference were also quite helpful. Doug Comer, who works for Senator DOLE, Randy Rader, and Steve Markman, on behalf of Senator HATCH, and Arthur Briskman, for Senator HEFLIN, were all of great service to the conference. Linda Nersesian (for Senator GRASSLEY), Ellen Broadman (for Senator METZENBAUM), Bob Fiedler (for Senator DECONCINI), Boyd Hollingsworth (for Senator SIMPSON), Rick Valentine (for Senator EAST), Mike Forscey (for Senator KENNEDY), and Cindy Lebow, Senator BIDEN's minority staff director, also contributed. Jan Wilson, from the Office of Legislative Counsel, did great work. In addition to the legal staff, Nancy Scott, Joseph Gibson, Debbie Bernstein and Karen Gordon of the full Judiciary Committee staff worked long hours to facilitate the activities of the conference.

Mr. President, all of the conferees and staff have performed a great service to the country in connection with this conference report and they deserve all of our thanks.

Mr. President, the conferees met on this matter, and they spent a lot of time. They were up until about 3 o'clock in the morning on it. We finally reached an agreement, and every member of the conference, Senate and House, signed except one refused.

It is a good report. I shall not ask for a rollcall vote.

Mr. HEFLIN. Mr. President, my remarks shall be very brief. As the conference report is being presented to this body today, I rise to congratulate the distinguished chairman of the Judiciary Committee for his leadership in making this report possible.

Since the ruling of the Supreme Court in Nothern Pipeline Construction Co. against Marathon Pipe Line Co. in 1982, we as Members of Congress have spent endless hours attempting to restructure the bankruptcy court and provide for additional judges and court personnel.

This conference report reflects a compromise between the Members of this body and our colleagues in the House based upon the article I adjunct court structure set forth in Senate bill 1013 which passed the Senate on April 27, 1983; and the Thurmond-Heflin substitute to H.R. 5174 which passed the Senate on June 19, 1984. I have great respect for the House conferees and I also congratulate and thank them for their hard work. Not everyone is happy with all the provisions of this report, and I too fear that there may be serious constitutional ramifications. But I am hopeful that this court structure can be workable, consistent with the intentions of the Senate. I am disappointed that the conferees were inclined to adopt some of the provisions in their present form.

Overall, I believe this legislation is good. It contains many significant, substantive reforms of the existing bankruptcy law. In the area of consumer bankruptcy, this legislation will tighten certain provisions of the 1978 act. It also provides procedures for expedited distribution of grain stored in bankrupt elevators and fish stored in fish processing facilities. Another provision concerns the bankruptcy of shopping centers and amends the laws to affirm or reject leases in a shopping center.

There is a modified version of a bill introduced by Senator DANFORTH which provides that a debt incurred as a result of an accident caused by drunk driving is not dischargeable.

Further, this legislation includes a proposal by the Federal Reserve Board which would exempt repurchase agreements from the automatic stay in bankruptcy proceedings.

There is a provision to protect holders of timesharing agreements in the event the timesharing contractor goes bankrupt.

This is an extremely complex and important package amending our existing court structure and substantive law.

The distinguished chairman of the Judiciary Committee, Senator STROM THURMOND, and the equally distinguished ranking minority member, Senator JOSEPH BIDEN; Senator BOB DOLE, chairman of the Subcommittee on Courts and many other members of the Senate Judiciary Committee and this body have had an active involvement in developing this important and essential legislation.

While I do not agree with all of its provisions, I am proud to be a part of this effort and I am hopeful that the Senate will act affirmatively on this conference report.

I would also like to commend and thank several staff members for their hard work and efforts. I want to give particular praise to Sally Rogers, of Senator THURMOND's office, for her outstanding work; to Doug Comer, of Senator DOLE's office; to Jan Wilson, of Legislative Counsel, and to Arthur Briskman, of my staff for their very diligent and continuing work. I would also like to recognize the efforts of

Pete Velde of Senator DOLE's staff; Ellen Broadman of Senator METZENBAUM's staff; John Podesta of Senator LEAHY's staff; Randy Rader and Steve Markman of Senator HATCH's staff; Carolyn Osolinik of Senator KENNEDY's staff; Bob Feidler of Senator DECONCINI's staff; Mary B. Troland of Senator BAUCUS' staff; Mark Gitenstein, Cindy Lebow, and Chip Reid of Senator BIDEN's staff.

Mr. President, I feel that the Senate should act affirmatively on this conference report.

Thank you Mr. President.

Mr. THURMOND. Mr. President, I have already paid tribute to the various Members who were so helpful and staff members, also. Again, I thank the Senator from Alabama for all that he contributed to this matter.

Mr. DOLE. Will the Senator from South Carolina yield?

Mr. THURMOND. I am pleased to yield.

Mr. DOLE. Mr. President, I would just take a few minutes to make some brief remarks concerning the consideration of the conference report on H.R. 5174, the bankruptcy improvements legislation. As Members of this body are aware, I have been in the forefront of the efforts to pass this critically needed reform of the bankruptcy courts and the bankruptcy laws for almost 4 years. At last, after resolving a number of complex and difficult issues, the Senate is ready to give final approval to a bill that, I believe, is vitally important to protecting the legitimate interests of a number of important sectors of our national economy.

This bankruptcy reform effort began with a simple bill to provide some expedited procedures in bankruptcy for farmers struggling to recover grain from insolvent elevators. Five times the legislation passed the Senate, while the House refused to take action. As the months—and then the years—went by, it became increasingly apparent that other segments of the business community were likewise in need of comprehensive relief from obsolete, burdensome bankruptcy procedures that have hampered good faith creditors in recovering upon legitimate claims. After a full year of hearings, this bill's predecessor—S. 2000 in the 97th Congress—passed the Senate and it, too, met an ignominious death in the House.

Following that, in June 1982, the Supreme Court rendered decision in the case of Northern Pipeline against Marathon Pipeline Co., which held that the bankruptcy court system now in place had been given powers constitutionally beyond their scope under the jurisdictional provisions of the 1978 reform act. This triggered a crisis in the court system, the implementation of an emergency jurisdictional rule sponsored by the judicial conference, and an expansion of the Senate legislation to include provisions to correct the deficiencies in the present court structure that the Supreme Court had identified. A second bill, S. 1013—passed by this body in early 1983—incorporated the provisions of S. 2000 and the court jurisdictional remedial measures. And still the House did not act.

Finally, in early 1984, the House was spurred into action by the Supreme Court decision in Bildisco against Bildisco. That case, which all Members are familiar with, addressed itself to the problems encountered by the courts and litigants when considering the issue of the treatment of collective bargaining agreements in bankruptcy. Only then—with the aggressive effort of the labor community—did the House consider the need for bankruptcy reform, and act on meaningful legislation. Of course, we are all thankful for the fact that we now have a consensus bill to act upon, which addresses all of these important problems. Nevertheless, I must say regretfully that many farmers—and small businessmen, institutional investors, financial institutions of all types and other parties affected by bankruptcy procedures—have had to endure 3 long years of frustration and economic loss due to the House refusal to take up the legislation.

SPECIFIC PROVISIONS OF THE BILL

In addition to providing expedited procedures for farmers who have grain stored in insolvent elevators, this bill provides important new protections for good faith creditors seeking recovery upon their claims in consumer debtor cases. Beyond that, there are provisions that reform procedures in bankruptcy that have affected the marketing of Treasury certificates under repurchase agreements; measures that correct problems for owners of shopping centers and their tenants, and other owners of real estate, whose leases are tied up in reorganization proceedings under chapter 11 of the Bankruptcy Code; reforms in the law of bankruptcy as it treats claims against drunk drivers, to ensure that victims of the drunk driver do not have their judgments against the drunk driver discharged in bankruptcy; important protections for timeshare participants, and finally, a host of technical reforms that improve the overall structure and functioning of the Bankruptcy Code. All of these reforms, contained in title III of the bill, are important although they have perhaps been overshadowed by the public debate on the Marathon issue and the labor provisions, the latter of which are also included in title III of the bill.

COURT STRUCTURE REFORMS

Title I of the bill, which enacts needed reforms in the organization and jurisdictional powers of the bankruptcy courts, has been carefully crafted to ensure its constitutionality under the Marathon decision. This title establishes an article I bankruptcy court, with judges appointed for limited terms, to handle the routine business of bankruptcy claims based upon State law, which under Marathon will require the attention of article III judges, will be referred to the district courts except where the parties consent to bankruptcy court jurisdiction. One of those areas reserved for attention of the district courts will be personal injury claims, which are exempted from the definition of core proceeding under the bill.

As most of my colleagues are aware, the Senate conferees differed over whether to retain the abstention language found in the original Senate bill. The majority of Senate conferees—this Senator included—felt that the Senate language was too broad, in that it prohibited the bankruptcy courts or district courts from considering any case that was based upon a State law claim. Mandatory abstention in favor of State courts in those cases was required. The House provision on abstention was, however, limited to Marathon type proceedings and the party seeking abstention would have been required to show that the cause could be timely adjudicated in the State courts before abstention would have been required.

The Senate conferees reached a fair compromise on this issue. The result of the conference discussion was a provision that preserves the integrity of bankruptcy jurisdiction while allowing abstention for personal injury cases where they can be timely adjudicated in State courts. In addition, where abstention does not occur, those cases will be handled by the district court where the bankruptcy has been filed or, if that court finds it appropriate, where the claim arose. Finally, the abstention provision will be prospective in application only, sparing litigants in pending cases delay of their proceedings.

The court structure provisions are, I believe, a constitutional answer to Marathon.

LABOR PROVISION

Mr. President, the conferees—after a full week of debate—agreed upon a provision concerning the treatment of collective bargaining agreements in bankruptcy that is a fair compromise between the decision in the Bildisco case and the various proposals that were supported by labor, the most recent of which was embodied in an amendment sponsored by the Senator from Oregon [Mr. PACKWOOD], at the time of earlier Senate consideration of H.R. 5174.

Two issues were involved in Bildisco: whether unilateral rejection of a collective bargaining agreement was permissible in bankruptcy, and what

standard the courts should apply in evaluating an application for approval to reject such agreements once the debtor has exercised that option. The Packwood amendment, which was earlier withdrawn in favor of moving the bill to conference, not only reversed that part of Bildisco dealing with unilateral rejections, but also set a standard of court review far beyond the Rea Express case, which was the toughest standard ever applied by any court prior to Bildisco, which rejected Rea Express.

The conference compromise evenly splits the difference between Bildisco and Packwood. It overturns the court ruling with regard to unilateral rejection, and requires now a prior court hearing and ruling upon an application for rejection of a collective bargaining agreement. In addition, it inserts into the law a requirement upon the debtor that the debtor make a proposal, for necessary modifications in the collective bargaining agreement that are necessary to permit a reorganization, to the union representatives, prior to seeking approval for an application to reject. And, it requires the debtor to provide all relevant information concerning the proposal to the unions prior to seeking such rejection. Finally, in order to ensure that businesses in need of immediate relief can obtain it, the labor provision of the conference bill provides for emergency relief for businesses where that relief is needed to prevent the collapse of the debtor's business; and in ruling upon the debtor's application for rejection, the court will apply the balancing of equities test enunciated in Bildisco, with a clarification of that standard to ensure that rejection is accomplished only where the equities balance clearly in favor of rejection.

Mr. President, the labor amendment is a good compromise between the proposals and positions that were expounded by each side. And, importantly, Mr. President, the labor provision is prospective only in application, to ensure that it will not be applied to cases pending in the courts today, such as the Continental and Wicks cases, where its application after those companies are far into their reorganization plans would work an impossible burden upon the litigants.

OMNIBUS JUDGESHIPS

The legislation now before the Senate also includes provisions included in the original Senate legislation providing for the creation of 85 new district and circuit court judgeships, with the appointment to be split roughly half this year and half next year. The staggering of these appointments was necessary both from a practical and political standpoint, due to the limited number of legislative days left in this session and the impending election. The judgeships are needed not only because of the increase in caseloads over the past few years, but also because of the additional cases that will be placed upon the district court dockets as a result of the Marathon decision and the remedies thereto that are incorporated in the bill.

Mr. President, I have previously placed statements in the RECORD stating the need for these judgeships in more detail, and the history of the judicial conference requests justifying the positions, and I refer my colleagues to those statements for additional information.

CONCLUSION

Mr. President, this bill is long overdue and its consideration and passage is heartily welcomed by this Senator and others in this Chamber. Time after time we have found ourselves forced to extend an unconstitutional court system while we waited for House action or for the consensus needed to resolve the many and important issues involved in the legislation. I trust that the vote on the conference report will be unanimous and the President's approval will come swiftly.

Mr. President, I commend the chairman of the Judiciary Committee and all members of the conference for their outstanding work and particularly members of the staff of Senator THURMOND, who has probably already acknowledged, and also Doug Comer of my staff. I think we have had a good result.

I wish to address a question to the Senator from Ohio. There is a technical point which needs to be clarified regarding the agreement of the conferees concerning the prospective application of the language on personal injury and wrongful death causes of action against a debtor in a bankruptcy case. Section 157(b)(5) which addresses this point was part of the same compromise as section 1411(a) on jury trials. Section 157(b)(5) is effective upon enactment while the jury trial language is effective only prospectively. Both provisions were intended to have prospective effect. Therefore, we should leave no doubt that it was the intent of the conference and the decision of the conference that the two sections were part of the same compromise. It was also agreed to delete language which provided that the provisions would be effective upon the date of enactment. Is that correct?

Mr. METZENBAUM. The chairman of our Courts Subcommittee is correct. He was a member of the conference committee on this bill, and I agree with him. The conference intended that section 157(b)(5) and section 1411(a) should be interpreted in this manner.

● Mr. D'AMATO. I wish to seek clarification of the definition of "forward contract" which was added as section 101(22) of title 11, United States Code. This is found in section 421(j)(5) of the conference report. Do I understand correctly that the term "commodity" as used in the definition of "forward contract" is intended to include, without limitation, foreign exchange?

● Mr. DOLE. The Senator's understanding is correct.

● Mr. D'AMATO. I would be correct in understanding, then, that the term "forward contract" would include a forward foreign exchange contract?

● Mr. DOLE. The Senator's understanding is again correct.

● Mr. D'AMATO. I thank the Senator for his clarification of this point.●

Mr. HATCH. Mr. President. Almost 2 years to the day that the Supreme Court struck down the jurisdiction of the bankruptcy courts as unconstitutional, we have reached a significant agreement with the House of Representatives to reconstitute and reform the bankruptcy system. For decades to come, legal scholars and practitioners will refer to the Bankruptcy Court and Federal Judgeship Act of 1984 as a landmark in the development of our Nation's unique bankruptcy system. As a body, the Senate can look with pride upon this accomplishment. In particular, however, this body should recognize the unwavering and untiring dedication of the chairman of the Judiciary Committee, Senator STROM THURMOND. His commitment to this legislative landmark that at times appeared impossible made it achievable. At the same time, this body owes great gratitude for this accomplishment to Senator and Judge Howell Heflin whose expertise and personal investment in this effort were indispensible. Finally, this body should offer a congradulatory commendation to Senators DOLE and DECONCINI whose contributions as chairman and member of the key Subcommittee on Courts initiated this bill and shaped it at every stage of the legislative process. These four Senators and many other members of the Judiciary Committee—Senators SIMPSON, GRASSLEY, EAST, BIDEN and others—deserve great credit for today's single achievement.

This conference was a successful enterprise. I would like to express my appreciation and great respect for my colleagues on the House delegation to the conference. We were able to cooperate and seek accommodations in policy that would serve well creditors, debtors, and all else who may be touched by the bankruptcy system. I must only express my sincere hope that this successful experience will set a precedent for many other conferences. The Senate has sent an enormously important crime package to the House, an improvement of the Freedom of Information Act, and numerous other critical legislative measures to the House in the hope of meeting in conference. This conference has shown that such meetings can be very

successful. Accordingly, I invite my House colleagues to give serious consideration to permitting a conference to convene on the subject of correcting America's crime epidemic.

Each of the three titles of this bill will have a dramatic impact on fair and equitable bankruptcy administration. Title I corrects the constitutional flaw discerned by the Supreme Court in the Marathon case which prohibited bankruptcy judges, who lack life tenure, from deciding certain bankruptcy cases grounded in State law. Under this bill, bankruptcy judges will act as article I adjuncts to Federal district courts in the resolution of core bankruptcy proceedings. Title II creates 85 new Federal Judgeships. Since 1977, case filings in Federal district courts have increased at an average rate of 39 percent nationwide. This places intolerable strains on the institution which Alexander Hamilton described as the "bulwarks of a limited Constitution," namely the Federal judiciary. (Federalist No. 78.) For example, the Utah District Court, which desperately needed the additional judge authorized by this bill, has experienced a 130.9-percent increase in case filings since 1977. Title III of this legislation reforms many provisions of the Bankruptcy Code which have desperately needed adjustment, revision, or complete reformation, including an important adjustment to recognize the unique problems faced by shopping center landlords and tenants during bankruptcy. Finally, in title III, this bill also creates new procedures governing the rejection of a collective bargaining agreement by a business attempting to reorganize under chapter 11.

After months of working to resolve the standards and procedures for rejection of collective bargaining agreements by a failing business, I feel that the conference version is a practical, workable mechanism. This provision will require negotiations to attempt to save both the labor contract and the business prior to court adjudication to reject the contract. These negotiations will be characterized by an offer from the business making such modifications in the labor contract as are necessary to permit the reorganization to be successful. Moreover the union can only reject such a good faith offer for cause good enough to justify the risk of the business' collapse. Only if these good faith negotiations fail does the court get involved in granting an application to reject the contract. At any time in this process a business may petition the court to allow such interim alterations as are necessary to prevent damage to the estate or to the prospects of reorganization. The bill contains very specific time limits to prevent the negotiation process or the court resolution from dragging on indefinitely. In the event the court does not rule within these prescribed limits, the debtor may unilaterally terminate the contract without consent of the court pending the final outcome of the case.

This brief summary shows that the conference has preserved the spirit of the Bildisco case by requiring at all phases of the process balancing of the valid interests of parties with legal claims. This process honors the purposes of reorganization without ignoring the interests of any creditor, employee, or debtor. Reorganizations are difficult. It is never easy to decide where and to what extent costs must be cut to save the business. This bill provides a framework for making difficult decisions fair and equitable.

I have only one regret as I reflect upon this conference product. It involves the deletion of the Senate-passed mandatory abstention provision. With its deletion, purely State law claims which do not arise under the Bankruptcy Code are allowed to be tried in State courts. This presents an important constitutional concern. State tort or contract cases in which one party happens to be bankrupt are still State law claims. They are not Federal questions. Thus, there is no Federal jurisdiction for these claims. The Constitution only grants Federal court jurisdiction to cases "arising under" Federal law and diversity cases. This is neither. The Senate abstention provision would have remedied this problem instead of depriving State law claimants of the protections of their State law. From 1898 to 1978—80 years—the bankruptcy system operated under a system that allowed State courts to interpret their own law. This system was evidently efficient enough to last eight decades without depriving parties of their rights. I regret that we did not see fit to restore that sensible Senate provision.

LABOR PROVISIONS

The conference spent the bulk of its time discussing appropriate standards and procedures for rejection of a labor contract during reorganization proceedings. Before discussing the substance of the conference's product, I must express again my appreciation to the key individuals who worked diligently to reach a fair and equitable resolution to this difficult problem. Teamsters' Union President Jackie Presser deserves special credit in this regard for his tireless defense of the workingman. By the same token, I would express appreciation to Bob Thompson at the U.S. Chamber for his great contributions to this debate. AFL-CIO President Lane Kirkland and representatives of the National Association of Manufacturers and many others deserve commendation for their efforts to reach a fair resolution of the difficult problem of deciding how to save a financially distressed business.

The conference committee set up a careful procedure to ensure that the interests of the struggling business, its union employees, and all other creditors of the business are balanced equitably and fairly. Of course, when a business is failing, no resolution is completely satisfactory. Often drastic measures are necessary to save the hemorrhaging company, including rejection of the businesses labor contract. In the Bildisco case, the Supreme Court unanimously established a healthy compromise with regard to chapter 11 reorganizations that involve a labor union. The Court did not accede to the wishes of business parties that labor contracts, like commercial contracts, should be subject to rejection whenever the business judged such action necessary. Nor did the Court accede to the wishes of labor parties that collective bargaining agreements should only be rejected under the test established by the REA Express case of the second circuit. The unanimous Court decided that the REA Express test was "fundamentally at odds" with the policies of flexibility and equity built into chapter 11. Instead the Court decided that the court reviewing bankruptcy should balance all the equities, including the interests of all affected parties, before determining whether rejection should be allowed. The conference's compromise adheres to the spirit of this unanimous Supreme Court opinion. At each step of the process set up by this bill, the parties and the court must carefully balance and preserve, to the extent possible, the legitimate and reasonable interests of all affected parties in such a manner as to assure the success of the reorganization.

The conference version of H.R. 5174 sets up a procedure to ensure that all parties' interests are balanced as carefully as possible in light of the difficult circumstances. The first step of the process should take place before the failing business ever appears in court to seek rejection of its labor agreement. The business must make an offer to its employees' union representatives that strives to both preserve the collective bargaining agreement and permit a successful reorganization. That offer should make "those necessary modifications" in the contract as "are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all the affected parties are treated fairly and equitably." The intent of this provision is to allow the business to make whatever changes in the collective bargaining agreement are reasonably necessary to ensure the likelihood of a successful reorganization. The provision emphasizes that the inevitable balancing that will go into

this attempt to save both the business and the labor contract must reasonably assure the fair and equitable treatment of all those affected by the reorganization effort. This fair and equitable treatment language was intended by the conference to ensure that the type of balancing of all the equities that takes place when the court finally rules on rejection also takes place during these preliminary negotiations. The conference also discussed at length its intent that this provision not become an attempt to devise an entire reorganization plan at a premature stage. We were all aware of the impossibility of even identifying all the creditors and their interests at this early stage of the reorganization effort. Accordingly, this proposal by the business which offers what is necessary to save the business and assure fair and equitable balancing of all the interests should not be construed to require a detailed accounting of how the difficult burden of reorganization is to be distributed amongst competing parties. Moreover the term "affected parties" is meant to include those parties with a contractual, legal, or financial tie to the debtor that would make it one of the logical parties to the equities balancing that must proceed as the court administers a reorganization. This and all other provisions in this labor part of the bill must be read in the context of the needs of the reorganization process. This provision is intended merely to require some reasonable consideration of various interests that should be considered in reorganizing.

The first step of this process will of course involve good faith negotiations between the parties. This was a requirement articulated by the Supreme Court in the Bildisco case. The conference, once again, preserved the spirit of that Court holding by requiring good faith efforts to confer in an effort to reach an agreement between the business and its union employees which will both preserve the labor contract with modifications and save the business. Of course, a distressed business will often find no way to rehabilitate the business without completely rejecting the labor contract. Complete rejection may, in cases of severe financial distress, be the only proposal that a business may make to effect reorganization. The good faith nature of these negotiations will require that the employees' union representative be given an opportunity to review and accept or reject the business proposal. In the spirit of good faith that should permeate these negotiations, however, the unions must not reject the business offer without good cause. This opportunity to accept or reject the proposal should be assessed in light of the essentiality of swift and fair resolution of the initial phases of the reorganization. Accordingly, rejection of a proposal should only happen if the cause for rejection is good enough to risk the damage to the business as well as its creditors and employees that delay or protracted negotiations could produce.

This is perhaps the place to discuss an important provision adopted by the conference to address the need for some interim unilateral action by the business. Thus, if it is essential to the continuation of the business or if irreparable damage might occur, the court may authorize the business to make whatever alterations in the labor contract which will avoid those harms. This process may become necessary during the negotiations prior to the debtor's filing an application for rejection or during the period when the court is considering the application or any other time "when the collective bargaining agreement continues in effect." This is an important aspect of the balancing process which the court must undertake when reviewing these sensitive reorganization cases involving a labor union contract. Chapter 11's overriding purpose is to take whatever steps are expedient to preserve the failing business for the benefit of all if possible. This provision gives the courts the flexibility to carry out that purpose as long as the labor contract remains in effect.

After the good faith negotiation process or if such process is not progressing to settlement of differences, the reorganizing business may find that it still has need to file an application to reject the labor contract. At that point, the court, in compliance with fair time limits set out by the conference version of this bill, holds a hearing and rules on the rejection application. That ruling is to be governed by the standard that the "balance of the equities clearly favors" rejection. This again harkens back to the Bildisco decision. The Supreme Court explicitly required this standard for assessment of the merits of the rejection application. The word "clearly" is merely intended to assure that rejection is not warranted where the equities balance exactly equally on each side. This is what the Supreme Court meant when it discussed the sensitivity of these matters. Of course, the equities will almost always balance in favor of one resolution or another. In such cases, the court will surely rule in accordance with the tilt of the balance.

The conference agreement also emphasizes the need for expedition in traversing this entire process. Accordingly, it provided an incentive for adherence to the specific time limits of this legislation. In the event that the court has not, for any reason, ruled on the rejection application within the 30-day period, the debtor business may unilaterally terminate or take any action short of termination of the labor contract pending the court's final ruling. This will prevent delays from jeopardizing the reorganization effort or damaging the estate.

As a further indication of the fairness and reasonable spirit of cooperation toward saving the business that should pervade this process, the conference bill requires the debtor to provide the union with relevant information that is necessary to evaluating its proposal. The court is also granted discretion to protect against any disclosure of trade secrets or other confidential information which the business perceives as a threat to its competitive standing.

As my colleagues know, I was a staunch opponent of the amendment proposed by Senator PACKWOOD which was pending on this floor for several weeks before we went to conference on this bill. This final version of the bill is far less onerous and one-sided than that amendment. Rather than ignoring the unanimous decision of the Supreme Court as that amendment would have done, this bill applies its principles in a manner that will protect the interest of all parties while permitting a distressed business to take whatever steps are necessary to reorganize itself and continue productive contributions to our economy. This amendment to the bankruptcy code flexibility that a court will need to weigh delicately and evenhandedly the various interests of all parties likely to be affected by a reorganization.

BANKRUPTCY JURISDICTION AND COURTS

Emerging from this conference, I do have one substantial reservation. Although the conference remedied the flaws discerned by the Supreme Court in the Marathon case, its failure to adhere to the Senate-passed bill may create constitutional problems of the same magnitude as those resolved by the bill. These problems arise because the conference bill retains the broad jurisdictional language allowing a bankruptcy court to adjudicate any case "related to" a bankruptcy claim. This means that a purely State law case could be litigated in a Federal court without the Federal question jurisdiction necessary under the Constitution for Federal court adjudication. The Senate bill had corrected this unconstitutional breadth in the jurisdiction of bankruptcy courts by requiring a bankruptcy forum to abstain when a State law claim had been filed in a State court of competent jurisdiction.

Article III, section 2 of the Constitution specifies the types of cases that may be litigated in Federal courts. Other than cases involving a State as a party, these types of cases are basically two—cases "arising under" Federal law and cases "between citizens of different States." Cases based solely on State law cannot be adjudicated in any

Federal court where there is no diversity and where the only Federal connection is that one of the parties is a chapter 11 debtor. In the absence of the bankruptcy of one party, no one questions that a State tort or contract claim would be adjudicated to completion in State court without any feasible assertion of Federal question jurisdiction. Financial status, however, is not mentioned as a qualification for Federal question jurisdiction in article III. Thus, the provisions allowing any case "related to" bankruptcy to be adjudicated in Federal court violates article III. Purely State law claims cannot be adjudicated in a Federal court.

Proponents of the use of "related to" Jurisdiction maintain that Congress' authority in article I to create bankruptcy laws empowers Congress to grant Federal courts jurisdiction over State law cases. This admits too much. If article I grants Congress this authority, then by statute Congress could legislate that any State law case "related to" interstate or foreign commerce—or any other Article I authority—shall be litigated in Federal court. Thus, Congress could effectively eliminate the specific jurisdictional grants of article III by statute. The Constitution cannot be amended by statute.

Ancillary jurisdiction questions are unrelated to this issue. Federal courts certainly retain authority to adjudicate a State claim arising out of the same facts giving rise to the Federal claim. Once again, however, the facts giving rise to a State law tort or contract are not the financial facts causing one of the parties to file for bankruptcy. A State tort or contract claim has no Federal nexus.

Permitting Federal bankruptcy courts to adjudicate State law claims would deprive State law claimants of the protections of State law merely because they happened to do business with or be injured by a party who later went bankrupt. Each State has its own unique legal safeguards for the judicial process, such as evidentiary or jury trial rules. Permitting a Federal bankruptcy court to assert jurisdiction over State law claims will deprive State law claimants of the protections of their own State laws. In this sense, this is an issue of litigation leverage. The bankrupt creditor would like to bring all cases to a single forum which may be distant from the situs of the injury or infraction. The State law claimant would prefer the ease of litigating where the action arose. The Constitution resolves these issues by preserving State court jurisdiction over purely State law issues.

The broad jurisdictional grant of the 1978 act sought to improve judicial efficiency. Not only was that found unconstitutional, a recent commentary suggests that "exercise of jurisdiction by bankruptcy courts to the full extent permitted by the code may impede rather than facilitate congressional goals because full exercise may congest bankruptcy courts with State law issues * * *" (59 Tex. L.R. 325 (1981), 95 Harv. L.R. 7093 (1982)). Mandatory abstention would essentially restore the way the system functioned successfully for decades prior to the unconstitutionally broad "related to" jurisdiction in 1978.

This amendment would restore the regime of Swift against Tyson. This danger is not that Federal courts will ignore State law, but that they will be interpreting State law in the absence of constitutional jurisdiction. Erie against Tompkins stands for the proposition that Federal courts should not be reaching their own interpretations of State law without an article III basis. State courts, under the Constitution, are granted the right to interpret their own law.

In Marathon, the Supreme Court decided that bankruptcy judges could not adjudicate State law claims. Marathon did not decide, however, that article III courts could constitutionally adjudicate all State law claims. Marathon simply does not stand for the proposition that district courts can adjudicate any State law claim. In order to pass constitutional muster, any bankruptcy amendments must remove adjudication of purely State law claims from Federal courts. Conferring such jurisdiction upon district courts would partially remove the problems created by Marathon, but, unless the district court has some independent basis for article III jurisdiction—diversity—will create constitutional problems as great as the problem solved by the amendments.

The present debate on abstention offers us a beautiful illustration of how American federalism has been dissipating in recent years as a serious constitutional doctrine. We hear about how much "more efficient" it would be if we could consolidate all this State law authority in Federal courts. Indeed, this is the very argument against federalism generally. Federalism is not always the most efficient system. It does not always promote uniformity. What it has done, however, over the past two centuries is help protect our liberties by separating and dispersing governmental authority, including judicial authority. The issue is which level of government ought to interpret State law—the Federal courts or the State courts. The Constitution resolved that question in article II and this bill is infirm to the degree it departs therefrom. At the conclusion of my remarks, I will include for the record a legal memorandum which provides more substantiation for the constitutional problems raised by this provision.

FEDERAL JUDGES

Article III of the Constitution grants Congress the power to review the status of lower Federal courts and make adjustments "from time to time" as circumstances warrant. The Constitutional Convention wisely perceived that changing circumstances might require alterations in the size and scope of lower Federal courts. Congress has the obligation to adjust the size of the Federal judiciary when necessary. Title II of this bill is an exercise of that responsibility.

A burgeoning caseload is jeopardizing the efficient and fair administration of justice in many judicial districts. When the number of cases filed in a district increases dramatically without any concomitant increase in judical resources available to resolve those disputes, intolerable strains are placed on the institution which Alexander Hamilton described as the "bulwarks of a limited Constitution"; namely, the Federal judiciary (Federalist Papers, No. 78).

Let me take a specific example to illustrate this problem. In the U.S. District Court for Utah, the number of cases filed—and remember that each of these cases demand at least some measure of a judge's precious time—has increased from 647 per year in 1977 to 1,489 in 1982. This is a 130.1-percent change. No district in the 10th circuit and only three other districts in the entire Nation have experienced a sharper climb in the rate of filings.

These filing statistics reveal a sharply expanded demand on each of Utah's three district court judges. In 1977, the Utah district had 324 filings per judgeship; in 1982, each judgeship was handling 496 filings.

In an effort to update these workload indicia, I contacted the clerk of the Utah district court. The statistics for the first 3 months of 1983 were alarming. In the first 3 months of 1982 (through March 30), a total of 364 cases were filed in the Utah district. In the same 3 month period in 1983, 606 cases were filed. Thus in a comparable period 1 year later, the number of filings had nearly doubled. Another comparison would put this 3-month figure in perspective: in all of 1977, 647 cases were filed; the first quarter of 1983 generated nearly an equivalent caseload to that annual 1977 figure.

These statistics, standing alone, build an impressive case for congressional action to increase the number of judgeships in Utah to account for the changing circumstance of a growing judicial caseload. Even these statistics, however, do not account for the impact of bankruptcy jurisdiction on the Utah district court. This legislation vests bankruptcy jurisdiction in the district courts with adjunct article 1 bankruptcy courts empowered to exercise such jurisdiction. The district

court, under this bill, could, however, recall any case at its discretion and would be required to recall some cases at the request of either party. Thus, a restructuring of the bankruptcy system will likely result in some additional workload for the Utah district on top of its already-difficult predicament. As we have learned in trying to arrive at a sensible resolution to the bankruptcy court problem, it is difficult to estimate with exactitude the number of bankruptcy cases that the district courts, rather than the bankruptcy courts, will need to handle. In attempting to make this prediction, however, the Justice Department developed a procedure to adjust current filing statistics to account for likely increases due to this new bankruptcy jurisdiction. The Department found that the Utah district, for example, could expect 512 weighted filings per judgeship without even considering the additional bankruptcy jurisdiction and 547 weighted filings per judgeship with bankruptcy included. These weighted filings factor in the complexity of cases and the likelihood that significant trial time will be required. The conclusion of the study further speaks to the need for bolstering the supply of judicial resources in Utah and many other districts and circuits to meet the demand for judicial resolution skills.

I have used Utah, Mr. President, as an effective illustration of the problem faced in a multitude of judicial districts and circuits. We cannot expect to retain our most qualified jurists and the highest standard of judicial administration in the Federal court system without some relief for the growing caseload.

CONSUMER FINANCE AMENDMENTS

The number of consumer bankruptcy cases filed has risen dramatically each year since the bankruptcy code was last amended in 1978. Several witnesses before the Senate Judiciary Committee pointed to these changes in the Code as the principal cause of the increase. The 1978 amendments generally eased a debtor's access to bankruptcy to avoid excessive indebtedness. Title II contains over 30 substantive amendments to curb abuses of the bankruptcy code and make its use truly a last resort.

An example of the types of reform included in title III is the provision which addresses the subject of repetitive filings. A debtor would not be eligible for bankruptcy relief if a prior case filed by the same debtor had been dismissed within 180 days for failure to appear at a meeting of creditors or for failure to follow orders.

The bill also creates a system of debtor counseling by the trustee to ensure that debtors are apprised of the option of debt repayment plans under chapter 13. Chapter 13 is used far too rarely. If debtors are aware of the option of debt repayment, it is more likely to become a more credible alternative to liquidation. Another provision simplifies the debt reaffirmation agreement procedures to encourage debtors and creditors to make mutually satisfactory arrangements to repay debts outside of bankruptcy.

Title III also sets an aggregate dollar ceiling of $4,000 on the value of personal property that a debtor may exempt from liquidation to settle claims. Currently the Federal law only sets a limit on the claimable value of any single item which the debtor wishes to exempt. Thus the debtor is free to exempt industrial items short of that dollar value without restriction, resulting in the exemption of enormous assets of the debtor. On the subject of exemptions, title III also requires a husband and wife filing jointly for bankruptcy to elect together to use State or Federal exemptions. This provision will prevent the couple from splitting their exemptions to allow the husband to benefit from State exemptions while the wife chooses the benefits of Federal exemptions.

Another important provision in title III prevents abuse of the code. If the court finds that "granting of relief would be a substantial abuse of the code," it may, after an adequate hearing, dismiss a chapter 7 petition. As I mentioned earlier, title III contains more than 30 amendments to ensure that a "fresh start" does not become a "head start."

OTHER AMENDMENTS

As I mentioned in my introduction, one part of this reform package includes numerous substantive changes. One of these is of particular importance to me, Mr. President. I would like to discuss the provisions improving bankruptcy procedures with regard to shopping centers.

SHOPPING CENTER BANKRUPTCY AMENDMENTS

Subtitle C of title III, with the exception of a few minor changes, is identical to S. 549 which was overwhelmingly approved by the committee and which unanimously passed the Senate in 1982 and 1983.

This subtitle contains three major substantive provisions which are intended to remedy serious problems caused shopping centers and their solvent tenants by the administration of the bankruptcy code.

The first problem which this bill would remedy is the long-term vacancy or partial operation of space by a bankrupt tenant. Although in a chapter 7 case the bankruptcy code presently requires that the trustee decide whether to assume or reject an unexpired lease within 60 days after the bankruptcy petition is filed, there is no deadline for this decision in a chapter 11 case. Because of the unprecedented number of bankruptcy cases and the consequent delays in the bankruptcy courts, tenant space has been vacated for extended periods of time before the bankruptcy court forced the trustee to decide whether to assume or reject the lease. During this time, the other tenants of the shopping center are hurt because of the reduced customer traffic in the shopping center. Tenants and landlords in other nonresidential structures have encountered similar problems.

The bill would lessen the problems caused by extended vacancies and partial operation of tenant space by requiring that the trustee decide whether to assume or reject nonresidential real property lease within 60 days after the order for relief in a case under any chapter. This time period could be extended by the court for cause, such as in exceptional cases involving large numbers of leases. One of the minor changes in this subtitle was to limit it to nonresidential real property leases. If the lease is not assumed or rejected within this 60-day period, or any additional period granted by the court, the lease is deemed rejected and the trustee must immediately surrender the property to the lessor.

A second and related problem is that during the time the debtor has vacated space but has not yet decided whether to assume or reject the lease, the trustee has stopped making payments due under the lease. These payments include rent due the landlord and common area charges which are paid by all the tenants according to the amount of space they lease. In this situation, the landlord is forced to provide current services—the use of its property, utilities, security, and other services—without current payment. No other creditor is put in this position. In addition, the other tenants often must increase their common area charge payments to compensate for the trustee's failure to make the required payments for the debtor.

The bill would lessen these problems by requiring the trustee to perform all the obligations of the debtor under a lease of nonresidential real property at the time required in the lease. This timely performance requirement will insure that debtor-tenants pay their rent, common area, and other charges on time pending the trustee's assumption or rejection of the lease. For cause, the court can extend the time for performance of obligations due during the first 60 days after the order for relief, but not beyond the end of such 60-day period. At the end of this period, the amounts due during the first 60 days would be required to be paid, and thereafter, all obligations must be performed on time. This permissible 60-day grace period is intended to give the trustee time to determine what lease obligations the debtor has and to locate the cash to make the

required payments in exceptionally large or complicated cases. The bill does not require the performance of obligations specified in section 365(b)(2), which relate to solvency and financial condition. The performance by the trustee of the debtor's obligations has no effect on the performance of the trustee's obligations under subsections (b) or (f) of section 365. The acceptance by the lessor of any payments made by the trustee as required by this subsection does not constitute a waiver or relinquishment of the lessor's rights under such lease or under the bankruptcy code.

A third problem occurs when shopping center leases are assumed or assigned and then used in ways which violate the use clause of the lease and disrupt the tenant mix. the bankruptcy code currently provides that when a shopping center lease is assumed or assigned, assurances must be given that the lease provisions will not be substantially breached and that the tenant mix will not be substantially disrupted. Unfortunately, courts have misapplied these provisions in ways which have deprived shopping centers and their tenants of the protections which Congress intended to provide them.

This bill would delete the word "substantially" from these provisions, thus requiring that any clause in the lease be adhered to. It is especially important that any use clause in the lease be strictly adhered to and that the tenant mix not be disrupted. The bankruptcy courts will still retain the flexibility to determine whether or not a proposed new use for the premises falls within any use clause of the lease and whether or not the new use would disrupt the tenant mix. This amendment requires strict compliance with the provisions of use clauses in shopping center leases and prohibits any changes in the use of the tenant's space not permitted by the use clause. This amendment is intended to stop courts from creating new leases by changing essential lease terms to facilitate assignments. It is intended to stop the practice of some courts to determine whether there has been a disruption by reference to the amount of space to be assigned as a percentage of the total area in the shopping center. This amendment is not intended to enforce requirements to operate under a specified trade name.

Other provisions of the bill would make minor and clarifying changes in the law. The bill provides that the trustee may not assume or reject a lease of nonresidential real property that has been terminated under applicable nonbankruptcy law prior to the order for relief. A lease that has terminated under applicable nonbankruptcy law is a lease that is unenforceable and no longer subject to reinstatement under the terms of the lease or applicable law.

The bill provides that nonresidential real property subject to a lease that has terminated by the expiration of its stated term is not property of the estate and that a proceeding or action by the landlord to regain possession of the property is not stayed. A lease that has terminated at the expiration of the stated term of such lease is a lease under which the lessee no longer has any renewal or extension rights.

The bill provides that lessors are permitted to require an assignee to provide a deposit or other security for the performance of the debtor's obligations substantially the same as the landlord would have required upon leasing the space to a similar tenant. This permits the landlord to get his usual, reasonable security deposit from an assignee tenant.

The bill requires the trustee to provide adequate assurance that an assignee of a shopping center lease has a financial condition and operating performance similar to that of the original tenant when the lease was executed. This is to insure that the assignee itself will not soon go into bankruptcy and will provide operating and advertising benefits to the other tenants similar to those provided by the original tenant when its lease was executed.

The bill also makes clear that the special shopping center protections contained in subsection (b)(3) apply to all assignments of shopping center leases, whether or not there has been a default of the lease. The bill also makes clear that a shopping center lease assumption or assignment is subject to all the provisions of the lease to be assumed or assigned and that the provisions of the lease to be assumed or assigned must not be breached, in addition to not breaching provisions of other leases, financing agreements or master agreements relating to the shopping center.

Approximately half of all U.S. retail trade is conducted in shopping centers. Retail merchants in shopping centers depend upon the operation of a carefully chosen mix of stores, all contributing to the success of the entire shopping center. If shopping center tenants especially major tenants, are not operating their stores, are not paying charges necessary for the upkeep of the shopping center or are using their space in ways not provided for in the lease and which disrupt the tenant mix, the financial health of all of the other merchants and of the shopping center itself can be threatened. This bill will reduce the likelihood that provisions of the bankruptcy code will themselves add to the economic distress of retail merchants in shopping centers.

I ask unanimous consent that an analysis of the amendments to the Bankruptcy Act of 1978 be printed in the RECORD.

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

ANALYSIS OF PROPOSED AMENDMENTS TO THE BANKRUPTCY ACT OF 1978

I. ABSTRACT

In amending the Code to comply with *Marathon* the failure to provide for bankruptcy court and Article III court abstention from certain state law claims could create a constitutional problem of a magnitude greater than that which the Bill is supposed to solve. *Marathon* held that the broad powers granted to bankruptcy judges under the Bankruptcy Act of 1978 were judicial powers and violated Article III of the Constitution. The present Bill attempts to cure the problem. However, if the Bill is amended to permit federal court adjudication of state law claims that could not otherwise have been brought in federal court, the amendments would give the district courts and bankruptcy judges powers beyond the scope of Article III. Therefore, in addition to the removal of the adjudication of state-created claims from the bankruptcy court to an Article III court, some form of mandatory abstention by the district court is necessary to avoid another serious Article III problem.

II. INTRODUCTION

In 1978, the Congress of the United States enacted the Bankruptcy Reform Act of 1978 (hereinafter "Code"). In June of 1982, the case of *Northern Pipeline Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50 (1982) (hereinafter "*Marathon*"), decided that the jurisdictional grant to the bankruptcy judges, contained in Section 241a of the Code (28 U.S.C. § 1471), consisted of judicial powers, and therefore violated Article III of the Constitution. In that case, *Northern Pipeline* filed a petition under Chapter 11 of the Code. Thereafter, in the bankruptcy court, Northern, the debtor, filed suit against Marathon which suit sought to recover damages on theories sounding in contract and tort. The causes of action pleaded and the remedies sought were based upon state law. The Supreme Court ruled that a bankruptcy judge could not adjudicate claims based upon state-created rights or causes of action. The six vote majority consisted of the plurality opinion of Justice Brennan (joined by Justices Marshall, Blackmun and Stevens) and the concurring opinion of Justice Rehnquist (joined by Justice O'Connor).

The plurality opinion found that the Code's jurisdictional grant unconstitutionally conveyed the essential attributes of Article III judicial power to bankruptcy judges.

The concurring opinion emphasized that its holding was restricted to the unconstitutionality of the jurisdictional grant to the bankruptcy judge of the power to adjudicate claims or causes of action based upon state law (see *Marathon*, C. J. Berger's dissent). The concurrence saw no need to decide the constitutionality of the jurisdictional grant of other Article III judicial powers. Accordingly, both the plurality and concurrence agreed that adjudication of causes of action based upon state law was a judicial power and that under the Constitution judicial power could only be exercised by an Article III court. The six-vote majority also concurred in the holding that the bankruptcy judge's power, as granted under the Code, impermissibly reduced the Code's

broad jurisdictional grant to the Article III courts to one of appellate review.

Both opinions therefore agreed that the bankruptcy judges could not be considered adjuncts to the Article III court to whom the jurisdiction was nominally granted by the Code.

Following the opinion, both the Senate and the House of Representatives have painstakingly drafted bills to inter alia, amend what the Supreme Court perceived as an impermissible grant of jurisdiction to the bankruptcy judges.

This analysis addresses only those provisions of the Bill that are necessary to amend the jurisdictional grant of the Code so it will conform to the *Marathon* ruling while not raising additional constitutional problems.

III. ANALYSIS

The *Marathon* case decided that bankruptcy judges cannot adjudicate claims or causes of action based upon state law. However, *Marathon* did not decide that Article III courts could constitutionally adjudicate all claims or actions based upon state law. Accordingly, *Marathon* did not reach the point of deciding whether the district courts were constitutionally authorized to adjudicate any and all claims that are based upon state law. Therefore, in amending the Code to comply with the *Marathon* holding, one must be mindful of what issue *Marathon* decided and what issue was not decided.

Marathon decided that the jurisdictional grant to the bankruptcy court to adjudicate state based claims was a grant of judicial power which judicial power, under the Constitution, could only be exercised by an Article III court. The case did not decide that an Article III court was constitutionally empowered to adjudicate all state-based claims. As is established *infra*, to pass constitutional muster, the amendments must remove adjudication of state-based claims from the bankruptcy court. Conferring that jurisdiction upon the district court will partially resolve the problem created by *Marathon*. However, unless the district court has some independent basis for Article III jurisdiction, the amendments, without mandatory abstention, create a constitutional problem of a magnitude as great as the problem solved by the amendments. The following sections therefore analyze the amendments which address abstention, recall and core proceedings in the context of the *Marathon* holding. The discussion also addresses the amendments in the context of the constitutional question left open in *Marathon*.

A. *Section 101(a)*: (H.R. 5174) and of the Thurmond-Heflin Amendment (No. 3083).

This section of the Bill contains amendments to Section 1334 of Title 28. Of particular significance is Section 1334 §§ (a), (b) and (c)(2). The amendments to (a) and (b) provide that the district court has original jurisdiction of all civil proceedings arising under, arising in or related to cases under Title 11 and exclusive original jurisdiction of all cases under Title 11. Accordingly, those subsections vest jurisdiction for the adjudication of all actions based upon state law in Article III courts as required by *Marathon*. This broad jurisdictional grant however extends Article III jurisdiction to the adjudication of causes of action that are purely local in origin and arise by virtue of state law completely independent of any Title 11 proceeding. Before *Marathon*, the bankruptcy court acquired jurisdiction over these pure state-created actions by viewing them as "related to cases under Title 11." *Marathon* though, decided, for the first time, that the adjudication of state created causes of action could not be accomplished, constitutionally, by a legislative or Article I court. According to *Marathon*, this was a judicial function and, under the Constitution, such judicial power could only be exercised by an Article III court. However, under Article III, the judicial power does not extend to the adjudication of purely state-created causes unless diversity jurisdiction exists.

Therefore, absent Title 11, there would be no basis for Article III jurisdiction over the adjudication of state-created causes that could only invoke state court jurisdiction. It is important to note that the Code confers jurisdiction at the statutory level, while the limits of Article III jurisdiction are Constitutionally imposed. Thus, it is doubtful that Title 11 of the Code could constitutionally extend Article III jurisdiction to the adjudication of nondiversity state-created causes of action.

Moreover, the prospects of using the Code to invoke the "federal question" jurisdiction of Article III runs counter to the case law. It should be remembered here that we are speaking of adjudication of causes of action that are local in origin and arise completely independent of any Title 11 proceeding. Their only relation to the Title 11 proceeding is that the debtor, quite apart from the bankruptcy proceeding, may be a responsible party or an injured party according to state law. These adjudications then involve questions of state law and do not raise federal questions. The "federal question" of the amount the debtor bankrupt can or will pay on each claim cannot arise until after the claim has been adjudicated. As a result, to avoid this constitutional problem of the extension of Article III jurisdiction to purely local causes, both H.R. 5174, and the Committee amendment (No. 3083) provide for abstention in all civil proceedings involving claims or causes derived from state law and incapable of Article III jurisdiction absent the Title 11 proceeding.

The DeConcini Amendment (No. 3087) however, does not provide for mandatory abstention in these cases. The DeConcini Amendment's provision (amending 28 U.S.C. 1334 (c)(2)) requiring district court abstention when such a cause of action is brought by the trustee is inadequate. The distinction between such cases brought by the trustee and such cases brought by any other party is an artificial one, implementing only the narrowest possible reading of the *Marathon* decision. The Constitutional (Article III) limits on district court jurisdiction are based on the nature of the case as well as on the character of the parties.

The amended § 1334(c)(2) then should provide for mandatory abstention from adjudication of state-based causes of action where there is no basis for federal jurisdiction other than Title 11. The House-passed bill and the Committee Amendment (No. 3083) does this. The DeConcini Amendment does not.

In addition to the constitutional question of jurisdiction, allocation of responsibility between the federal and state judiciary (10th Amendment) also supports mandatory abstention. *Marathon* decided that the bankruptcy judge cannot adjudicate the state claims, and further, that the bankruptcy judge could only provide narrowly circumscribed assistance as an adjunct or magistrate to Article III courts.

Therefore, without mandatory abstention the district courts, already overburdened with judicial responsibility, would have a massive influx of additional cases requiring the district court to adjudicate all of the state court actions with only limited assistance from bankruptcy judges.

As a result, the district court would be adjudicating nondiversity state actions, no matter how small, while the state courts would not be able to consider cases well within their expertise as well as within their case load "budget." Mandatory abstention for all such adjudications of state-created actions that would otherwise be in a state forum, would prevent this unanticipated case load burden on the district courts.

B. *Section 104(a)*: Title 28 is amended by adding Chapter 6 which includes Section 157.

As indicated previously, six members of the Supreme Court found that bankruptcy judges could not adjudicate state-created causes of action. Moreover, the same majority agreed that, as adjuncts to the required Article III court, the bankruptcy judges could only perform narrowly circumscribed nonadjudicatory functions with respect to state-created causes of action.

With respect to this holding, i.e., the inability of the bankruptcy judges to adjudicate state-based claims either alone or as an adjunct to the district court, it does not matter if there is another basis for Article III jurisdiction (diversity) other than the Code. Even where the district court can constitutionally exercise jurisdiction over state-based actions as in cases where there is also diversity jurisdiction, it is clear, from *Marathon*, that the bankruptcy court, in its role as adjunct to the district court, can adjudicate no such causes of action. Therefore, the matters over which the bankruptcy court can exercise summary jurisdiction—core proceedings (28 U.S.C. 157(b))—should exclude adjudication of state-based causes of action.

The amended Bill should provide that the liquidation or estimation of contingent or unliquidated claims is not a core proceeding. Almost all causes or claims derived from and based upon state law, that have not yet been adjudicated, would qualify as contingent or unliquidated claims. Accordingly, this provision is essential in order to exclude the adjudication of state-based claims from the bankruptcy court's summary jurisdiction (core proceedings). This is required by *Marathon* and appears necessary to remove the adjudication of these state-based actions to the district courts.

The provision of the DeConcini Amendment (No. 3087) at Section 104(a) (amending 28 U.S.C. to provide a new Section 157(b)(2)(B)) which purports to insure that the liquidation or estimation of contingent personal injury tort claims not be considered "core proceedings"; subject to bankruptcy judge adjudication, should not, however, be deemed adequate on its face in resolving the constitutional problem. Unless, as noted above, the district courts are also required to abstain from adjudication of such cases where there is no diversity jurisdiction, the Article III limitations on the district court's authority could well be exceeded.

Thus, Article III imposes two separate requirements with respect to the determination of contingent personal injury tort claims. First, such claims may not be considered "core proceedings" subject to bankruptcy court jurisdiction if the Supreme Court's mandate in *Marathon* is to be met. Accordingly, the Bill should provide for mandatory recall of such cases to the district courts. Second, if such cases are based on state law, and there is no diversity juris-

diction, the district courts must be required, in turn, to abstain from adjudication of such cases, in favor of adjudication by the appropriate state courts.

The amendment providing for recall should accordingly provide for mandatory recall to the district court of all proceedings involving adjudication of claims or causes based upon state law. If the amendment does not provide for this extent and type of recall, it will not solve the problem directly created by the *Marathon* holding. As the Bill now reads, recall must be granted in all proceedings involving claims that do not arise under Title 11, are not proceedings arising under Title 11 or arising in a case under Title 11, then this provision accomplishes the mandate of *Marathon*. It must be clear though that the adjudication of all such state-based claims would qualify as proceedings "related to a case under Title 11." Otherwise, this all-important provision will not comply with the *Marathon* holding. It is important to bear in mind, however, that while a definition of core proceedings that excludes state based tort actions is required by *Marathon*, such a definition will not solve the constitutional questions left open in *Marathon*, i.e., the constitutionality of Article III court jurisdiction over purely local actions.

Finally, the provisions that govern the functions of the bankruptcy judge when such a recalled proceeding is referred to him must heed the plurality opinion in *Marathon* which found that bankruptcy judges could not constitutionally exercise any adjudicatory power on state claims as an adjunct or magistrate to the district court. Furthermore, the concurrence also stressed that the district court must be more than an appellate or reviewing court when it adjudicates state-based claims.

On this point, it bears emphasis that the Emergency Rules themselves do not comply with the plurality opinion in *Marathon*. There is also some question if those rules would comply with the concurrence in *Marathon*. It should be stressed that the Emergency Rules are of judicial creation in an unforeseen crisis. These factors may support the constitutionality of the Emergency Rules against some challenges. However those crisis circumstances do not exist with respect to a congressional enactment. Therefore, the amendments pertaining to reference back following recall should narrowly circumscribe the bankruptcy judges' function so that it is not fact finding. The plurality in *Marathon* practically insists on this type of limitation.

C. *Section 121:* (Section 122 of Amendment No. 3083)

For much the same reasons, the Bill should become effective on the date it is enacted. Its provisions should apply to all cases then pending and thereafter filed that are governed by the Code. If the amendments do not apply to all other Title 11 proceedings then pending, then many Title 11 proceedings will be vulnerable to challenge in litigation or on appeal for noncompliance with *Marathon*. There will be many Title 11 proceedings pending or in litigation when the amendments become law. Many of the Title 11 proceedings do or will require adjudication of claims or causes of action based upon state law. Thousands of these claims or causes provide no basis for Article III jurisdiction. Many thousands more do or will require the adjudication of the state-based claims where diversity invokes Article III jurisdiction.

At present, this claim or cause is being adjudicated by bankruptcy judges with the district court serving the review function as provided by the Emergeny Rules. If the Bill's amendments do not apply to these proceedings, they all run the substantial risk of complete or partial reversal because of the holding in *Marathon*.

Applying the amendments to all such proceedings allows all of the parties to avoid the risk of relying on the Emergency Rules to constitutionalize adjudications that are beyond the bankruptcy judge and may be beyond Article III. Moreover, immediate application prejudices no one.

SECTION 462(C) OF H.R. 5174

● Mr. DECONCINI. I know that the Senator from Kansas, along with the Senator from South Carolina, was the principal sponsor of this provision deleting subsection (c)(2) of section 547 of the code, and I would like to clarify two points regarding the effect of this change.

Am I correct that the elimination of the 45-day restriction in subsection (c)(2) of section 547 will relieve buyers of commercial paper with maturities in excess of 45 days of the concern that repayments of such paper at maturity might be considered as preferential transfers?

● Mr. DOLE. That is correct, assuming that the "ordinary course of business or financial affairs" and "ordinary business terms" requirements are met.

● Mr. DECONCINI. Would there be any doubt that companies that have a need for short-term funds, and investors who wish to purchase short-term obligations, would both be acting in their respective "ordinary course of business or financial affairs" if they were to deal directly or indirectly with each other in the commercial paper market? And would not the payment of a commercial paper note at maturity be in accordance with "ordinary business terms"?

● Mr. DOLE. Those understandings are correct. The commercial paper market is an established market, and participants in it would presumably be acting in the ordinary course of their business or financial affairs and on the basis of ordinary business terms.●

Mr. GRASSLEY. Mr. President, I believe that Congress has acted responsibly in passing a bankruptcy bill that goes further than merely resolving the constitutional issues raised by the Marathon decision. This bill contains all of the substantive changes made in a bill passed last year, S. 445, the Omnibus Bankruptcy Improvements Act of 1983. Therefore we are recasting the bankruptcy courts in a constitutional mold and we are also implementing a number of substantive provisions pertaining to grain elevator bankruptcies, consumer credit, shopping centers tenant bankruptcies, time share industry bankruptcies, repurchase agreements, and other issues.

As a conferee to the Senate-House conference I want to note Chairman THURMOND'S leadership in directing the shape of this bill. He gave all members of the conference an opportunity to voice issues of concern and masterfully negotiated the differences raised between the two bills.

One of the differences that I wish to note for the record, is that between the Senate and House versions of the grain elevator provision. That difference was resolved in favor of the Senate version which provides that the person qualifying under the grain elevator provision is defined as a "producer" or "an entity which engages in the growing of grain." If we had defined eligibility based on the House language we would have limited application of the grain elevator provision to farmers who obtain 80 percent or more of gross income from farming. That provision would have virtually eliminated the very person who we are trying to benefit through this provision—the small farmer. We have passed this provision four times in the Senate and never, I repeat never, did the grain elevator provision contain this limitation.

Overall this legislation is a vast improvement over our present system. There is still much to do in this area but I believe that we have come a long way in addressing the most significant and necessary revisions.

Mr. PACKWOOD. Mr. President, I am very pleased that the conference committee was able to reach an agreement on the much needed bankruptcy law amendments. I commend all of the conferees for their long and arduous negotiations, particularly over the difficult labor provisions contained in the bill,

Several weeks ago, I offered an amendment to the bankruptcy bill to address the controversy over the rejection of labor contracts in bankruptcy. This amendment, which was developed with the cooperation of labor leaders, was designed to reverse the Supreme Court's Bildisco decision. The Bildisco decision upheld the right of a company to unilaterally cancel a union contract. The amendment I offered would have prevented companies from unilaterally rejecting union contracts, and forced management and labor to negotiate in good faith over proposed contract changes. This amendment was vigorously opposed by those who did not want to give labor contracts adequate protection in bankruptcy.

Mr. President, the agreement reached by the Conferees on the labor provisions in the bill brings to an end the effort to assure that labor contracts, which are negotiated in good faith, are properly protected. I am pleased that the approach contained in the amendment I offered was, for the most part, adopted by the conferees.

While I am concerned by the inclusion in the bill of certain controversial

provisions, I feel that these emergency relief provisions will have only limited and secondary consequences and application. Specifically, I include in this category: First, allowing the debtor to make unilateral changes if the judge fails to rule on the rejection application within 30 days; second, authorizing the court to approve interim relief; and, third, deleting the effective date. On balance, I think the bill should stimulate collective bargaining and limit the number of cases when a judge will have to authorize the rejection of a labor contract.

Mr. President, at this time I would like to describe for the record my understanding of the labor bankruptcy provisions adopted by the conference committee.

Under the conference language, before a debtor in possession, or a trustee, may apply to the court for rejection of its labor contract, it must make a proposal to the union which, first, "provides for those necessary modifications in the employee benefits and protections that are necessary to permit the reorganization of the debtor and," second, "assures that all creditors, the debtor and other affected parties are treated fairly and equitably." As to the first requirement, similar to the proposal which I had made, only modifications which are necessary to a successful reorganization may be proposed. Therefore, the debtor will not be able to exploit the bankruptcy procedure to rid itself of unwanted features of the labor agreement that have no relation to its financial condition and its reorganization and which earlier were agreed to by the debtor, The word "necessary" inserted twice into this provision clearly emphasizes this required aspect of the proposal which the debtor must offer and guarantees the sincerity of the debtor's good faith in seeking contract changes.

The second requirement of the proposal—that it assure fair and equitable treatment for all creditors, the debtor and other affected parties—also is similar to language in my proposed amendment. This language guarantees that the focus for cost cutting must not be directed exclusively at unionized workers. Rather the burden of sacrifices in the reorganization process will be spread among all affected parties. This consideration is desirable since experience shows that when workers know that they alone are not bearing the sole brunt of the sacrifices, they will agree to shoulder their fair share and in some instances without the necessity for a formal contract rejection.

This language should not be difficult to apply. In fact, at least one bankruptcy court has already applied this kind of analysis in a case in Rhode Island. There the court found that the labor agreement should be rejected, and that absent rejection, the company would have to shut down. But the court refused to permit rejection unless the debtor showed that it had reduced topheavy management salaries, disposed of six out of seven company cars, utilized the remaining one just for business purposes, canceled gasoline credit cards, and reduced health, welfare, and pension contributions for management personnel proportionately with the reduced contributions for unionized employees. This case was called *In re Blue Ribbon Transportation Co.*, 113 L.R.R.M. 3505 (D.R.I. 1983). As I see it, this approach is eminently fair and will not be impossible to implement. The debtor will already have been required to analyze its obligations to all affected parties. After the petition in bankruptcy is filed, the debtor is obligated to submit immediately a list of creditors, a schedule of assets and liabilities, and a statement of financial affairs. Therefore, the debtor will have a basis upon which to determine the fair and equitable treatment of all parties.

After the proposal is made, and until a hearing on the motion to reject, the parties must bargain in good faith. This provision places the primary focus on the private collective-bargaining process and not in the courts. The amendments then provide that the court may approve the rejection of the agreement if the debtor has made a proposal as discussed above, the union has rejected it without good cause, and the balance of the equities clearly favors rejection. The "without good cause" language provides an incentive or pressure on the debtor to negotiate in good faith. In practical terms, this language imposes no barrier to rejection if the debtor's proposal has contained only the specified "necessary" modifications. Thus, the language serves to prohibit any bad faith conduct by an employer, while at the same time protecting the employer from a Union's rejection of the proposal without good cause.

The amendments also provide that the trustee may seek the court's permission for interim changes in the labor agreement pending its ruling on the rejection application. The court may only grant the interim relief after notice and a hearing and only if essential to the continuation of the debtor's business. This provision essentially requires the court to apply the test used by the Second Circuit Court of Appeals in the *REA Express* case, 523 F.2d 164, cert. denied, 423 U.S. 1017 (1975).

The amendments also prohibit the trustee from unilaterally altering or terminating the labor agreement prior to compliance with the provisions of the section. This provision encourages the collective bargaining process, so basic to federal labor policy. The provision overrules the 5-to-4 portion of the Supreme Court's Bildisco decision and means that the labor contract is enforceable and binding on both parties until a court-approved rejection or modification. There is a limited exception contained in section 1113(d)(2). Where the court wrongly fails to decide the rejection application in the prescribed time, the trustee may terminate or alter any contract provisions pending the ruling of the court. Obviously if the court ultimately refuses to approve rejection of the contract, then the trustee will have to pay back any wages or benefits withheld unilaterally and unpaid wages and benefits will be treated as costs of administration. In addition, if the trustee makes any such unilateral changes, then the union is also free to engage in strike activity since its no-strike obligation would no longer be binding.

Mr. KENNEDY. Mr. President, as the sponsor of the Senate bill which mirrored the labor provisions contained in the House passed bankruptcy amendments and an original cosponsor of the Packwood amendment I am gratified with the results of the conference and pleased that I was able to participate in fashioning the conference language on the status of collective bargaining agreements during chapter 11 reorganizations.

The conference agreement parallels the Packwood amendment and achieves the aim of that amendment and of my own bill dealing with this subject—S. 2462—to overturn the Bildisco decision which had given the trustee all but unlimited discretionary power to repudiate labor contracts and to substitute a rule of law that encourages the parties to solve their mutual problems through the collective bargaining process.

I would have preferred that the subsections permitting unilateral action by the trustee when the court does not issue a timely ruling and providing for interim relief for the trustee not have been included in the final agreement. But I'm convinced that both of these defects are sufficiently limited by appropriate safeguards that they do not detract from the overall product. In particular I note that if a trustee does not take unilateral action while awaiting a court decision, under settled labor law principles the employees can respond by using their economic weapon, the right to strike. I am also distressed that, in contrast to the Packwood amendment and my bill, the labor provision does not take effect across the board on the date of enactment.

Those blemishes aside, the bill accomplishes what the supporters of the Packwood amendment sought. Congressman MORRISON who together with Congressman HUGHES of New Jersey, led the House conferees in making the amendments to the Senate

proposal now embodied in the final agreement, has prepared an analysis of the labor provision which accurately reflects the understanding of the conferees committed to fashioning a conference bill that protects collective bargaining agreements and promotes collective bargaining negotiations. I ask unanimous consent to include that analysis in the RECORD.

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

STATEMENT ON H.R. 5174

(By the Honorable William Hughes and Honorable Bruce Morrison)

Congressman Hughes and I offered key amendments during the conferees' discussion of collective bargaining agreements during Chapter 11 proceedings. The purpose of this joint statement is to outline our understanding of the language adopted by the conferees.

Any proposal by a trustee or debtor-in-possession to modify a collective bargaining agreement in a Chapter 11 case is to "provide for those necessary modifications in the employees benefits and protections that are necessary to permit the reorganization of the debtor." This language makes plain that the trustee must limit his proposal to modify a collective bargaining agreement to only those modifications that must be accomplished in the reorganization is to succeed. The key phrase is "necessary" modifications.

This same provision also includes language that requires assurance that "all creditors, the debtor and other affected parties are treated fairly and equitably." This language is similar to language in an amendment offered by the Junior Senator from Oregon in the other body. This section would ensure that, where the trustee seeks to repudiate a collective bargaining agreement, the covered employees do not bear either the entire financial burden of making the reorganization work or a disproportionate share of that burden, but only their fair and equitable share of the necessary sacrifices.

The phrase "without good cause" in subsection (c)(2) of new section 1113 of title 11, like similar language in the amendment offered by the junior Senator from Oregon in the other body, is intended to ensure that a continuing process of good faith negotiation will take place before court involvement, and does so by embodying the standard set out by Vern Countryman in *(The Rejection of Collective Bargaining Agreements by Chapter 11 Debtors,* 57 American Bankruptcy Law Journal 299, 300, 319).

As in civil litigation generally, it is the applicant—the trustee—who must carry the burden of proving the elements of his case to secure from the court an order permitting the rejection of the agreement.

The trustee is permitted to "terminate or alter any provisions of the collective bargaining agreement" if the court does not rule on the rejection application within 30 days after the commencement of the hearing. The courts are expected as a matter of course to meet the time limits set by Congress. In the unlikely event that a particular court should not do so, expeditious mandamus relief would be available in the appellate courts.

The trustee has an affirmative obligation to provide all the relevant financial and other information necessary to adequately evaluate the proposal and if that obligation is not met or if the trustee otherwise delays the proceeding, the application should be denied.

If an application for rejection is denied by the court after a hearing on the merits, the covered employees are entitled to their wages and benefits lost by employer unilateral action as an administrative expense.

The House conferees accepted subsection (E) permitting the court to authorize interim changes in the collective bargaining agreement on the understanding: that, as the final sentence of the subsection makes clear, a motion for such interim relief may only be made in conjunction with an application for rejection and any authorization shall be effective only for the period for considering and ruling on the application stated in subsection (d). In deference to the overall policy of the provision which is to encourage the parties to reach their own agreement through collective bargaining, the court in framing any such relief may not go beyond the proposal made by the trustee pursuant to subsection (b)(1)(A). The statutory language of subsection (e) stating the standard for qualifying for interim relief is, in essence, the REA Express standard. After a full hearing and the court's consideration of the entire matter in depth on the merits if the application for rejection is denied and the collective bargaining agreement is continued in force, the employees are entitled to their wages and benefits lost under an interim order as an administrative expense.

Since an application to reject a collective bargaining agreement implicates national labor policy, as well as bankruptcy policy, if the union or trustee so move, such an application is to be heard by a U.S. district judge.

It was also our understanding that a chapter 11 reorganization case that is brought for the sole purpose of repudiating or modifying a collective bargaining agreement is a case brought in "bad faith."

ON THE COLLECTIVE BARGAINING PROVISIONS OF THE BANKRUPTCY CONFERENCE REPORT

● Mr. MOYNIHAN. Mr. President, I rise today to express my support for the collectively bargained labor contract provisions of the conference report for the bankruptcy bill, H.R. 5174. The labor contract provisions of the conference report, I am pleased to say, are substantially similar to the amendment I advanced with my distinguished colleagues from Oregon [Mr. PACKWOOD] and Arizona [Mr. DECONCINI].

Before I discuss my reasons for supporting the conference report, permit me to recall a little background of this matter, so important to the Nation's working men and women.

On February 22, 1984, the Supreme Court, in the case of the National Labor Relations Board against Bildisco & Bildisco, ruled that companies may use bankruptcy proceedings to abrogate union contracts unilaterally. In its decision, the Supreme Court reasoned, in effect, that a labor contract should be treated in the same manner as any other financial agreement negotiated by a failing company. As such, the Court rules that, in determining whether to accept the cancellation of the labor contract, bankruptcy courts have to find simply that the union contract is burdensome, and that the balance of the equities favor the cancellation of the contract. What this means is that bankruptcy courts have to find that ending the labor contract will serve the best interests of the company, its employees, and its creditors.

In what may be the most significant aspect of the Supreme Court ruling, the Court determined that a company may cancel the union contract unilaterally, even before the bankruptcy court approves the cancellation, and such would not violate the National Labor Relations Act.

Mr. President, I submit that the Supreme Court's ruling will affect, significantly and adversely, the state of labor-management relations in America. Indeed, on February 26, 1984, a Washington Post editorial called the Bildisco decision "one of the most important labor relations cases of the decade." Rightfully so.

Mr. President, it is evident to this Senator that the Bildisco ruling represents a large and historic matter, worthy of this body's prompt attention. The Supreme Court has determined that companies may use bankruptcy proceedings to cancel or significantly modify their labor contracts, simply because the company considers the labor contract a financial burden. The Court decision, in effect, has sanctioned the type of labor practice employed by one airline company, which filed for bankruptcy under chapter 11, and then 3 days later, opened up as a smaller carrier with one-third of its former employees working for only 60 percent of their former wages.

Mr. President, I certainly do not argue that under no circumstances should employees for firms facing bankruptcy contribute to the company's reorganization efforts. Indeed, throughout the recession of 1980–82, many unions voluntarily agreed to lower wages and benefits to improve the competitiveness of their companies and industries. A certain degree of wage and benefit flexibility, by both management and labor, is necessary when the alternative for the company is bankruptcy, with the loss of all the employee positions.

In my view, however, the Congress must distinguish between labor contracts and other financial arrangements. The renegotiation of a bank loan, for example, may require simply that the interest rate on a loan be lowered, or that the company repay the loan on a longer schedule. Not much happens. I ask my colleagues to consider, in contrast, the human costs of the rejection of an existing labor contract, before bankruptcy court approval. If an employer reduces the number of union employees, as some companies already have done, many workers

will have to look for new work. If work is not readily available, the worker may be forced to turn to unemployment insurance. Accrued pension rights, for which employees may have worked years to accumulate, also may be eliminated by a single declaration by the company.

Mr. President, we ought not let the Supreme Court decision stand without modification. Labor contracts are different from other contracts and must be treated as such by Federal law.

Congress recognized as much nearly 50 years ago, by passing that landmark piece of labor legislation, the National Labor Relations Act [or the Wagner Act]. The Wagner Act, signed into law by president Franklin Delano Roosevelt on July 5, 1935, established a Federal policy to protect and promote collectively-bargained labor contracts.

Section 1 of the National Labor Relations Act, as passed by Congress in 1935, stated that:

> Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours or other working conditions, and by restoring equality of bargaining power between employers and employees.
>
> It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

During the debate on this important legislation, a distinguished predecessor of mine from the State of New York and the chief sponsor of the bill, Senator Robert F. Wagner, addressed the protection of labor contracts. On May 15, 1935, Senator Wagner stated that "there is practically unanimous agreement in the Congress that the right of employees to organize and bargain collectively through representatives of their own choosing should be safeguarded at all times."

Mr. President, in my view, Congress must protect and retain the commitments made to the Nation's working men and women in 1935, to safeguard equal bargaining power between the representatives of companies and the representatives of labor. We can help do so by adopting the conference report.

The conference report, in my view, is a sound and entirely reasonable compromise between the goals Congress articulated in the National Labor Relations Act and the bankruptcy proceedings under chapter 11, which allow companies to lower costs, when necessary, in order to reorganize.

Let me describe briefly the provisions of the conference report.

First, under the conference agreement, a company seeking to renegotiate a labor contract must make a proposal to the union before the company files an application with the bankruptcy court to cancel the labor contract. The firm's proposal must provide for the necessary modifications in employee benefits and protections to enable the employer to continue operating.

Mr. President, this provision is a most important one, worthy of this body's support, for it ensures that a company's workers will not have to bear an undue burden to keep the company solvent. The union would have to make the necessary concessions. Nothing more. Nothing less.

The conference agreement also provides that a company must meet with its employee representatives in good faith, to reach an agreement concerning the labor contract modifications. This provision, then, embodies the basic principles of collective bargaining established by Congress in the National Labor Relations Act. Section 8(a)(5) of the National Labor Relations Act [NLRA] makes it a violation of the Nation's labor laws to refuse to collectively bargain with the representatives of employees. Moreover, under the NLRA, an employer may reject labor contracts only after complying with very stringent criteria.

Last, Mr. President, the conference report before us today would provide that if the union and the company cannot reach agreement, the bankruptcy court may authorize the cancellation of the union contract if the Court makes two following findings: First, that the union's refusal to accept modifications was unjustified; and second, that the cancellation of the contract was in the best interest of the company, the creditors, the employees, and all other affected parties.

In sum, Mr. President, this conference report, consistent with the intent of Congress in the National Labor Relations Act, provides that the company must try to negotiate with employees to work out the changes necessary to prevent the company from failing. The legislation also embodies the principles of the NLRA by requiring the company to bargain in good faith. And last, Mr. President, H.R. 5174 retains the criteria to reject labor contracts established in the Bildisco decision; namely, that the cancellation of the contract is in the best interest of employees, employers, and creditors alike.

Mr. President, I know that few, if any, Members of this body want to see the abrogation of collectively bargained labor contracts, even in the course of bankruptcy proceedings. But in certain circumstances, we must recognize that costs, including labor costs, must be lowered for financially troubled firms to survive.

In the wake of the Bildisco decision, the task before the Congress is to ensure fair and reasonable negotiations of labor contracts during bankruptcy proceedings. Although I would have preferred to provide greater protections for labor contracts than the conference report provides, I believe that the final agreement represents a reasonable compromise—one that ought to ensure fair labor negotiations during bankruptcy proceedings.

Mr. President, I support the measure we have before us today, and urge my colleagues to do the same.●

Mr. BAKER. Mr. President, I will not take but just a moment, but I have never seen a group of Senators more diligent and dedicated to getting a difficult matter through over a long period of time as has been the case here on this bill. I congratulate the chairman of the committee, the Senator from Kansas, the Senator from Alabama, and so many others who participated over such a long period of time.

Mr. President, I believe we are prepared to vote on the conference report.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the conference report.

The conference report was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceed to call the roll.

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

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

Mr. BAKER. Mr. President, is there a bill at the desk, H.R. 5950, which we received from the other body?

The PRESIDING OFFICER. There is.

INCREASE IN FEDERAL CONTRIBUTION FOR QUADRENNIAL POLITICAL PARTY PRESIDENTIAL NATIONAL NOMINATING CONVENTIONS

Mr. BAKER. I ask the Chair lay before the Senate H.R. 5950.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 5950) to increase the Federal contribution for the Quadrennial Political Party Presidential National Nominating Conventions.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consideration of the bill.

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. I yield to the two managers.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, let me indicate to my colleagues that this provision passed the Senate earlier. We went to conference with this provision in the Senate bill. It was rejected ultimately by the House conference. The Senate receded on that provision.

Following that it was suggested, rather than to try to put it on some tax measure, it ought to come over on its own. That bill is before us now. I have talked with a number of people in my party and some in the other party who all have indicated this is very, very important. I have tried to gain assurance because I know of the concern that we will soon hear again from the distinguished author of this provision as we did several years ago about how the money will be used. I have just spoken to Mr. William Timmons, who will play a role in the Republican Convention in Dallas. While he cannot assure me precisely how the money will be spent, it will be spent wisely. [Laughter.]

They are willing to make an accounting. I said, "Would you be willing to account for how the money was spent following the convention?" They are perfectly willing to do that. I think it is important they do that because that would certainly indicate whether this was ever repeated again.

AMENDMENT NO. 3379

(Purpose: To limit increased payments to major political parties to purposes related to convention security)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. LONG], proposes an amendment number 3397. At the end of the bill add the following new section:

SEC. . Any increase in any payment to a major party under section 9008(b) of the Internal Revenue Code of 1954 made solely by reason of the amendments made by this Act shall only be used to provide police protection, capital or other improvements made substantially for security reasons, and similar security measures.

Mr. LONG. Mr. President, after we agreed to this amendment in the Senate, I saw a presentation about this matter on one of the major networks. Frankly, it was enough to make me believe that we had made a mistake to permit the convention to have any of the money out of the Presidential campaign fund. We have asked people to mark their tax return if they would like to see $1 of their tax money go to the Presidential election campaign fund—to help ease the burden of an honorable man and woman who runs for the office of President and Vice President. The people of this country, I do not believe would favor having their money, which they designate for that purpose, spent for a national convention.

I would be willing to go along with this matter if this money is to be used for security. I can understand that there is a growing need for security. I think the American people would not particularly object if we are paying for police protection, or if we are paying to assure the personal safety of the key people involved in holding a convention. There will be demonstrations I am led to believe in connection with the Democratic Convention, I do not know whether this is also the case with the Republican Convention. I was at one convention—in Chicago—where we could have had real trouble if that city had not had a good mayor, Mayor Daly, and a strong police force. At the hotel where I stayed people who were not happy about what was happening put some stink bombs in the elevator shaft. Every time one of us went up or down the elevator we smelled very bad for hours after we departed from the elevator.

There is a need in some situations for security protection. But I do not think the people of this country approve or would approve of any of this money being spent for cocktail parties or for receptions, for food or beverage, or for lodging of delegates.

It seems to me that the basic law should be amended so that, for the future, the money that will go for the nominating conventions will only be used to pay for security.

Mr. Manatt assured me that all the additional money that is in this bill for the Democratic Convention is going to be used on security. He tells me that he is willing to account for it on that basis. I would insist on this amendment, Mr. President, except that I am advised by our friends on the House side that they might have difficulty getting a quorum to pass this bill at this late hour. But I hope that I could have the assurance of the leadership that, if I permit this bill to go through in this fashion without my amendment, they will help me obtain an opportunity to amend the basic law to limit these funds to security purposes for the future.

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. Mr. President, I could not agree more with the Senator from Louisiana. Mr. President, I have to confess, this was brought to me by the two chairmen, the Republican and Democratic national chairmen, as I am sure it was to the minority leader, the chairman, and ranking member of the Finance Committee which has jurisdiction over the Presidential Campaign Fund. So it did not originate here. It is not a partisan issue. It came from both parties. It was presented as a matter of funding extra and additional security precautions, structures, and equipment, and related things. I cannot tell you with reference to the two conventions.

I do not know a thing about it, Mr. President, except what I have just now related. But I do know the Senator from Louisiana is absolutely right. If we amend this thing and send it back to the House. I am afraid that we will never get the bill. I do not know what that amounts to, but I am sure there is not going to be an opportunity to act on a Senate amendment to this bill.

While I was not overenthusiastic with the thing to begin with, and I do not believe the chairman or the ranking member were either, we are faced with it. It has passed once in the Senate already. As the chairman of the committee pointed out, it was dropped in conference.

I do not think the Speaker would mind me repeating a conversation I had with him. That is when he called after it was dropped, he said that he hoped we would send it to them again. I indicated to him that I was not inclined to do that, to ask the Senate to do it again, but if the House sent it back to the Senate, I would be willing to take it up. The House did do that, as we now know, and we have that measure here.

If ever there was a bipartisan measure, this is it. Nobody is claiming the parenthood of this thing. I really urge the Senator from Louisiana to go ahead and do this without that amendment, and I pledge to him that after the conventions, I will join with him in the time I have remaining in taking a look at the generic law and see how we ought to structure it in relation to conventions.

Mr. LONG. Could I have the assurance of the chairman of the committee that at some point, either this year or next year, I could have his cooperation in seeing that we have an opportunity to amend this section of the law? It seems to me that the Senate, on a rollcall vote, would agree to spend this money on fun out at those conventions. That is what a lot of people go to conventions for. Some go there hoping to be nominated for President. I know that.

Mr. BAKER. I never have had any fun at a convention.

Mr. LONG. I am not going to be there for one good reason. I can have a better time someplace else. It is not all that much fun.

Mr. RANDOLPH. Mr. President, who has the floor? I would like to make a statement.

Mr. BAKER. I think the Senator from West Virginia.

Mr. RANDOLPH. Mr. President, and my colleagues in the Chamber, we had no problem like this in the Democratic National Convention when we nominated Woodrow Wilson in Baltimore in 1912. I was there at the convention, and I want to report that we would have had no need for legislation of this kind to be discussed, let alone possibly passed by the Congress of the United States. My reference to 1912 is not fantasy. I attended that convention when Woodrow Wilson was nominated over Champ Clark, who was then the Speaker of the House of Representatives.

Mr. DOLE. I will be happy to cosponsor any amendment with the Senator from Louisiana to accomplish his purposes. When would that be effective?

Mr. LONG. Obviously, we cannot do it before the Democratic Convention. I do not care to be partisan about it. I do not want a burden imposed on the Republican Party that is not imposed on the Democratic Party. But I do think starting at the next convention that is how it ought to be. If we spend money, it ought to be for security. Security is becoming an increasing problem. I can understand that. I think the people of the United States can understand that. If you can show this expenditure is for essential security needs, I am sure they would approve of it.

Those cities, by the way, ought to help provide security. As I indicated, I was at the Chicago convention when the antiwar protesters really gave the Democrat a very bad time. It was only because there was a very strong mayor in the city of Chicago that they did not break that convention up. But you cannot expect quite that much of a strong mayor in every city around the United States, and sometimes even with a strong mayor, you may not be able to enforce security, in view of the terrorism and all that which is afoot in the world today.

Mr. DOLE. I have talked to Mr. Timmons. He is a very responsible man. I indicated your concern to him less than 15 minutes ago. He indicated that there are many things. One would be some of it to go to the city of Dallas for extra protection; some would go to ushers, maybe. They may not be in uniform, but they are a force as far as orderly conduct in a convention is concerned. I have indicated our reluctance to do the things suggested earlier, and he agreed with that. But he was not prepared to indicate how he would account for every dollar.

I do believe they understand if there is anything that looks like it is improper, it would be difficult to do anything in the furture.

Mr. LONG. This is taxpayer money being spent, and it ought to be accounted for just as the President's campaign expenditures have to be accounted for. If there is any irregularity, somebody ought to be accountable. This is not money to be spent just to have a good time.

Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 5950) was ordered to a third reading, was read the third time, and passed.

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

Mr. DOLE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, that completes my list. We now must await the receipt of an adjournment resolution from the House of Representatives. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BAKER. Mr. President, there is one other matter that I understand has been cleared on both sides for action. That is concurring in a House amendment to the Landsat conference report. I hope we can do that before we leave. While we try to find the papers and the people, 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. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

LAND REMOTE-SENSING SATELLITE DATA

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5155.

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

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 5155) entitled "An Act to establish a system to promote the use of land remote-sensing satellite data, and for other purposes", with the following amendment: In lieu of the matter inserted by the said amendment, insert:

That this Act may be cited as the "Land Remote Sensing Commercialization Act of 1984".

TITLE I—DECLARATION OF FINDINGS, PURPOSES, AND POLICIES

FINDINGS

SEC. 101. The Congress finds and declares that—

(1) the continuous civilian collection and utilization of land remote-sensing data from space are of major benefit in managing the Earth's natural resources and in planning and conducting many other activities of economic importance;

(2) the Federal Government's experimental Landsat system has established the United States as the world leader in land remote-sensing technology;

(3) the national interest of the United States lies in maintaining international leadership in civil remote sensing and in broadly promoting the beneficial use of remote-sensing data;

(4) land remote sensing by the Government or private parties of the United States affects international commitments and policies and national security concerns of the United States;

(5) the broadest and most beneficial use of land remote-sensing data will result from maintaining a policy of nondiscriminatory access to data;

(6) competitive, market-driven private sector involvement in land remote sensing is in the national interest of the United States;

(7) use of land remote-sensing data has been inhibited by slow market development and by the lack of assurance of data continuity;

(8) the private sector, and in particular the "value-added" industry, is best suited to develop land remote-sensing data markets;

(9) there is doubt that the private sector alone can currently develop a total land remote-sensing system because of the high risk and large capital expenditure involved;

(10) cooperation between the Federal Government and private industry can help assure both data continuity and United States leadership;

(11) the time is now appropriate to initiate such cooperation with phased transition to a fully commercial system;

(12) such cooperation should be structured to involve the minimum practicable amount of support and regulation by Federal Government and the maximum practicable amount of competition by the private sector, while assuring continuous availability to the Federal Government of land remote-sensing data;

(13) certain Government oversight must be maintained to assure that private sector activities are in the national interest and that the international commitments and policies of the United States are honored; and

(14) there is no compelling reason to commercialize meteorological satellites at this time.

PURPOSES

SEC. 102. The purposes of this Act are to—

(1) guide the Federal Government in achieving proper involvement of the private sector by providing a framework for phased commercialization of land remote sensing and by assuring continuous data availability to the Federal Government;

(2) maintain the United States worldwide leadership in civil remote sensing, preserve its national security, and fulfill its international obligations;

(3) minimize the duration and amount of further Federal investment necessary to assure data continuity while achieving commercialization of civil land remote sensing;

(4) provide for a comprehensive civilian program of research, development, and demonstration to enhance both the United States capabilities for remote sensing from space and the application and utilization of such capabilities; and

(5) prohibit commercialization of meteorological satellites at this time.

POLICIES

SEC. 103. (a) It shall be the policy of the United States to preserve its right to acquire and disseminate unenhanced remote-sensing data.

(b) It shall be the policy of the United States that civilian unenhanced remote-sensing data be made available to all potential users on a nondiscriminatory basis and in a manner consistent with applicable antitrust laws.

(c) It shall be the policy of the United States both to commercialize those remote-sensing space systems that properly lend themselves to private sector operation and to avoid competition by the Government with such commercial operations, while continuing to preserve our national security, to honor our international obligations, and to retain in the Government those remote-sensing functions that are essentially of a public service nature.

DEFINITIONS

SEC. 104. For purposes of this Act:

(1) The term "Landsat system" means Landsats 1, 2, 3, 4, and 5, and any related ground equipment, systems, and facilities, and any successor civil land remote-sensing space systems operated by the United States Government prior to the commencement of the six-year period described in title III.

(2) The term "Secretary" means the Secretary of Commerce.

(3)(A) The term "nondiscriminatory basis" means without preference, bias, or any other special arrangement (except on the basis of national security concerns pursuant to section 607) regarding delivery, format, financing, or technical considerations which would favor one buyer or class of buyers over another.

(B) The sale of data is made on a nondiscriminatory basis only if (i) any offer to sell or deliver data is published in advance in such manner as will ensure that the offer is equally available to all prospective buyers; (ii) the system operator has not established or changed any price, policy, procedure, or other term or condition in a manner which gives one buyer or class of buyer de facto favored access to data; (iii) the system operator does not make unenhanced data available to any purchaser on an exclusive basis; and (iv) in a case where a system operator offers volume discounts, such discounts are no greater than the demonstrable reductions in the cost of volume sales. The sale of data on a nondiscriminatory basis does not preclude the system operator from offering discounts other than volume discounts to the extent that such discounts are consistent with the provisions of this paragraph.

(C) The sale of data on a nondiscriminatory basis does not require (i) that a system operator disclose names of buyers or their purchases; (ii) that a system operator maintain all, or any particular subset of, data in a working inventory; or (iii) that a system operator expend equal effort in developing all segments of a market.

(4) The term "unenhanced data" means unprocessed or minimally processed signals or film products collected from civil remote-sensing space systems. Such minimal processing may include rectification of distortions, registration with respect to features of the Earth, and calibration of spectral response. Such minimal processing does not include conclusions, manipulations, or calculations derived from such signals or film products or combination of the signals or film products with other data or information.

(5) The term "system operator" means a contractor under title II or title III or a license holder under title IV.

TITLE II—OPERATION AND DATA MARKETING OF LANDSAT SYSTEM

OPERATION

SEC. 201. (a) The Secretary shall be responsible for—

(1) the Landsat system, including the orbit, operation, and disposition of Landsats 1, 2, 3, 4, and 5; and

(2) provision of data to foreign ground stations under the terms of agreements between the United States Government and nations that operate such ground stations which are in force on the date of commencement of the contract awarded pursuant to this title.

(b) The provisions of this section shall not affect the Secretary's authority to contract for the operation of part or all of the Landsat system, so long as the United States Government retains—

(1) ownership of such system;

(2) ownership of the unenhanced data; and

(3) authority to make decisions concerning operation of the system.

CONTRACT FOR MARKETING OF UNENHANCED DATA

SEC. 202. (a) In accordance with the requirements of this title, the Secretary, by means of a competitive process and to the extent provided in advance by appropriation Acts, shall contract with a United States private sector party (as defined by the Secretary) for the marketing of unenhanced data collected by the Landsat system. Any such contract—

(1) shall provide that the contractor set the prices of unenhanced data;

(2) may provide for financial arrangements between the Secretary and the contractor including fees for operating the system, payments by the contractor as an initial fee or as a percentage of sales receipts, or other such considerations;

(3) shall provide that the contractor will offer to sell and deliver unenhanced data to all potential buyers on a nondiscriminatory basis;

(4) shall provide that the contractor pay to the U.S. Government the full purchase price of any unenhanced data that the contractor elects to utilize for purposes other than sale;

(5) shall be entered into by the Secretary only if the Secretary has determined that such contract is likely to result in net cost savings for the U.S. Government; and

(6) may be reawarded competitively after the practical demise of the space segment of the Landsat system, as determined by the Secretary.

(b) Any contract authorized by subsection (a) may specify that the contractor use, and, at his own expense, maintain, repair, or modify, such elements of the Landsat system as the contractor finds necessary for commercial operations.

(c) Any decision or proposed decision by the Secretary to enter into any such contract shall be transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives for their review. No such decision or proposed decision shall be implemented unless (A) a period of 30 calendar days has passed after the receipt by each such committee of such transmittal, or (B) each such committee before the expiration of such period has agreed to transmit and has transmitted to the Secretary written notice to the effect that such committee has no objection to the decision or proposed decision. As part of the transmittal, the Secretary shall include information on the terms of the contract described in subsection (a).

(d) In defining "United States private sector party" for purposes of this Act, the Secretary may take into account the citizenship of key personnel, location of assets, foreign ownership, control, influence, and other such factors.

CONDITIONS OF COMPETITION FOR CONTRACT

SEC. 203. (a) The Secretary shall, as part of the advertisement for the competition for the contract authorized by section 202, identify and publish the international obligations, national security concerns (with appropriate protection of sensitive information), domestic legal considerations, and any other standards or conditions which a private contractor shall be required to meet.

(b) In selecting a contractor under this title, the Secretary shall consider—

(1) ability to market aggressively unenhanced data;

(2) the best overall financial return to the Government, including the potential cost savings to the Government that are likely to result from the contract;

(3) ability to meet the obligations, concerns, considerations, standards, and conditions identified under subsection (a);

(4) technical competence, including the ability to assure continuous and timely delivery of data from the Landsat system;

(5) ability to effect a smooth transition with the contractor selected under title III; and

(6) such other factors as the Secretary deems appropriate and relevant.

(c) If, as a result of the competitive process required by section 202(a), the Secretary receives no proposal which is acceptable under the provisions of this title, the Secretary shall so certify and fully report such finding to the Congress. As soon as practicable but not later than 30 days after so certifying and reporting the Secretary shall reopen the competitive process. The period for the subsequent competitive process shall not exceed 120 days. If, after such subsequent competitive process, the Secretary receives no proposal which is acceptable under the provisions of this title, the Secretary shall so certify and fully report such finding

to the Congress. In the event that no acceptable proposal is received, the Secretary shall continue to market data from the Landsat system.

(d) A contract awarded under section 202 may, in the discretion of the Secretary, be combined with the contract required by title III, pursuant to section 304(b).

SALE OF DATA

SEC. 204. (a) After the date of the commencement of the contract described in section 202(a), the contractor shall be entitled to revenues from sales of copies of data from the Landsat system, subject to the conditions specified in sections 601 and 602.

(b) The contractor may continue to market data previously generated by the Landsat system after the demise of the space segment of that system.

FOREIGN GROUND STATIONS

SEC. 205. (a) The contract under this title shall provide that the contractor shall act as the agent of the Secretary by continuing to supply unenhanced data to foreign ground stations for the life, and according to the terms, of those agreements between the United States Government and such foreign ground stations that are in force on the date of the commencement of the contract.

(b) Upon the expiration of such agreements, or in the case of foreign ground stations that have no agreement with the United States on the date of commencement of the contract, the contract shall provide—

(1) that unenhanced data from the Landsat system shall be made available to foreign ground stations only by the contractor; and

(2) that such data shall be made available on a nondiscriminatory basis.

TITLE III—PROVISION OF DATA CONTINUITY AFTER THE LANDSAT SYSTEM

PURPOSES AND DEFINITION

SEC. 301. (a) It is the purpose of this title—

(1) to provide, in an orderly manner and with minimal risk, for a transition from Government operation to private, commercial operation of civil land remote-sensing systems; and

(2) to provide data continuity for six years after the practical demise of the space segment of the Landsat system.

(b) For purposes of this title, the term "data continuity" means the continued availability of unenhanced data—

(1) including data which are from the point of view of a data user—

(A) functionally equivalent to the multispectral data generated by the Landsat 1 and 2 satellites; and

(B) compatible with such data and with equipment used to receive and process such data; and

(2) at an annual volume at least equal to the Federal usage during fiscal year 1983.

(c) Data continuity may be provided using whatever technologies are available.

DATA CONTINUITY AND AVAILABILITY

SEC. 302. The Secretary shall solicit proposals from United States private sector parties (as defined by the Secretary pursuant to section 202) for a contract for the development and operation of a remote-sensing space system capable of providing data continuity for a period of six years and for marketing unenhanced data in accordance with the provisions of sections 601 and 602. Such proposals, at a minimum, shall specify—

(1) the quantities and qualities of unenhanced data expected from the system;

(2) the projected date upon which operations could begin;

(3) the number of satellites to be constructed and their expected lifetimes;

(4) any need for Federal funding to develop the system;

(5) any percentage of sales receipts or other returns offered to the Federal Government;

(6) plans for expanding the market for land remote-sensing data; and

(7) the proposed procedures for meeting the national security concerns and international obligations of the United States in accordance with section 607.

AWARDING OF THE CONTRACT

SEC. 303. (a)(1) In accordance with the requirements of this title, the Secretary shall evaluate the proposals described in section 302 and, by means of a competitive process and to the extent provided in advance by appropriation Acts, shall contract with a United States private sector party for the capability of providing data continuity for a period of six years and for marketing unenhanced data.

(2) Before commencing space operations the contractor shall obtain a license under title IV.

(b) As part of the evaluation described in subsection (a), the Secretary shall analyze the expected outcome of each proposal in terms of—

(1) the net cost to the Federal Government of developing the recommended system:

(2) the technical competence and financial condition of the contractor;

(3) the availability of such data after the expected termination of the Landsat system;

(4) the quantities and qualities of data to be generated by the recommended system;

(5) the contractor's ability to supplement the requirement for data continuity by adding, at the contractor's expense, remote-sensing capabilities which maintain United States leadership in remote sensing;

(6) the potential to expand the market for data;

(7) expected returns to the Federal Government based on any percentage of data sales or other such financial consideration offered to the Federal Government in accordance with section 305;

(8) the commercial viability of the proposal;

(9) the proposed procedures for satisfying the national security concerns and international obligations of the United States;

(10) the contractor's ability to effect a smooth transition with any contractor selected under title II; and

(11) such other factors as the Secretary deems appropriate and relevant.

(c) Any decision or proposed decision by the Secretary to enter into any such contract shall be transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives for their review. No such decision or proposed decision shall be implemented unless (1) a period of 30 calendar days has passed after the receipt by each such committee of such transmittal, or (2) each such committee before the expiration of such period has agreed to transmit and has transmitted to the Secretary written notice to the effect that such committee has no objection to the decision or proposed decision. As part of the transmittal, the Secretary shall include the information specified in subsection (a).

(d) If, as a result of the competitive process required by this section, the Secretary receives no proposal which is acceptable under the provisions of this title, the Secretary shall so certify and fully report such finding to the Congress. As soon as practicable but not later than 30 days after so certifying and reporting, the Secretary shall reopen the competitive process. The period for the subsequent competitive process shall not exceed 180 days. If, after such subsequent competitive process, the Secretary receives no proposal which is acceptable under the provisions of this title, the Secretary shall so certify and fully report such finding to the Congress. Not earlier than 90 days after such certification and report, the Secretary may assure data continuity by procurement and operation by the Federal Government of the necessary systems, to the extent provided in advance by appropriation Acts.

TERMS OF CONTRACT

SEC. 304. (a) Any contract entered into pursuant to this title—

(1) shall be entered into as soon as practicable, allowing for the competitive procurement process required by this title;

(2) shall, in accordance with criteria determined and published by the Secretary, reasonably assure data continuity for a period of six years, beginning as soon as practicable in order to minimize any interruption of data availability;

(3) shall provide that the contractor will offer to sell and deliver unenhanced data to all potential buyers on a nondiscriminatory basis;

(4) shall not provide a guarantee of data purchases from the contractor by the Federal Government;

(5) may provide that the contractor utilize, on a space-available basis, a civilian United States Government satellite or vehicle as a platform for a civil land remote-sensing space system, if—

(A) the contractor agrees to reimburse the Government immediately for all related costs incurred with respect to such utilization, including a reasonable and proportionate share of fixed, platform, data transmission, and launch costs; and

(B) such utilization would not interfere with or otherwise compromise intended civilian Government missions, as determined by the agency responsible for the civilian platform; and

(6) may provide financial support by the United States Government, for a portion of the capital costs required to provide data continuity for a period of six years, in the form of loans, loan guarantees, or payments pursuant to section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255).

(b)(1) Without regard to whether any contract entered into under this title is combined with a contract under title II, the Secretary shall promptly determine whether the contract entered into under this title reasonably effectuates the purposes and policies of title II. Such determination shall be submitted to the President and the Congress, together with a full statement of the basis for such determination.

(2) If the Secretary determines that such contract does not reasonably effectuate the requirements of title II, the Secretary shall promptly carry out the provisions of such title to the extent provided in advance in appropriations acts.

MARKETING

SEC. 305. (a) In order to promote aggressive marketing of land remote-sensing data, any contract entered into pursuant to this title may provide that the percentage of sales paid by the contractor to the Federal Government shall decrease according to stipulated increases in sales levels.

(b) After the six-year period described in section 304(a)(2), the contractor may continue to sell data. If licensed under title IV; the contractor may continue to operate a civil remote-sensing space system.

REPORT

SEC. 306. Two years after the date of the commencement of the six-year period described in section 304(a)(2), the Secretary shall report to the President and to the Congress on the progress of the transition to fully private financing, ownership, and operation of remote-sensing space systems, together with any recommendations for actions, including actions necessary to ensure United States leadership in civilian land remote sensing from space.

TERMINATION OF AUTHORITY

SEC. 307. The authority granted to the Secretary by this title shall terminate 10 years after the date of enactment of this Act.

TITLE IV—LICENSING OF PRIVATE REMOTE-SENSING SPACE SYSTEMS

GENERAL AUTHORITY

SEC. 410. (a)(1) In consultation with other appropriate Federal agencies, the Secretary is authorized to license private sector parties to operate private remote-sensing space systems for such period as the Secretary may specify and in accordance with the provisions of this title.

(2) In the case of a private space system that is used for remote sensing and other purposes, the authority of the Secretary under this title shall be limited only to the remote-sensing operations of such space system.

(b) No license shall be granted by the Secretary unless the Secretary determines in writing that the applicant will comply with the requirements of this Act, any regulations issued pursuant to this Act, and any applicable international obligations and national security concerns of the United States.

(c) The Secretary shall review any application and make a determination thereon within 120 days of the receipt of such application. If final action has not occurred within such time, the Secretary shall inform the applicant of any pending issues and of actions required to resolve them.

(d) The Secretary shall not deny such license in order to protect any existing licensee from competition.

CONDITIONS FOR OPERATION

SEC. 401. (a) No person who is subject to the jurisdiction or control of the United States may, directly or through any subsidiary or affiliate, operate any private remote-sensing space system without a license pursuant to section 401.

(b) Any license issued pursuant to this title shall specify, at a minimum, that the licensee shall comply with all of the requirements of this Act and shall—

(1) operate the system in such manner as to preserve and promote the national security of the United States and to observe and implement the international obligations of the United States in accordance with section 607;

(2) make unenhanced data available to all potential users on a nondiscriminatory basis;

(3) upon termination of operations under the license, make disposition of any satellites in space in a manner satisfactory to the President;

(4) promptly make available all unenhanced data which the Secretary may request pursuant to section 602;

(5) furnish the Secretary with complete orbit and data collection characteristics of the system, obtain advance approval of any intended deviation from such characteristics, and inform the Secretary immediately of any unintended deviation;

(6) notify the Secretary of any agreement the licensee intends to enter with a foreign nation, entity, or consortium involving foreign nations or entities;

(7) permit the inspection by the Secretary of the licensee's equipment, facilities, and financial records;

(8) surrender the license and terminate operations upon notification by the Secretary pursuant to section 403(a)(1); and

(9)(A) notify the Secretary of any "value added" activities (as defined by the Secretary by regulation) that will be conducted by the licensee or by a subsidiary or affiliate; and

(B) if such activities are to be conducted, provide the Secretary with a plan for compliance with the provisions of this Act concerning nondiscriminatory access.

ADMINISTRATIVE AUTHORITY OF THE SECRETARY

SEC. 403. (a) In order to carry out the responsibilities specified in this title, the Secretary may—

(1) grant, terminate, modify, condition, transfer, or suspend licenses under this title, and upon notification of the licensee may terminate licensed operations on an immediate basis, if the Secretary determines that the licensee has substantially failed to comply with any provision of this Act, with any regulation issued under this Act, with any terms, conditions, or restrictions of such license, or with any international obligations or national security concerns of the United States;

(2) inspect the equipment, facilities, or financial records of any licensee under this title;

(3) provide penalties for noncompliance with the requirements of licenses or regulations issued under this title, including civil penalties not to exceed $10,000 (each day of operation in violation of such licenses or regulations constituting a separate violation);

(4) compromise, modify, or remit any such civil penalty;

(5) issue subpoenas for any materials, documents, or records, or for the attendance and testimony of witnesses for the purpose of conducting a hearing under this section;

(6) seize any object, record, or report where there is probable cause to believe that such object, record, or report was used, is being used, or is likely to be used in violation of this Act or the requirements of a license or regulation issued thereunder; and

(7) make investigations and inquiries and administer to or take from any person an oath, affirmation, or affidavit concerning any matter relating to the enforcement of this Act.

(b) Any applicant or licensee who makes a timely request for review of an adverse action pursuant to subsections (a)(1), (a)(3), or (a)(6) shall be entitled to adjudication by the Secretary on the record after an opportunity for an agency hearing with respect to such adverse action. Any final action by the Secretary under this subsection shall be subject to judicial review under chapter 7 of title 5, United States Code.

REGULATORY AUTHORITY OF THE SECRETARY

SEC. 404. The Secretary may issue regulations to carry out the provisions of this title. Such regulations shall be promulgated only after public notice and comment in accordance with the provisions of section 553 of title 5, United States Code.

AGENCY ACTIVITIES

SEC. 405. (a) A private sector party may apply for a license to operate a private remote-sensing space system which utilizes, on a space available basis, a civilian United States Government satellite or vehicle as a platform for such system. The Secretary, pursuant to the authorities of this title, may license such system if it meets all conditions of this title and—

(1) the system operator agrees to reimburse the Government immediately for all related costs incurred with respect to such utilization, including a reasonable and proportionate share of fixed, platform, data transmission, and launch costs; and

(2) such utilization would not interfere with or otherwise compromise intended civilian Government missions, as determined by the agency responsible for such civilian platform.

(b) The Secretary may offer assistance to private sector parties in finding appropriate opportunities for such utilization.

(c) To the extent provided in advance by appropriation Acts, any Federal agency may enter into agreements for such utilization if such agreements are consistent with such agency's mission and statutory authority, and if such remote-sensing space system is licensed by the Secretary before commencing operation.

(d) The provisions of this section do not apply to activities carried out under title V.

(e) Nothing in this title shall affect the authority of the Federal Communications Commission pursuant to the Communications Act of 1934, as amended (47 U.S.C. 151 et seq.).

TERMINATION

SEC. 406. If, five years after the expiration of the six-year period described in section 304(a)(2), no private sector party has been licensed and continued in operation under the provisions of this title, the authority of this title shall terminate.

TITLE V—RESEARCH AND DEVELOPMENT

CONTINUED FEDERAL RESEARCH AND DEVELOPMENT

SEC. 501. (a)(1) The Administrator of the National Aeronautics and Space Administration is directed to continue and to enhance such Administration's programs of remote-sensing research and development.

(2) The administrator is authorized and encouraged to—

(A) conduct experimental space remote-sensing programs (including applications demonstration programs and basic research at universities);

(B) develop remote-sensing technologies and techniques, including those needed for monitoring the Earth and its environment; and

(C) conduct such research and development in cooperation with other Federal agencies and with public and private research entities (including private industry, universities, State and local governments,

foreign governments, and international organizations) and to enter into arrangements (including joint ventures) which will foster such cooperation.

(b)(1) The Secretary is directed to conduct a continuing program of—

(A) research in applications of remote-sensing;

(B) monitoring of the Earth and its environment; and

(C) development of technology for such monitoring.

(2) Such program may include support of basic research at universities and demonstrations of applications.

(3) The Secretary is authorized and encouraged to conduct such research, monitoring, and development in cooperation with other Federal agencies and with public and private research entities (including private industry, universities, State and local governments, foreign governments, and international organizations) and to enter into arrangements (including joint ventures) which will foster such cooperation.

(c)(1) In order to enhance the United States ability to manage and utilize its renewable and nonrenewable resources, the Secretary of Agriculture and the Secretary of the Interior are authorized and encouraged to conduct programs of research and development in the applications of remote sensing using funds appropriated for such purposes.

(2) Such programs may include basic research at universities, demonstrations of applications, and cooperative activities involving other government agencies, private sector parties, and foreign and international organizations.

(d) Other Federal agencies are authorized and encouraged to conduct research and development on the use of remote sensing in fulfillment of their authorized missions, using funds appropriated for such purposes.

(e) The Secretary and the Administrator of the National Aeronautics and Space Administration shall, within one year after the date of enactment of this Act and biennially thereafter, jointly develop and transmit to the Congress a report which includes (1) a unified national plan for remote-sensing research and development applied to the Earth and its atmosphere; (2) a compilation of progress in the relevant ongoing research and development activities of the Federal agencies; and (3) an assessment of the state of our knowledge of the Earth and its atmosphere, the needs for additional research (including research related to operational Federal remote-sensing space programs), and opportunities available for further progress.

USE OF EXPERIMENTAL DATA

SEC. 502. Data gathered in Federal experimental remote-sensing space programs may be used in related research and development programs funded by the Federal Government (including applications programs) and cooperative research programs, but not commercial uses or in competition with private sector activities, except pursuant to section 503.

SALE OF EXPERIMENTAL DATA

SEC. 503. Data gathered in Federal experimental remote-sensing space programs may be sold en bloc through a competitive process (consistent with national security interest and international obligations of the United States and in accordance with section 607) to any United States entity which will market the data on nondiscriminatory basis.

TITLE VI—GENERAL PROVISIONS

NONDISCRIMINATORY DATA AVAILABILITY

SEC. 601. (a) Any unenhanced data generated by any system operator under the provisions of this Act shall be made available to all users on a nondiscriminatory basis in accordance with the requirements of this Act.

(b) Any system operator shall make publicly available the prices, policies procedures, and other terms and conditions (but, in accordance with section 104(3)(C), not necessarily the names of buyers or their purchases) upon which the operator will sell such data.

ARCHIVING OF DATA

SEC. 602. (a) It is in the public interest for the United States Government—

(1) to maintain an archive of land remote-sensing data for historical, scientific, and technical purposes, including long-term global environmental monitoring;

(2) to control the content and scope of the archive; and

(3) to assure the quality, integrity, and continuity of the archive.

(b) The Secretary shall provide for long-term storage, maintenance, and upgrading of a basic, global, land remote-sensing data set (hereinafter referred to as the "basic data set") and shall follow reasonable archival practices to assure proper storage and preservation of the basic data set and timely access for parties requesting data. The basic data set which the Secretary assembles in the Government archive shall remain distinct from any inventory of data which a system operator may maintain for sales and for other purposes.

(c) In determining the initial content of, or in upgrading, the basic data set, the Secretary shall—

(1) use as a baseline the data archived on the date of enactment of this Act;

(2) take into account future technical and scientific developments and needs;

(3) consult with and seek the advice of users and producers of remote-sensing data and data products;

(4) consider the need for data which may be duplicative in terms of geographical coverage but which differ in terms of season, spectral bands, resolution, or other relevant factors;

(5) include, as the Secretary considers appropriate, unenhanced data generated either by the Landsat system, pursuant to title III, or by licensees under title IV;

(6) include, as the Secretary considers appropriate, data collected by foreign ground stations or by foreign remote-sensing space systems; and

(7) ensure that the content of the archive is developed in accordance with section 607.

(d) Subject to the availability of appropriations, the Secretary shall request data needed for the basis data set and pay to the providing system operator reasonable costs for reproduction and transmission. A system operator shall promptly make requested data available in a form suitable for processing for archiving.

(e) Any system operator shall have the exclusive right to sell all data that the operator provides to the United States remote-sensing data archive for a period to be determined by the Secretary but not to exceed ten years from the date the data are sensed. In the case of data generated from the Landsat system prior to the implementation of the contract described in section 202(a), any contractor selected pursuant to section 202 shall have the exclusive right to market such data on behalf of the United States Government for the duration of such contract. A system operator may relinquish the exclusive right and consent to distribution from the archive before the period of exclusive right has expired by terminating the offer to sell particular data.

(f) After the expiration of such exclusive right to sell, or after relinquishment of such right, the data provided to the United States remote-sensing data archive shall be in the public domain and shall be made available to requesting parties by the Secretary at prices reflecting reasonable costs of reproduction and transmittal.

(g) In carrying out the functions of this section, the Secretary shall, to the extent practicable and as provided in advance by appropriation Acts, use existing Government facilities.

NONREPRODUCTION

SEC. 603. Unenhanced data distributed by any system operator under the provisions of this Act may be sold on the condition that such data will not be reproduced or disseminated by the purchaser.

REIMBURSEMENT FOR ASSISTANCE

SEC. 604. The Administrator of the National Aeronautics and Space Administration, the Secretary of Defense and the heads of other Federal agencies may provide assistance to system operators under the provisions of this Act. Substantial assistance shall be reimbursed by the operator, except as otherwise provided by law.

ACQUISITION OF EQUIPMENT

SEC. 605. The Secretary may, by means of a competitive process, allow a licensee under title IV or any other private party to buy, lease, or otherwise acquire the use of equipment from the Landsat system, when such equipment is no longer needed for the operation of such system or for the sale of data from such system. Officials of other Federal civilian agencies are authorized and encouraged to cooperate with the Secretary in carrying out the provisions of this section.

RADIO FREQUENCY ALLOCATION

SEC. 606. (a) Within 30 days after the date of enactment of this Act, the President (or the President's delegee, if any, with authority over the assignment of frequencies to radio stations or classes of radio stations operated by the United States) shall make available for non-governmental use spectrum presently allocated to government use, for use by United States Landsat and commercial remote-sensing space systems. The spectrum to be so made available shall conform to any applicable international radio or wire treaty or convention, or regulations annexed thereto. Within 90 days thereafter, the Federal Communications Commission shall utilize appropriate procedures to authorize the use of such spectrum for non-governmental use. Nothing in this section shall preclude the ability of the Commission to allocate additional spectrum to commercial land remote-sensing space satellite system use.

(b) To the extent required by the Communications Act of 1934, as amended (47 U.S.C. 151 et seq.), an application shall be filed with the Federal Communications Commission for any radio facilities involved with the commercial remote-sensing space system.

(c) It is the intent of Congress that the Federal Communications Commission complete the radio licensing process under the Communications Act of 1934, as amended (47 U.S.C.151 et seq.), upon the application of any private sector party or consortium

operator of any commercial land remote-sensing space system subject to this Act, within 120 days of the receipt of an application for such licensing. If final action has not occurred within 120 days of the receipt of such an application, the Federal Communications Commission shall inform the applicant of any pending issues and of actions required to resolve them.

(d) Authority shall not be required from the Federal Communications Commission for the development and construction of any United States land remote-sensing space system (or component thereof), other than radio transmitting facilities or components, while any licensing determination is being made.

(e) Frequency allocations made pursuant to this section by the Federal Communications Commission shall be consistent with international obligations and with the public interest.

CONSULTATION

SEC. 607. (a) The Secretary shall consult with the Secretary of Defense on all matters under this Act affecting national security. The Secretary of Defense shall be responsible for determining those conditions, consistent with this Act, necessary to meet national security concerns of the United States and for notifying the Secretary promptly of such conditions.

(b)(1) The Secretary shall consult with the Secretary of State on all matters under this Act affecting international obligations. The Secretary of State shall be responsible for determining those conditions, consistent with this Act, necessary to meet international obligations and policies of the United States and for notifying the Secretary promptly of such conditions.

(2) Appropriate Federal agencies are authorized and encouraged to provide remote-sensing data, technology, and training to developing nations as a component of programs of international aid.

(3) The Secretary of State shall promptly report to the Secretary any instances outside the United States of discriminatory distribution of data.

(c) If, as a result of technical modifications imposed on a system operator on the basis of national security concerns, the Secretary, in consultation with the Secretary of Defense or with other Federal agencies, determines that additional costs will be incurred by the system operator, or that past development costs (including the cost of capital) will not be recovered by the system operator, the Secretary may require the agency or agencies requesting such technical modifications to reimburse the system operator for such additional or development costs, but not for anticipated profits. Reimbursements may cover costs associated with required changes in system performance, but not costs ordinarily associated with doing business abroad.

AMENDMENT TO NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION, 1983

SEC. 608. Subsection (a) of section 201 of the National Aeronautics and Space Administration Authorization Act, 1983 (Public Law 97-324; 96 Stat. 1601) is amended to read as follows:

"(a) The Secretary of Commerce is authorized to plan and provide for the management and operation of civil remote-sensing space systems, which may include the Landsat 4 and 5 satellites and associated ground system equipment transferred from the National Aeronautics and Space Administration; to provide for user fees; and to plan for the transfer of the operation of civil remote-sensing space systems to the private sector when in the national interest."

AUTHORIZATION OF APPROPRIATIONS

SEC. 609. (a) There are authorized to be appropriated to the Secretary $75,000,000 for fiscal year 1985 for the purpose of carrying out the provisions of this Act. Such sums shall remain available until expended, but shall not become available until the time periods specified in sections 202(c) and 303(c) have expired.

(b) The authorization provided for under subsection (a) shall be in addition to moneys authorized pursuant to title II of the National Aeronautics and Space Administration Authorization Act, 1983.

TITLE VII—PROHIBITION OF COMMERCIALIZATION OF WEATHER SATELLITES

PROHIBITION

SEC. 701. Neither the President nor any other official of the Government shall make any effort to lease, sell, or transfer to the private sector, commercialize, or in any way dismantle any portion of the weather satellite systems operated by the Department of Commerce or any successor agency.

FUTURE CONSIDERATIONS

SEC. 702. Regardless of any change in circumstances subsequent to the enactment of this Act, even if such change makes it appear to be in the national interest to commercialize weather satellites, neither the President nor any official shall take any action prohibited by section 701 unless this title has first been repealed.

Mr. GORTON subsequently said: Mr. President, I ask my colleagues to support the House amendments, which represent a compromise between the Senate and the House versions of H.R. 5155, the Land Remote-Sensing Commercialization Act of 1984. The Senate and House bills were quite similar, and the amended bill is not substantially different than H.R. 5155 as passed unanimously by the Senate earlier this month.

This legislation authorizes the phased transfer of land remote-sensing capabilities from the Federal Government to the private sector. Further, the legislation provides a framework for a new remote-sensing industry, balancing national security concerns and international commitments with private, commercial interests.

Many issues and concerns have been discussed since last year when the President proposed to commercialize the Federal Government's Landsat system. Mr. President, I have been favorably impressed with the input this legislation has drawn from Federal agencies, data users, State and local governments, and private industry, all of which have a genuine interest in the commercialization process. Every effort has been made in developing this legislation to balance these interests, and I feel that all concerned parties are satisfied with the legislation.

I would like to describe for my colleagues the evolution of the legislation since I introduced it as S. 2292 on February 9, 1984.

On March 22, 1984, I chaired a hearing on Landsat commercialization before the Science, Technology, and Space Subcommittee of the Commerce Committee. The subcommittee received legislative recommendations from representatives of the Federal agencies, private industry, and data users. I am very grateful for their invaluable assistance in shaping the legislation to its present form.

After the hearing, I worked with my colleagues on the Commerce Committee to develop legislation acceptable to members of the committee and the entire Senate. I am particularly appreciative of the assistance of Senators HOLLINGS and PRESSLER, who each had introduced their own Landsat bills and contributed significantly to the development of this bill.

On May 8, 1984 the bill was unanimously approved by the Commerce Committee as an amendment in the nature of a substitute to its companion, H.R. 5155. The marked-up bill was passed unanimously by the Senate on June 8, 1984.

As I stated, the compromise bill we are considering today is not significantly different from H.R. 5155 as passed by the Senate and has been agreed to by pertinent Members from both Houses of Congress.

Most of the provisions contained in the compromise amendments are drawn from H.R. 5155 either as originally passed by the House or as amended by the Senate; the intent of such provisions is clearly explained in House Report 98-647 or Senate Report 98-458. However, in a number of instances, the language in the compromise amendments does differ from that contained in either the House- or Senate-passed bills. The following paragraphs described these cases where new language appears in the compromise amendment in order to explain congressional intent with respect to commercialization of civil remote-sensing space systems.

Section 104(4). "Unenhanced data" has been redefined to make it clear that such data need not include even the minimal processing described in the House-passed definition.

Section 201(a)(2). "Agreements" rather than "Memoranda of Understanding" is used, as in section 205, to describe arrangements for data exchange between the U.S. Government and foreign ground stations. "Agreements" is a broader term than "Memoranda of Understanding," but clearly includes the latter. The broader term is used in order to include all such relevant arrangements whether or not they are called Memoranda of Understanding procedures contained therein because of the unusual, even unique, nature of this phased transfer of an operation from Government to private sector responsibility. Thus, the Con-

gress intends these provisions to take precedence over and to supplement other general procurement law.

Section 202(a)(2). Language regarding the title II contract has been changed to indicate that under such contract, funds could flow either from the Government to the contractor—if the contractor operated the Landsat system in addition to marketing Landsat data—or from the contractor to the Government—if the contractor only marketed Landsat data.

Sections 202(c) and 303(c). Senate language on notification of the Congress regarding the title II and title III contracts has been altered slightly. The "report-and-wait" period has been shortened from 30 days of continuous session of Congress to 30 calendar days, in recognition of the delays which could be imposed on the commercialization process by a requirement to wait for 30 days of continuous session of Congress.

Section 301(b). The original House definition of "MSS data" has been replaced by a definition of "data continuity." Under the new definition, it is clear that the title III contractor is required to meet minimum performance standards, including provision of unenhanced data that meet "compatibility" and "functionally equivalent" standards. The contractor is not required to develop any particular type or level of technology.

Section 303(a)(2). This new subsection makes it clear that the title III contractor must acquire a license under title IV.

Section 303(d). If the Secretary receives no acceptable proposal under title III, it is the clear intent of the Congress that the Secretary should assure data continuity by developing a land remote-sensing space system to be procured and operated by the Federal Government.

Section 304(a)(6). Support of the title III contractor by the Federal Government has been limited to loans, loan guarantees, or direct subsidies by removal of language in the Senate amendment which referred to "other financial considerations."

Section 401(a)(2). This new subsection indicates that the licensing authority of the Secretary, in the case of multiple-use space systems, extends only to the remote-sensing portions of such systems.

Section 401(d) and 403(a). The Secretary may deny or condition a license on the basis of national security, international commitments and obligations, or noncompliance with nondiscriminatory access, but not in order to limit competition.

Section 402(b)(6). The original Senate amendment stipulated that the licensee obtain advance approval from the Secretary of any agreement with a foreign entity. In an attempt to balance considerations of commercial viability with the sensitivities involved in international remote sensing, this language has been changed to require only notification of the Secretary of such agreements.

Sections 402(b)(7) and 403(a)(2). The Secretary is authorized to inspect the licensee's equipment, facilities, or financial records. It is intended that the Secretary's authority to inspect financial records be adequate to ensure that the licensee is in compliance with provisions of the act relating to nondiscriminatory access to unenhanced data.

Section 403(a)(6). In light of the international sensitivities involved in remote sensing and the transportability of remote-sensing hardware, the Secretary is given authority for seizure of objects, records, or reports. However, the standard for seizure has been tightened from the House-passed "reasonable appearance" to the more stringent "probable cause."

Section 501(c). Section 501(b) of the Senate amendment has been divided into section 501(b) and section 501(c) to highlight the differing, but complementary, roles in research and development of the Secretary, which appear in section 501(b), and the Secretaries of Agriculture and Interior, which appear in section 501(c).

Sections 601(a) and 104(3). Section 601(a) has changed little during legislative action on H.R. 5155. It is noted here only to emphasize the clear congressional intent that any system operator make unenhanced data available on a nondiscriminatory basis. Thus, for example, a company could not be licensed to operate, and to retain exclusive use of data from, a private remote-sensing space system, even if the company financed, launched, and operated such system in its entirety.

Section 602(d). This section has been redrafted to clarify that the Secretary may not demand data from a system operator for archival purposes unless the Secretary has available appropriated funds to pay such system operator for the costs of reproducing and transmitting the data.

Section 603. A system operator may provide that data not be reproduced or disseminated by any purchaser. However, during the life of existing memoranda of understanding, this provision is not intended to abrogate the authority of foreign ground-station operators with respect to the dissemination of land remote-sensing data.

Section 606. The Senate amendment has been altered to clarify the authority of the Federal Communications Commission to license use of radio facilities by private remote-sensing space systems after the President has made available spectrum for use by such systems.

Section 607(c). This subsection has been redrafted to clarify that reimbursements may cover only costs associated with technical changes in system performance imposed in light of national security concerns. Reimbursement would not cover costs ordinarily associated with the economic and political risks of doing business abroad. Thus, a system operator would not be reimbursed if he were temporarily forbidden to conduct business in a given country. Reimbursements apply only to private sector parties who have obtained a license pursuant to title IV.

Section 609. An authorization of $75 million is provided for fiscal year 1985, which will be expended largely for development of the land remote/sensing system pursuant to title III. It is expected that the Secretary will submit a supplemental budget request to the Congress during fiscal year 1985 for the financial support authorized under title III, and the level of funding under this section would enable the Secretary to proceed without delay. Any authorization under this section remaining after fiscal year 1985 may be expended by the Secretary in future fiscal years.

Again, these provisions are ones that have not already been clarified by either the Senate or House report. None represent major changes from the Senate version of the bill.

In conclusion, I wish to update my colleagues on the other aspect of the Landsat commercialization process. The Department of Commerce has already solicited and received bids from private parties on development of a follow-on system to Landsat. A decision on the bids by the Secretary of Commerce was expected earlier this month. The Secretary announced today that a decision still has not been reached, and will not be until late this summer.

Mr. President, I hope that the Department will quickly, as the Congress has, so that a follow-on system to Landsat can be developed in time to preserve data continuity. With the enabling legislation in place, a timely decision by the Department, consistent with the legislation, will lead to successful commercialization of Landsat.

● Mr. HOLLINGS. Mr. President, I compliment the distinguished chairman of the Science, Technology, and Space Subcommittee [Mr. GORTON] for the excellent job that he has done with the Landsat legislation, H.R. 5155. I strongly support this measure.

The informal agreement reached by the House and Senate has produced a carefully crafted bill that balances the concerns of users and operators, safeguards national security and foreign policy interests, promotes commercialization, and sustains important Federal research and development activities in land remote sensing. Enactment of

this bill should facilitate the commercialization of land remote sensing.

I do have a concern with the commercialization process. Frankly, I am worried when I look at the trade press and see where a Federal subsidy of $1 billion may be required over the next 6 years to commercialize the Landsat system. This is quite a large amount of money and far exceeds any level of funding that I had anticipated. I hope that the trade press accounts are exaggerated. However, in order to ensure that the commercialization process is carried out in compliance with the legislation, I have asked the Comptroller General of the United States to do an immediate evaluation of the contractual proposal and to assess its compliance with the policies established in this legislation, its impact on the Federal budget, and its impact on the future development of land remote sensing in the United States.

Mr. President, I support H.R. 5155 and recommend that this bill be passed and sent to the President for signature.●

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

The PRESIDING OFFICER. Is there objection? Without objection, the motion is agreed to.

ADOLESCENT FAMILY LIFE DEMONSTRATION PROGRAM EXTENSION

Mr. DOLE. Mr. President, I ask the Chair lay before the Senate Calendar No. 940, S. 2616.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2616) to extend the Adolescent Family Life Demonstration Program.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Labor and Human Resources with amendments, as follows:

On page 1, line 6, after "year" insert "ending September 30,".

On page 2, lines 1 and 2, after "year" insert "ending September 30,".

On page 2, after line 2, insert:

(b) Section 2001(a)(5) of such Act is amended to read as follows:

"(5) pregnancy and childbirth among unmarried adolescents, particularly young adolescents, often results in severe adverse health, social, and economic consequences, including: a higher percentage of pregnancy and childbirth complications; a higher incidence of low birth weight babies; a higher frequency of developmental disabilities; higher infant mortality and morbidity; a greater likelihood that an adolescent marriage will end in divorce; a decreased likelihood of completing schooling; and higher risks of unemployment and welfare dependency; and therefore, education, training, and job search services are important for adolescent parents;".

(c) Section 2001(b)(3) of such Act is amended by inserting "both" before "for pregnant adolescents" in the matter preceding subparagraph (A).

(d) Section 2002(a)(4)(H) of such Act is amended by striking out "and referral to such services".

So as to make the bill read:

S. 2616

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That *(a)* section 2010(a) of the Public Health Service Act is amended by striking out "and" after "1983," and by inserting before the period a comma and "$30,000,000 for the fiscal year *ending September 30,* 1985, $30,000,000 for the fiscal year ending September 30, 1986, and $30,000,000 for the fiscal year ending September 30, 1987".

(b) Section 2001(a)(5) of such Act is amended to read as follows:

"(5) pregnancy and childbirth among unmarried adolescents, particularly young adolescents, often results in severe adverse health, social, and economic consequences, including: a higher percentage of pregnancy and childbirth complications; a higher incidence of low birth weight babies; a higher frequency of developmental disabilities; higher infant mortality and morbidity; a greater likelihood that an adolescent marriage will end in divorce; a decreased likelihood of completing schooling; and higher risk of unemployment and welfare dependency; and therefore, education, training, and job search services are important for adolescent parents;".

(c) Section 2001(b)(3) olf such Act is amended by inserting "both" before "for pregnant adolescents" in the matter preceding subparagraph (A).

(d) Section 2002(a)(4)(H) of such Act is amended by striking out "and referral to such services".

Mr. DOLE. Mr. President, I ask unanimous consent that the committee amendments be agreed to.

Without objection, it is so ordered.

AMENDMENT NO. 3380

(Purpose: To make a technical amendment)

Mr. DOLE. Mr. President, I send a technical amendment to the desk on behalf of Senator DENTON and ask for its immediate consideration.

Mr. PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. DENTON, proposes an amendment numbered 3380:

At the end of the bill, add the following:

(e) Section 2008(g) of such Act is repealed.

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

The amendment (No. 3380) was agreed to.

Mr. HATCH. Mr. President, I encourage my colleagues to favorably consider S. 2616, the Adolescent Family Life Act. This reauthorization of the Adolescent Family Life Program is a credit to Senator DENTON and all other Members ot the Senate Labor and Human Resources Committee who are committed to looking at approaches solving the problems of adolescent pregnancy. It is through this legislation that we will continue our national effort to address the critical issues of adolescence and sexuality.

This legislation was authored and enacted in 1981 with a bipartisan support. Since 1981, 59 demonstration projects and 16 research initiatives have been undertaken to prevent teenage pregnancies and help teenagers who are faced with difficult decisions regarding the challenges of parenthood, or the option and questions surrounding the alternative of adoption. For the most part, unwed adolescent mothers can expect to face a future of unemployment, welfare dependency, and divorce. This is the tragedy. When an adolescent should be full of hope about the future, she is faced with these dim prospects.

Let us focus renewed effort to support the Adolescent Family Life Act as a programmatic prolog to what we must yet do to solve these serious problems. The Adolescent Family Life Act offers an alternative which encourages family participation in the delivery of services to pregnant teenagers. It also provides counseling to teenagers and their families. Several demonstration projects have been funded to test the viability of this program, and verifiable data indicate that many individuals can be more effectively served with this approach. Parents, I feel, are usually the best source of help, strength, and counsel that young people receive. Government should seek to strengthen the bonds between parent and child. The Adolescent Family Life Act has moved us out of the arena of debate into the arena of research to test policy alternatives. This is why the continuation of the Adolescent Family Life Act is vital. I hope that the Senate will favorably consider the positive potential of the Adolescent Family Life Act's traditional approach to the problems of escalating teenage pregnancies, and I urge the approval of S. 2616 as amended.

Mr. GRASSLEY. Mr. President, I am proud to join my colleagues by supporting this bi-partisan legislation reauthorizing the Adolescent Family Life Act for an additional 3 years. I commend the leadership and initiative Senator DENTON has faithfully demonstrated as chairman of the Family and Human Services Subcommittee addressing areas that few have the courage to address publicly. The area of adolescent sexuality and pregnancy is such an issue, with strong views held on both sides of the fence. This program promotes pregnancy prevention and abortion alternatives by providing support services, education and research. Additionally, I support policies and programs that foster and encourage family and parental participation

rather than usurp traditional responsibilities. The Adolescent Family Life Act does just this. The two hearings held by the Family and Human Services Subcommittee demonstrated the effectiveness of this program and spawned further interest in the need for such a program to more efficiently deal with the rise of teen pregnancies. I join my other colleagues in supporting this legislation.

Mr. DENTON. Mr. President, I am pleased that my bill to reauthorize the Adolescent Family Life Program, S. 2616, has been placed on the unanimous consent calendar for passage. The bill, which passed the Committee on Labor and Human Resources by a vote of 18 to 0, would reauthorize the current law for 3 years at the current authorization level of $30 million for 1985, 1986, and 1987.

I appreciate the support this law has received from the members of the Labor and Human Resources Committee. The Adolescent Family Life Act not only has continued to demonstrate that educational, health, and social services are important for pregnant adolescents and adolescent parents, but also has begun to demonstrate new approaches to involving families in dealing with their teenaged children in the areas of sex education and the problems associated with premarital sexual relations. This prevention aspect of the Adolescent Family Life Act has been an exciting development for the entire field of agencies and organizations concerned about alleviating the negative consequences of adolescent pregnancy both for families and our society as a whole.

Current law requires applicants to involve religious and charitable organizations, voluntary associations, and other groups in the private sector in the development of projects and in the delivery of services.

There has been some discussion as to whether or not the involvement of religious organizations in the provision of adolescent family life services violates the establishment and free enterprise clauses of the first amendment. Upon careful review, however, the Committee on Labor and Human Resources retained its firm commitment to the reliance on the private voluntary sector, which includes all traditional nonsectarian and sectarian voluntary and service organizations, to provide services under this act.

As the committee stated in its original report in 1981, it does not believe that the involvement of religious organizations in Adolescent Family Life Act programs is contrary to the establishment clause of the first amendment. Such organizations, like the other community organizations, enumerated in the relevant section of the act, can play an appropriate role in these programs. Charitable organizations with religious affiliations historically have provided social services with the support of their communities and without controversy. The committee noted, of course, that the use of Adolescent Family Life Act funds to promote religion, or to teach the religious doctrines of a particular sect, is contrary to the intent of this legislation.

The Adolescent Family Life Act is currently funding 59 model demonstration projects. Sixteen of these projects offer prevention services to teenagers and their parents, 30 offer care services to pregnant adolescents and teenage parents, including services for the babies, the teenaged fathers, and other family members; 13 projects offer a combination of care and prevention services.

The major recurring theme in testimony delivered before the subcommitttee in hearings held on the reauthorization was the need to allow more time for the demonstration projects to continue without changes in their goals or operations so that they can be fairly evaluated for their effectiveness. The projects are only 1 or 2 years old, and the law allows the demonstrations to be funded for up to 5 years will declining Federal funds. Preliminary results show that the demonstrations are having a positive impact on the lives of many young people and their parents. With the extension of this law for 3 more years, the Congress will have evaluation reports and valid results from which to judge how well these new approaches have worked and to what extent they have become an integral part of the local communities' array of services to adolescents.

Another feature of the Adolescent Family Life Act is the establishment of a research program. Currently 16 research projects in the areas of premarital adolescent sexual relations, adoption, and services to pregnant adolescents and teenaged parents have been funded. This research will be helpful in bringing current data and experience to bear in establishing even more effective programs and policies concerning adolescent pregnancy.

The bill, as reported by the Labor and Human Resources Committee, contains one amendment which has three features. First, the amendment adds a sentence to the findings section stating that education, training, and job search services are important for adolescent parents. Second, the amendment changes the purposes section of the act to clarify that care services are for both pregnant adolescents and adolescent parents. Third, the amendment emphasizes the requirement that care projects provide education and vocational training by deleting the reference to referral to such services.

I supported the amendment because it will improve the quality of education and vocational training services already established under the act, and will put these services on par with other necessary services described in the statute.

Under this provision, projects will be encouraged to provide education and vocational training services rather than refer clients for such services. The amendment will have the practical effect of fully integrating education and vocational training activities with health and other services provided by the Adolescent Family Life Act. The Urban Institute study of comprehensive care projects shows that integrated health services contribute to the high rate of healthy mothers and babies who participate in the projects before, during, and after delivery. The rates of educational and vocational attainment among clients in the study, however, were not as high. The data suggests that with a little more emphasis on education and vocational training, we may be able to ensure a higher degree of achievement among adolescent mothers and fathers.

The benefits of educational and vocational attainment to young parents and to society are enormous. These services will help to meet the long-term needs of teen parents by helping them to break the cycle of poverty and repeat pregnancy that too often accompanies adolescent parenthood. We now know that over half of all AFDC beneficiaries became recipients as adolescent parents, and that a lack of education and marketable skills are the foremost causes of long-term welfare dependency. I am confident that the amendment will strengthen the ongoing efforts of adolescent family life projects to help adolescent, including adolescent fathers, improve their educational and job status.

In addition, I have offered a technical amendment to the bill that would repeal the exemption to the Paperwork Reduction Act of 1980 contained in the adolescent family life statute. This provision exempted the Secretary from the provisions of the Paperwork Reduction Act of 1980 because of concerns about possible delays that Office of Management and Budget clearance procedures might cause in needed research projects. These concerns proved unfounded. Despite the exemption provided by the law, the Secretary agreed to follow Office of Management and Budget clearance procedures for information collection requests and was able to do so without undue delays. The Paperwork Reduction Act provides that such requests be reviewed by the Office of Management and Budget to ensure that the information is needed and useful and is not available from another Federal agency. This amendment is not controversial, and will serve to satisfy the concerns of some Senators who were active in the passage of the original Paperwork Reduction Act and who

would like to see the act applied across the board to all information collection requests.

I am convinced that the Adolescent Family Life Act makes sense from a national perspective about addressing the serious problems associated with teenage sex, adolescent pregnancy, and abortions performed on teenaged girls. I know that many of my colleagues have maintained strong support for this law and I thank them for it. I urge my colleagues to accept the bill without further delay.

● Mr. KENNEDY. I am pleased to join with my colleagues in introducing S. 2616, the Adolescent Family Life Act. Its care services are very similar to those provided under legislation I sponsored in 1978, offering comprehensive health and social services to pregnant adolescents. In 1981, I was involved in negotiations that produced the compromise which resulted in this program. S. 2616 extends the authorization of appropriations through fiscal year 1987, enabling these valuable service and demonstration projects to continue and undergo sufficient evaluation.

The high rate of pregnancy among unmarried teenagers and the negative consequences of those pregnancies remain as major problems in our society. The Guttmacher Institute estimated that 1.1 million teenagers will become pregnant each year. In other words, 1 teenage girl in 10 is likely to become pregnant in her teens.

Teenage parenthood is part of the cumulative disadvantages associated with low socioeconomic status. It occurs in greater proportions of lower than higher income populations and creates additional barriers to occupational and educational achievement. Children born to teenage parents have increased health risks, partly associated with the lack of adequate prenatal care and nutrition among low income groups where teenage pregnancy is more prevalent.

While the problems associated with teenage pregnancy partially result from the lack of social and economic resources, programs designed to help prevent teenage pregnancy are an important component of the necessary support. Demonstration projects may suggest innovative approaches and serve as natural experiments for testing the effectiveness of various preventive strategies.

Thus, I am pleased to cosponsor S. 2616, extending title XX for 3 years in providing services for pregnant adolescents and adolescents at risk of pregnancy.●

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

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

S. 2616

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (*a*) section 2010(a) of the Public Health Service Act is amended by striking out "and" after "1983," and by inserting before the period a comma and "$30,000,000 for the fiscal year *ending September 30,* 1985, $30,000,000 for the fiscal year *ending September 30,* 1986, and $30,000,000 for the fiscal year *ending September 30,* 1987".

(b) Section 2001(a)(5) of such Act is amended to read as follows:

"(5) pregnancy and childbirth among unmarried adolescents, particularly young adolescents, often results in severe adverse health, social, and economic consequences, including: a higher percentage of pregnancy and childbirth complications; a higher incidence of low birth weight babies; a higher frequency of developmental disabilities; higher infant mortality and morbidity; a greater likelihood that an adolescent marriage will end in divorce; a decreased likelihood of completing schooling; and higher risks of unemployment and welfare dependency; and therefore, education, training, and job search services are important for adolescent parents;".

(c) Section 2001(b)(3) of such Act is amended by inserting "both" before "for pregnant adolescents" in the matter preceding subparagraph (A).

(d) Section 2002(a)(4)(H) of such Act is amended by striking out "and referral to such services".

(e) Section 2008(g) of such Act is repealed.

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

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

The motion to lay on the table was agreed to.

INSIDER TRADING SANCTIONS ACT OF 1984

Mr. DOLE. Mr. President, I now ask the Chair to lay before the Senate Calendar Order No. 1021, S. 910.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 910) to amend the Securities Exchange Act of 1934 to increase the sanctions against trading securities while in possession of material nonpublic information.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Banking, Housing, and Urban Affairs with amendments, as follows:

On page 1, line 3, strike "That this", and insert "Section 1. This";

On page 1, line 4, strike "1983", and insert "1984";

On page 2, line 2, strike "numbering existing paragraph", and insert "redesignating subsection";

On page 2, line 3, strike "paragraph '(d)(1)' ", and insert "subsection (d)(1)"

On page 2, line 4, strike "of existing paragraph (d)", and insert "thereof";

On page 2, line 5, after "following", insert "new";

On page 2, line 6, after "2)", insert "(A)";

On page 2, line 24, strike "may", and insert "shall";

On page 2, line 25, strike "may", and insert "shall";

On page 3, after line 8, insert the following:

"(B) No person shall be subject to a sanction under subparagraph (A) of this paragraph solely because that person aided and abetted a transaction covered by such subparagraph in a manner other than by communicating material nonpublic information. Section 20 of this title shall not apply to an action brought under this paragraph. No person shall be liable under this paragraph solely by reason of employing another person who is liable under this paragraph.

"(C) For purposes of this paragraph 'profit gained' or 'loss avoided' is the difference between the purchase or sale price of the security and the value of that security as measured by the trading price of the security a reasonable period after public dissemination of the nonpublic information.

"(D) No action may be brought under this paragraph more than five years after the date of the purchase or sale. This paragraph shall not be construed to bar or limit in any manner any action by the Commission or the Attorney General under any other provision of this title, nor shall it bar or limit in any manner any action to recover penalties, or to seek any other order regarding penalties, imposed in an action commenced within five years of such transaction.

"(E) The sanction under subparagraph (A) shall not apply to the purchase or sale of a security by a person other than a natural person if such person shows that—

"(i) the individual making the investment decision on behalf of such person to purchase or sell any security or to cause any security to be purchased or sold by or on behalf of others did not know the material nonpublic information; and

"(ii) such person had implemented one or a combination of policies and procedures, reasonable under the circumstances, taking into consideration the nature of the person's business, to ensure that the individual making the investment decision would not violate this paragraph, which policies and procedures may include, but are not limited to, (I) those which restrict any purchase or sale, or the causing of any purchase or sale, of any security, or (II) those which prevent such individual from knowing such information.".

SEC. 3. Section 32 of the Securities Exchange Act of 1934 is amended by striking "$10,000" from subsection (a) and inserting in lieu thereof "$100,000".

SEC. 4. Section 15(c)(4) of the Securities Exchange Act of 1934 is amended to read as follows:

"(4) If the Commission finds, after notice and opportunity for a hearing, that any person subject to the provisions of section 12, 13, 14, or subsection (d) of section 15 of this title or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply, or take steps to effect compliance, with such

provision of such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.".

SEC. 5. Section 20 of the Securities Exchange Act of 1934 is amended by adding at the end thereof the following:

"(d) Wherever communicating, or purchasing or selling a security while in possession of, material nonpublic information would violate, or result in liability to any purchaser or seller of the security under any provision of this title, or any rule or regulation thereunder, such conduct in connection with a purchase or sale of a put, call, straddle, option, or privilege with respect to such security or with respect to a group or index of securities including such security, shall also violate and result in comparable liability to any purchaser or seller of that security under such provision, rule, or regulation.".

SEC. 6. (a) Section 3(a)(39) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39)) is amended—

(1) by inserting before the semicolon at the end of subparagraph (A) the following: ", contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7), or futures association registered under section 17 of such Act (7 U.S.C. 21), or has been and is denied trading privileges on any such contract market";

(2) by inserting before the semicolon at the end of subparagraph (B) the following: ", or is subject to an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act (7 U.S.C. 1 et seq.)"; and

(3) by inserting after "municipal securities dealer," in subparagraph (C) the following: "or while associated with an entity or person required to be registered under the Commodity Exchange Act,".

(b) Section 15(b)(4) of such Act (15 U.S.C. 78o(b)(4)) is amended—

(1) by striking out "or fiduciary" in subparagraph (B)(ii) and inserting in lieu thereof "fiduciary, or any entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.)";

(2) in subparagraph (C)—

(A) by inserting "entity or person required to be registered under the Commodity Exchange Act," before "or municipal securities dealer"; and

(B) by inserting "entity or person required to be registered under such Act," before "or insurance company"; and

(3) by inserting "the Commodity Exchange Act," after "Investment Company Act of 1940," each place it appears in subparagraphs (D) and (E).

SEC. 7. The amendments made by this Act shall become effective immediately upon enactment of this Act.

On page 7, line 15, strike "4.", and insert "7."

So as to make the bill read:

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

SECTION 1. This Act may be cited as "The Insider Trading Sanctions Act of 1984".

SEC. 2. Section 21 of the Securities Exchange Act of 1934 is amended by redesignating subsection (d) as subsection (d)(1), and adding at the end thereof the following new paragraph:

"(2)(A) Whenever it shall appear to the Commission that any person has violated any provision of this title or the rules or regulations thereunder by purchasing or selling a security while in possession of material nonpublic information in a transaction (i) on or through the facilities of a national securities exchange or from or through a broker or dealer, and (ii) which is not part of a public offering by an issuer of securities other than standardized options, the Commission may being an action in a United States district court to seek, and the court shall have jurisdiction to impose, a civil penalty to be paid by such person, or any person aiding and abetting the violation of such person. The amount of such penalty shall be determined by the court in light of the facts and circumstances, but shall not exceed three times the profit gained or loss avoided as a result of such unlawful purchase or sale, and shall be payable into the Treasury of the United States. If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court. The actions authorized by this paragraph may be brought in addition to any other actions that the Commission or the Attorney General are entitled to bring. For purposes of section 27 of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this title. The Commission, by rule or regulation, may exempt from the provisions of this paragraph any class of persons or transactions.

"(B) No person shall be subject to a sanction under subparagraph (A) of this paragraph solely because that person aided and abetted a transaction covered by such subparagraph in a manner other than by communicating material nonpublic information. Section 20 of this title shall not apply to an action brought under this paragraph. No person shall be liable under this paragraph solely by reason of employing another person who is liable under this paragraph.

"(C) For purposes of this paragraph 'profit gained' or 'loss avoided' is the difference between the purchase or sale price of the security and the value of that security as measured by the trading price of the security a reasonable period after public dissemination of the nonpublic information.

"(D) No action may be brought under this paragraph more than five years after the date of the purchase or sale. This paragraph shall not be construed to bar or limit in any manner any action by the Commission or the Attorney General under any other provision of this title, nor shall it bar or limit in any manner any action to recover penalties, or to seek any other order regarding penalties, imposed in an action commenced within five years of such transaction.

"(E) The sanction under subparagraph (A) shall not apply to the purchase or sale of a security by a person other than a natural person if such person shows that—

"(i) the individual making the investment decision on behalf of such person to purchase or sell any security or to cause any security to be purchased or sold by or on behalf of others did not know the material nonpublic information; and

"(ii) such person had implemented one or a combination of policies and procedures, reasonable under the circumstances, taking into consideration the nature of the person's business, to ensure that the individual making the investment decision would not violate this paragraph, which policies and procedures may include, but are not limited to, (I) those which restrict any purchase or sale, or the causing of any purchase or sale, of any security, or (II) those which prevent such individual from knowing such information.".

SEC. 3. Section 32 of the Securities Exchange Act of 1934 is amended by striking "$10,000" from subsection (a) and inserting in lieu thereof "$100,000".

SEC. 4. Section 15(c)(4) of the Securities Exchange Act of 1934 is amended to read as follows:

"(4) If the Commission finds, after notice and opportunity for a hearing, that any person subject to the provisions of section 12, 13, 14, or subsection (d) of section 15 of this title or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply, or take steps to effect compliance, with such provision of such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.".

SEC. 5. Section 20 of the Securities Exchange Act of 1934 is amended by adding at the end thereof the following:

"(d) Wherever communicating, or purchasing or selling a security while in possession of, material nonpublic information would violate, or result in liability to any purchaser or seller of the security under any provision of this title, or any rule or regulation thereunder, such conduct in connection with a purchase or sale of a put, call, straddle, option, or privilege with respect to such security or with respect to a group or index of securities including such security, shall also violate and result in comparable liability to any purchaser or seller of that security under such provision, rule, or regulation.".

SEC. 6. (a) Section 3(a)(39) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39) is amended—

(1) by inserting before the semicolon at the end of subparagraph (A) the following: ", contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7), or futures association registered under section 17 of such Act (7 U.S.C. 21), or has been and is denied trading privileges on any such contract market";

(2) by inserting before the semicolon at the end of subparagraph (B) the following ", or is subject to an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act (7 U.S.C. 1 et seq.)", and

(3) by inserting after "municipal securities dealer," in subparagraph (C) the following: "or while associated with an entity or person required to be registered under the Commodity Exchange Act,".

(b) Section 15(b)(4) of such Act (15 U.S.C. 79o(b)(4)) is amended—

(1) by striking out "or fiduciary" in subparagraph (B)(ii) and inserting in lieu thereof "fiduciary, or any entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.)";

(2) in subparagraph (C)—

(A) by inserting "entity or person required to be registered under the Commodity Exchange Act," before "or municipal securities dealer"; and

(B) by inserting "entity or person required to be registered under such Act," before "or insurance company"; and

(3) by inserting "the Commodity Exchange Act," after "Investment Company Act of 1940," each place it appears in subparagraphs (D) and (E).

SEC. 7. The amendments made by this Act shall become effective immediately upon enactment of this Act.

Mr. DOLE. Mr. President, I ask unanimous consent the committee amendments be agreed to.

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

AMENDMENT NO. 3381

Mr. DOLE. Mr. President, I send to the desk a technical amendment on behalf of Senator D'AMATO and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE), on behalf of Mr. D'AMATO, proposes an amendment numbered 3381.

Mr. DOLE. 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:

Beginning with page 3, line 19, strike out all through page 4, line 2.

On page 3, line 1, after "Section 20" insert "(a)".

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York. Is there further debate?

The amendment (No. 3381) was agreed to.

Mr. D'AMATO. Mr. President, I wish to express my support for S. 910, The Insider Trading Sanctions Act of 1984. S. 910 is a bill which would significantly increase the penalty for those who engage in insider trading. Insider trading is defined loosely as "trading while in possession of material nonpublic information." Some commentators have called insider trading a victimless crime; however, I strongly disagree. The investor who trades with a person possessing nonpublic inside information is clearly at a severe informational disadvantage. In addition, the integrity of the market is violated, which results in a loss of investor confidence. John Fedders, the Director of the Securities and Exchange Commission's Division of Enforcement, has stated publicly that he believes that those who engage in insider trading are thieves, I concur wholeheartedly with Mr. Fedders.

During the subcommittee's deliberation on S. 910, consideration was given to additional amendments to strengthen or clarify the prohibitions on insider trading. The subcommittee devoted particular attention to the possibility of a statutory definition of insider trading. In my view, a statutory definition ideally could provide greater clarity and simplicity of analysis in this area without inhibiting the lawful business activities of investors and market professionals. I also believe that a statutory definition could reduce the unnecessary complexity of proof in insider trading case law while preserving the Commission's flexibility to reach new and unforeseen abuses. At the same time I recognize the difficulties attendant to the codification of a definition applicable to the diverse circumstances governed by existing case low, including trading and tipping involving inside and market information, the liability of traders, tippers and tippees, and the respective rights of other market participants, corporate shareholders, and sources of misappropriated information.

Several witnesses testified in support of a definition of insider trading, and the subcommittee reviewed several proposed definitions. The Commission testified, however, that it was not dissatisfied with existing case law governing insider trading. The Commission expressed concern that a statutory definition could introduce new terms and concepts that would generate a significant amount of litigation and that a definition could limit the Commission's flexibility to deal with future abuses.

In view of the complexity of the undertaking, and the necessity for prompt action on the bill, the committee determined not to include a definition of insider trading in this legislation.

It is evident that current law lacks any real deterrence to engaging in insider trading. In most situations, the inside trader disgorges his ill-gotten gain and signs a consent decree mandating that he obey the Federal securities laws in the future. There is little disincentive to engage in insider trading since the punishment, if caught, is merely being restored to the monetary position from which you began. S. 910 would amend the Securities and Exchange Act of 1934 to provide strong deterrence to the crime of insider trading.

The Insider Trading Sanctions Act authorizes the Commission to bring an action in Federal district court to seek a civil penalty against any person who violates the Federal securities laws by purchasing or selling a security while in possession of material nonpublic information. The Commission may also bring a penalty action against any person who aids and abets another person's violation by communicating material nonpublic information. The Commission may in its discretion, seek a penalty from any or all persons covered by this provision.

Civil money penalties are payable to the U.S. Treasury. The amount of a penalty would be in the court's discretion, but would be limited to a maximum of three times the profit gained or loss avoided as a result of the insider trading violation.

The new remedy could be sought instead of, or in addition to, any other remedies now available to the Commission. Thus, in an appropriate case, the Commission would have the discretion to seek, among other things: First, an order enjoining the violator from breaking the law again; second, disgorgement of illicit profits; and third, a civil penalty of up to three times the profit gained or loss avoided.

The legislation is intended to limit liability for the civil penalty to those most directly culpable in insider trading violations. The penalty would be imposed only on those who violate the Federal securities laws by trading while in possession of material nonpublic information, and or by tipping or communicating material nonpublic information to others who trade. In addition, S. 910 would increase the fine for criminal violations of the Federal securities laws from $10,000 to $100,000.

S. 910 contains a provision intended to clarify one aspect of the prohibition of insider trading under the Securities Exchange Act. This provision would make clear that it is not possible to insulate oneself from the prohibition of insider trading by restricting activity to securities that are derivative of the securities to which the material nonpublic information relates. Thus, the provision clarifies that tipping or trading in respect to derivative securities is unlawful to the same extent as tipping or trading in respect to the underlying security. For example, if, in a given set of circumstances, a corporate officer would violate the antifraud provisions by purchasing any securities issued by his employer, subjecting himself to liability to selling shareholders, then he would violate the antifraud provisions to the same extent by purchasing options with respect to these securities, and subject himself to comparable liability to selling option holders and other similarly situated persons in the derivative market. He would also be subject to any other comparable relief, including a Commission injunctive action or, in appropriate circumstances, an action for the civil penalty. The misuse of material nonpublic information in the derivative markets threatens the integrity, of, and public confidence in, the Nation's securities markets in the same manner as any other abuse of confidential information.

The bill would amend section 15(c)(4) of the Securities Exchange Act to authorize the Commission to institute administrative proceedings based on violations of section 14 of the Securities Exchange Act.

Section 15(c)(4) currently authorizes the Commission to institute administrative proceedings based on the fail-

ure to comply in any material respect with sections 12, 13, and 15(d) of the Securities Exchange Act by any person subject to those provisions. Under this provision, the Commission's authority includes the ability to compel compliance with the issuer registration, and beneficial ownership and periodic reporting requirements. The bill would provide the Commission with needed flexibility to address proxy and tender offer violations in situations in which the imposition of an unjunction is not an appropriate form of relief, the costs attendant to civil litigation seen unwarranted, or civil litigation otherwise seems inappropriate.

This amendment would also remove an anomaly in existing law that can lead to uneven enforcement. This anomaly is particularly acute in situations involving violations of the Williams Act, which added sections 13(d) and 14(d) to the Securities Exchange Act. Section 13(d) generally requires disclosure of certain information by persons who acquire more than 5 percent of the stock of a reporting company, while section 14(d) generally requires disclosures of similar information relating to a tender offer. Currently, the Commission may take action under section 15(c)(4) with respect to deficiencies in a bidder's initial filings under section 13(d), but cannot proceed with respect to identical deficiencies in subsequent filings made pursuant to section 14(d). Similarly, the Commission cannot act under this section with respect to any deficiencies in the subject company's filings in response to the tender offer, because these filings would be made pursuant to section 14(d).

The bill would also amend section 15(c)(4) to clarify the Commission's authority to proceed administratively against officers or directors or other individuals who cause a failure to comply with sections 12, 13, 14, or 15(d). It would eliminate unnecessary burdens, costs, and possible inequities, resulting from the potential bifurcation of proceedings in cases where a section 15(c)(4) proceeding is the appropriate forum for dealing with violations on the part of an issuer, and it is also appropriate to take enforcement action against the individuals responsible for the violation. The Commission's experience demonstrates that individual corporate officials or others may bear responsibility for untimely or inaccurate filings, or other violations, by an issuer. This amendment is consistent with the Commission's current practice of proceeding against such persons.

Finally, S. 910 would amend the definition in section 3(a)(39) of the Securities Exchange Act, specifying the conduct that would subject a person to a statutory disqualification, to include misconduct relating to the commodities markets, Currently, market professionals who have violated the Federal securities laws may be barred from performing similar functions in the commodities markets. In extending comparable protection to the securities markets, the bill would rectify this unintended anomaly. Among other things, this change would make it possible to bar persons who have violated the Commodity Exchange Act from acting as broker-dealers. It would also restrict the ability of such persons to participate in certain public offerings. The bill would also amend section 15(b)(4) of the Securities Exchange Act to authorize the Commission to bring administrative proceedings to sanction or restrict the activities of broker-dealers and associated persons, based on misconduct relating to the commodities markets.

S. 910 as reported by the committee, has been amended on the floor to eliminate a statutory exemption from secondary liability for multiservice broker-dealers. It is my belief that there should be certain limits on the liability of a multiservice firm, such as a broker-dealer or insurance company, where one employee possesses material nonpublic information, but another employee, not knowing of the information, trades for the firm's account before the information is made public. By deleting the statutory exemption it is my intention to provide the Commission flexibility in order that they may deal equitably with this situation on an administrative basis.

The committee believes that persons under a duty to make public disclosure or abstain from tipping or trading are not free to circumvent such obligations by trading, or tipping others reasonably likely to trade, in the derivative market. The misuse of material nonpublic information in the derivative markets threatens the integrity of, and public confidence in, the Nation's securities markets in the same manner as any other abuse of confidential information.

Mr. President, I ask unanimous consent that a section-by-section analysis be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill states the title of the bill.

Section 2 of the bill amends Section 21(d) of the Exchange Act by adding a new subparagraph (d)(2)(A) to give the Commission authority to seek from a U.S. district court a civil penalty of up to three times the amount of profit gained or loss avoided by a person who violates or aids and abets a violation of, the federal securities laws by purchasing or selling a security while in possession of material nonpublic information. The new sanction is available with respect to any transaction on or through the facilities of a national securities exchange or from or through a broker or dealer, and which is not part of a public offering by an issuer of securities other than standardized options.

Within the maximum amount, the court has discretion to determine the amount of the penalty in light of the facts and circumstances. The penalty shall be paid to the U.S. Treasury. If the penalty is not paid within the time ordered by the court, the Commission shall refer the matter to the Attorney General who may bring an action in a U.S. district court to recover the penalty.

The actions authorized by this subparagraph may be brought in addition to any other action brought by the Commission or the Attorney General. For purposes of venue, service of process and other matters under Section 27 of the Securities Exchange Act, actions under this paragraph shall be considered actions to enforce a liability or a duty created by this title. The Commission, by rule or regulation, may exempt from the provisions of this paragraph any class of persons or transactions.

New subparagraph (d)(2)(B) is added to limit the new civil penalty sanction, but not to limit any existing remedies, with respect to certain classes of persons who are not direct violators of the law. No person shall be subject to the new sanction solely because that person aided and abetted a transaction covered by new subparagraph (A) in a manner other than by communicating material nonpublic information. Section 20(a) of the Securities Exchange Act, which holds liable persons who control persons who violate the Securities Exchange Act, will not apply for purposes of the new sanction provided under subparagraph (A). No person shall be subject to the new sanction solely by reason of employing another person who is liable under this paragraph.

New subparagraph (d)(2)(C) defines "profit gained or loss avoided" to mean the difference between the purchase or sale price of a security and the value of that security as measured by trading price a reasonable period after public dissemination of the nonpublic information.

New subparagraph (d)(2)(D) places a five-year statute of limitations on actions brought under this paragraph. This provision shall not be construed to limit any other actions brought by the Commission or the Attorney General.

Section 3 of the bill amends Section 32(a) of the Securities Exchange Act to increase the maximum criminal penalties for violations of the At from $10,000 to $100,000.

Section 4 of the bill amends Section 15(c)(4) of the Securities Exchange Act to provide that the Commission may being an administative proceeding to require compliance with Section 14 of the Securities Exchange Act. This amendment also clarifies the Commission's authority to seek administrative relief against individuals who cause failures to comply with Sections 12, 13, 14, or 15(d) of the Securities Exchange Act.

Section 5 of the bill provides that the amendments in the bill become effective upon enactment.

Section 6 of the bill amends Section 20 of the Securities Exchange Act to provide that wherever communicating, or purchasing or selling a security while in possession of, material nonpublic information would violate or result in liability under this title, such conduct in connection with a derivative security shall also violate and result in comparable liability under this title.

Section 7 of the bill amends Section 3(a)(39) of the Securities Exchange Act to provide that persons who have engaged in

certain misconduct under the commodities laws will be subject to statutory disqualification. It also amends Section 15(b) of the Securities Exchange Act to permit an administrative proceeding against broker-dealers, or associated persons, based on misconduct in the commodities markets.

Mr. SARBANES. Mr. President, the Insider Trading Sanctions Act of 1984 is much needed legislation to deter insider trading, a market abuse which threatens investor confidence in the fairness and integrity of our capital markets by undermining the public's expectations of honest and fair securities markets where all participants play by the same rules.

"Insider trading" is the term used to refer to trading in the securities markets while in possession of material information—information that would be important to an investor in making a decision to buy or sell a security—that is not available to the general public.

To establish a stronger deterrent to violations, this legislation provides increased sanctions against insider trading.

First, the legislation amends section 21(d) of the Securities and Exchange Act of 1934 to give the Securities and Exchange Commission authority to seek from a court a civil money penalty of up to three times the amount of profit gained or loss avoided by a person who violates, or aids and abets a violation of the Federal securities laws by purchasing or selling a security while in possession of material nonpublic information. Second, the legislation amends section 32 of the Exchange Act to increase the maximum fine for a criminal violation from $10,000 to $100,000. Third, the legislation amends section 15(c)(4) of the Exchange Act to give the Commission authority to bring an administrative proceeding against persons who violate section 14 of the act. Fourth, the bill clarifies that insider trading in stock options is illegal, just as it is in the underlying stock. Finally, the Insider Trading Sanctions Act of 1984 empowers the Securities and Exchange Commission to bar or suspend the registration of a broker who has been disciplined by the Commodity Futures Trading Commission.

Mr. President, this legislation is long overdue. I urge its passage without delay.

Mr. DOLE. Mr. President, third reading.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, 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.

Mr. DOLE. Mr. President, I ask unanimous consent to discharge the Banking Committee of H.R. 559, the House companion bill, and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill will be stated by title.

The bill clerk read as follows:

A bill (H.R. 559) to amend the Securities Exchange Act of 1934 to increase the sanctions against trading in securities while in possession of material nonpublic information.

There being no objection, the Senate proceeded to consider the bill.

Mr. DOLE. Mr. President, I move to strike all after the enacting clause and insert the text of S. 910, as amended.

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

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 559), as amended, was read the third time and passed.

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

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

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent that Calendar Order No. 1021, S. 910, be indefinitely postponed.

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

PATENT LAW AMENDMENTS

Mr. DOLE. Mr. President, I ask the Chair to lay before the Senate Calendar Order No. 1016, S. 1538.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1538) to amend the patent law of the United States.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with amendment, as follows:

S. 1538

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Patent Law Amendments of 1983".

SEC. 2. (a) Chapter 14 of title 35, United States Code, is amended by adding at the end thereof the following new section:

"§ 156. [Issuance of patents without examination] *Statutory invention recording*

"(a) Notwithstanding any other provisions of this title, the Commissioner is authorized to [issue a patent on an invention without the examination required by sections 131 and 132 of this title,] *publish a statutory invention registration containing the specification and drawings of a regularly filed application for a patent without examination,* except as may be required to conduct an interference proceeding, to determine compliance with section 112 of this title, or to review for formalities required for printing, if the applicant—

"(1) waives [all remedies with respect to the patent and any reissue thereof, arising under sections 183 and 271 through 289 of this title and under any other provision of Federal law, within such time as the Commissioner specifies, and] *the right to receive a patent on the invention within such period as may be prescribed by the Commissioner, and*

"(2) pays *application, publication and other processing fees* [fees, which may be less than those specified in section 41 of this title, established by the Commissioner for the filing and issuance of such a patent.] *Commissioner.*

"(b) The waiver under this section shall take effect upon [issuance of the patent. No maintenance fees shall be required with respect to patents issued under this section.".] *publication of the statutory invention recording.*

"(c) A statutory invention recording published pursuant to this section shall have all of the attributes specified for patents in this title except those specified in section 183, and sections 271 through 289 of this title. A statutory invention recording shall not have any of the attributes specified for patents in any other title of this Code.".

(b) The analysis for chapter 14 of title 35, United States Code, is amended by adding at the end the following:

"156. [Issuance of patents without examination.".] *Statutory invention recording.".*

(c) The Secretary of Commerce shall convene an inter-agency committee to co-ordinate policy on the use of the statutory invention recording procedure by agencies of the United States. Such policy shall ordinarily require use of the statutory invention recording procedure for inventions as to which the United States may have the right of ownership that do not have commercial potential. The interagency committee shall also, after obtaining views from the public, establish standards for evaluating the commercial potential of inventions to which the government may have the right of ownership. The head of each agency which has a significant research program (as determined by the Secretary of Commerce) shall designate either the senior technology transfer official or the senior research policy official to participate as a member of the interagency committee. The Secretary of Commerce shall report to the Congress annually on the use of statutory invention recordings. Such report shall include an assessment of the degree to which agencies of the Federal Government are making use of the statutory invention recording system, the degree to which it aids the management of federally developed technology, and an assessment of the cost savings to the Federal Government of the use of such procedures.

SEC. 3. Section 134 of title 35, United States Code, is amended by striking out "primary".

[SEC. 4. Section 151 of title 35, United States Code, is amended—

[(1) by amending the second sentence in the first paragraph to read as follows: "The notice shall specify the issue fee which shall be paid within three months thereafter, or within such shorter time, not less than one month, as fixed by the Commissioner in such notice."; and

[(2) by striking out the third paragraph.]

SEC. [5.]*4.* Section 361(d) of title 35, United States Code, is amended by inserting "or within one month [thereafter"] *after such date*" after "application" in the first sentence.

SEC. [6.]*5.* Section 366 of title 35, United States Code, is amended—

(1) by inserting "after the date of withdrawal," after "effect";

(2) by inserting ", unless a claim for the benefit of a prior filing date under section 365(c) of this part was made in a national application, or an international application designating the United States, filed before the date of such withdrawal" before the period at the end of the first sentence; and

(3) by inserting "withdrawn" after "such" in the second sentence.

SEC. [7.]*6.* (a) Section 371(a) of title 35, United States Code, is amended by—

(1) striking out "is" and inserting in lieu thereof "may be"; and

(2) striking out ", except those filed in the Patent Office".

(b) Section 371(b) of title 35, United States Code, is amended to read as follows:

"(b) Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22 (1) or (2) of the treaty.".

(c) Section 371(c)(2) of title 35, United States Code, is amended by—

(1) striking out "received from" and inserting in lieu thereof "communicated by"; and

(2) striking out "verified" before "translation".

(d) Section 371(d) of title 35, United States Code, is amended to read as follows:

"(d) The requirements with respect to the national fee referred to in subsection (c)(1), the translation referred to in subsection (c)(2), and the oath or declaration referred to in subsection (c)(4) of this section shall be complied with by the *date of the* commencement of the national stage or by such later time as may be fixed by the Commissioner. The copy of the international application referred to in subsection (c)(2) shall be submitted by the *date of the* commencement of the national stage. Failure to comply with these requirements shall be regarded as abandonment of the application by the parties thereof, unless it be shown to the satisfaction of the Commissioner that such failure to comply was unavoidable. The payment of a surcharge may be required as a condition [for] *of* accepting the national fee referred to in subsection (c)(1) or the oath or declaration referred to in subsection (c)(4) of this section if these requirements are not met by the *date of the* commencement of the national stage. The requirements of subsection (c)(3) of this section shall be complied with by the *date of the* commencement of the national stage, and failure to do so shall be regarded as a cancellation of the amendments to the claims in the international application made under article 19 of the treaty.".

SEC. [8] *7.* (a) Section 372(b) of title 35, United States Code, is amended by—

(1) striking out the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(2) inserting at the end thereof the following:

"(3) the Commissioner may require a verification of the translation of the international application or any other document pertaining thereto if the application or other document was filed in a language other than English.".

(b) Section 372 of title 35, United States Code, is amended by deleting subsection (c).

SEC. [9.] *8.* Section 376(a) of title 35, United States Code, is amended by striking out paragraph (5) and redesignating paragraph (6) as paragraph (5).

SEC. [10.] *9.* Title 35, United States Code, is amended by striking out "Patent Office" each place it appears and inserting in [its place] *lieu thereof* "Patent and Trademark Office".

SEC. [11.] *10.* Notwithstanding section 2 of the Public Law 96-517, no fee shall be collected for maintaining a plant patent in force.

SEC. 11. (a) Section 7 of title 35, United States Code, is amended to read as follows:

"§ 7. Board of Patent Appeals and Interferences

"The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, who shall be appointed under the classified civil service. The Commissioner, the deputy commissioner, the assistant commissioners, and the examiners-in-chief shall constitute a Board of Patent Appeals and Interferences.

"The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, review adverse decisions of examiners upon applications for patents and shall determine priority and patentability of invention in interferences declared pursuant to section 135(a) of this title. Each appeal and interference shall be heard by at least three members of the Board of Patent Appeals and Interferences, the members to be designated by the Commissioner. The Board of Patent Appeals and Interferences has sole power to grant rehearings.

"Whenever the Commissioner considers it necessary to maintain the work of the Board of Patent Appeals and Interferences current, he may designate any patent examiner of the primary examiner grade or higher, having the requesite ability, to serve as examiner-in-chief for periods not exceeding six months each. An examiner so designated shall be qualified to act as a member of the Board of Patent Appeals and Interferences. Not more than one such primary examiner shall be a member of the Board of Patent Appeals and Interferences hearing an appeal or determining an interference. The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each designated examiner-in-chief in the Patent and Trademark Office at not in excess of the maximum scheduled rate provided for positions at GS-16 pursuant to section 5332 of title 5, United States Code. The per annum rate of basic compensation of each designated examiner-in-chief shall be adjusted, at the close of the period for which he was designated to act as examiner-in-chief, to the per annum rate of basic compensation which he would have been receiving at the close of such period if such designation had not been made.".

(b) The item relating to section 7 in the analysis for chapter 1 of title 35, United States Code, is amended by inserting "Board of Patent Appeals and Interferences" in lieu of "Board of Appeals".

SEC. 12. Section 41(a)(6) of title 35, United States Code, is amended by inserting "Board of Patent Appeals and Interferences" in lieu of "Board of Appeals", each place it appears and inserting "in the appeal" after "oral hearing".

SEC. 13. (a) Section 134 of title 35, United States Code, including the section heading, is amended by inserting "Board of Patent Appeals and Interferences" in lieu of "Board of Appeals" each place it appears.

(b) The item relating to section 134 in the analysis for chapter 12 of title 35, United States Code, is amended by inserting "Board of Patent Appeals and Interferences" in lieu of "Board of Appeals".

SEC. 14. (a) Section 135(a) of title 35, United States Code, is amended to read as follows:

"(a) Whenever an application is made for a patent which, in the opinion of the Commissioner, would interfere with any pending application, or with any unexpired patent, an interference may be declared and the Commissioner shall give notice thereof to the applicants, or applicant and patentee, as the case may be. The Board of Patent Appeals and Interferences shall determine the priority and patentability of invention in interferences. Any final decision, if adverse to the claim of an applicant, shall constitute the final refusal by the Patent and Trademark Office of the claims involved, and the Commissioner may issue a patent to the applicant who is adjudged the prior inventor. A final judgment adverse to a patentee from which no appeal or other review has been or can be taken or had shall constitute cancellation of the claims of the patent, and notice thereof shall be endorsed on copies of the patent thereafter distributed by the Patent and Trademark Office.".

(b) Section 135(b) of title 35, United States Code, is amended by striking out "may" and inserting in lieu thereof "shall".

SEC. 15. Section 141 of title 35, United States Code, is amended to read as follows:

"§ 141. Appeal to court of appeals for the Federal circuit

"An applicant dissatisfied with the decision in an appeal to the Board of Patent Appeals and Interferences under section 134 of this title may appeal to the United States Court of Appeals for the Federal Circuit, thereby waiving his right to proceed under section 145 of this title. A party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences may appeal to the United States Court of Appeals for the Federal Circuit, but such appeal shall be dismissed if any adverse party to such interference, within twenty days after the appellant has filed notice of appeal according to section 142 of this title, files notice with the Commisisoner that he elects to have all further proceedings conducted as provided in section 146 of this title. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under section 146, in default of which the decision appealed from shall govern the further proceedings in the case.".

SEC. 16. Section 145 of title 35, United States Code, is amended—

(1) by inserting "Board of Patent Appeals and Interferences in an appeal under section 134 of this title" in lieu of "Board of Appeals" in the first sentence; and

(2) by inserting "Board of Patent Appeals and Interferences" in lieu of "Board of Appeals" in the second sentence.

SEC. 17. Section 146 of title 35, United States Code, is amended by striking "board of patent interferences on the question of priority" and inserting in lieu thereof

"Board of Patent Appeals and Interferences".

SEC. 18. Section 305 of title 35, United States Code, is amended by inserting "Board of Patent Appeals and Interferences" in lieu of "Board of Appeals".

SEC. 19. Section 1295(a)(4)(A) of title 28, United States Code, is amended by striking out "Appeals or the Board of Patent" and inserting in lieu thereof "Patent Appeals and".

SEC. 20. Section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182), is amended by striking out "a Board of Patent Interferences" and inserting in lieu thereof "the Board of Patent Appeals and Interferences", and by striking out "the Board of Patent Interferences" and inserting in lieu thereof "the Board of Patent Appeals and Interferences".

SEC. 21. (a) Section 305(d) of the National Aeronautics and Space Act of 1952 (42 U.S.C. 2457(d)) is amended by—

(1) striking out "Patent" in the title and inserting in lieu thereof "Patent Appeals and",

(2) striking out "a Board of Patent Interferences" and inserting in lieu thereof "the Board of Patent Appeals and Interferences", and

(3) striking out "the Board of Patent Interferences" and inserting in lieu thereof "the Board of Patent Appeals and Interferences".

(b) Section 305(e) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(e)) is amended by striking out "a Board of Patent Interferences" and inserting in lieu thereof "the Board of Patent Appeal and Interferences".

SEC. 22. The examiners-in-chief of the Board of Appeals and the examiners of interferences of the Board of Patent Interference on the effective date of this Act shall continue in office as members of the Board of Patent Appeals and Interferences.

SEC. 23. Section 3 of title 35, United States Code, is amended by adding at the end thereof the following:

"(e) The members of the Trademark Trial and Appeal Board of the Patent and Trademark Office shall receive compensation equal to that paid a GS-16 under the General Schedule contained in section 5332 of title 5, United States Code.".

SEC. [12] *24.* (a) Sections [10]*9* and [11]*10* of the Act shall take effect upon the date of enactment.

(b) Sections 1 through 9 *8* of this Act shall take effect [six]*three* months after the date of enactment.

(c) Sections 11 through 23 of this Act shall take effect three months after the date of enactment.

The amendments were agreed to.

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

Mr. DOLE. Mr. President, I ask unanimous consent the committee amendments be agreed to.

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

AMENDMENT NO. 3382

(Purpose: To extend the patent on certain drug products)

Mr. DOLE. Mr. President, I send an amendment to the desk on behalf of Senator THURMOND and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], on behalf of Mr. THURMOND, proposes an amendment numbered 3382.

Mr. DOLE. 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:

Redesignate section 24 as section 25.

Between section 23 and section 25, as redesignated, insert the following new section:

SEC. 24. (a) Title 35 of the United States Code is amended by adding immediately following section 155 the following new section:

"§ 155A. Patent extension

"(a) Notwithstanding section 154 of this title, the term of any patent which encompasses within its scope a composition of matter which is a new drug product, if such new drug product is subject to the labeling requirements for oral hypoglycemic drugs of the sulfonylurea class as promulgated by the Food and Drug Administration in its final rule of March 22, 1984 (FR Doc. 84-9640) and was approved by the Food and Drug Administration for marketing after promulgation of such final rule and prior to the date of enactment of this law, shall be extended until April 21, 1992.

"(b) The patentee or licensee or authorized representative of any patent described in such subsection (a) shall, within ninety days after the date of enactment of such subsection, notify the Commissioner of Patents and Trademarks of the number of any patent so extended. On receipt of such notice, the Commissioner shall confirm such extension by placing a notice thereof in the official file of such patent and publishing an appropriate notice of such extension in the Official Gazette of the Patent and Trademark Office.".

(b) The table of sections for chapter 14 of title 35, United States Code is amended by adding after the item relating to section 155 the following new item:

"155A. Patent extension".

Section 25(a) of the bill, as redesignated, is amended by striking out "9 and 10" and inserting in lieu thereof "9, 10, and 24".

Mr. THURMOND. Mr. President, the amendment which I am offering to S. 1538 would provide a limited patent term extension for certain oral antidiabetic drugs.

The drugs affected by this amendment were issued approvable letters by the FDA relating to their safety and effectiveness during the 1970's. Final approval was withheld while the FDA completed its rulemaking procedures with respect to class labeling for all oral antidiabetic drugs, which were begun in 1970. Despite the best efforts of the patent holders to cooperate and expedite these proceedings, they were not completed until earlier this year. One of the affected companies lost 10 years of patent protection because of these prolonged proceedings and, in the absence of a remedy, would only have 2 years of exclusive marketability left.

This amendment would provide partial relief to the companies affected by the lengthy rulemaking delay by extending their patents until April 21, 1992. This would amount to not more than approximately 6 years of additional patent protection. Thus, the patent holders would enjoy an effective patent life equivalent to that enjoyed by the average drug patent holder.

Mr. President, this provision is similar in its goal to those enacted with respect to aspertame and forane. U.S. patent law is designed to reward inventors for their innovation and investment, and to provide future incentives for research into new areas of technology and medicine. Accordingly, this patent term restoration, like the others, will afford affected parties the normal protections conferred by the patent laws on the drug industry.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3382) was agreed to.

AMENDMENT NO. 3383

(Purpose: To amend the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939 to improve the labeling of textile fiber and wool products)

Mr. DOLE. 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 Kansas [Mr. DOLE], for Mr. THURMOND and Mr. HOLLINGS, proposes an amendment numbered 3383.

Mr. DOLE. 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 end of the bill insert the following new title:

TITLE —

SEC. . This title may be cited as the "Textile Fiber and Wool Products Identification Improvement Act".

SEC. 2. Subsection (b) of section 4 of the Textile Fiber Products Identification Act (15 U.S.C. 70b(b)) is amended by adding at the end thereof the following new paragraph:

"(5) If it is a textile fiber product processed or manufactured in the United States, it be so identified.".

SEC. 3. Subsection (e) of section 4 of the Textile Fiber Products Identification Act (15 U.S.C. 70b(e)) is amended to read as follows:

"(e) For purposes of this Act, in addition to the textile fiber products contained therein, a package of textile fiber products intended for sale to the ultimate consumer shall be misbranded unless such package has affixed to it a stamp, tag, label, or other means of identification bearing the informa-

tion required by subsection (b), with respect to such contained textile fiber products, or is transparent to the extent it allows for the clear reading of the stamp, tag, label, or other means of identification on the textile fiber product, or in the case of hoisery items, this section shall not be construed as requiring the affixing to a stamp, tag, label, or other means of identification to each hoisery product contained in a package if (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products contained therein, the information required by subsection (b), and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each textile fiber product contained therein.".

SEC. 4. Section 5 of the Textile Fiber Products Identification Act (15 U.S.C. 70b) is amended by adding at the end thereof the following new subsections:

"(i) For the purposes of this Act, a textile fiber product shall be considered to be falsely or deceptively advertised in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, unless such textile fiber product description states in a clear and conspicuous manner that such textile fiber product is processed or manufactured in the United States, or imported, or both.

"(j) For purposes of this Act, a textile fiber product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the inside center of the neck midway between the shoulder seams, or if such product does not contain a neck in the most conspicuous place on the inner side of such product, unless it is on or affixed on the outer side of such product, or in the case of hosiery items on the outer side of such product or package.".

SEC. 5. Paragraph (2) of section 4(a) of the Wool Products Labeling Act of 1939 (15 U.S.C. 68b(a)(2)) is amended by adding at the end thereof the following new subparagraph:

"(D) the name of the country where processed or manufactured.".

SEC. 6. Section 4 of the Wool Products Labeling Act of 1939 (15 U.S.C. 68b) is amended by adding at the end thereof the following new subsections:

"(e) For the purposes of this Act, a wool product shall be considered to be falsely or deceptively advertised in any mail order promotional material which is used in the direct sale or direct offering for sale of such wool product, unless such wool product description states in a clear and conspicuous manner that such wool product is processed or manufactured in the United States, or imported, or both.

"(f) For purposes of this Act, a wool product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the inside center of the next midway between the shoulder seams, of if such product does not contain a neck in the most conspicious place on the inner side of such product, unless it is on or affixed on the outer side of such product or in the case of hosiery items, on the outer side of such product or package.".

SEC. 7. Section 5 of the Wool Products Labeling Act of 1939 (15 U.S.C. 68c) is amended—

(1) by striking out "Any person" in the first paragraph and inserting in lieu thereof "(a) Any person";

(2) by striking out "Any person" in the second paragraph and inserting in lieu thereof "(b) Any person"; and

(3) by inserting after subsection (b) (as designated by this section) the following new subsection:

"(c) For the purposes of subsections (a) and (b) of this section, any package of wool products intended for sale to the ultimate consumer shall also be considered a wool product and shall have affixed to it a stamp, tag, label, or other means of identification bearing the information required by section 4, with respect to the wool products contained therein unless such package of wool products is transparent to the extent that it allows for the clear reading of the stamp, tag, label, or other means of identification affixed to the wool product, or in the case of hosiery items this section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each hosiery product contained in a package if (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products contained therein, the information required by subsection (4), and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is eqully applicable with respect to each hosiery product contained therein.".

SEC. 8. The amendments made by this Act shall be effective 90 days after the date of enactment of this Act.

Mr. THURMOND. Mr. President, this amendment pertains to proper labeling of textile/apparel products.

I originally introduced this amendment as S. 1816 in an effort to strengthen domestic law as it relates to country of origin labeling requirements for textile and apparel products. While present law requires country of origin marking on textile products entering the United States, there have been increasing instances where textile and apparel products are entering the United States in violation of domestic labeling laws.

One of the major problems in the effectiveness of existing law is the fact that labels are often placed in inconspicuous places. This bill would designate that the label be attached to the neck of the garment if applicable, or if the garment does not contain a neck, to the most conspicuous place on the inner side of the foreign made textile/apparel product. This will allow easy identification of the label by consumers and will help with enforcement of present textile agreements.

My bill will also require that textile/apparel products produced in this country carry origin labels. Since there is no present law which requires American-made textile and apparel products to be labeled as such, foreign textile/apparel products that are misbranded are often mistaken for American-made products.

Another provision of the bill will require that, in the case of bulk packaging of textile products, both the package, as well as the garments within be labeled as to country of origin.

The final major feature of this legislation would mandate that mail order catalog sale descriptions contain country of origin information. A large portion of all textile/apparel products sold in this country are purchased through mail order catalog-type systems. Through these mail order transactions, the consumer does not have access to country of origin information for textile/apparel products at the actual point of purchase.

Reports have shown that U.S. consumers prefer to buy American-made textile products. My legislation will simply allow consumers to better identify the products they wish to purchase.

Mr. President, it is most important for this legislation to be approved by the full Senate and signed into law as soon as possible. The domestic textile, fiber and apparel complex employs over 2 million Americans nationwide. This industry provides more jobs than the U.S. auto and steel industries combined. Unfortunately, the U.S. textile/apparel industry is suffering through its most severe crisis in recent history. Textile/apparel imports from low-wage paying countries, such as the People's Republic of China, Taiwan, and Hong Kong, have flooded our markets and displaced thousands of American workers.

In 1983, imports of textile/apparel products increased 25 percent over 1982. For the first 4 months of 1984, textile/apparel imports were up 49 percent over the same period in 1983. Last year's trade deficit for textiles and apparel was $10.6 billion—15 percent of the entire U.S. trade deficit, which totaled $69.3 billion. Finally, over the past 7 years, 413,000 textile and apparel jobs have been lost in this country. While this legislation will not correct all the problems confronting our domestic textile/apparel industry, it is a positive step toward preserving one of America's most vital and strategically important industries.

Mr. President, S. 1816 was unanimously approved by the Senate Commerce, Science, and Transportation Committee on June 13, 1984. I ask unanimous consent that a list displaying the numerous textile/apparel related associations that fully support this bill be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. THURMOND. Before concluding, Mr. President, I should like to thank the 22 Members of this body who chose to cosponsor S. 1816. I would also like to especially thank

Senators PACKWOOD and KASTEN, and their very capable committee staff members, for their invaluable assistance on this legislation during its review by the Commerce Committee.

In closing, Mr. President, I strongly believe that this bill is a positive step toward stabilizing the jobs of the over 2 million Americans employed in the textile, fiber, and apparel complex, and I hope that the Senate will give this legislation the strong vote of approval which it merits.

EXHIBIT 1

Amalgamated Clothing & Textile Workers Union.
American Apparel Manufacturers Association.
American Textile Manufacturers Institute.
American Yarn Spinners Association.
Clothing Manufacturers Association of America.
International Ladies' Garment Workers Union.
Knitted Textile Association.
Luggage & Leather Goods Manufacturers of America.
Man-Made Fiber Producers Association, Inc.
National Association of Hosiery Manufacturers.
National Association of Uniform Manufacturers.
National Cotton Council of America.
National Knitwear Manufacturers Association.
National Knitwear & Sportswear Association.
National Wool Growers Association.
Neckwear Association of America.
Northern Textile Association.
Textile Distributors Association, Inc.
Work Glove Manufacturers Association.

Mr. HOLLINGS. Mr. President, as a cosponsor of the original S. 1816 and this amendment, I hope the Senate will give swift approval to this legislation. Perhaps then President Reagan will begin to understand the depth of concern over what is happening to America's textile apparel industry and its workers. Perhaps then President Reagan will begin to carry out candidate Reagan's 1980 pledge to help our Nation's textile workers. If this legislation, which I was pleased to help expedite through the Commerce Committee, manages to win the attention of the administration, it will be one giant step for our beleaguered textile and apparel workers.

Unfortunately, this amendment does not come close to getting at the nub of the problem. In fact, we already have origin labeling requirements on the books in existing tariff legislation. But our President has chosen to ignore them. When we talk about "buy American and save American jobs," I get a feeling of having been there before, because that is exactly the problem we addressed 25 years ago when Congress passed the Textile Fiber Products Identification Act. The requirements contained in that legislation—while they do not go quite so far in all instances as the provisions of S. 1816—would, if enforced, obviate the need for S. 1816. The point is that the President is refusing to use the weapons Congress has already given him to combat the illegal trade practices of our foreign competition and to level the field of play. He does so because he is captive to a thoroughly discredited "free trade" policy coming from the State Department and from the huge multinational conglomerates who could not care less about American jobs.

If this administration—or for that matter any recent administration—was serious about saving textile jobs, it could start by enforcing existing laws against mislabeling, against dumping, and against the many other illegal trade practices being used against the United States.

The problem is that we do not have trade policy in this country. There's a trade war going on out there and our Government sits blithely in the bleachers—watching. Instead of competing, we stand by as our industries and jobs get picked off. Other countries are using every weapon at their command—subsidies, licensing requirements, tax rebates, inspection practices, artificial currency rates, and so on to close their markets to us while we open our markets to them. Is it any wonder we are not doing better? And the President has recently had his trade people up here talking to Senators and Congressmen in an attempt to broaden the President's tariff-cutting authority so we can export more jobs. It is just unbelievable.

In 1980, candidate Ronald Reagan made a commitment to relate the growth of textile imports to the growth of the domestic market. The figures show he has reneged on that promise. Our textile apparel trade deficit has more than doubled in the 3 years of this administration, soaring from $4 billion in 1980 to $10.6 billion in 1983. And the situation is rapidly getting worse. So far this year, textile-apparel imports are running more than 45 percent ahead of last year. Just this spring, three more mills were shut down in South Carolina alone.

There is no secret to how we should control the textile import tide. A President who understood trade and the threat to American jobs could stem the flow in short order. First, he would suggest global quotas, setting a limit on what we allow into our market. Second, he would enforce the laws already on the books to safeguard against dumping and all those other illegal trade practices.

The amendment before us today does not take that approach. Frankly, I am concerned that when this measure passes, it will serve no greater purpose than to give politicians cause to thump our chests and carry on about how we've done something great for the textile industry. But let us not kid ourselves. Even if we are fortunate enough to get it passed, signed, and on the books, it will not markedly slow the rising tide of textile and apparel imports. Because chances are the President will simply ignore this labeling law just as he has ignored the other labeling laws already passed.

Mr. President, the American textile worker is the most productive in the world. American mills are the most modern. We can compete not only in the home market, but overseas—if the field of trade is level and fair. But our Government refuses to lend a hand. That is why textile jobs are needlessly disappearing—not because of mislabling, but because of misgovernment.

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

The amendment (No. 3383) was agreed to.

AMENDMENT NO. 3384

(Purpose: To make technical amendments)

Mr. DOLE. Mr. President, I send a technical amendment to the desk, on behalf of Mr. MATHIAS.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE), for Mr. MATHIAS, proposes an amendment numbered 3384.

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

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

The amendment is as follows:

Section 156(a) of such title 35, United States Code, as added by section 2(a) of the bill is amended in the first sentence by striking out "registration" after "statutory invention" and inserting in lieu thereof "recording",

Section 156(c) of such title 35, as added by section 2(a) is amended by striking out the final quotation marks and final period.

Section 156 of such title 35 is further amended by adding at the end thereof the following new subsection:

"(d) The Secretary of Commerce shall convene an interagency committee to coordinate policy on the use of the statutory invention recording procedure by agencies of the United States. Such policy shall ordinarily require use of the statutory invention recording procedure for inventions as to which the United States may have the right of ownership that do not have commercial potential. The interagency committee shall also, after obtaining views from the public, establish standards for evaluating the commercial potential of inventions to which the government may have the right of ownership. The head of each agency which has a significant research program (as determined by the Secretary of Commerce) shall designate either the senior technology transfer official or the senior research policy official to participate as a member of the interagency committee. The Secretary of Commerce shall report to the Congress annually on the use of statutory

invention recordings. Such report shall include an assessment of the degree to which agencies of the Federal Government are making use of the statutory invention recording system, the degree to which it aids the management of federally developed technology, and an assessment of the cost savings to the Federal Government of the use of such procedures.".

Strike out section 2 (c) of the bill.

Section 21(a) of the bill is amended by striking out paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

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

The amendment (No. 3384) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

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

S. 1538

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

TITLE I—PATENT LAW

SEC. 101. This title may be cited as the "Patent Law Amendments of 1984".

SEC. 102. (a) Chapter 14 of title 35, United States Code, is amended by adding at the end thereof the following new section:

"§ 156. Statutory invention recording

"(a) Notwithstanding any other provisions of this title, the Commissioner is authorized to publish a statutory invention recording containing the specification and drawings of a regularly filed application for a patent without examination, except as may be required to conduct an interference proceeding, to determine compliance with section 112 of this title, or to review for formalities required for printing, if the applicant—

"(1) waives the right to receive a patent on the invention within such period as may be prescribed by the Commissioner, and

"(2) pays application, publication and other processing fees established by the Commissioner.

"(b) The waiver under this section shall take effect upon publication of the statutory invention recording.

"(c) A statutory invention recording published pursuant to this section shall have all of the attributes specified for patents in this title except those specified in section 183, and sections 271 through 289 of this title. A statutory invention recording shall not have any of the attributes specified for patents in any other title of this Code.

"(d) The Secretary of Commerce shall convene an interagency committee to coordinate policy on the use of the statutory invention recording procedure by agencies of the United States. Such policy shall ordinarily require use of the statutory invention recording procedure for inventions as to which the United States may have the right of ownership that do not have commercial potential. The interagency committee shall also, after obtaining views from the public, establish standards for evaluating the commercial potential of inventions to which the government may have the right of ownership. The head of each agency which has a significant research program (as determined by the Secretary of Commerce) shall designate either the senior technology transfer official or the senior research policy official to participate as a member of the interagency committee. The Secretary of Commerce shall report to the Congress annually on the use of statutory invention recordings. Such report shall include an assessment of the degree to which agencies of the Federal Government are making use of the statutory invention recording system, the degree to which it aids the management of federally developed technology, and an assessment of the cost savings to the Federal Government of the use of such procedures".

SEC. 103. Section 134 of title 35, United States Code, is amended by striking out "primary".

SEC. 104. Section 361(d) of title 35, United States Code, is amended by inserting "or within one month after such date" after "application" in the first sentence.

(b) The analysis for chapter 14 of title 35, United States Code, is amended by adding at the end the following:

SEC. 105. Section 366 of title 35, United States Code, is amended—

(1) by inserting "after the date of withdrawal," after "effect";

(2) by inserting ", unless a claim for the benefit of a prior filing date under section 365(c) of this part was made in a national application, or an international application designating the United States, filed before the date of such withdrawal" before the period at the end of the first sentence; and

(3) by inserting "withdrawn" after "such" in the second sentence.

SEC. 106. (a) Section 371(a) of title 35, United States Code, is amended by—

(1) striking out "is" and inserting in lieu thereof "may be"; and

(2) striking out ", except those filed in the Patent Office".

(b) Section 371(b) of title 35, United States Code, is amended to read as follows:

"(b) Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22 (1) or (2) of the treaty.".

(c) Section 371(c)(2) of title 35, United States Code, is amended by—

(1) striking out "received from" and inserting in lieu thereof "communicated by"; and

(2) striking out "verified" before "translation".

(d) Section 371(d) of title 35, United States Code, is amended to read as follows:

"(d) The requirements with respect to the national fee referred to in subsection (c)(1), the translation referred to in subsection (c)(2), and the oath or declaration referred to in subsection (c)(4) of this section shall be complied with by the date of the commencement of the national stage or by such later time as may be fixed by the Commissioner. The copy of the international application referred to in subsection (c)(2) shall be submitted by the date of the commencement of the national stage. Failure to comply with these requirements shall be regarded as abandonment of the application by the parties thereof, unless it be shown to the satisfaction of the Commissioner that such failure to comply was unavoidable. The payment of a surcharge may be required as a condition of accepting the national fee referred to in subsection (c)(1) or the oath or declaration referred to in subsection (c)(4) of this section if these requirements are not met by the date of the commencement of the national stage. The requirements of subsection (c)(3) of this section shall be complied with by the date of the commencement of the national stage, and failure to do so shall be regarded as a cancellation of the amendments to the claims in the international application made under article 19 of the treaty.".

SEC. 107. (a) Section 372(b) of title 35, United States Code, is amended by—

(1) striking out the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(2) inserting at the end thereof the following:

"(3) the Commissioner may require a verification of the translation of the international application or any other document pertaining thereto if the application or other document was filed in a language other than English.".

(b) Section 372 of title 35, United States Code, is amended by deleting subsection (c).

SEC. 108. Section 376(a) of title 35, United States Code, is amended by striking out paragraph (5) and redesignating paragraph (6) as paragraph (5).

SEC. 109. Title 35, United States Code, is amended by striking out "Patent Office" each place it appears and inserting in lieu thereof "Patent and Trademark Office".

SEC. 110. Notwithstanding section 2 of Public Law 96-517, no fee shall be collected for maintaining a plant patent in force.

SEC. 111. (a) Section 7 of title 35, United States Code, is amended to read as follows:

"§ 7. Board of Patent Appeals and Interferences

"The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, who shall be appointed under the classified civil service. The Commissioner, the deputy commissioner, the assistant commissioners, and the examiners-in-chief shall constitute a Board of Patent Appeals and Interferences.

"The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, review adverse decisions of examiners upon applications for patents and shall determine priority and patentability of invention in interferences declared pursuant to section 135(a) of this title. Each appeal and interference shall be heard by at least three members of the Board of Patent Appeals and Interferences, the members to be designated by the Commissioner. The Board of Patent Appeals and Interferences has sole power to grant rehearings.

"Whenever the Commissioner considers it necessary to maintain the work of the Board of Patent Appeals and Interferences current, he may designate any patent examiner of the primary examiner grade or higher, having the requisite ability, to serve as examiner-in-chief for periods not exceeding six months each. An examiner so designated shall be qualified to act as a member of the Board of Patent Appeals and Interferences. Not more than one such primary examiner shall be a member of the Board of Patent Appeals and Interferences hearing an appeal or determining an interference. The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each designated examiner-in-chief in the Patent and Trademark Office at not in excess of the maximum schedule rate provided for positions at GS-16 pursuant to section 5332 of title 5, United States Code. The per annum rate of basic compensation of each designated examiner-in-chief shall be adjusted, at the close of the period for

which he was designated to act as examiner-in-chief, to the per annum rate of basic compensation which he would have been receiving at the close of such period if such designation had not been made.".

(b) The item relating to section 7 in the analysis for chapter 1 of title 35, United States Code, is amended by inserting "Board of Patent Appeals and Interferences" in lieu of "Board of Appeals".

SEC. 112. Section 41(a)(6) of title 35, United States Code, is amended by inserting "Board of Patent Appeals and Interferences" in lieu of "Board of Appeals", each place it appears and inserting "in the appeal" after "oral hearing".

SEC. 113. (a) Section 134 of title 35, United States Code, including the section heading, is amended by inserting "Board of Patent Appeals and Interferences" in lieu of "Board of Appeals" each place it appears.

(b) The item relating to section 134 in the analysis for chapter 12 of title 35, United States Code, is amended by inserting "Board of Patent Appeals and Interferences" in lieu of "Board of Appeals".

SEC. 114. (a) Section 135(a) of title 35, United States Code, is amended to read as follows:

"(a) Whenever an application is made for a patent which, in the opinion of the Commissioner, would interfere with any pending application, or with any unexpired patent, an interference may be declared and the Commissioner shall give notice thereof to the applicants, or applicant and patentee, as the case may be. The Board of Patent Appeals and Interferences shall determine the priority and patentability of invention in interferences. Any final decision, if adverse to the claim of an applicant, shall constitute the final refusal by the Patent and Trademark Office of the claims involved, and the Commissioner may issue a patent to the applicant who is adjudged the prior inventor. A final judgment adverse to a patentee from which no appeal or other review has been or can be taken or had shall constitute cancellation of the claims of the patent, and notice thereof shall be endorsed on copies of the patent thereafter distributed by the Patent and Trademark Office.".

(b) Section 135(b) of title 35, United States Code, is amended by striking out "may" and inserting in lieu thereof "shall".

SEC. 115. Section 141 of title 35, United States Code, is amended to read as follows:

"§ 141. Appeal to court of appeals for the Federal circuit

"An applicant dissatisfied with the decision in an appeal to the Board of Patent Appeals and Interferences under section 134 of this title may appeal to the United States Court of Appeals for the Federal Circuit, thereby waiving his right to proceed under section 145 of this title. A party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences may appeal to the United States Court of Appeals for the Federal Circuit, but such appeal shall be dismissed if any adverse party to such interference, within twenty days after the appellant has filed notice of appeal according to section 142 of this title, files notice with the Commissioner that he elects to have all further proceedings conducted as provided in section 146 of this title. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under section 146, in default of which the decision appealed from shall govern the further; proceedings in the case.".

SEC. 116. Section 145 of title 35, United States Code, is amended—

(1) by inserting "Board of Patent Appeals and Interferences in an appeal under section 134 of this title" in lieu of "Board of Appeals" in the first sentence; and

(2) by inserting "Board of Patent Appeals and Interferences" in lieu of "Board of Appeals" in the second sentence.

SEC. 117. Section 146 of title 35, United States Code, is amended by striking "board of patent interferences on the question of priority" and inserting in lieu thereof "Board of Patent Appeals and Interferences".

SEC. 118. Section 305 of title 35, United States Code, is amended by inserting "Board of Patent Appeals and Interferences" in lieu of "Board of Appeals".

SEC. 119. Section 1295(a)(4)(A) of title 28, United States Code, is amended by striking out "Appeals or the Board of Patent" and inserting in lieu thereof "Patent Appeals and".

SEC. 120. Section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182), is amended by striking out "a Board of Patent Interferences" and inserting in lieu thereof "the Board of Patent Appeals and Interferences", and by striking out "the Board of Patent Interferences" and inserting in lieu thereof "the Board of Patent Appeals and Interferences".

SEC. 121. (a) Section 305(d) of the National Aeronautics and Space Act of 1952 (42 U.S.C. 2457(d)) is amended by—

(1) striking out "a Board of Patent Interferences" and inserting in lieu thereof " the Board of Patent Appeals and Interferences", and

(2) striking out "the Board of Patent Interferences" and inserting in lieu thereof "the Board of Patent Appeals and Interferences".

(b) Section 305(e) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(e)) is amended by striking out "a Board of Patent Interferences" and inserting in lieu thereof "the Board of Patent Appeals and Interferences".

SEC. 122. The examiners-in-chief of the Board of Appeals and the examiners of interferences of the Board of Patent Interferences on the effective date of this Act shall continue in office as members of the Board of Patent Appeals and Interferences.

SEC. 123. Section 3 of title 35, United States Code, is amended by adding at the end thereof the following:

"(e) The members of the Trademark Trial and Appeal Board of the Patent and Tradmark Office shall receive compensation equal to that paid at GS-16 under the General Schedule contained in section 5332 of title 5, United States Code.".

SEC. 124. (a) Title 35 of the United States Code is amended by adding immediately following section 155 the following new section:

"§ 155A. Patent extension

"(a) Notwithstanding section 154 of this title, the term of any patent which encompasses within its scope a composition of matter which is a new drug product, if such new drug product is subject to the labeling requirements for oral hypoglycemic drugs of the sulfonylurea class as promulgated by the Food and Drug Administration in its final rule of March 22, 1984 (FR Doc. 84-9640) and was approved by the Food and Drug Administration for marketing after promulgation of such final rule and prior to the date of enactment of this law, shall be extended until April 21, 1992.

"(b) The patentee or licensee or authorized representative of any patent described in such subsection (a) shall, within ninety days after the date of enactment of such subsection, notify the Commissioner of Patents and Trademarks of the number of any patent so extended. On receipt of such notice, the Commissioner shall confirm such extension by placing a notice thereof, in the official file of such patent and publishing an appropriate notice of such extension in the official Gazette of the Patent and Trademark office.".

(b) The table of sections for chapter 14 of title 35, United States Code is amended by adding after the item relating to section 155 the following new item:

"155A. Patent extension".

SEC. 125. (a) Sections 109, 110, and 124 of this Act shall take effect upon the date of enactment.

(b) Sections 101 through 108 of this Act shall take effect three months after the date of enactment.

(c) Sections 111 through 123 of this Act shall take effect three months after the date of enactment.

TITLE II—TEXTILE FIBER AND WOOL PRODUCTS IDENTIFICATION IMPROVEMENT ACT

SEC. 201. This title may be cited as the "Textile Fiber and Wool Products Identification Improvement Act".

SEC. 202. Subsection (b) of section 4 of the Textile Fiber Products Identification Act (15 U.S.C. 70b(b)) is amended by adding at the end thereof the following new paragraph:

"(5) If it is a textile fiber product processed or manufactured in the United States, it be so identified.".

SEC. 203. Subsection (e) of section 4 of the Textile Fiber Products Identification Act (15 U.S.C. 70b(e)) is amended to read as follows:

"(e) For purposes of this Act, in addition to the textile fiber products contained therein, a package of textile fiber products intended for sale to the ultimate consumer shall be misbranded unless such package has affixed to it a stamp, tag, label, or other means of identification bearing the information required by subsection (b), with respect to such contained textile fiber products, or is transparent to the extent it allows for the clear reading of the stamp, tag, label, or other means of identification on the textile fiber product, or in the case of hosiery items, this section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each hosiery product contained in a package if (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products contained therein, the information required by subsection (b), and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each textile fiber product contained therein.".

SEC. 204. Section 4 of the Textile Fiber Products Identification Act (15 U.S.C. 70b) is amended by adding at the end thereof the following new subsections:

"(i) For the purposes of this Act, a textile fiber product shall be considered to be falsely or deceptively advertised in any mail order catalog or mail order promotional material which is used in the direct sale or

direct offering for sale of such textile fiber product, unless such textile fiber product description states in a clear and conspicuous manner that such textile fiber product is processed or manufactured in the United States, or imported, or both.

"(j) For purposes of this Act, a textile fiber product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the inside center of the neck midway between the shoulder seams, or if such product does not contain a neck in the most conspicuous place on the inner side of such product, unless it is on or affixed on the outer side of such product, or in the case of hosiery items on the outer sider of such product or package.".

SEC. 205. Paragraph (2) of section 4(a) of the Wool Products Labeling Act of 1939 (15 U.S.C. 68b(a)(2)) is amended by adding at the end thereof the following new subparagraphs:

"(D) the name of the country where processed or manufactured.".

SEC. 206. Section 4 of the Wool Products Labeling Act of 1939 (15 U.S.C. 68b) is amended by adding at the end thereof the following new subsections:

"(e) For the purposes of this Act, a wool product shall be considered to be falsely or deceptively advertised in any mail order promotional material which is used in the direct sale or direct offering for sale of such wool product, unless such wool product description states in a clear and conspicuous manner that such wool product is processed or manufactured in the United States, or imported, or both.

"(f) For purposes of this Act, a wool product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the inside center of the neck midway between the shoulder seams, or if such product does not contain a neck in the most conspicuous place on the inner side of such product, unless it is on or affixed on the outer side of such product or in the case of hosiery items, on the outer side of such product or package.".

SEC. 207. Section 5 of the Wool Products Labeling Act of 1939 (15 U.S.C. 68c) is amended—

(1) by striking out "Any person" in the first paragraph and inserting in lieu thereof "(a) Any person";

(2) by striking out "Any person" in the second paragraph and inserting in lieu thereof "(b) Any person"; and

(3) by inserting after subsection (b) (as designated by this section) the following new subsection;

"(c) For the purposes of subsections (a) and (b) of this section, any package of wool products intended for sale to the ultimate consumer shall also be considered a wool product and shall have affixed to it a stamp, tag, label, or other means of identification bearing the information required by section 4, with respect to the wool products contained therein, unless such package of wool products is transparent to the extent that it allows for the clear reading of the stamp, tag, label, or other means of identification affixed to the wool product, or in the case of hosiery items this section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each hosiery product contained in a package if (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products contained therein, the information required by subsection (4), and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each hosiery product contained therein.".

SEC. 208. The amendments made by this Act shall be effective 90 days after the date of enactment of this Act.

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

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

The motion to lay on the table was agreed to.

REFERRAL OF THE NUCLEAR REGULATORY COMMISSION BILL

Mr. DOLE. Mr. President, I ask unanimous consent that once the Environment and Public Works Committee reports the authorization bill for fiscal year 1984 and 1985 for the Nuclear Regulatory Commission, it be referred to the Energy Committee until no later than August 10, 1984.

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

Mr. DOLE. The purpose of this referral is to permit the Energy Committee to review the provision (sec. 201) of the bill, amending the Nuclear Waste Policy Act of 1982.

EXECUTIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate go into executive session to consider Calendar No. 662.

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

The nomination will be stated.

DEPARTMENT OF THE INTERIOR

The legislative clerk read the nomination of Robert N. Broadbent, of Nevada, to be an Assistant Secretary of the Interior.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. 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. DOLE. Mr. President, it is my understanding that we have not been able to clear the nomination of Mr. Robert N. Broadbent to be an Assistant Secretary of the Interior, so we will take up the nomination, I assume, when we return in July.

THE NOMINATION OF ROBERT N. BROADBENT

● Mr. DECONCINI. Mr. President, the Senate Energy and Natural Resources Committee favorably reported the nomination of Robert N. Broadbent to be Assistant Secretary of the Interior for Water and Science. Bob Broadbent served as Commissioner of Reclamation from 1980 to 1983 and throughout that period demonstrated to all westerners that he clearly understood the value of reclamation projects and the important role reclamation programs play in the lives of all citizens in Western States. Mr. President, water is perhaps the single-most important natural resource in this country. In States like Arizona, where there is always a threatened shortage of this precious resource, reclamation has become the only method of insuring a sufficient supply of water to meet the needs of our State's inhabitants and providing a quality lifestyle. As a result, the State has a great deal of interaction with the Bureau of Reclamation in particular. As Commissioner of Reclamation, Bob Broadbent proved himself to be a fair and bipartisan individual who worked well with Arizonans and attempted to be responsive to our diverse needs. He is indeed a professional who has a firm grasp on water issues and would, in my view, make an excellent Assistant Secretary for Water and Science.

Mr. President, I support the nomination of Robert N. Broadbent and urge the Senate to act on this confirmation as expeditiously as possible so that he can take charge of the new responsibilities that accompany this challenging position.●

LEGISLATIVE SESSION

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

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 1:34 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bill, in which it requests that concurrence of the Senate:

H.R. 5953. An act to increase the statutory limit on the public debt.

At 1:45 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 332. Concurrent resolution expressing the sense of the Congress that the Union of Soviet Socialist Republics should provide the signatories of the Helsinki Final Act with specific information as to the whereabouts, health, and legal status of Yelena Bonner.

At 4:05 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5174) to provide for the appointment of U.S. bankruptcy judges under article III of the Constitution, to amend title 11 of the United States Code for the purpose of making certain changes in the personal bankruptcy law, of making certain changes regarding grain storage facilities, and of clarifying the circumstances under which collective-bargaining agreements may be rejected in cases under chapter 11, and for other purposes.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 5604) to authorize certain construction at military installations for fiscal year 1985, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. PRICE, Mr. DELLUMS, Mr. MONTGOMERY, Mr. KAZEN, Mr. WON PAT, Mr. DICKINSON, Mr. KRAMER, and Mr. WHITEHURST as managers of the conference on the part of the House.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 5898. An Act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1985, and for other purposes;

H.R. 5899. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1985, and for other purposes; and

H.R. 5950. An act to increase the Federal contribution for the Quadrennial Political Party Presidential National Nominating Conventions.

At 7:08 p.m. a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the concurrent resolution (H. Con. Res. 328) to correct technical errors on the enrollment of the bill H.R. 4170.

The message also announced that the House agrees to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 334, Concurrent resolution providing for a conditional adjournment of the House from June 29, 1984, until July 23, 1984, and a conditional adjournment of the Senate from June 29, or 30, 1984 until July 30, 1984.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 5898. An act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1985, and for other purposes; to the Committee on Appropriations.

H.R. 5899. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1985, and for other purposes; to the Committee on Appropriations.

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-3476. A communication from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "Congress Needs Better Information on Forest Service's Below-Cost Timber Sales"; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3477. A communication from the Deputy Assistant Secretary of the Air Force for Logistics and Communications transmitting, pursuant to law, a report on a decision to study numerous Air Force activities for conversion to performance under contract; to the Committee on Armed Services.

EC-3478. A communication from the Deputy Assistant Secretary of Defense for Administration transmitting, pursuant to law, a report on defense contracts negotiated under section 2304(a)(11) and 2304(a)(16); to the Committee on Armed Services.

EC-3479. A communication from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "Examination of the Federal Deposit Insurance Corporation's Financial Statements for the Years Ended December 31, 1983 and 1982; to the Committee on Banking, Housing, and Urban Affairs.

EC-3480. A communication from the chairman of the Senate Committee on Energy and Natural Resources transmitting a committee print entitled "Impact of Oil Company Mergers," prepared by the majority staff of the Committee on Energy and Natural Resources; to the Committee on Energy and Natural Resources.

EC-3481. A communication from the Deputy Associate Director for Royalty Management Operations, Department of the Interior, transmitting, pursuant to law, a report on certain refunds of royalty overpayments; to the Committee on Energy and Natural Resources.

EC-3482. A communication from the Deputy Associate Director of the Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of certain excess royalty payments; to the Committee on Energy and Natural Resources.

EC-3483. A communication from the Secretary of Transportation, transmitting, pursuant to law, the fifth annual report on the highway bridge replacement and rehabilitation program; to the Committee on Environment and Public Works.

EC-3484. A communication from the Acting Assistant Legal Advisor for Treaty Affairs, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the sixty day period prior to June 27, 1984; to the Committee on Foreign Relations.

EC-3485. A communication from the Assistant Secretary of Health and Human Services (Health), transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-3486. A communication from the executive director of the Committee for Purchase from the Blind and Severely Handicapped, transmitting, pursuant to law, the annual report on the activities of the committee for fiscal year 1983; to the Committee on Labor and Human Resources.

EC-3487. A communication from the Acting Comptroller General of the United States, transmitting, pursuant to law, a report entitled "States Fund an Expanded Range of Activities Under Low-income Home Energy Assistance Block Grant"; to the Committee on Labor and Human Resources.

EC-3488. A communication from the President of the United States transmitting, pursuant to law, notification that he has designated Susan Wittenberg Liebeler as Vice Chairman of the U.S. International Trade Commission; to the Committee on Finance.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PERCY, from the Committee on Foreign Relations, with an amendment:

S. 2713: An original bill to authorize appropriations for the fiscal year 1985 for intelligence activities of the U.S. Government, the Intelligence Community staff, the Central Intelligence Agency retirement and disability system, and for other purposes (Rept. No. 98-543).

By Mr. WEICKER, from the Committee on Appropriations, without amendment:

S. 2836: An original bill making appropriations for the Departments of Labor, Health and Human Services, and Education and related agencies for the fiscal year ending September 30, 1985, and for other purposes (Rept. No. 98-544).

By Mr. HELMS, from the Committee on Agriculture, Nutrition, and Forestry, with an amendment in the nature of a substitute:

S. 1300: A bill to amend the Rural Electrification Act of 1936 to insure the continued financial integrity of the rural electrification and telephone revolving fund, and for other purposes (Rept. No. 98-545).

By Mr. SIMPSON, from the Committee on Environment and Public Works, without amendment:

S. 2846: An original bill to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, and section 305 of the Energy Reorganization Act of 1974 (Rept. No. 98-546).

By Mr. THURMOND, from the Committee on the Judiciary:

Report to accompany the bill (S. 1538) to amend the patent laws of the United States (Rept. No. 98-547).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. GARN, from the Committee on Banking, Housing, and Urban Affairs:

June Q. Koch, of Maryland, to be an Assistant Secretary of Housing and Urban Development.

(The above nomination was reported from the Committee on Banking, Housing, and Urban Affairs with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. ABDNOR:

S. 2833. A bill to limit to the national median family income the amount of farm loss which may be deducted against nonfarm income by high-income taxpayers in competition with full-time, family-sized farm operators; to the Committee on Finance.

By Mr. WILSON (for himself, Mr. CRANSTON, Mr. TOWER, Mr. BENTSEN, and Mr. MCCLURE):

S. 2834. A bill to remove an impediment to oil and gas leasing of certain Federal lands in Corpus Christi, TX, and Port Hueneme, CA, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BAUCUS:

S. 2835. A bill to amend the Clayton Act to allow certain sellers of agricultural products to bring antitrust actions; to the Committee on the Judiciary.

By Mr. WEICKER from the Committee on Appropriations:

S. 2836. An original bill making appropriations for the Departments of Labor, Health and Human Services, and Education and related agencies for the fiscal year ending September 30, 1985, and for other purposes; placed on the calendar.

By Mr. DANFORTH:

S. 2837. A bill to provide a basis for filing by water carriers of complaints regarding rail contractors; to the Committee on Commerce, Science, and Transportation.

By Mr. CHAFEE:

S. 2838. A bill to suspend until July 1, 1987, the duty on narrow fabric looms; to the Committee on Finance.

By Mr. MOYNIHAN:

S. 2839. A bill to amend the tariff schedules of the United States regarding the classification of certain articles of wearing apparel; to the Committee on Finance.

By Mr. DURENBERGER (for himself and Mr. BOSCHWITZ):

S. 2840. A bill to amend the Federal Aviation Act of 1958 to improve air transportation to small communities, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. PRYOR (for himself and Mr. BUMPERS):

S. 2841. A bill to provide statutory guidelines concerning the award of certain contracts, and for other purposes; to the Committee on Governmental Affairs.

By Mr. PRYOR (for himself, Mr. BUMPERS, and Mr. SASSER):

S. 2842. A bill to amend section 3109 of title 5, United States Code, to clarify the authority for appointment and compensation of experts and consultants, to provide statutory guidelines concerning the award of contracts for the procurement of consulting services, management and professional services, and special studies and analyses, and for other purposes; to the Committee on Governmental Affairs.

By Mrs. HAWKINS (for herself, Mr. D'AMATO and Mr. DOLE):

S. 2843. A bill to require the Secretary of Health and Human Services to make grants for the planning and implementation of model programs to develop an economical method for early detection of cancer; to the Committee on Labor and Human Resources.

By Mr. GLENN (for himself, Mr. HEFLIN, Mr. HUDDLESTON, Mr. MATSUNAGA, Mr. MELCHER, Mr. MOYNIHAN, Mr. NUNN, Mr. RIEGLE, and Mr. SARBANES):

S. 2844. A bill to establish a Federal Interagency Arson Prevention and Control Task Force to coordinate Federal antiarson programs; to the Committee on Governmental Affairs.

By Mr. DANFORTH (for himself, Mr. MITCHELL, Mr. COHEN, Mr. EAGLETON, Mr. HELMS, Mr. MOYNIHAN, Mr. HEINZ, Mr. KASTEN, and Mr. RUDMAN):

S. 2845. A bill to amend the Trade Act of 1974 to clarify the scope of certain determinations by the International Trade Commission under title II of such act; to the Committee on Finance.

By Mr. SIMPSON from the Committee on Environment and Public Works:

S. 2846. An original bill to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, and section 305 of the Energy Reorganization Act of 1974; to the Committee on Energy and Natural Resources, by unanimous consent until no later than August 10, 1984.

By Mr. BOSCHWITZ:

S. 2347. A bill to eliminate the asset criteria for the needs test under the guaranteed student loan program; to the Committee on Labor and Human Resources.

S. 2848. A bill entitled the "Women's Small Business Ownership Act of 1984"; to the Committee on Small Business.

By Mr. SIMPSON (for himself, Mr. LAXALT, and Mr. DECONCINI):

S. 2849. A bill entitled the "Federal Forum Equity Act"; to the Committee on the Judiciary.

By Mr. MELCHER (for himself and Mr. BAUCUS):

S. 2850. A bill to designate certain National Forest System lands in the State of Montana for inclusion in the National Wilderness Preservation System, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DANFORTH (for himself, Mr. FORD, Mrs. KASSEBAUM, Mr. JEPSEN, Mr. EXON, Mr. KASTEN, Mr. GRASSLEY, and Mr. DOLE):

S.J. Res. 331. Joint resolution to require the Interstate Commerce Commission to consider certain indicators in determining the revenue adequacy of railroads, and for other purposes.

By Mr. DOLE (for himself, Mr. LEAHY, Mr. DANFORTH, Mr. HEINZ, Mr. HUDDLESTON, Mr. PRYOR, Mr. COCHRAN, Mr. DURENBERGER, Mr. HOLLINGS, Mr. INOUYE, Mr. JEPSEN, Mr. LUGAR, Mrs. HAWKINS, Mr. HATFIELD, Mr. HEFLIN, Mr. ZORINSKY, Mr. NUNN, Mr. JOHNSTON, Mr. WILSON, Mr. MATSUNAGA, Mr. HART, Mr. MOYNIHAN, Mr. BAUCUS, Mr. DIXON, Mr. BOREN, Mr. BUMPERS, Mr. COHEN, Mr. RANDOLPH, Mr. MURKOWSKI, and Mr. RIEGLE):

S.J. Res. 332. Joint resolution to proclaim October 16, 1984, as "World Food Day"; to the Committee on the Judiciary.

By Mr. HELMS:

S.J. Res. 333. A joint resolution to designate September 21, 1984 as "World War I Aces and Aviators Day"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BAKER (for himself and Mr. BYRD):

S. Res. 419. Resolution to authorize testimony by staff of Senator MATHIAS; considered and agreed to.

By Mr. EXON (for himself, Mr. HUDDLESTON, Mr. JEPSEN, and Mr. FORD):

S. Con. Res. 130. Concurrent resolution expressing the sense of the Congress that the President should assure an adequate flow of affordable credit to farmers and should assure fair treatment to agricultural borrowers; placed on the calendar.

STATEMENT ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ABDNOR:

S. 2833. A bill to limit to the national median family income the amount of farm loss which may be deducted against nonfarm income by high income taxpayers in competition with full-time, family-size farm operators; to the Committee on Finance.

(The remarks of Mr. ABDNOR and the text of the legislation appear earlier in today's RECORD.)

By Mr. WILSON (for himself, Mr. CRANSTON, Mr. TOWER, Mr. BENTSEN, and Mr. MCCLURE):

S. 2834. A bill to remove an impediment to oil and gas leasing of certain Federal lands in Corpus Christi, TX, and Port Hueneme, CA, and for other purposes; to the Committee on Energy and Natural Resources.

GAS LEASING IN CALIFORNIA AND TEXAS

● Mr. WILSON. Mr. President, I am today introducing legislation on behalf on myself, and Senators CRANSTON, TOWER, BENTSEN, and MCCLURE that would remove an impediment to oil and gas leasing on certain Federal lands in Corpus Christi, TX and Port Hueneme, CA.

Mr. President, the legislation I am introducing today will permit consenting parties, which include the cities of Corpus Christi and Port Hueneme and the U.S. Navy to enter into leasing agreements for oil and gas reserves located on Federal lands. The issue here is one which is relatively simple, and I must add noncontroversial. It involves authority to lease oil and gas rights on Federal lands located within the limits of an incorporated city.

The relevant section of the United States Code which describes such authority is the Mineral Leasing Act for Acquired Lands, 30 U.S.C. section 351, which grants the Secretary of the Interior authority to lease oil and gas rights on acquired Federal lands except in those instances in which such lands are "situated within incorporated cities, towns, and villages", U.S.C. section 352(a). In these excepted areas, authority to proceed with leasing is not clearly provided for.

Mr. President, the general intent of this provision is certainly a good one. It attempts to preserve the integrity of local land use decisions. Unhappily, in the instances of Corpus Christi and Port Hueneme, it fails to provide the flexibility to permit consenting parties to begin lease sales.

This legislation would address the lack of authority to authorize such leasing. It stipulates:

Notwithstanding section 3 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. section 352, the fact that certain Federal lands are incorporated into a part of Corpus Christi, TX, or the city of Port Hueneme, CA, shall not prevent the leasing of such lands by the Secretary of the Interior for oil or gas exploration and extraction, and such lands shall be available for such leasing as if they were not in an incorporated city, except that no such leasing activity shall proceed without the permission of the appropriate city.

As I have already noted, this legislation carries the support of the four Senators from the affected States of California and Texas. It also has the support of the honorable chairman of the Energy and Natural Resources Committee, Mr. MCCLURE. Mr. President, this legislation is needed to permit both the city and the Navy to benefit from these reserves. I ask my colleagues to support this legislation, and hope that the committee to which it is referred will take prompt and supportive action.

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

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

S. 2834

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding section 3 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352), the fact that certain Federal lands are incorporated into and a part of the city of Corpus Christi, Texas, or the city of Port Hueneme, California, shall not prevent the leasing of such lands by the Secretary of the Interior for oil or gas exploration and extraction, and such lands shall be available for such leasing as if they were not in an incorporated city, except that no such leasing activity shall proceed without the permission of the appropriate city.●

● Mr. BENTSEN. Mr. President, I am pleased to cosponsor with Senators TOWER and MCCLURE the bill proposed by Senator WILSON.

This proposed Naval Lands Mineral Leasing Authority Legislation for the incorporated cities of Corpus Christi, TX, and Port Hueneme, CA would be an asset to the communities involved as well as a positive move in the direction of decreasing our dependence on foreign oil and gas importation. This bill shows the support that communities have for furthering oil and gas exploration and production in our own country.

Only a few short years ago in 1977 we were importing 46.5 percent of our oil from abroad. Due to a conscious effort to conserve energy and to look for oil and gas in this country only 3 years later in 1980 we witnessed a substantial decrease in importation down to 37.3 percent; and as early as last year we were importing only 28 percent of our oil from overseas. Every effort and initiative taken to promote and promulgate exploration and extraction of our domestic hydrocarbon resources and to decrease our dependence on foreign countries and organizations should be encouraged.

The revenue gained from such Federal oil and gas leasing is equally dispursed between the Federal Government and the State involved. In Texas, 50 percent of the parcelled revenue will go to the independent school districts in the county where the leasing occurs. I applaud the efforts of Corpus Christi to raise money for their children's schooling.

Also, as you know, we are witnessing a very weak and fragile situation in the Middle East and the Persian Gulf. Everyday the Iranian and Iraqi forces threaten to destroy oil tankers. We must look for and support actions that, within reason, will help to alleviate the dependence and constraints that bind us overseas. We must seek opportunities and avenues to decrease our unstable position in the energy field.

I am very supportive of the Senator from California's bill. It shows a very positive attitude toward our educational institutions, the worsening situation in the Persian Gulf, and toward energy production. I urge my colleagues to support this bill.●

By Mr. DANFORTH:

S. 2837. A bill to provide a basis for filing by water carriers of complaints regarding rail contracts; to the Committee on Commerce, Science, and Transportation.

COMPLAINTS OF WATER CARRIERS REGARDING RAIL CONTRACTS

● Mr. DANFORTH. Mr. President, today I am introducing a bill that would provide expanded protection for inland waterway carriers against anticompetitive practices by railroads.

Last summer, I chaired a Senate Commerce Committee hearing for the purpose of determining what we in Congress could do to improve the depressed state of the inland waterway industry. As a result of that hearing, I have cosponsored legislation to speed congressional action on replacement and improvement to our locks and dams. Further, I have fought to postpone additional increases in user fees. Today, I am taking aim at one more problem that has hindered the waterway industry. It involves the industry's inability to successfully challenge anticompetitive practices by railroads.

The bill I am introducing does two things: First, it amends the statute to give standing to water carriers to challenge railroad contracts on the basis that they are predatory or otherwise anticompetitive. Under the current law, water carriers are excluded from challenging such contracts. Second, the bill amends the statute to provide that in regulating the railroad industry, the Interstate Commerce Commission shall be guided by a policy that clearly prohibits pricing and practices by railroads that are predatory or otherwise undermine competition with water carriers.

The underlying thrust of this bill is to encourage competition between water carriers and rail carriers. I think it is a fair bill. I hope my colleagues will support it.

I ask unanimous consent that the text of the bill be printed in the CONGRESSIONAL RECORD following this statement.

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

S. 2837

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 10713(d)(2) of title 49, United States Code, is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting immediately after subparagraph (B) the following new subparagraph:

"(C) A complaint may be filed under this section by a water carrier only on the grounds that the proposed contract is unfair, destructive, predatory, or otherwise undermines competition.".

SEC. 2. Section 10101(a) of title 49, United States Code, is amended—

(1) by striking "and" at the end of paragraph (14);

(2) by striking the period at the end of paragraph (15) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(16) to prohibit pricing and practices by rail carriers that are unfair, destructive, predatory, or otherwise undermine competition with water carriers.".●

By Mr. CHAFEE:

S. 2838. A bill to suspend until July 1, 1987, the duty on narrow fabric looms; to the Committee on Finance.

SUSPENSION OF DUTY ON NARROW FABRIC LOOMS

● Mr. CHAFEE. Mr. President, today I am introducing legislation to suspend until July 1, 1987, the existing column I rate of duty on narrow fabric looms.

The machines covered by this legislation are used in the production of woven narrow fabrics which have a wide variety of end uses in apparel, medical, industrial, and home furnishing products. This equipment is available in very small quantities from only one domestic producer which produces only one conventional type of narrow loom. Nearly all of domestic demand must be satisfied by foreign purchases.

There is no reason for the Federal Government to impose a duty on these particular machines, currently assessed at 5.6 percent ad valorem. Continuation of the duties would not protect U.S. industry. But it would unnecessarily increase the cost of textile manufacturing equipment and ultimately the cost of textile goods.

As the economic recovery in the United States continues, narrow fabric manufacturers have begun to purchase large numbers of these machines—some of them state of the art—from sources in Switzerland, England, West Germany, and Japan. Many companies regard these purchases as a vital part of their modernization programs and believe this equipment will enable them to remain competitive in both domestic and export markets.

If American industry is to succeed—domestically and abroad—it must be able to produce high quality products that are competitively priced. The efficient production of textile products can be promoted substantially by eliminating this unnecessary tax.

Mr. President, where no purpose is served by retaining this tax, and industry and jobs can be helped by its elimination, there is no question in my mind what we must do. I urge my colleagues to join me in support of this bill.

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. 2838

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the subpart B of part 1 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by inserting in numerical sequence the following new item:

912.15 Power driven weaving machines for weaving fabrics not over 12 inches in width (provided for in items 670.14, part 4E, schedule 6)

Column I Free
Column II No change
Column III On or before 6/30/87

(b) For purposes of applying item 670.74 to parts of articles provided for under item 912.15 (as added by subsection (a)), any such part that is entered, or withdrawn from warehouse for consumption, during the effective period of item 912.15 shall be dutiable at the rate that would apply if item 912.15 had not been enacted.

SEC. 2. The amendment made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of the enactment of this Act.●

By Mr. MOYNIHAN:

S. 2839. A bill to amend the Tariff Schedules of the United States regarding the classification of certain articles of wearing apparel; to the Committee on Finance.

CLASSIFICATION OF CERTAIN WEARING APPAREL

● Mr. MOYNIHAN. Mr. President, I rise today to introduce legislation to clarify the tariff classification of certain imported apparel products.

In the mid-1970's, our trade negotiators for the Tokyo Round Negotiations agreed to tariff concessions on garments classified as "sets." These sets would be subject to lower duties than the duty on the same articles entering individually. Importers have taken full advantage of this tariff differential, pairing different garments for duty purposes that otherwise would be dutiable at a higher rate.

Our trade negotiators intended this tariff differential to only apply to a small and select group of garments—such specific garments as oriental martial arts uniforms and washsuits—but today, importers are forming "sets" from all types of apparel, including shirts, sweaters, and trousers.

My bill simply would close the loophole in the U.S. Tariff Schedules, conforming our schedules to the actual intent of U.S. trade negotiations. The measure is both necessary and appropriate, and I am pleased to report that the Commerce Department supports the intent of this legislation.

I ask unanimous consent that the full text of my bill be printed in the RECORD.

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

S. 2839

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the headnotes to part 6 of schedule 3 of the Tariff Schedules of the United States (19 U.S.C. 1202) are amended by adding at the end thereof the following:

"3. Except for suits; pajamas and other nightwear; playsuits, washsuits, and similar apparel; judo, karate and other oriental martial arts uniforms; swimwear; and infants' sets up to and including 24 months of age, all articles of apparel are to be separately classified under their appropriate tariff items, even if two or more such articles are imported together and designed to be sold together at retail."

SEC. 2. The amendment made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 30th day after the date of the enactment of this Act.●

By Mr. DURENBERGER (for himself and Mr. BOSCHWITZ):

S. 2840. A bill to amend the Federal Aviation Act of 1958 to impove air transportation to small communities, and for other purposes; to the Committee on Commerce, Science, and Tranportation.

SMALL COMMUNITY AIR SERVICE IMPROVEMENT ACT

● Mr. DURENBERGER. Mr. President, when the Civil Aeronautics Board ceases to exist next year, the Department of Transportation will inherit the Essential Air Service [EAS] program for small communities. Congress created the EAS Program in 1978 to ensure that small- and medium-size communities maintain access to the national air transportation system. Until the program expires in 1988, the Federal Government will be supporting such service at an annual cost of approximately $50 million.

While the existing EAS Program has succeeded in maintaining some air service to these communities, it has left many of them with a minimal level and quality of service—far below that needed to ensure the community's growth and development. For example, when the EAS Program began, Fairmont, Worthington, and Mankato, MN, we all served with Convair-580 aircraft with 44 seats and adequate cargo space. Today, the level of service has dropped significantly, and all three communities are forced to share space on 15-seat Beech-99 aircraft with little or no room for cargo. The Board recently has reduced the EAS level for each city, and the total number of seats available at Mankato has declined by 71 percent. Wortington's seats have decreased by 50 per-

cent, while Fairmont is down 48 percent.

Despite its protests to the CAB, Thief River Falls, MN, lost its Convair service and suffered a reduction in EAS. It now receives service on Beech Queenaires which can carry only 9 or 10 passengers.

Although general economic conditions have played a major role in these developments, these service reductions have tended to force traffic levels even lower, thereby tempting the Board to set even lower guaranteed service levels. In addition, the CAB's emphasis throughout has been on maintenance of some link with the national transportation system—not on developing traffic or improving service to small communities. With this approach, not only has service declined, but the likelihood that the affected communities will be able to support subsidy-free service is severely reduced.

The principal problem with the EAS Program is that it is not structured to take advantage of market forces. Instead of merely setting a floor for EAS and paying whatever subsidy is required to maintain that service as it does now, the Federal Government's role should be to promote, encourage, and develop service to small communities. The bill I am introducing today is intended to achieve just that, by building into the EAS Program the incentives to encourage the optimal level and quality of service.

First, this legislation redefines EAS to require improved service at all EAS points. An increased level of service would be combined with more convenient scheduling and through service to major beyond-hub destinations.

Second, this bill provides two new mechanisms to give the CAB and affected communities new opportunities to develop traffic to its maximum potential. The first of these proposals would permit any community or State to provide alternative financial assistance to a carrier serving an EAS point. Such assistance could be in cash or kind, and could be used to maintain service at EAS levels or to support service beyond the EAS level set by the CAB. For example, under my proposal, States or communities could purchase an aircraft for the carrier's use, or help a carrier to choose new, energy efficient aircraft by guaranteeing the financing of such a purchase. The CAB would be required to designate the chosen carrier only if it were satisfied that the amount of Federal subsidy would decrease under the scheme, and that air service would be improved. The State or local contribution would have to be at least 20 percent of the Federal contribution. As an additional incentive to encourage the best available service, the bill would permit a carrier to apply for the exclusive right, effective for up to 3 years, to serve an EAS point in exchange for its guarantee to provide a specified level and quality of service.

For the Federal Government to share the cost of EAS with the affected communities and States is not a new idea. In section 106 of the Airline Deregulation Act, Congress demanded a report on the feasibility and appropriateness of devising formulas by which States and localities could share part of the costs being incurred by the Federal Government. In drafting their joint report, entitled "Sharing Federal Government Airline Subsidy Cost by State Governments and Their Political Subdivisions," the CAB and DOT considered the possibility of requiring States to contribute 20 percent of the subsidy cost. The agencies agreed that it would be exceedingly difficult to decide exactly where and from whom to collect, since many of the affected airports serve multiple communities in more than one State. The SCASIA eliminates this problem since it encourages cost sharing instead of requiring it. State or community contributions would be worked out voluntarily on an ad hoc basis, with the people who have a stake in the proposal deciding for themselves what their respective contributions will be.

As the DOT and CAB stated on pages 25 and 34 of their report:

> The objective is to improve small communities' access to the national transportation system in a way which would enable them to get the level of service which matches their actual and potential demand, and at the least overall cost to the travelers and general public. Cost sharing between the Federal Government and non-Federal entities is desirable in principle in order to foster efficiency in the use of subsidy funds. State and local requests for subsidized air service would be closer to the level of actual demand for air service if they shared the costs of the program. Funding by the Federal Government alone could provide either too little or too much.

Mr. President, small communities are important. They are important to Minnesota, and they are important to the Nation. Good air service is essential to their continued growth and vitality. We simply cannot afford to let them grow weaker and weaker in terms of their ability to support air service without Federal financial help. Sooner or later, those communities for which air service is simply uneconomical will lose their air link to the national transportation system. Unfortunately, the existing program all but ensures that many communities capable of sustaining unsubsidized service will also be cut off. Within existing budget constraints, we should use every available tool to prepare our smaller communities for a fully deregulated environment by developing each community's maximum potential. I hope my colleagues will join me in supporting this effort to make the EAS Program a more positive, forward-looking endeavor.

Mr. President, I ask unanimous consent that the text of the bill, along with a section-by-section analysis, be printed at this point in the RECORD.

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

S. 2840

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Small Community Air Service Improvement Act of 1984".

SEC. 2. Section 102(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1302(a)) is amended by striking out paragraph (8) and inserting in lieu thereof the following:

"(8) The promotion, encouragement, and development of a comprehensive and convenient system of continuous scheduled interstate and overseas airline service for small communities and for isolated areas of the United States through policies which:

"(A) give such communities and areas a full and fair opportunity to demonstrate their maximum revenue-generating potential;

"(B) are designed to lead to self-sufficient, scheduled air service to the community wherever possible; and

"(C) maintain essential air transportation to such communities and areas, with direct Federal financial assistance where necessary and appropriate.".

SEC. 3. (a) Section 419(a)(2)(C) of the Federal Aviation Act of 1958 is amended by inserting "(i)" after "(C)" and by adding at the end thereof the following:

"(ii) Not later than the last day of the one-year period beginning on the date of enactment of this clause, the Board shall conduct such a review and make appropriate adjustments as to what is essential air transportation to each eligible point so as to conform to subsection (f) of this section (as amended by the Small Community Air Service Improvement Act of 1984). For points receiving essential air transportation which requires payments to an air carrier under this section, essential air transportation shall be specified as provided in the preceding sentence and in addition shall be specified at not less than a level of service calculated to demonstrate to the fullest extent the potential for supporting airline service at such point without the need for payments under this section. In making adjustments under this clause, the Board shall give great weight to the views of the communities affected and the State agency of the State in which such communities are located.".

(b) Section 419(a)(2) of the Federal Aviation Act of 1958 is amended by adding at the end thereof the following new subparagraph:

"(D) At any time after October 24, 1988, the Board may withdraw the designation 'eligible point' from any point which—

"(i) is less than 50 miles driving distance from a designated hub, or

"(ii) is not being served pursuant to a plan for joint economic assistance under subsection (c) or pursuant to a grant of exclusive rights under subsection (d), and, after having had for at least 24 consecutive months an increased level of essential air transportation as determined under subparagraph (C) of this paragraph, has failed to demonstrate a potential to support air-

line service without Federal financial assistance.".

SEC. 4. Section 419 of the Federal Aviation Act of 1958 is amended by redesignating subsections (c) through (g) as subsections (f) through (j), respectively, and by inserting after subsection (b) the following new subsections:

"ALTERNATIVE FINANCIAL ASSISTANCE

"(c)(1) Any community, State, or combination of communities and States may, jointly with any air carrier, file an application with the Board for approval of a plan for joint economic assistance to such carrier to provide air transportation to an eligible point. Such plan shall consist of compensation under this subsection and economic assistance in cash or in kind by such communities and States. If not more than one air carrier serves such point on the date of such application, such plan may also provide for the grant of exclusive rights to the carrier filing such application to provide air transportation to such point for a period not exceeding three years.

"(2) The Board shall approve such application and grant such exclusive rights, after notice and a hearing if requested by an applicant or any carrier (other than an applicant) providing service to the affected point on the date of such application, and shall make payments pursuant to such plan, if (A) the fair market value of the proposed non-Federal contribution is not less than one-fourth the amount of the proposed Federal contribution, and (B) the applicants show that the plan for joint economic assistance is likely to improve overall air service to the point and reduce the amount of compensation that would otherwise be required to be paid under this section during the period such plan is in effect.

"(3) In disposing of each application filed under this subsection, the Board shall solicit and give great weight to the opinions of the communities affected by the application and the State agency of the State in which such communities are located.

"(4) A carrier granted an exclusive right under this subsection to provide service to an eligible point shall not terminate, suspend, or reduce air transportation to such point below the level of essential air transportation established by the Board for such point during the two-year period beginning on the date such exclusive right is granted, or during the period for which such exclusive right is granted, whichever is shorter, unless agreed to by all parties to the plan and the Board.

"GRANT OF EXCLUSIVE RIGHTS

"(d)(1) Any air carrier may, individually or jointly with one or more other air carriers, apply to the Board for the exclusive right to provide air transportation for a period not exceeding three years to an eligible point to which service is being provided on the date of such application by not more than one air carrier with compensation under this section, other than compensation under subsection (c). Such application shall set forth a service plan which meets the essential air transportation prescribed for such point and assures through-service to at least three of the six points (excluding any hub cities included in the essential air transportation definition for such eligible point) which are the leading air travel destinations from such eligible point, as determined by the Board. Any carrier submitting such an application shall specify in detail the service (including approximate departure times of flights and through-plane or connecting service) and fare levels which it will guarantee during the period such exclusive right is to remain in effect.

"(2) The Board shall by order approve such application, after notice and a hearing if requested by an applicant or any carrier providing service to the eligible point on the date of such application, if the applicant can show that approval will result in a substantial improvement in overall air service to the point and a reduction in amounts otherwise payable under this section for service to such point. The Board may revoke a grant of exclusive rights to provide air transportation to a point under this subsection, if the fare levels of the carrier exceed the levels specified in its application under paragraph (1) of this subsection.

"(3) In disposing of each application filed under this subsection, the Board shall solicit and give great weight to the opinions of the communities affected by the application and the state agency of the State in which such communities are located.

"(4) A carrier or carriers granted an exclusive right under this subsection to provide service to an eligible point shall not terminate, suspend, or reduce air transportation to such point below the level of essential air transportation established by the Board for such point during the two-year period beginning on the date such exclusive right is granted, or during the period for which such exclusive right is granted, whichever is shorter, unless agreed to by all carriers involved in the plan, the communities affected, and the Board.

"ANTITRUST EXEMPTION

"(e) Any person who has been granted an exclusive right to provide air transportation under subsection (c) or (d) of this section shall be exempted from the operation of the 'antitrust laws' set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. § 12) to the extent necessary to permit such person to provide such transportation under such exclusive right, as approved by the Board under subsection (c) of (d).".

SEC. 5. Section 419(f) of the Federal Aviation Act of 1958 is amended by striking out paragraph (1) and inserting in lieu thereof the following new paragraph:

"(1) with respect to air transportation to any point (other than in the State of Alaska), in no case shall essential air transportation be specified as fewer than two daily round trips, six days per week, or aircraft with adequate passenger and freight capacity to accommodate all points served on any such flight, with such flights operating at convenient times in the morning and and evening and providing as great an opportunity for through service to and from major beyond-hub destinations as may be practicable, except that with respect to air transportation to any point more than 150 miles from a designated hub, such transportation shall, in addition, be provided on aircraft with pressurization and lavatory facilities; and".

SEC. 6. Section 419(a)(11)(B) of the Federal Aviation Act of 1958 is amended by striking out "section" and inserting in lieu thereof "subsection" each place it appears.

SEC. 7. Subsection (j) of section 419 of the Federal Aviation Act of 1958 (as redesignated by section 4 of this Act) is amended by striking out "date of enactment of this section" and inserting in lieu thereof "date of enactment of the Small Community Air Service Improvement Act of 1984".

SECTION-BY-SECTION ANALYSIS OF S. 2840, THE SMALL COMMUNITY AIR SERVICE IMPROVEMENT ACT

SEC. 2. The amendment proposed in Section 2 would broaden the Federal Aviation Act's basic policy objectives with respect to small community air service. Rather than merely declaring the "maintenance" of small community service to be in the public interest, the new provison would make "promotion, encouragement and development" of small community air service one of the Board's fundamental goals. The amendment would also encourge the Board to help communities demonstrate their maximum revenue-generating potential (thereby minimizing the need for subsidies) instead of merely setting a floor for small community air service and paying whatever subsidy is required to maintain the minimal level. Sub-paragraph (C) of the proposed new paragraph reaffirms the federal government's commitment to maintaining essential air transportation even for points where compensation is required.

SEC. 3. All points at which a certificated air carrier was providing service or was authorized to provide service on the date of enactment of the Airline Deregulation Act are eligible to participate in the existing small community air service program. The amendment in Section 3 would direct the Board to review all essential air service determinations for such points within one year after enactment so as to assure each community the quality of service which gives it the fullest possible opportunity to develop its potential for self-sufficiency. Once the existing program expires, the Board would be allowed to drop points within one hour's driving time of their designated hub airport or which have had two years' opportunity to demonstrate their potential for self-sustaining service, except that a point chosen to receive service under an alternative to long-term federal financial assistance or pursuant to a grant of exclusive rights could not be dropped while it participates in the alternative program.

SEC. 4. The overall effect of the essential air service program as established in the Airline Deregulation Act of 1978 and implemented by the Board since that date has been able to drive small community air service to minimal levels. The amendments set forth in Section 4 would instruct the Board to employ alternatives to the present system of relying exclusively on federal subsidies where alternative approaches will improve overall air service to a community and decrease the amount of federal subsidy which would otherwise be necessary.

The new subsection (c) would direct the Board to participate in two new programs to improve a community's air service and potential for self-sufficiency. The current essential air service program is limited to minimum service to nearby hub cities. It ignores two important sources of revenue—states and localities, and beyond-hub traffic. A community has little or no control over whether it receives jet service, whether flights are well-timed or whether it will receive single-plane, single-carrier or good connecting service to and from its most popular destinations, or good freight service.

Under the proposed subsection (c), a community or state dissatisfied with its existing service could reach an agreement with a carrier specifying the type of equipment, the timing of flights, and other details of service over and above the number of seats to be provided. The community or state could

pledge a certain level of assistance equal to at least one-fourth the proposed federal contribution. The state and local assistance could consist of financial operating assistance, use of state-owned or leased aircraft or other equipment, state guarantees in connection with the financing of equipment purchases, or any other type of assistance.

The Board would be required to approve the application whenever the applicants could show that overall service would improve while decreasing the amount of Federal subsidy for maintaining essential air transportation levels. Exclusive service rights could be granted to an air carrier providing service under this provision.

The proposed new subsection (d) would require the Board to approve exclusive service arrangements for a point if overall service to a community would be improved and subsidies would decrease as a result of improved beyond-hub service. Under subsection (d), a carrier (or several carriers) would be able to examine a community's revenue generating potential taking account of traffic to points beyond designated hubs. Where an airline or combination of airlines concluded that it would be economical to provide service between a point and at least three of its six leading beyond-hub air travel destinations, it could apply to the Board for the exclusive right to provide the service. The carrier or carriers would be required to guarantee proposed service and fare levels. The Board would be required to approve the application if it found that an improvement in service and reduction in subsidy would result. Exclusive rights would be effective for up to three years at a time.

The proposed subsection (e) would make it clear that applicants acting jointly under subsections (c) and (d) would receive immunity from the antitrust laws only to the extent necessary to carry on conduct approved by the Board.

SEC. 5. Essential air transportation would be deemed to consist of at least two well-timed flights per day in each direction, six days per week on aircraft with adequate freight capacity. In addition, for points more than 150 air miles distance from their designated hub, essential air transportation would have to be provided on aircraft with pressurization and lavatories.

SEC. 6. Makes the "bumping" provisions of section 419 inapplicable to the new alternative programs set forth in subsections (c) and (d).

SEC. 7. The existing Section 1389(g) would be amended to extend the life of the essential air transportation program until 10 years after enactment of the amendments, in order to give small communities a fair and reasonable opportunity to develop their full revenue-generating potential and thereby become able to support air service after the termination of the program.●

By Mr. PRYOR (for himself, Mr. BUMPERS, and Mr. SASSER):

S. 2842. A bill to amend section 3109 of title 5, United States Code, to clarify the authority for appointment and compensation of experts and consultants, to provide statutory guidelines concerning the award of contracts for the procurement of consulting services, management and professional services, and special studies and analyses, and for other purposes; to the Committee on Governmental Affairs.

CONSULTANT REFORM AND DISCLOSURE ACT

● Mr. PRYOR. Mr. President, I am today introducing legislation to provide controls over the Federal Government's use of consultant services. This legislation, like its predecessors, establishes accountability in the use of these consultants.

I have long been concerned about the extensive role which consultants play in the day-to-day processes of the Federal Government. I have introduced legislation in the 96th and 97th Congress, but unfortunately, the Senate was never able to consider either of these bills. It is my hope that during this session, as problems continue to occur with consultant services Governmentwide, and with indications pointing to increased problems in the future, that the Senate will have an opportunity to act on this bill.

Mr. President, in no way am I opposed to consultant services for the Federal Government in an absolute sense. On the contrary, many jobs, particularly commercial and industrial functions, can be supplied efficiently and economically by the private sector. What I am concerned about is the lack of information which the Congress has on how many consultants are working for our Federal agencies and the justification for their employment. I don't want consultants making policy, for example, deciding for the Department of Defense that our Nation requires this weapon system or that. I don't want them preparing budget documents at the Department of Energy as I discovered they were doing during my investigation in 1980.

Lack of competitive bids for contract services has been documented in several General Accounting Office reports. Other problems which GAO has found include: unnecessary services performed by consultants, extensive sole-source contract awards, duplicative services, and lack of effective management by agencies to assure the proper use of these services.

Basically, this bill will require an agency to make public its intentions to award a contract, to make the contract, once awarded, available to public scrutiny, and require consultants to disclose the role they played in preparing reports under Government contracts. Additionally, the bill requires consultants to fully disclose any conflicts of interest they have that could result in biased advice when writing reports. It will also require agencies to disclose in their budgets sent to Congress the amount of funds requested for the procurement of goods and services and would require agencies to evaluate the contractor's performance in certain contracts which provide for the preparation of a report. Finally, it will make Federal managers accountable for their procurement actions by linking the determination of senior executive service bonuses to their compliance with this bill's provisions.

Mr. President, this bill could be called the Consultant Sunshine Act, because it pierces the shroud of darkness which has enveloped consultant services for the Federal Government for too long. I urge my colleagues to join me so that the American taxpayers and the Congress can someday soon actually find out what is taking place behind too many closed doors.

I ask that the text of the bill be printed at this point in the RECORD.

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

S. 2842

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Consultant Reform and Disclosure Act of 1984".

STATEMENT OF FINDINGS

SEC. 2. The Congress finds and declares that—

(1) Federal procurement officials have not consistently complied with the laws relating to procurement activities and regulations and management guidelines in awarding contracts for the procurement of consulting services, management and professional services, and special studies and analyses;

(2) procurement practices, insofar as they relate to the procurement of consulting services, management and professional services, and special studies and analyses, do not presently provide for (A) full and open competition, (B) the prevention of duplication of overlap among contracts, (C) adequate consideration of conflicts of interest, or (D) the public disclosure of the use and role of contractors who provide such services, studies, and analyses;

(3) information regarding the Federal Government's use of consulting services, management and professional services, and special studies and analyses is not maintained in a manner that results in the availability of helpful or meaningful information to the Congress, the executive branch, or the public;

(4) the competitive pressures of the free marketplace increase the likelihood that consulting services, management and professional services, and special studies and analyses will be provided at competitive prices;

(5) full and open competition in the Federal procurement process supports the basis of the free enterprise system while guaranteeing maximum return on Federal procurement expenditures;

(6) the costs of performing governmental functions are borne by the taxpayer regardless of whether the functions are performed in the private or public sector;

(7) the integrity of the governmental process, especially when consulting services, management and professional services, and special studies and analyses are used in the performance of governmental functions, requires full public disclosure of the use and role of contractors who perform such functions; and

(8) legislation and oversight is necessary to achieve the consistent policies and practices needed in Federal procurement of consulting services, management and professional services, and special studies and analyses.

SEC. 3. It is the policy of the United States that—

(1) governmental policymaking and decisionmaking functions should be performed by accountable Federal officials;

(2) the procurement of consulting services, management and professional services, and special studies and analyses by contract should be in compliance with applicable laws and regulations; and

(3) governmental functions should be accomplished through the most economical means available while recognizing the inherently governmental nature of certain activities.

TITLE I—APPOINTMENTS

REVISION OF SECTION 3109 OF TITLE 5

SEC. 101. (a) Section 3109 of title 5, United States Code, is amended to read as follows:

"§ 3109.1 Employment of individual experts and consultants

"(a) For the purpose of this section—

"(1) 'agency' has the same meaning as in section 552(e) of this title;

"(2) 'appointed consultant' means an individual—

"(A) who has a high degree of knowledge, skill, or experience in a particular field; and

"(B) whose primary function is to serve an agency in an advisory capacity in that field, rather than to perform or supervise an operating function of the agency; and

"(3) 'appointed expert' means an individual—

"(A) who has excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field;

"(B) who, because of such qualifications and attainment, is usually regarded as an authority or as a practitioner of unusual competence and skill by other individuals who work in that field; and

"(C) whose primary function is to perform or supervise an operating function of an agency rather than to provide advisory services.

"(b) When authorized by an appropriation Act or other statute, the head of an agency may appoint and fix the pay of appointed experts and consultants for temporary (not in excess of one year) or intermittent services, without regard to—

"(1) the provisions of this title governing appointment in the competitive service; and

"(2) chapter 51 and subchapter III of chapter 53 of this title (relating to position classification and pay rates),

except that the rate of pay for any individual so appointed may not exceed the rate of basic pay payable for GS-18 unless otherwise specifically authorized by statute.

"(c) Positions in the Senior Executive Service may not be filled under the authority of subsection (b) of this section.

"(d) The Office of Personnel Management shall prescribe regulations governing the employment of appointed experts and consultants and the reporting requirements of this section, and may take such action as it considers appropriate to assure compliance with those regulations, including audit of individual cases, and, if necessary, suspension of the authority to appoint experts and consultants. Agencies shall comply with the requirements of the Office, including taking any corrective action the Office may direct.

"(e) Each agency shall report to the Office of Personnel Management on a periodic basis with respect to—

"(1) the number of days each appointed expert or appointed consultant employed by the agency during the period was so employed, and

"(2) the total amount paid by the agency to each appointed expert and appointed consultant for such work during the period.

"(f) The head of any agency with statutory authority to appoint experts and consultants without regard to the provisions of this section shall, to the extent practicable and in keeping with the provisions of such authority, appoint such experts and consultants in a manner consistent with the provisions of this section.

"(g) The head of each agency shall establish procedures for the review and approval of—

"(1) any determination relating to the need for the services of an appointed expert or appointed consultant under this section; and

"(2) the appointment of each appointed expert or appointed consultant.".

(b) The table of sections at the beginning of chapter 31 of title 5, United States Code, is amended by striking out the item relating to section 3109 and inserting in lieu thereof the following new item:

"§ 3109.1 Employment of individual experts and consultants

EFFECTIVE DATE

SEC. 102. The amendments made by this title shall take effect one hundred and eighty days after the date of enactment of this Act.

TITLE II—CONTRACTS

DEFINITIONS

SEC. 201. For purposes of this title:

(1) The term "agency" has the same meaning as in section 552(e) of title 5, United States Code.

(2) The term "contract" means (A) any agreement, including any amendment to or modification of an agreement, between the Government and a contractor for the procurement of goods and services, or (B) any letter authorizing a contractor to provide goods or services to the United States prior to a specification of the compensation for the provision of such goods or services.

(3) The term "contractor " means any person, firm, unincorporated association, joint venture, partnership, corporation or affiliates thereof, including consultants and organizations thereof, which is a party to a contract with the Government.

(4) The term "report" means a written study, plan, evaluation, analysis, manual, or similar document, in draft or final form, which is prepared by a contractor pursuant to a contract with an agency and which is submitted—

(A) to such agency, or

(B) on behalf of such agency to any other agency of the Government.

but does not mean a billing document, invoice, or other routine business transmittal made with respect to the contract.

(5) The term "consulting services" means advisory services with respect to agency administration and management or agency program management.

(6) The term "management and professional services" means professional services related to management and control of programs, including—

(A) management data collection services;

(B) policy review and development services;

(C) program evaluation services;

(D) program management support services;

(E) program review and development services;

(F) systems engineering services; and

(G) other management and professional services of a similar nature which are not related to any specific program.

(7) The term "special study or analysis"—

(A) means any nonrecurring examination of a subject which—

(i) is undertaken to provide greater understanding of relevant issues and alternatives regarding organizations, policies, procedures, systems, programs, and resources; and

(ii) leads to conclusions or recommendations with respect to planning, programing, budgeting, decisionmaking, or policy development; and

(B) includes—

(i) any study initiated by or for the program management office;

(ii) a cost benefit analysis, a data analysis (other than a scientific analysis), an economic study or analysis, an environmental assessment of impact study, a feasibility study which does not relate to construction, a legal or litigation study, a legislative study, a regulatory study, or a socioeconomic study;

(iii) a geological study, a natural resources study, a scientific data study, a soil study, a water quallity study, a wildlife study, or a general health study; or

(iv) any similar special study or analysis.

PUBLICATION OF NOTICE OF CONTRACTS

SEC. 202. (a) Notwithstanding any other provision of law, as soon as an agency completes preparation of a procurement request for consulting services, management and professional services, or a special study or analysis which the agency estimates will result in the award of a contract the cost of which exceeds $10,000, the agency shall transmit to the Secretary of Commerce a written notice describing such contract. The Secretary of Commerce shall publish each notice received pursuant to this subsection in the publication "Commerce Business Daily" published by the Department of Commerce. An agency is not required by the first sentence of this subsection to transmit to the Secretary of Commerce a notice with respect to any contract—

(1) for which a national security classification has been lawfully made relative to the contract or the terms therein; or

(2) which is awarded due to such an unusual and compelling emergency that the Government would be seriously injured if award of such contract were delayed for the purpose of publishing such notice prior to award.

(b) Whenever an agency modifies a contract for consulting services, management and professional services, or a special study or analysis, and in the modification of such contract increases the cost of the contract award by at least $25,000, the agency shall transmit to the Inspector General of such agency or comparable official, or in the case of an agency which does not have an Inspector General or comparable official, the head of the agency or his designee, a written notice describing—

(1) the original contract;

(2) the modification being made; and

(3) the justification for the modification.

DISCLOSURE OF INFORMATION CONCERNING THE USE OF CONTRACTORS

SEC. 203. Each report prepared by a contractor pursuant to a contract for consulting services, management and professional services, or a special study or analysis, and each report prepared by an agency which is substantially derived from or includes sub-

stantial portions of any such report, shall include a statement disclosing—

(1) the name and business address of the contractor who prepared or contributed to the report;

(2) the total cost of the contract;

(3) whether the contract was awarded using competitive or noncompetitive procedures;

(4) the name of the office which or employee who authorized the award of the contract;

(5) in any case in which a contractor uses a subcontractor to prepare any portion of a report for an agency, the name and business address of the subcontractor and the amount paid to the subcontractor for the work;

(6) the names of all employees of the contractor, and any subcontractor, who substantially contributed to the report; and

(7) in any case in which an organizational conflict of interest has been determined under section 205 to exist with respect to the contract, the facts and circumstances of the conflict of interest.

CONTRACT EVALUATION

SEC. 204. (a) Within one hundred and twenty days after the date of completion of the performance required by any contract for consulting services, management and professional services, or a special study or analysis, the total cost of which exceeds $50,000, the agency shall prepare a written evaluation of the contract performance. The evaluation shall include a summary of the performance of the contractor under the contract, including—

(1) the performance of the contractor, based on the terms and specifications included in the contract; and

(2) any deviation by the contractor from the provisions of the contract originally awarded with respect to cost and time for completion of the contract and a statement of the reasons for any such deviation.

(b) The agency shall include the evaluation required by subsection (a) in the records maintained by the agency regarding the contract and shall maintain a copy of the evaluation in a central location within the agency.

(c) A written copy of any evaluation made under this section shall be transmitted to the contractor concerned together with a notice stating that the contractor may, within ten days after the date on which the contractor receives such copy, transmit comments to the agency concerning such evaluation. Any such comments shall be included in the evaluation as a supplement.

ORGANIZATIONAL CONFLICT OF INTEREST

SEC. 205. (a) For purposes of this section—

(1) the term "designated agency" means the Department of Energy, the Department of Transportation, or the Environmental Protection Agency;

(2) the term "organizational conflict of interest" means any relationship or situation in which an offeror for a contract for consulting services, management and professional services, or a special study or analysis or a contractor under such contract has past, present, or anticipated interests which either directly, or indirectly through a client relationship, relate to work to be performed under such contract and which—

(A) may diminish the capacity of the offeror or contractor to furnish impartial, technically sound, and objective assistance, advice or services under such contract; or

(B) may result in an unfair competitive advantage to the offeror or contractor; except that, such term does not include the normal flow of benefits from the performance of the contract; and

(3) the terms "offeror" and "contractor" include—

(A) a chief executive or director of the offeror or contractor, to the extent that such executive or director will or does become substantially involved in the performance of a contract for consulting services, management and professional services, or a special study or analysis entered into with a designated agency; and

(B) a consultant or subcontractor proposed to be used by the offeror or contractor in the performance of such contract in any case in which such consultant or subcontractor may be performing services similar to the services performed by the offeror or contractor.

(b)(1) Whenever an offeror submits to a designated agency a bid or proposal for a contract for consulting services, management and professional services, or a special study or analysis, the offeror shall include with such bid or proposal—

(A) a statement which discloses all relevant facts relating to each existing or potential organizational conflict of interest with respect to the contract; or

(B) a statement certifying, to the best knowledge and belief of such offeror, that there is no existing or potential organizational conflict of interest with respect to the contract.

(2) Any consultant or subcontractor which any such offeror proposes to use in the performance of a contract described in paragraph (1) shall also submit to the designated agency receiving the bid or proposal a statement including the information required by paragraph (1).

(3) In any case in which a contract described in paragraph (1) has been entered into by a designated agency and a modification of the contract becomes necessary, the contractor and any consultant or subcontractor used by the offeror in the performance of the contract shall submit to such agency—

(A) a statement with respect to such modition which includes the information required by paragraph (1) to be submitted with respect to a contract; or

(B) a revision of any statement submitted under paragraph (1) which relates to any existing or potential organizational conflict of interest concerning such modification.

(4) Each contractor, consultant, and subcontractor which has submitted a statement to a designated agency under this subsection shall submit to the same agency, on a timely basis, such revisions of such statement as may be necessary to reflect clearly and accurately and changes in circumstances relating to an existing or potential organizational conflict of interest arising after such statement was made or last revised.

(c) The head of each designated agency shall establish or designate an office to administer the provisions of this section with respect to contracts of the agency and bids and proposals submitted for such contracts. The head of each such office shall evaluate each statement received pursuant to subsection (b) to determine whether an organizational conflict of interest or the appearance of such a conflict exists with respect to the contract for which the statement is submitted. In making such evaluation, the head of such office shall—

(1) consider whether—

(A) the offeror, contractor, consultant, or subcontractor has conflicting roles or interests which might bias the judgment of the offeror, contractor, consultant, or subcontrator concerning the work to be performed pursuant to the contractor; or

(B) the offeror or contractor will have an unfair competitive advantage in the performance of the contract; and

(2) specifically consider any proposed terms of the contract which require the offeror or the contractor to furnish advice, evaluation, or other services which will have a direct effect on future decisions of the agency relating to contracts, procurement, research and development programs, production, or regulatory activities.

(d) Whenever the head of an office established or designated under subsection (c) determines that an organizational conflict of interest or that the appearance of such a conflict exists with respect to a contract for consulting services, management and professional services, or a special study or analysis, or a proposal for such a contract, he shall transmit a notice of his determination to the offeror or contractor involved. Within ten days after the date on which the offeror or contractor receives such notice, the offeror or contractor may transmit written comments to the head of the office concerning the determination or may transmit such comments to the head of the agency with a request that the head of the agency review such determination. Within thirty days after the date on which the head of the agency receives any such request, the head of the agency shall review the determination of the head of the office and shall issue a written decision. In reviewing such determination, the head of the agency may request the offeror or contractor to furnish additional information concerning the issues involved. The head of the agency shall transmit a copy of his decision under this subsection to the offeror or contractor and the head of the office.

(e) If, prior to the award of a contract for consulting services, management or professional services, or a special study or analysis, the head of the office established or designated by the head of a designated agency under subsection (c) determines that an organizational conflict of interest or the appearance of such a conflict exists in the case of any offeror for, or of any consultant or subcontractor proposed to be used by an offeror in the performance of, such contract and such determination is not reversed by the head of the designated agency—

(1) such agency shall disqualify such offeror from eligiblity for award of the contract or, in the case of an organizational conflict of interest or the appearance of such a conflict involving a consultant or subcontractor proposed to be used by the offeror in the performance of the contract, shall prohibit the offeror from using the services of such consultant or subcontractor;

(2) such agency shall include in the contract awarded to the offeror such conditions as such agency determines would avoid an organizational conflict of interest or the appearance of such a conflict involving such offeror or such consultant or subcontractor; or

(3) if such agency determines that—

(A) the facts and circumstances surrounding the contract necessitate immediate action; and

(B) such agency is unable to obtain the services to be performed pursuant to the contract from any other person other than the offeror, consultant, or subcontractor involved in the organizational conflict of interest or the appearance of such a conflict.

such agency may award the contract to the offeror if such agency includes in the records maintained by such agency on the contract, makes available to the public, and transmits to each committee of the Senate and the House of Representatives having legislative jurisdiction over the agency, a complete statement of the relevant facts disclosed by the offeror, consultant, or subcontractor pursuant to subsection (b), or otherwise known or made available to the agency.

(f)(1) If, after a designated agency has entered into a contract for consulting services, management and professional services, or a special study or analysis, the head of an office established or designated in the agency under subsection (c) determines that an organizational conflict of interest or the appearance of such a conflict exists with respect to the contract, and such determination is not reversed by the head of the agency, the agency shall—

(A) terminate the contract; or

(B) in any case in which termination is not in the best interest of the Government, modify the contract to the extent necessary to prevent or mitigate to the greatest extent possible the conflict or the appearance of the conflict and include in the records maintained by the agency on the contract, make available to the public, and transmit to each committee of the Senate and the House of Representatives having legislative jurisdiction over the agency, a complete statement of the relevant facts determined to exist regarding the offeror, consultant, or subcontractor.

(2)(A) Except as provided in the second sentence of this subparagraph, a contractor who has entered into a contract with a designated agency for consulting services, management and professional services, or a special study or analysis, or a consultant or a subcontractor or any such contractor, shall have no claim against the United States for damages as a result of an action of such agency under paragraph (1) (other than a claim specified pursuant to a clause in the contract authorizing termination for the convenience of the Government). Except as provided in subparagraph (B), such contractor, consultant, or subcontractor may have a claim against the United States for compensation for work performed prior to such agency action.

(B) A contractor who has entered into a contract with a designated agency for consulting services, management and professional services, or a special study or analysis, or a consultant or a subcontractor to any such contractor shall have no claim for compensation for work performed prior to an action of such agency under paragraph (1) if it is determined that such contractor's, consultant's, or subcontractor's failure to disclose completely the relevant facts under subsection (b) precluded a determination of the existence of an organizational conflict of interest or the appearance of such a conflict involving such contractor, consultant, or subcontractor prior to the award of the contract.

(i)(1) This section shall not apply to contracts for consulting services, management and professional services, or any special study or analysis entered into, or bids or prosposals for such contracts submitted, on or after the date three years after the effective date of this title.

(2) Two years after the effective date of this title, the Comptroller General of the United States, in conjunction with the Director of the Office of Management and Budget, shall commence an evaluation of the operations of the provisions of this section, and, within nine months after the commencement of such evaluation, shall prepare and transmit a report to the Congress concerning the result of such evaluation, including recommendations for the continuation, modification, or termination of such provisions.

BUDGET IDENTIFICATION AND JUSTIFICATION

SEC. 206. (a) The head of each agency shall include with the request for regular appropriations for each fiscal year submitted to the Pesident pursuant to section 1108 of title 31, United States Code, an itemized statement of the amounts requested by the agency for procurement in such fiscal year. The state shall identify such amounts according to the same subfunctional categories to be used by the President in the submission of the Budget for such fiscal year pursuant to section 1105(a) of such title and, within each such category, shall identify such amounts according to classifications of (1) procurement of consulting services, management and professional services, and special studies and analyses, and (2) all other procurement activities.

(b) The budget transmitted by the President to the Congress for each fiscal year under section 1105(a) of title 31, United States Code, shall set forth separately, within each subfunctional category used in such Budget, requests for new budget authority for, and estimates or outlays by, each agency for (1) procurement of consulting services, management and professional services, and special studies and analyses, and (2) all other procurement activities.

(c)(1) By April 1 of the fiscal year preceding the fiscal year for which the Budget is submitted pursuant to section 1105(a) of title 31, United States Code, the head of each agency shall prepare and transmit to the Committees on Appropriations of the Senate and the House of Representatives an analysis of each request for new budget authority and of the estimates of outlays included in such Budget for such agency pursuant to subsection (b) of this section and a statement justifying the need for each such request and estimate.

(2) Within sixty days after the date on which the President transmits to the Congress a revision of any request or estimate included in the Budget for any fiscal year pursuant to subsection (b), the head of the agency affected by such revision shall prepare and transmit to the Congress a modification of the analysis and statement required by paragraph (1) which reflects the revision made by the President.

FEDERAL PROCUREMENT DATA SYSTEM

SEC. 207. (a) The Administrator for Federal Procurement Policy shall establish a data system for the collection and dissemination of information regarding all contracts entered into by each agency. The system shall classify each contract or contract modification in an amount exceeding $10,000 as either a contract for professional type services or a contract for commercial and industrial type activities, and shall include for each such contract or contract modification—

(1) the name of the agency awarding the contract;

(2) an identification number or other designation for the contract or modification, as the case may be;

(3) the name of the contracting office of the agency which awarded the contract;

(4) the name of the contractor;

(5) whether the contractor is a small business or a minority business;

(6) the date on which the contract award or the modification was made;

(7) the city, county, State, or country in which the work under the contract will be performed;

(8) a brief description of the work to be performed under the contract;

(9) the total amount payable by the Government under the contract;

(10) the estimated completion date of the contract;

(11) whether the contract was awarded through competitive or noncompetitive procedures;

(12) the type of contract, such as a cost reimbursement contract or fixed price contract; and

(13) if applicable, the authority used to negotiate the contract under the second sentence of section 2304(a) of title 10, United States Code, or section 302(c) of the Federal Property and Administrative Services Act of 1949.

(b)(1) Consistent with otherwise applicable law, the Administrator for Federal Procurement Policy shall make information in the data system established under subsection (a) available, on request, to the Congress, the various agencies, and the public.

(2) The Administrator for Federal Procurement Policy shall prepare and transmit to the Congress quarterly and annual reports regarding the information maintained on each agency within the system.

(c) Each agency shall provide such information to the Administrator for Federal Procurement Policy as may be necessary to assure that the data concerning the agency contained in the data system established under subsection (a) and in the reports transmitted under subsection (b)(2) is current, accurate, and complete.

PUBLIC AVAILABILITY

SEC. 208. (a)(1) Each agency shall compile and make available to the public a list of all contracts entered into by the agency during the twelve-month period immediately preceding the month during which the list is prepared and a separate list of all contracts entered into by the agency for which performance has not been completed on the date on which such list is prepared. The lists shall be updated on a quarterly basis and shall include, for each such contract—

(A) the contract identification number assigned by the agency;

(B) the contractor's name;

(C) the date of award and the estimated completion date;

(D) the original and current amounts to be paid by the agency under the contract; and

(E) a brief description of the work to be performed.

(2) Each agency shall prepare and maintain a written statement justifying the need for each contract for consulting services, management and professional services, or a special study or analysis which is entered into by the agency. The statement shall include the name of the Government officer or employee who authorized the award of the contract and the Government officer or employee who is responsible for the administration of the contract.

(3) Each agency shall permit the public to inspect and make copies of the list prepared under paragraph (1) and the statements prepared under paragraph (2). The agency may charge a reasonable fee to reimburse

the agency for the costs of making such copies.

(b)(1) Except in the case of a contract the disclosure of which or of any information included therein is prohibited by law, and except in the case of a contract the terms of which are lawfully classified for reasons of national security—

(A) all contracts shall be considered public information and shall be available to the public upon request; and

(B) in the case of a contract for consulting services, management and professional services, or a special study or analysis the following information shall be available to the public:

(i) the name and qualifications of any personnel designated in the contract; and

(ii) in the case of a contract awarded on a sole source basis, the justification for awarding such contract on such basis.

(2) Paragraph (1) does not require an agency to make technical proposals available to the public.

EXEMPTIONS

SEC. 209. Notwithstanding any other provision of this title, contracts for consulting services, management and professional services, and special studies or analyses, and any data, reports, or other material pertaining thereto, which—

(1) relate to sensitive foreign intelligence or foreign counterintelligence activities;

(2) relate to sensitive law enforcement investigations, or

(3) are classified under the national security classification system,

are exempt from the provisions of this title.

EFFECT ON OTHER LAW

SEC. 210. The provisions of this title shall supersede any statute enacted before the date of enactment of this Act to the extent such statute is inconsistent with the provisions of this title.

EFFECTIVE DATE

SEC. 211. The provisions of this title shall take effect one hundred and eighty days after the date of enactment of this Act.●

By Mrs. HAWKINS (for herself, Mr. D'AMATO, and Mr. DOLE):

S. 2843. A bill to require the Secretary of Health and Human Services to make grants for the planning and implementation of model programs to develop an economical method for early detection of cancer; to the Committee on Labor and Human Resources.

NATIONAL CANCER SCREENING ACT

● Mrs. HAWKINS. Mr. President, in 1984, nearly 1 million new cancer cases will be diagnosed in the United States. The vast majority of these new cancer cases will have been symptomatic, in that the cancers will already have been firmly localized with fully developed tumors, or in many cases, already metastatic and widespread in the body.

More than 450,000 cancer mortalities will occur in 1984.

Current treatment technology of cancer has advanced in the past decade and can serve to effect cures where early detection of precancer lesions in asymptomatic cases are discovered, and treated.

Early detection techniques are now available for the asymtomatic groups at risk relative to breast cancer, colorectal cancer, lung cancer, cervical cancer, and prostate cancer. These five cancers comprise the greatest total of cancer mortalities today.

Of the almost 1 million new cancer cases diagnosed in 1984, nearly half of these will die of their disease. It is estimated that if cancer cases are found when asymptomatic via early detection current available techniques, there will be a vast reduction in cancer mortalities and a great increase in cancer cures.

To quote but one recent development in early detection technique, "a blood test for early detection of breast cancer has revealed 95 percent of early stage breast cancer when it is most curable." ACS president-elect Dr. William Feller.

I propose to create two early detection models, each to be located in cancer centers of the highest qualifications. Ten thousand persons, from groups at risk, will be screened relative to the noted five cancers. Those found to have cancer at its early stage, will be referred for therapy, and followed up. The percentage of those found asymptomatic with early precancer lesions, or cancer in early stages, will be compared against the total screened.

The American Cancer Society has committed its entire organization to support this model program for early detection of cancer, with its 2,300,000 volunteers and with its professional resources.

Industry, suffering billions in annual losses via cancer in the labor forces, and additional current group insurance costs due to cancer statistics, is highly supportive of this model plan for early detection screening of groups at risk. Industry will cooperate by submitting employees at risk for screening. Insurance companies express enthusiasm at the prospect of a model early detection program which could reduce the present vast costs of long term therapy and suffering.

Nations in Europe are emphasizing the importance of cancer detection to an ever increasing extent. For but one example, Hungary, a socialist country with minimal resources, has built a system for early detection of cervical cancer, by means of educating qualified female high school students in the technique of microscopic examination of Pap smears, and then employing those graduating the course, as members of the early detection system of cervical cancer. Hungary has thereby vastly reduced mortality of cervical cancer by joining its early detection system to compelling every adult female to a Pap smear test when in contact with any hospital or medical source, and periodically thereafter.

With the current technology available for early detection of cancer, and the ever improving therapy offered, our goal is to establish a model for nationwide employment of early detection centers which will greatly reduce the currrent and growing numbers of cancer mortalities. With the enthusiastic cooperation from industry and insurance companies, we estimate that for about $10, persons at risk will be screened nationally and where found to have early cancer or precancer lesions, be cured of this most monstrous of all human afflictions.●

● Mr. D'AMATO. I rise today to cosponsor legislation introduced by my good friend and colleague, the junior Senator from Florida. This bill, the National Cancer Screening Act of 1984, will set up two model programs to develop a cost-effective method for the early detection of cancer.

Cancer is the most costly disease in our Nation, not only in dollars, but in lives. In dollars, the disease costs us billions each year. More tragically, 450,000 people will die this year from cancer, with almost a million new cancer cases being diagnosed.

Although there have been, and continue to be, major advances in the treatment of cancer, the emphasis now is turning more toward prevention. This part March, the Department of Health and Human Services launched the Cancer Prevention Awareness Campaign. The essence of this campaign is to limit cancer deaths through prevention. The largest cancer-causing factors are controllable; 35 percent of cancer mortalities are linked to dietary factors and 30 percent are traced to smoking.

Not smoking and careful diets are important for preventing cancer. Another important step is early detection. Most experts agree that many cancers are controllable if caught at an early stage. This legislation will set up 2 model programs to test at least 20,000 individuals. The directors of the program must then submit to the Secretary of Health and Human Services and Congress a detailed report containing recommendations for the establishment of an economical national program to test for cancer.

I commend the fine work and accomplishments of the National Cancer Institute [NCI] and the American Cancer Society. NCI, with its strong commitment to biomedical research, together with the American Cancer Society, with its 2.3 million volunteers, provides a powerful force in combating this tragic disease and is a valuable ally for the cancer-screening program.

The technology and the resources are available to make this project an outstanding success. I expect passage of the National Cancer Screening Act to lay the foundation for a dramatic decease in deaths from cancer in the near future. I strongly urge my colleagues to join me as cosponsor of this legislation.●

By Mr. GLENN (for himself, Mr. HEFLIN, Mr. HUDDLESTON, Mr. MATSUNAGA, Mr. MELCHER, Mr. MOYNIHAN, Mr. NUNN, Mr. RIEGLE, and Mr. SARBANES):

S. 2844. A bill to establish a Federal Interagency Arson Prevention and Control Task Force to coordinate Federal antiarson programs; to the Committee on Government Affairs.

FEDERAL INTERAGENCY ARSON PREVENTION AND CONTROL TASK FORCE ACT

Mr. GLENN. Mr. President, I am pleased to introduce legislation which will establish a Federal Interagency Arson Prevention and Control Task Force. This task force will coordinate the antiarson programs of the many Federal agencies with antiarson activities. In the past, the failure to coordinate their activities has led to duplication, inconsistency and jurisdictional conflict. The legislation that I am introducing today will ameliorate these problems and help achieve efficient, effective application of Federal resources and expertise.

Arson has become a veritable epidemic, terrorizing neighborhoods, undermining Federal programs and policies, destroying homes and businesses, and eroding job opportunities and municipal tax bases. Each year, arson's fiery wave of death and destruction kills nearly a thousand persons, injuries several thousand more, causes well over a billion dollars in direct property losses and results in indirect losses estimated at $15 billion. These losses of life and property are so devastating that the United States has become known as the arson capital of the world.

I am pleased that Congress is becoming more aware of the deadly, billion-dollar crime of arson, and with the steps it has taken to deal with the problem. Last year, Congress passed the Anti-Arson Act which permanently classified arson as a major crime for purposes of the FBI's Uniform Crime Reports and clarified Federal jurisdiction over arson. This year, the Senate included antiarson provisions in its omnibus criminal reform package, and passed legislation which, if enacted, would create a "National Arson Awareness Week." Much more remains to be done; the next step is better coordination of the Federal effort.

The task force would be charged with mapping out an antiarson strategy to provide assistance to State and localities. It would be required to coordinate antiarson training, grant assistance and research and development and to gather and compile relevant statistical data. The task force also would be required to report annually to Congress on its activities and the status of the Federal antiarson coordination effort.

Because past experience has demonstrated that the involvement of high level officials is crucial to the success of antiarson programs, the bill designates the heads of Federal agencies with significant antiarson activities for membership on the task force. However, to provide flexibility, the bill authorizes the heads of these agencies to select a designee if they desire. Unlike previous versions of this legislation, the bill specifies no minimum compensation rate for such designees—for example level V of the Executive Schedule. Nevertheless, it is contemplated that only higher level officials will be designated because such officials have the authority to exercise independent judgment and initiatives and have regular access to agency heads.

The bill also provides for the creation of subcommittees and working groups. Because of their valuable knowledge and experience, it is contemplated that the task force will invite the active participation of the leaders of the fire service and law enforcement communities, including such organizations as the International Association of Arson Investigators, International Association of Chiefs of Police, International Association of Fire Fighters, International Association of Fire Chiefs, Fire Marshal's Association of North America, National Association of Attorneys General, National District Attorneys Association, the Joint Council of Fire Service Organizations and others.

Another important aspect of the bill is its requirement for an annual report to Congress. This will afford accountability as well as provide Congress with useful information. Among other things, such information will help Congress determine the need for additional spending; any expenditures will be absorbed by existing agency budgets.

Finally, the task force will supplant the existing informal task force which meets periodically. This group is staffed by lower level employees, lacks a specific mandate and is not required to report to Congress.

Mr. President, I hope that the Committee on Governmental Affairs will review this legislation quickly so that the Congress can complete action on the bill during this session of Congress.

I ask unanimous consent that the text of the bill be printed in the RECORD following my remarks.

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

S. 2844

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

SHORT TITLE

SECTION 1. That this Act may be cited as the "Federal Interagency Arson Prevention and Control Task Force Act of 1984."

SEC. 2 (a). There is established within the Federal Government a Federal Interagency Arson Prevention and Control Task Force (hereinafter in this Act referred to as the Task Force.) The Task Force shall consist of the following persons (or their designees):

(1) The Attorney General

(2) The Director of the Federal Bureau of Investigation

(3) The Postmaster General

(4) The Secretary of the Treasury

(5) The Administrator of the United States Fire Administration

(6) The Director of the Federal Emergency Management Agency

(7) The Administrator of the Federal Insurance Administration

(8) The Director of the Bureau of Alcohol, Tobacco and Firearms

(9) The Commissioner of the Internal Revenue Service

(10) The Director of the Law Enforcement Assistance Administration

(11) Director, National Bureau of Standards

(12) Chief, United States Forest Service

(13) Secretary, Department of Housing and Urban Development

(b) The Task Force shall:

(1) develop and implement a comprehensive and coordinated Federal strategy and methodology for improving assistance to state and local governments for the prevention, detection, and control of arson;

(2) coordinate antiarson training and educational programs established within the Federal Government;

(3) coordinate Federal grants to State and local governments for arson prevention, training, detection, and control;

(4) coordinate Federal research and development relating to arson prevention, training, detection, and control;

(5) gather and compile statistical data relating to arson prevention, training, detection, and control;

(6) review each agency report filed under subsection (g); and

(7) provide such other assistance to Federal agencies, States, and local governments that aid in the cooperation and coordination of Federal antiarson assistance efforts.

(c) The members of the Task Force shall elect a chairman. The Chairman shall call regular meetings of the Task Force at such times and places as the Chairman determines. However, the Task Force must hold at least four meetings a year in Washington, D.C. The Task Force may assemble and disseminate information, issue reports and other publication and conduct such other activites as it considers appropriate to provide for effective coordination of Federal antiarson assistance.

(d) The Task Force may establish such subcommittees or working groups as may be necessary for the fulfillment of its task. The membership may include persons not members of the Task Force. Guidelines or regulations promulgated under the provisions of section 7(d) of the Federal Advisory Committee Act do not apply to any such subcommittee or working group.

(e) The Task Force may request any agency of the executive branch to furnish it with such information, advice, and services as may be useful for the fulfillment of the Task Force's functions under this section. The agencies of the executive branch are authorized, to the extent permitted by law, to provide the Task Force with administrative services, information, facilities, and funds necessary for its activities.

(f) The Task Force may procure, subject to the availability of funds, the temporary professional services of individuals to assist in its work, in accordance with the provi-

sions of section 3109 of title 5, United States Code.

(g) Each agency of the executive branch with arson related activities shall report annually to the Task Force with respect to its efforts in providing training, educational programs, grants, and other Federal assistance to State and local governments for arson prevention, detection, and control.

(h) The Task Force shall transmit annually a report to the Congress concerning its activities under this Act. The report shall include an assessment of the success of the Task Force in coordinating Federal efforts for the prevention, detection, and control of arson.

(i) The expenses of the Task Force shall be paid from the appropriations of each of the agencies represented on the Task Force pursuant to subsection (a).

SEC. 3. The Director of the Bureau of Alcohol, Tobacco and Firearms is authorized and directed to assist the Task Force established under section 2 of this Act by providing to the Task Force, as the Task Force determines necessary and to the extent permitted by law, access to personnel and resources of the Bureau, including the use of laboratory facilities for research on the detection and prevention of arson.

By Mr. DANFORTH (for himself, Mr. MITCHELL, Mr. COHEN, Mr. EAGLETON, Mr. HELMS, Mr. MOYNIHAN, Mr. HEINZ, and Mr. KASTEN):

S. 2845. A bill to amend the Trade Act of 1974 to clarify the scope of certain determinations by the International Trade Commission under title II of such act; to the Committee on Finance.

DETERMINATIONS BY THE INTERNATIONAL TRADE COMMISSION

● Mr. DANFORTH. Mr. President, when the ITC handed down its June 6 finding that the footwear industry was not being seriously injured by imports, I was incredulous. The evidence of injury appeared overwhelming. The ITC decision seemed to defy common sense. It still does.

Therefore, I have concluded that either the International Trade Commission failed to interpret the law as Congress had intended, or there is something seriously wrong with the law.

In either case, the bill I am introducing today is designed to remedy the situation. It does not guarantee the footwear industry—or indeed any industry—an injury finding under section 201 of the Trade Act. It does, however, clarify the law to better reflect the intent of Congress when the law was enacted. It does so by making explicit certain elements that the Congress clearly intended the ITC to address during their consideration of a case under section 201.

First, the bill addresses the matter of "captive" imports—imports that are brought into the country for sale by the domestic manufacturers themselves. Specifically, the bill includes such imports as a factor to be taken into account when determining serious injury and when determining whether imports are a substantial cause of that injury. It also specifies that imports by domestic producers may not be considered in defining the domestic industry which is affected by imports.

All told, these provisions, along with one that makes it explicit that captive imports reflect the ill health—rather than the health—of an industry, make a good deal of sense. If taken to the extreme, the notion that captive imports is a sign of health would imply that a manufacturer that has abandoned all domestic production in favor of marketing imports still represents a strong American industry.

The second key element of the bill requires the Commission to take into account an increase in imports when determining whether serious injury is occurring. This would seem obvious and was, in my opinion, clearly intended in current law. However, if the ITC can find no injury in a case where import penetration has increased from 51 percent to almost 70 percent since 1979, it appears the more explicit reference may be necessary.

Ironically, this very issue was the subject of a discussion on the Senate floor on December 13, 1974, during consideration of the Trade Act. At that time, Senator RUSSELL LONG responded to questions from Senators Muskie and McIntyre about the footwear industry's chances of obtaining import relief under section 201 in view of dramatic increases in import penetration. Senator LONG's response could not have been more clear.

It is our guess that if the shoe industry would seek relief under the terms of this act, chances are 90 out of 100 that it would get relief.

Third, the bill addresses the issue of industry profits. As currently written, the ITC is required to take into account a number of economic factors relating to serious injury. The profit factor is but one of these criteria and the bill makes it clear that evidence of profits should not preclude a finding of injury.

Fourth, among the key substantive provisions of the bill is a provision designed to address what is becoming known as the survivor syndrome. This relates to the problem of the ITC judging capacity utilization based only on those plants functioning at the time the statistics are taken—ignoring completely the fact that plants may have shut down, thereby reducing total capacity, during the period under consideration. To remedy this, the bill calls for the ITC to consider declines in production relative to domestic consumption and plant closings in determining serious injury.

Finally, the bill contains a provision designed to clarify certain factors that do not belong in an objective determination of economic injury, such as the effectiveness or consequences of import relief. While these factors are relevant to the President's decision on whether or not to grant relief as currently provided in the statute, they should have no bearing on an injury determination.

These provisions of the bill are self-evident, commonsensical measures. They are primarily clarifications of existing law, but do ensure that various factors that may have been overlooked by the Commission in the recent footwear case are part of its analysis in the future.●

● Mr. COHEN. Mr. President, I am pleased to join Senator DANFORTH today in introducing legislation to make necessary changes in the so-called escape clause procedures under section 201 of the Trade Reform Act of 1974.

Over the past few months, I have stood on this floor many times as chairman of the Senate Footwear Caucus to recite the plight of the footwear industry. The statistics of injury in this industry due to imports, such as massive import penetration levels, high unemployment and extensive plant closings present, in my view, the classic case of an industry that is unable to survive the onslaught of foreign imports. It is a perfect example of the type of case that should prevail under our trade laws. Despite this clear showing of injury by reason of imports, earlier this month the International Trade Commission denied the footwear industry's petition for relief under section 201.

In my opinion, the ITC's decision defies logic. The initial statements of the Commissioners indicate that the ITC has ignored the true condition of the domestic footwear industry. First, the Commission's decision that no injury has occurred underestimates the massive surge of imports that has flooded the domestic market. Since 1968, when tariffs were lowered, imports have increased by 232 percent. In 1983, they accounted for 64 percent of the U.S. market and over 6 percent of the entire U.S. trade deficit. Today, imported footwear comprises over 70 percent of the entire retail market. This import penetration level is well over twice the import levels in the steel and copper industries, which were both granted relief by the ITC last week.

These high import levels have had a crippling effect on the U.S. industry and its labor force. Unemployment in the industry now exceeds 18 percent, double the national average. In 1982, 41,000 American shoe workers were unemployed due to factory closings. Already, in 1984, approximately 20 more factories have been closed. In my own State of Maine—the largest footwear manufacturing State in the Nation—nearly 2,000 jobs have been lost since 1981, when the orderly marketing agreements were terminated.

Just last week, I received word from another Maine shoe manufacturer that it will be closing part of its facilities, putting over 50 more people out of work.

And yet, the ITC ruled that imports are not seriously injuring this industry. I invite the ITC commissioners to come to Maine and explain to the unemployed shoe workers, especially to those workers in rural areas with no other source of employment, that the footwear industry is not hurting due to imports.

The commissioners' statement that no injury exists because some of the shoe companies are making a profit is equally astounding. This ignores the fact that profit margins have been limited to only the larger companies. The majority of firms comprising the domestic industry, however, are small firms that have been hit hard by imports. Also, Mr. President, I want to point out that simply making a profit does not mean that the entire industry is not being injured. Simply start laying off workers and shutting down factories and it is easy to make a profit. Move your operations off shore to countries where the production costs are lower and you can certainly make a profit that way. The simple fact is that the industry has had to resort to these profitmaking techniques due to massive, uncontrolled imports. Only the survivors in this ravaged industry have turned a profit—and the number of survivors is dropping fast.

Mr. President, the ITC's decision in the footwear case brings me to the inescapable conclusion that our trade laws are not working as Congress intended. If this classic case of injury by reason of imports cannot pass muster under our trade laws, then the ITC is either misinterpreting the law or the current law must be clarified. It is my firm belief that this case should have won under the current escape clause provisions. In order to avoid another case of the ITC turning the rule of law on its head, however, it is crucial that the Congress amend the section 201 process so that relief will be granted in meritorious cases such as these.

The legislation we are introducing today would clarify the law in several areas. First, the bill makes clear that the ITC must consider increases in imports by domestic producers as a factor in finding serious injury or the threat of serious injury, rather than treating such increases as positive efforts to adjust. This change will make the ITC recognize that domestic producers are often forced to go offshore as a last resort in order to survive the flood of imports.

Second, the bill makes clear that a domestic industry's loss of market share is positive evidence of injury under section 201. In the footwear decision, the ITC indicated that the domestic footwear industry is not being injured, despite its total failure to participate in the tremendous growth of the market in 1982 and 1983. Making this change in the law will ensure that loss of market share is not disregarded by the ITC.

Third, the bill makes clear that the aggregate profitability of an industry alone does not preclude the ITC from finding serious injury or the threat of serious injury when the production and employment criteria of the statute are met.

Recently, I along with several of my colleagues, introduced S. 2731, a footwear quota bill to provide immediate relief to the footwear industry. Identical legislation has been introduced in the House. I, as well as other members of the Senate Footwear Caucus will actively pursue passage of that important legislation in order to save the domestic footwear industry from further decline.

I believe that, in addition to the quota legislation, the trade reforms we are introducing today are necessary to ensure that the travesty of justice we have witnessed in the footwear case will not be repeated. It is only fair that the Congress amend our trade laws so that relief will be granted to industries that are being sorely injured by imports.●

By Mr. BOSCHWITZ:

S. 2847. A bill to eliminate the asset criteria for the needs test under the guaranteed student loan program; to the Committee on Labor and Human Resources.

NEEDS TEST UNDER THE GUARANTEED STUDENT LOAN PROGRAM

● Mr. BOSCHWITZ. Mr. President, I rise today to introduce legislation to ease access to the Guaranteed Student Loan Program. This bill would eliminate any asset test in determining eligibility for the GSL Program.

This program was first authorized in 1965 as part of the Higher Education Act. It was intended to address the student and needs of lower and especially middle income families by providing incentives to private lenders to make loans to students. The GSL Program was based on financial need from 1965 until 1978. In 1978 the needs test was removed by the Middle Income Student Assistance Act. Although this clearly made the GSL Program available to all students from middle income families, it also made the program available to high income families and contributed to the GSL Program becoming the fastest growing entitlement program in the late 1970's and early 1980's. The number of loan commitments more than tripled from fiscal year 1978 to fiscal year 1981 and appropriations in fiscal year 1981 were almost five times what they were in fiscal year 1978.

As part of the 1981 Omnibus Reconciliations Act a needs test was again applied to the GSL Program, but only where the family adjusted gross income exceed $30,000. However, not only is a determination of need based on income, but also on assets. First, this discourages savings for education because savings would be counted against students in determining eligibility for any aid, including a guaranteed student loan. It is usually easier to get a loan if you have some collateral, not more difficult. Second, many farm families are ineligible because the value of their family farm is counted against them in determining eligibility for the GSL Program. Although many farm families are land rich, they are cash poor, and are forced to sell land or farm equipment to pay for their son's or daughter's education.

The original purpose of the GSL Program was to help middle income students afford a post-secondary education. The $30,000 needs test helps to ensure high income students are not benefiting, but we need to eliminate consideration of assets to ensure that middle income students and families receive the assistance they need.●

By Mr. BOSCHWITZ:

S. 2848. A bill entitled the "Women's Small Business Ownership Act of 1984"; to the Committee on Small Business.

WOMEN'S SMALL BUSINESS OWNERSHIP ACT OF 1984

● Mr. BOSCHWITZ. Mr. President, I am introducing a bill to establish a National Commission on Women's Small Business Ownership. The purpose of the Commission will be to study ways to improve the business climate for women business owners. The Commission would be appointed for 2 years at a cost of about $2 million, report its findings, and then expire. Similar legislation has been introduced in the House by Congressman MOODY and has been reported out of the Small Business Committee.

You hear and read a lot about the difficulties encountered by women business owners, but there is very little statistical data available. The most recent statistics available are Census Bureau data from 1977 to 1980. That data showed that over that period the average net income of female-operated sole proprietorships continued to stay at about 31 percent of the average for male-operated sole proprietorships. The number of businesses owned by women increased 33 percent from 1977 to 1980, while business owned by men only increased 11 percent.

This Commission will help fill the void in statistics since 1980 by not only collecting available data but also reviewing data collecting procedures and

identifying gaps and discrepancies. The Commission will also review all existing Federal initiatives relating to women-owned small businesses and the Federal role in aiding and promoting women-owned small businesses. This bill directs the Commission to focus on the special problems of socially and economically disadvantaged women in owning small businesses. Finally, the Commission would be required to make recommendations based upon its findings. The recommendations should include private sector and Federal initiatives to assist women in small business ownership.

Last year, President Reagan took some important steps to help promote women entrepreneurs and to improve the business climate for women. He reinstituted the Interagency Committee on Women's Business Enterprise to coordinate the efforts of the various Federal agencies in assisting women business owners. The President established a Presidential Advisory Committee to advise the President and the Small Business Administration concerning the status of women-owned businesses. Probably the most innovative step taken by President Reagan was to initiate a series of conferences for women entrepreneurs to provide business skills training for women business owners. This Commission would complement the initiatives taken by President Reagan by serving as a review body of all efforts on behalf of women business owners.

As one of the few businessmen in Congress, and one of very few to have started a business from scratch, I know all too well the difficulties in owning a business. To succeed in business, particularly to start a business, I had to borrow from banks, approach new suppliers, convince landlords to rent me buildings, fight with government at various levels, and overcome many other obstacles. For women, accomplishing all of those things would have been harder. For a black, Hispanic, or Hmong it would have been harder as well, and if I had been a woman and a member of one of those minority groups it would have been harder still. One of the basics of the free enterprise system is access—All should have equal access to our economic system. We are not yet close to achieving economic parity in the marketplace and the pace at which we move is not rapid enough, especially considering the number of people affected. So barriers must be broken down, barriers—economic and others—that deny people equal access to treatment in our society.

The Commission established by this bill will help to identify those barriers and help us, both the Government and private sector, to break down those barriers.●

By Mr. DANFORTH (for himself, Mr. FORD, Mrs. KASSEBAUM, Mr. JEPSEN, Mr. EXON, Mr. KASTEN, Mr. GRASSLEY, and Mr. DOLE):

S.J. Res. 331. Joint resolution to require the Interstate Commerce Commission to consider certain indicators in determining the revenue adequacy of railroads, and for other purposes; to the Committee of Commerce, Science, and Transportation.

REVENUE ADEQUACY OF RAILROADS

● Mr. DANFORTH. Mr. President, today I am introducing on behalf of myself and Senators FORD, KASSEBAUM, JESPEN, EXON, KASTEN, GRASSLEY, and DOLE, a joint resolution dealing with the Interstate Commerce Commission's [ICC] regulation of the railroad industry.

The basis for the resolution goes back to last summer when I chaired Senate Commerce Committee hearings on the Staggers Rail Act of 1981. The purpose of the hearings was to determine whether the goals of the act were being met. We heard from numerous witnesses, including representatives of the railroad industry and shippers.

During the hearings, witnesses testified that the Staggers Act's goal of improving the financial health of the railroad industry was indeed being met. Witnesses said that this was best demonstrated by the industry's remarkable turnaround since the 1970's. Back then, the industry was plagued with bankruptcies. Today, the industry is being touted as a good investment by Wall Street.

On the other hand, witnesses said that the Staggers Act's other goals of ensuring effective competition and protecting shippers through regulation were not being met. They said the basic problem was that the ICC was not giving these goals sufficient weight in its regulation of the railroads. Let me explain further.

The Staggers Act gives greater rate freedom to a railroad that is not revenue adequate, that is to say, not profitable. In making this determination, the ICC has decided to look at only one factor, which is a comparison of the railroad's return on investment to the current cost of capital. Using this factor, all the major railroads have been found to be revenue inadequate. Shippers testified that if the ICC took into account additional financial factors, some of these same railroads would be found to be revenue adequate.

Another problem has arisen with respect to how the ICC determines market dominance. This is important because under the Staggers Act the ICC has authority to regulate rates only where the railroad has market dominance, which is another way of saying that the railroad has not effective competition. In making its determination on market dominance, the ICC has decided to consider product and geographical competition. Shippers testified that this would result in a further reduction of the ICC's jurisdiction over railroad rates.

In another area, the ICC has proposed certain guidelines to be used to ensure that railroad coal rates are reasonable. While this effort is commendable, shippers testified that the ICC's guidelines would not actually act as constraints on these rates, but instead would permit them to escalate.

Finally, during the hearing, shippers and some railroads stated that the ICC has not scrutinized the cancellation of joint routes, joint rates, and reciprocal switching agreements by certain railroads before they have gone into effect. These witnesses testified that the cancellations could reduce competition among railroads, and could lead to a new group of captive shippers if permitted to continue unabated.

Since the conclusion of the committee's hearings, I have wrestled with the question of whether legislation is necessary to address the concerns raised during the hearings. Frankly, I believe much could be accomplished without additional legislation. Further, I am aware that some shippers and rail carriers have been meeting to try to resolve some of these concerns. However, so far these matters still have not been resolved. Accordingly, I have decided to introduce the joint resolution at this time. I believe it gives a clear signal to the ICC and others that we in Congress really do expect all of the goals of the Staggers Act to be met. At the same time, the joint resolution does not actually amend the Staggers Act. Instead, it goes directly to the ICC's implementation of the act. Accordingly, I believe it represents a moderate approach that many of our colleagues can support.

In closing, I ask unanimous consent that the text of 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. 331

Whereas the Interstate Commerce Commission (hereinafter referred to as the "Commission") is mandated by law to determine the revenue adequacy of railroads, and revenue adequacy is considered in any dispute regarding the reasonableness of rail rates;

Whereas, in determining the revenue adequacy of railroads, the Commission has decided to use a single financial indicator which results in most railroads being found to be revenue inadequate, despite other evidence to the contrary;

Whereas the Commission is responsible for determining whether a disputed rail rate is reasonable, in instances where there is an absence of effective competition;

Whereas the Commission has decided that evidence of geographic and product competition may be relevant in determining whether there is effective competition for service on a particular rail line;

Whereas the Commission has issued proposed guidelines for prescribing reasonable rates for the shipment of coal in instances where there is an absence of effective competition, and such guidelines are intended to make such rates subject to four upward constraints, described in terms of stand-alone costs, management efficiencies, 15-percent annual increases, and revenue adequacy;

Whereas such guidelines would not actually constrain rates for the shipment of coal, but would permit such rates to escalate;

Whereas the Commission is responsible for ensuring effective competition among rail carriers;

Whereas the Commission has permitted cancellations of through rates, joint rates and reciprocal switching agreements by rail carriers that control points of origin or destination, and such cancellations threaten competition;

Whereas the Commission is responsible for balancing the need for confidentiality of information regarding railroad contracts with the rights of parties to challenge such contracts; and

Whereas the Commission has decided to condition the release of detailed information regarding railroad contracts on the ability of parties challenging such contracts to demonstrate the likelihood of success on the merits of their complaints: Now, therefore, be it

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

(1) in determining the revenue adequacy of railroads, the Commission should consider multiple financial indicators, such as return on investment, operating ratio, fixed-charge coverage ratio, and throw-off to debt ratio;

(2) in determining in any particular proceeding whether there is effective competition, the Commission should consider evidence of geographic and product competition only when the railroad which is a party to such proceeding proves that such evidence exists, and that such competition is an effective constraint on the rate of such railroad;

(3) the Commission should revise its proposed guidelines for prescribing reasonable rates for the shipment of coal in instances where there is an absence of effective competition, to clarify further the meaning of the guideline on stand-alone costs and to eliminate the guideline on 15 percent annual increases;

(4) in promoting maximum competition among rail carriers for rail traffic, the Commission should prohibit a rail carrier or its affiliate that controls a point of origin or destination from preventing another carrier from competing for such traffic by refusing to—

(A) interchange traffic at a requested junction point;

(B) provide requested reciprocal switching service; or

(C) establish a rate on a portion of a through route or a charge for reciprocal switching that commercially permits another carrier to provide the service, unless the carrier that controls a point of origin or destination proves that such rate or charge is less than its costs (plus a reasonable return) or providing service over such carrier's portion of the through movement, or of providing such reciprocal switching service;

(5) the Commission should expedite completion of its study of the reasons for and the effects of all cancellations of through rates, joint rail rates and reciprocal switching agreements which have occurred since the date of enactment of the Staggers Rail Act of 1980 (Public Law 96-448; 94 Stat. 1895) and should report to the Congress on any necessary or desirable administrative or legislative actions regarding such cancellations; and

(6) in releasing detailed information regarding railroad contracts, the Commission should facilitate discovery of such information by parties with standing to challenge such contracts.●

By Mr. DOLE (for himself, Mr. LEAHY, Mr. DANFORTH, Mr. HEINZ, Mr. HUDDLESTON, Mr. PRYOR, Mr. COCHRAN, Mr. DURENBERGER, Mr. HOLLINGS, Mr. INOUYE, Mr. JEPSEN, Mr. LUGAR, Mrs. HAWKINS, Mr. HATFIELD, Mr. HEFLIN, Mr. ZORINSKY, Mr. NUNN, Mr. JOHNSTON, Mr. WILSON, Mr. MATSUNAGA, Mr. HART, Mr. MOYNIHAN, Mr. BAUCUS, Mr. DIXON, Mr. BOREN, Mr. BUMPERS, Mr. COHEN, Mr. RANDOLPH, Mr. MURKOWSKI, and Mr. RIEGLE):

S.J. Res. 332. Joint resolution to proclaim October 16, 1984, as "World Food Day"; to the Committee on the Judiciary.

WORLD FOOD DAY

Mr. DOLE. Mr. President, the Senator from Kansas is pleased to introduce this year's Senate joint resolution designating October 16, 1984, as "World Food Day"; 29 of my colleagues join me in introducing this resolution, and I thank them for their support. The cosponsors of this resolution manifest the strong bipartisan concern that exists for the problems of world hunger: Senators LEAHY, DANFORTH, HEINZ, HUDDLESTON, PRYOR, COCHRAN, DURENBERGER, HOLLINGS, INOUYE, JEPSEN, LUGAR, HAWKINS, HATFIELD, HEFLIN, ZORINSKY, NUNN, JOHNSTON, WILSON, MATSUNAGA, HART, MOYNIHAN, BAUCUS, DIXON, BOREN, BUMPERS, COHEN, RANDOLPH, MURKOWSKI, and RIEGLE.

Last year, a similar resolution was introduced by the distinguished Senator from Pennsylvania. World Food Day has become an October tradition. Senators DANFORTH and LEAHY have also been very active in their concerns for world hunger.

Most recently, the distinguished Senator from Missouri toured Africa to personally visit those areas that were suffering from famine as a result of the prolonged drought conditions on that continent. The pictures and tales he came back with have left a lasting impression on all of us. His great concern was translated into action through his leadership in providing a total of $150 million for emergency Public Law 480 food assistance to Africa through the supplemental appropriations process this year.

PUBLIC AWARENESS EFFORT

Resolutions such as this one to designate World Food Day, help to increase the awareness of people in this country of the problems of hunger and malnutrition that face other less fortunate nations. Every year since it began, thousands of people participate in World Food Day events. Over 300 groups have joined the World Food Day National Committee to coordinate efforts relating to this issue. This kind of resolution demonstrates that the Congress of the United States is serious about its commitment to helping solve the serious problem of world hunger.

The issue is one that is tremendously complex—it is rooted in the poverty and challenges of economic development that Third World countries face. There are no easy solutions. But that doesn't mean that we shouldn't try to do what we can as one of the wealthiest nations in the world and the leading food producer.

There are four major organizations that are involved in food assistance efforts in Third World countries. The Food and Agriculture Organization [FAO], the World Food Programme, the International Fund for Agricultural Development, and the World Food Council. These organizations are to be congratulated on their tremendous commitment to the goals of providing food to people in countries faced with serious hunger and malnutrition problems.

WORLD FOOD SUPPLIES

The world's food supply remains a cause for serious concern in the early 1980's. The FAO Conference held in November of 1983 found that preliminary statistics indicated a decline of 1 percent in world food and agricultural production in 1983 after an increase of about 3 percent in the preceding 2 years. Further, production in developing countries increased at a rate well below that of the previous 2 years and was lower than the average for the period 1978-82. In the developed countries, food production had declined by 8 percent. A decrease in coarse grain output of 13 to 14 percent was reported, primarily in North America.

WORLD FOOD AID NEEDS

According to a recent outlook and situation summary released by the U.S. Department of Agriculture, world food aid needs remain high. During 1984-85, developing countries will need to import 1 million more tons of grain than the previous year to maintain diets at existing levels. Although food aid needs are projected to decline an estimated 640,000 tons from the 1983-84 high of 12.4 million, this will still represent 38 percent of the countries' 31 million-ton food import requirement.

INEQUITABLE DISTRIBUTION OF FOOD SUPPLY

If world food supplies were distributed equitably, there would be enough to feed all the world's people at nutritionally adequate levels. However, food supplies are shared very unevenly between the relatively wealthy developed nations and the poor developing countries. Further inequities exist among the Third World countries themselves, as well as among the different population and income groups within them.

FAO estimates that about one-quarter of the people in the developing countries are undernourished. Nearly three-quarters are to be found in the Far East, but Africa has almost as high a proportion of undernourished people. The total numbers of undernourished people have continued to increase in recent years. Twelve countries have extremely severe malnutrition problems—India, Indonesia, Bangladesh, Nigeria, Brazil, Ethiopia, Pakistan, the Philippines, Afghanistan, Burma, Colombia, and Thailand. More than 40 percent of the populations of Chad, Ethiopia, and Haiti are undernourished.

DROUGHT SITUATION IN AFRICA

The United States has been particularly concerned about the situation in Africa, where 22 western, eastern, and southern African countries, with a combined population of 150 million, are threatened by grave food shortages. In an attempt to provide relief for this drought situation, the Congress has provided an additional $150 million in food assistance through the Public Law 480 program to address the need in African countries. This Food-for-Peace Program is the primary mechanism by which the United States participates in efforts to eradicate world hunger.

MAGNITUDE OF PROBLEM

Mr. President, the world's population exceeds 4,000 million, and of this number, nearly 500 million suffer from severe malnutrition. The human consequences of these appalling statistics are everyday misery, chronic illness, and often death.

Although it is uncertain how many people actually die from starvation every year, millions of people die from illnesses which they are too weak to resist as a result of malnutrition and even outright hunger. The infant death rate for children under the age of 5 is a matter of grave concern. Many children in underdeveloped countries never have a chance to survive to a better future.

This widespread problem of hunger and malnutrition that continued to exist in Third World countries is not simply caused by inadequate food production—the root problem is poverty. Fighting world hunger begins with the battle against poverty. Closely related to this is the necessity to develop a Third World country's agricultural system so that it can become self-sufficient, generating both food for the hunger and jobs for the rural population.

CONCLUDING REMARKS

Mr. President, the Senator from Kansas is pleased to be able to introduce this resolution with more than the requisite number of cosponsors. Although the world hunger situation has appeared to be somewhat alleviated during the past 2 years, crises like the African drought and accompanying famine conditions may be expected to arise and will require a widespread humanitarian response from the world's greatest food producers, of which we are the leader.

We have been blessed with agricultural abundance in this country, and it is in the traditional American spirit of generosity that we provide assistance to less fortunate underdeveloped countries through programs such as the Food for Peace Program (Public Law 480). Hunger in any form is unacceptable, and this World Food Day resolution is part of a continuing effort to generate an understanding of the magnitude of this world hunger problem. I thank my colleagues for their support of this effort, and hope that this resolution will receive expeditious consideration by the committee.

Mr. DANFORTH. Mr. President, I am pleased to cosponsor a joint resolution designating October 16, 1984, as "World Food Day." The commemoration of this day will encourage thousands of people across the country to discuss and take action on world hunger issues. There is clearly a pressing need to heighten public awareness of the world hunger problem. Global nutrition requirements are outstripping food aid resources at an alarming pace. As the world's foremost food producer and largest food donor, the United States is obligated to take the lead in correcting this tragic imbalance. If we fail to commit ourselves to this undertaking, the elimination of hunger will remain an illusory dream.

The obstacles confronting us are formidable. Natural and manmade disasters have wreaked havoc with food production and food supply systems in country after country. As a result, more than 500 million people are plagued by hunger and chronic malnutrition. Over half of those afflicted by hunger are small children. In a single day, more than 40,000 children die of nutrition-related causes. Many of those who survive the ravages of hunger will go through life with serious mental or physical disabilities.

Most of the world's severely malnourished people live in the developing nations of Asia, Africa, Latin America, and the Indian subcontinent. It is in Sub-Saharan Africa, however, that the food crisis is most acute. Sub-Saharan Africa is the only region in the world where per capita food production is actually declining. There are more hungry people in Africa today than 10 years ago. Inevitably, the children suffer the most. Nutrition experts estimate that one in three African children dies of hunger or malnutrition-related disease before reaching school age. There is every indication that the continent's food situation will continue to deteriorate in the coming years.

Finally, we must not forget that even in the United States, there are people who go without enough to eat. Although accurate measures of the extent of domestic hunger are hard to come by, the available evidence indicates that the number of people seeking food relief is on the increase.

The world hunger problem can be overcome. The necessary resources and technology already exist. We only lack the will. The United States and the other developed nations must renew their commitment to free the world from hunger. The people of the developing world must in turn commit themselves to working constructively with us toward this goal. I believe that the celebration of World Food Day is an important first step in this mutual undertaking.

Mr. President, I ask unanimous consent that the proposed 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. 332

Whereas World War I, the "war to end all wars" began seventy years ago;

Whereas that war spawned a new breed of warrior, the aviator, who engaged in single combat high above the conflict on the ground;

Whereas these truly remarkable men defended the skies of Europe with valor and distinction;

Whereas some of these aviators achieved the title "Ace" by gaining at least five confirmed victories over opponents in the air;

Whereas there are only about 60 known surviving Aces of World War I, who meet periodically to share memories of a conflict familiar to many Americans only through recorded history;

Whereas all Americans should express their gratitude and respect for these galliant air warriors for their extraordinary feat in defense of liberty: Now therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That September 21, 1984 is designated as "World War I Aces and Aviators Day" and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate programs and activities.

By Mr. HELMS:

S.J. Res. 333. Joint resolution to designate September 21, 1984 as "World War I Aces and Aviators Day"; to the Committee on the Judiciary.

WORLD WAR I ACES AND AVIATORS DAY

● Mr. HELMS. Mr. President, I am today introducing legislation that will establish September 21, 1984 as "World War I Aces and Aviators Day."

Seventy years ago, World War I, "the war to end all wars," began. Before it was over, American blood stained the fields of France. Like the men who stormed the beaches of Normandy a generation later, they were willing to give their lives so that others might live in freedom. Just repeating the names like the Marne, Chateau-Thierry, Belleau Wood and the Argonne is enough to conjure up the horror of that conflict.

That war also spawned a new breed of warrior, Mr. President, one who sometimes was locked in single combat far above the impersonal mass slaughter on the ground. He was, of course, the airman. Aviation was in its infancy then. The first sustained flight by a heavier than air powered craft took place on December 17, 1903, when the Wright brothers' *Flyer* took off at Kitty Hawk, NC. The first aeroplane for possible military use was not delivered to the U.S. Army until August 1909.

At the start of World War I the aeroplane was generally viewed as being of dubious military value. But in 4 years it had become a powerful strategic weapon. Aviation at the time was novel enough, and dangerous enough to excite universal admiration. Still, it was the "Ace," the individual flyer who was able to achieve five confirmed victories over his opponents in the air, that stood out above all others. Despite the seriousness of their work, some viewed it as a game. They were lighthearted youths who, because of the often individualistic nature of their contests, were dubbed "Knights of the Air." They were also among the real pioneers of aviation and this country owes these men a great deal.

Now their ranks are thin, Mr. President. Like so many of their doughboy counterparts on the ground, the final roll call has sounded for most of our first air aces. Soon they all will be gone and their names, and the feats they achieved, will slip into the history books along with their comrades from earlier wars. Those aces from the first air war who remain today are truly remarkable men. Our Nation is proud of them and we should find a way to honor them for the contributions they have made to our country and to the progress of aviation.

I am therefore introducing this resolution calling upon the President of the United States to proclaim September 21, 1984 as "World War I Aces and Aviators Day," so that all Americans can express their gratitude and respect for these courageous airmen. I urge other Senators to join in support of this legislation.●

ADDITIONAL COSPONSORS

S. 1531

At the request of Mr. RIEGLE, the names of the Senator from North Dakota [Mr. ANDREWS], the Senator from Mississippi [Mr. STENNIS], the Senator from New Jersey [Mr. BRADLEY], the Senator from New Mexico [Mr. BINGAMAN] and the Senator from Tennessee [Mr. SASSER] were added as cosponsors of S. 1531, A bill to encourage the use of public school facilities before and after school hours for the care of school-age children and for other purposes.

S. 1779

At the request of Mr. PROXMIRE, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of S. 1779, A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to generate additional revenues for the Superfund to provide incentives for hazardous waste recycling and to provide for certain additional forms of assistance respecting release of hazardous substances, to amend the Internal Revenue Code of 1954 to impose (in lieu of the Superfund taxes on petroleum and chemical feedstocks) an additional tax on hazardous wastes, and for other purposes.

S. 1841

At the request of Mr. THURMOND, the names of the Senator from Minnesota [Mr. BOSCHWITZ], and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of S. 1841, A bill to promote research and development, encourage innovation, stimulate trade, and make necessary and appropriate amendments to the antitrust, patent, and copyright laws.

S. 2258

At the request of Mr. MOYNIHAN, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 2258, A bill to grant a Federal charter to the 369th Veterans' Association.

S. 2509

At the request of Mr. RUDMAN, the name of the Senator from Kentucky [Mr. FORD] was added as a cosponsor of S. 2509, a bill to amend the Federal Election Campaign Act of 1971 to regulate political advertising in campaigns for Federal elective office.

S. 2720

At the request of Mrs. HAWKINS, the names of the Senator from Indiana [Mr. LUGAR], the Senator from Mississippi [Mr. COCHRAN], the Senator from New Jersey [Mr. BRADLEY], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Nebraska [Mr. ZORINSKY], and the Senator from Georgia [Mr. MATTINGLY] were added as cosponsors of S. 2720, a bill to recognize the organization known as the Women's Army Corps Veterans' Association.

S. 2725

At the request of Mr. DECONCINI, the name of the Senator from Florida [Mrs. HAWKINS] was added as a cosponsor of S. 2725, a bill to amend part A of title XVIII of the Social Security Act with respect to payment rates for hospice care.

S. 2735

At the request of Mr. NICKLES, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 2735, a bill to rescind funds appropriated to the Energy Security Reserve by the 1980 Department of the Interior and Related Agencies Appropriations Act, and for other purposes.

S. 2743

At the request of Mr. GRASSLEY, the names of the Senator from Wisconsin [Mr. KASTEN], the Senator from Colorado [Mr. HART], the Senator from Maryland [Mr. SARBANES], the Senator from Nevada [Mr. HECHT], the Senator from South Dakota [Mr. PRESSLER], and the Senator from New Jersey [Mr. LAUTENBERG] were added as cosponsors of S. 2743, a bill to designate a portion of 16th Street, NW., Washington, DC, on which the Embassy of the Union of Soviet Socialists Republics is located, as "Andrei Sakharov Avenue."

S. 2766

At the request of Mr. THURMOND, the names of the Senator from Mississippi [Mr. STENNIS], the Senator from Massachusetts [Mr. TSONGAS], the Senator from Georgia [Mr. MATTINGLY], and the Senator from New Hampshire [Mr. RUDMAN] were added as cosponsors of S. 2766, a bill to amend Chapter 44, title 18, United States Code, to regulate the manufacture and importation of armor piercing ammunition.

S. 2774

At the request of Mrs. KASSEBAUM, the names of the Senator from South Carolina [Mr. HOLLINGS], the Senator from Georgia [Mr. NUNN], the Senator from Utah [Mr. HATCH], the Senator from Hawaii [Mr. MATSUNAGA] were added as cosponsors of S. 2774, a bill to grant a Federal charter to the National Society, Daughters of the American Colonists.

S. 2802

At the request of Mr. THURMOND, the names of the Senator from North Carolina [Mr. EAST], and the Senator from Alabama [Mr. DENTON], were added as cosponsors of S. 2802, A bill to provide for comprehensive reforms and to achieve greater equity in the compensation of attorneys pursuant to Federal statute in civil, criminal, and administrative proceedings in which the United States is party, and in civil proceedings involving State and local governments.

SENATE JOINT RESOLUTION 253

At the request of Mr. PRESSLER, the name of the Senator from Iowa [Mr.

GRASSLEY] was added as a cosponsor of Senate Joint Resolution 253, a joint resolution to authorize and request the President to designate September 16, as "Ethnic American Day".

SENATE JOINT RESOLUTION 276

At the request of Mr. THURMOND, his name was added as a cosponsor of Senate Joint Resolution 276, a joint resolution to designate the week beginning June 3, 1984, as "Management Week in America".

SENATE JOINT RESOLUTION 299

At the request of Mr. BYRD, his name was added as a cosponsor of Senate Joint Resolution 299, a joint resolution to designate November 1984 as "National Diabetes Month".

At the request of Mr. ABDNOR, the names of the Senator from Iowa [Mr. GRASSLEY], the Senator from South Dakota [Mr. PRESSLER], the Senator from Idaho [Mr. MCCLURE], the Senator from North Dakota [Mr. BURDICK], and the Senator from Florida [Mrs. HAWKINS] were added as cosponsors of Senate Joint Resolution 299, supra.

SENATE JOINT RESOLUTION 305

At the request of Mrs. HAWKINS, the names of the Senator from Hawaii [Mr. MATSUNAGA], and the Senator from Kansas [Mr. DOLE] were added as cosponsors of Senate Joint Resolution 305, a joint resolution to designate the week of September 10, 1984, through September 16, 1984, as "Teenage Alcohol Abuse Awareness Week".

SENATE JOINT RESOLUTION 307

At the request of Mr. GARN, the names of the Senator from Alabama [Mr. DENTON], the Senator from Florida [Mrs. HAWKINS], the Senator from Texas [Mr. TOWER], the Senator from Nebraska [Mr. ZORINSKY], and the Senator from Oklahoma [Mr. NICKLES] were added as cosponsors of Senate Joint Resolution 307, a joint resolution to designate July 20, 1984, as "Space Exploration Day".

SENATE JOINT RESOLUTION 308

At the request of Mr. NUNN, the name of the Senator from Wisconsin [Mr. PROXMIRE] was added as a cosponsor of Senate Joint Resolution 308, a joint resolution to designate the week beginning on September 9, 1984, as "National Community Leadership Week".

SENATE JOINT RESOLUTION 309

At the request of Mr. BENTSEN, the names of the Senator from West Virginia [Mr. RANDOLPH], the Senator from Massachusetts [Mr. TSONGAS], the Senator from South Carolina [Mr. THURMOND], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Illinois [Mr. DIXON], the Senator from Arkansas [Mr. BUMPERS], the Senator from California [Mr. WILSON], the Senator from Ohio [Mr. GLENN], the Senator from Michigan [Mr. LEVIN], and the Senator from Florida [Mrs. HAWKINS] were added as cosponsors of Senate Joint Resolution 309, a joint resolution authorizing and requesting the President to designate January 1985 as "National Cerebral Palsy Month".

SENATE JOINT RESOLUTION 325

At the request of Mr. NUNN, the names of the Senator from Rhode Island [Mr. CHAFEE], the Senator from Minnesota [Mr. DURENBERGER], and the Senator from South Carolina [Mr. HOLLINGS] were added as cosponsors of Senate Joint Resolution 325, a joint resolution to designate October 7, 1984 through October 13, 1984, as "National Children's Week".

SENATE CONCURRENT RESOLUTION 118

At the request of Mr. GRASSLEY, the names of the Senator from Wisconsin [Mr. KASTEN], the Senator from Colorado [Mr. HART], the Senator from Maryland [Mr. SARBANES], the Senator from Nevada [Mr. HECHT], the Senator from South Dakota [Mr. PRESSLER], and the Senator from New Jersey [Mr. LAUTENBERG] were added as cosponsors of Senate Concurrent Resolution 118, a concurrent resolution expressing the sense of Congress that the portion of the street in the District of Columbia on which is located the Embassy of the Union of Soviet Socialist Republics, and the portion of any street in any other city in the United States on which is located a consular office or mission of the Union of Soviet Socialist Republics, should be named Andrei Sakharov Avenue.

SENATE CONCURRENT RESOLUTION 120

At the request of Mrs. HAWKINS, the name of the Senator from Massachusetts [Mr. TSONGAS] was added as a cosponsor of Senate Concurrent Resolution 120, a concurrent resolution expressing the sense of the Congress that the legislatures of the States should develop and enact legislation designed to provide child victims of sexual assault with protection and assistance during administrative and judicial proceedings.

SENATE CONCURRENT RESOLUTION 129

At the request of Mr. MATSUNAGA, the name of the Senator from Illinois [Mr. PERCY] was added as a cosponsor of Senate Concurrent Resolution 129, a concurrent resolution relating to space rescue.

SENATE RESOLUTION 412

At the request of Mr. HOLLINGS, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of Senate Resolution 412, a resolution to congratulate and commend the USA Philharmonic Society.

SENATE RESOLUTION 414

At the request of Mr. BYRD, his name was added as a cosponsor of Senate Resolution 414, a resolution to congratulate and commend the USA Philharmonic Society.

SENATE CONCURRENT RESOLUTION 130—RELATING TO CREDIT TREATMENT OF AGRICULTURAL BORROWERS

Mr. EXON (for himself, Mr. HUDDLESTON, Mr. JEPSEN, Mr. FORD, and Mr. ZORINSKY) submitted the following concurrent resolution; which was placed on the calendar by unanimous consent:

S. RES. 130

Whereas the competing credit demands by State and local governments, agriculture, business, and consumers, aggravated by massive Federal debt financing and increasing credit demands by foreign governments, continue to cause serious economic disruption in rural America;

Whereas the United States has a vital interest in protecting the economic health of American farmers;

Whereas the American farmer has been caught in an unprecedented credit squeeze;

Whereas current monetary and fiscal policies have caused real interest rates to remain at two or three times historic levels of such rates;

Whereas high real interest rates have dramatically increased the value of the dollar to the detriment of farmers who devote at least one out of three acres of land to production for export;

Whereas the average value of an acre of farm land fell this year for the third year in a row, the longest sustained decline since the Great Depression;

Whereas the total amount of debt owed by American farmers is $203,800,000,000;

Whereas last year Brazil, Mexico, Argentina, and Venezuela held $260,000,000,000 in external debt and the interest payments on these loans alone totaled more than $20,000,000,000;

Whereas the governments of Brazil, Mexico, Argentina, and Venezuela have been successful in securing postponements in debt and principal repayments, favorable renegotiations, new loan guarantees, and other special arrangements through private negotiations, assistance from the United States Government, and the International Monetary Fund; and

Whereas American farmers have been unsuccessful in securing similar special treatment from private banks or the Federal Government; Now, therefore, be it

Resolved by the Senate (the House of Representatives of the United States of America in Congress concurring), That it is the sense of the Congress that—

(1) the President, in cooperation with the Board of Governors of the Federal Reserve System, should exercise appropriate authority to assure that an adequate flow of credit be available to American farmers at reasonable rates and that American farmers be treated no less favorably than foreign borrowers with comparable levels of risk, and

(2) the President, in cooperation with the Board of Governors of the Federal Reserve System, should take noninflationary actions necessary to reduce interest rates which are currently at levels abnormally above the real cost of money.

Mr. EXON. Mr. President, I rise to offer a concurrent resolution to express the sense of the Congress that American farmers should receive fair treatment and an adequate flow of credit.

Wednesday night, this body approved a most modest deficit reduction package. The recent string of record deficits have had an extremely adverse effect on rural America. As Federal borrowing competes with private borrowing, interest rates increase and as interest rates increase, so does the value of the dollar. Needless to say, this chain reaction has especially hurt the American farmer.

Not only do expenses rise due to increased interest costs, but foreign markets are closed due to the overvalued dollar. In a sector that devotes one-third of its capacity to export. A strong dollar is devastating.

Farmers are facing increasing difficulty in securing loans to get them through this extremely difficult period. Although Nebraska, like many rural States, enjoys a low rate of employment, it is not enjoying prosperity. The unemployment statistics mask a real crisis in rural America.

There have been record numbers of foreclosures and farm sales across the Midwest. The dockets of the bankruptcy courts are filled with farm bankruptcies. This spring many farmers went to their local bankers to renew their loans only to be told that this year the bank just cannot renew.

There is a credit crisis in rural America. Unfortunately, the general public does not know about it.

In contrast, the debt crisis among foreign borrowers receives daily attention in the media and from the administration. Just yesterday, Secretary Regan decried the recent surge in the prime interest rate because it has, in his words, "inflamed a lot of Latin American nations and many of their leaders."

Mr. President, as a Senator from a farm State, I am here to say that if Latin American leaders are inflamed, the American farmers are ablazin'.

The external debt of Brazil, Mexico, Argentina, and Venezuela is roughly equivalent to the total indebtedness of the American farmer. However, I have been puzzled at the diverse treatment the two situations receive.

When foreign borrowers are faced with a temporary inability to repay loans, the President requests an $8.4 billion increase in the funding for the International Monetary Fund to bail out the foreign borrowers.

Recently, when Argentina could not make its loan repayments, the administration lined up a massive loan guarantee scheme.

However, when the American farmer faces a temporary inability to repay his or her loan obligations, the administration railroads a bill through Congress to cut target price supports and reduce farmers' income.

Maybe farm credit problems receive little attention because farm bankers are small local banks rather than the Chase Manhattan or Manufacturers Hanover Trust.

Mr. President, if given the chance, I am confident that the American farmer can weather this storm. The American farmer is a good risk. Our Nation is blessed with the globe's most fertile land, our agricultural sector is the world's most productive and if the Federal Government can get its financial house in order, the agricultural trade opportunities on the world market are indeed bright.

I am not so confident of the creditworthiness of some of our largest foreign borrowers. Recently 11 Latin American nations banded together to form a borrowers cartel. The combined strength of this organization causes me to wonder whether the American lenders or their guarantors will see much of their money. But I surely expect that one way or another Uncle Sam will be asked to pay up.

The irony is indeed great. Farmers, a good credit risk, are unable to secure sufficient credit, while large Latin American borrowers, a questionable credit risk, at best, are given more and more credit.

This resolution asks for equity. Our Nation's first obligation is to its own. The agricultural sector of our economy is subject to constant uncertainty due to the shifting sands of unstable Federal economic policy.

This resolution asks that the President endeavor to assure an adequate flow of credit to American farmers and to assure that farmers are treated no less favorably than foreign borrowers of comparable risk.

I hope that my colleagues see the fairness of this resolution and vote for its adoption.

Mr. President, I ask unanimous consent that recent editorials appearing in the Lincoln Star and the Lincoln Journal newspapers be printed in the RECORD as if read.

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

[From the Lincoln (NE) Journal-Star, June 24, 1984]

DEBT: THE DIRTY SECRET GETS OUT

(By Joseph Kraft)

One by one the veils are coming off that dirty secret of international life—the Latin American debt problem. Already events have forced the debtor countries, the commercial banks and the monetary authorities to declare their distress.

Only the U.S. government continues to ignore the case for emergency measures. But that ostrich-like attitude could prove costly—in political as well as economic impact.

About $350 billion is owed by Latin American countries to several hundred banks in the United States, Western Europe, the Mideast and Japan. Most of the debt is concentrated in four countries—Brazil ($93 billion), Mexico ($87 billion), Argentina ($45 billion) and Venezuela ($34 billion). Defaults by any one country could strain the biggest U.S. banks—stimulating a panic that might bring down the whole financial system.

Since the mid-1982, the debtor countries have been unable to meet their obligations. But Mexico, the first country to run short, developed, with the Federal Reserve Board and the International Monetary Fund, a way to meet the problem on the quiet. The Mexican model, followed by much of Latin America, involved three elements.

First, an austerity program designed to restore financial solvency was worked out by the debtor countries with the IMF. Second, the IMF pushed the commercial banks to roll over existing loans and to cough up some new money. Third, the regulatory agencies, led by the Fed, relaxed the rules so that the commercial banks did not have to reclassify their loans in ways that would diminish earnings and thus reduce public confidence.

As the crisis atmosphere of 1982 wore off, however, public opinion in Latin America grew increasingly hostile to austerity policies undertaken on behalf of foreign banks. In Argentina the democratic government of Raul Alfonsin, which took over from the military junta, found the pressure particulary acute.

Accordingly, Argentina refused to come to terms with the IMF. It made repeated difficulties about interest payments to the banks. It appealed to other Latin American countries for support. A meeting of 11 Latin American countries in Colombia last week asserted anew the case against poor countries tightening their belts to pay off the banks of rich countries.

For a while the banks and the monetary authorities tried to pretend that nothing much was happening. But a run on Continental Illinois, a major bank with many bad loans, showed the bluff was not working. The Fed and other regulatory agencies were obliged to throw the full credit of the United States behind all deposits with Continental Illinois and other major U.S. banks.

With their weakness thus exposed, the banks have now stopped pretending all their Latin American loans are good as gold.

A logical next step is a move by the political authorities in the industrial countries. In one way or another, a promise of more money for the IMF, for the debtor countries, for the banks, needs to be made. For more money is the condition of more lending. More lending is the condition of economic growth in Latin America. And growth is the condition of decisions by Argentina and other countries to keep current on payments which the banks require to stay afloat.

At the London summit this month the seven industrial countries committed themselves to protect the international financial system. But so far, the U.S. government has dug in against further support for the debtor countries, banks or monetary authorities. The official view is that government support can only cushion the bad policies of debtor countries and the banks. And, having gone this far with that view, there is an understandable temptation to hang tough till the elections.

That standoff attitude, however, is more and more risky as the dirty secret becomes known. For the debtor countries are increasingly disposed to challenge the harsh terms imposed by the rich nations. As they do, the position of the banks becomes visibly weaker. And apprehension about the banks leads to sudden gusts of panic that seem to come out of nowhere. Recent runs on U.S. banks have started with rumors in Tokyo.

"The whole system could collapse." one U.S. expert said, "while we were sleeping."

Moreover, if the Reagan administration continues to sit on its hands, the do-nothing policy will be fair game politically. For the financial jitters are connected to big deficits and high interest rates.

[From the Lincoln (NE) Journal, June 13, 1984]

DEBT CRISIS ON FARM SHOULD COMMAND REAGANITES' INTEREST

In what way are many Great Plains and Midwest farmers and ranchers like Brazil, Argentina, Poland or Mexico? That's easy, isn't it? All are shouldering immense debt loads which they are currently incapable of paying off on time. [And maybe incapable of ever repaying.]

What to do to prevent a formal declaration of bankruptcy? The single most utilized crisis approach on the international scene has been what's called rescheduling. That means the loan repayments are rearranged so they can be made over a longer time schedule. Instead of 30 years, maybe 40 or 50.

Anything, or almost anything, to prevent an official bankruptcy, or debt repudiation. Such would be devastating for the subject nation as well as for the collection of huge banks—including the biggest ones in the United States—which recklessly lent the billions in a more euphoric or seemingly favored time.

We Americans have had bruising experience at this domestically.

During the Great Depression a half-century ago, farmers in Nebraska and other states demanded state legislatures enact moratoriums on farm foreclosures. That was a form of debt rescheduling. Last Sunday the Des Moines Register editorially made a major appeal to Congress; stretch out the farm debt. Act quickly, too.

The Iowa newspaper observed that tens of thousands of American farmers have been "caught on the wrong side of a historic change in the world's economy. After years of inflation, during which it was profitable to borrow, suddenly it became perilous to be in debt. Those farmers lucky enough to have retired most of their debt before the change, or those prudent enough to avoid heavy debt, are generally doing fine. Neighbors who happened to borrow at the wrong time, however, are facing a situation almost as grim as that faced by farmers during the Depression."

Plugged by the Register would be a debt restructuring and stretch-out program, backed by federal guarantees. It is a program at least worth reviewing.

You'd think that a Reagan administration which either acquiesces in or aggressively promotes the restructuring and rescheduling of international debt by Poland and Argentina, and agrees with the temporary rescue of the giant-sized Continental Illinois National Bank and Trust Co. would show comparable interest in the American farm debt crisis.

Regardless of the Reagan re-election line about the great day in the morning again, the only reason some Americans once more are "standing tall" is that they absolutely must. If they don't, high water will immediately cover their heads.

U.S. DEFICIT, ARGENTINE DEBT SQUEEZE FARMERS IN DILEMMA

Nebraskans, in common with other citizens, understand that the debt bedeviling Third World countries has some importance for our nation. Such big-money affairs may seem rather abstract, but we realize that if those countries default on what they owe major U.S. banks, the repercussions could shake our financial system and probably the world's.

Sometimes, however, it is only by examining specific cases that we can grasp the ramifications reaching all the way to the neighborhoods where we live.

Argentina offers an example. It is one of the nations struggling under a heavy debt burden. And, as columnist Joseph Kraft recounts elsewhere on this page, its people are resisting austerity measures being imposed by its leaders. The government is under pressure to find other ways to put Argentina's financial house in order.

One way to do this is by an increase in exports, which brings more money into the Argentine economy from outside. Selling farm products abroad is particularly appealing to Argentina, because it is an agricultural country with much potential still untapped. And, at the moment, international grain prices are rising.

Argentina, then, looms as an increasingly tough competitor for U.S. farmers attempting to sell to foreign markets.

A few figures tell the story. So far in this decade, the Argentine share of world wheat trade has been double what it was a decade earlier, reports the U.S. Department of Agriculture. The country's total exports of wheat and coarse grains also doubled in that period. And its land planted to soybeans has risen from 40,000 acres in 1965 to more than 6 million acres now, according to a study for the American Soybean Association.

Moreover, with meat exports declining, Argentina can be expected to put more land into crop production. Its government is aggressively encouraging increased agricultural production.

Countries such as Argentina, struggling for their very economic survival, can be formidable rivals in world trade. How do U.S. farmers meet this competition?

Not by pricing themselves out of the market, obviously. Yet the muscle shown by the U.S. dollar in relation to other currencies makes our farm products—indeed, all our exports—more expensive abroad.

Our dollar's value is high, of course, because interest rates here are high. And interest rates are high because our government is a major customer for credit. That, in turn, is so because government is operating with such a fearsome budget deficit.

The Argentine case shows why prosperity on our farms—and throughout the economies of agriculture-oriented states like Nebraska—is dependent on curbing the deficit and restraining interest rates so the dollar's value moves to a more realistic level. And the shadow of the deficit that falls on rural areas also darkens the whole of the national economy.

Mr. EXON. Mr. President, I am also pleased to announce that Senator JEPSEN of Iowa has asked to be a cosponsor of this resolution, as well as Senator FORD of Kentucky.

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

Mr. EXON. Mr. President, this matter, as I understand it, has been cleared by both the chairman of the Banking Committee, who is on the floor, and also the ranking minority member, Senator PROXMIRE, of Wisconsin. The Senator from Kentucky, Senator HUDDLESTON, has asked to be made a cosponsor of the concurrent resolution which I send to the desk at the time.

The PRESIDING OFFICER. Without objection, the resolution will be placed on the calendar.

Mr. BAKER. I thank all Senators.

ADDITIONAL COSPONSOR—SENATE CONCURRENT RESOLUTION 130

Mr. EXON. Mr. President, earlier today I introduced a concurrent resolution with several cosponsors. I ask unanimous consent that Senator ZORINSKY of Nebraska be added as a cosponsor of the concurrent resolution.

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

AMENDMENTS SUBMITTED

AGRICULTURAL STABILIZATION AND CONSERVATION COMMITTEE ACT

ZORINSKY AMENDMENT NO. 3375

Mr. BYRD (for Mr. ZORINSKY) proposed an amendment to the bill S. 1643, to strengthen the operation of the Agricultural Stabilization and Conservation Committee System, and for other purposes, as follows:

On page 1, line 4, strike out "1983" and insert in lieu thereof "1984".

On page 2, strike out lines 6, 7, and 8 and insert in lieu thereof the following: "ing: 'The county committee for a county, by majority vote, may petition the Secretary to change the number of local areas in the county, and the Secretary shall make such change as petitioned by the county committee, except that any such change may not result in the number of local areas in a county exceeding the number of such areas in the county on December 31, 1980.';".

On page 2, lines 12, 13, and 14, strike out "Each local committee shall meet not less than four times annually, the meetings to be held on different days of the year." and insert in lieu thereof "Each local committee shall meet (1) one time each year, and (2) at the direction of the county committee, with the approval of the State committee, such additional times during the year as may be necessary to carry out this section. Notwithstanding section 388 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1388), the Secretary may not provide compensation or payments to a member of a local committee under such section for work performed at, or travel expenses incurred in attending, more than four meetings of such committee in any year. The meetings of a local committee shall be held on different days of the year.".

On page 2, line 18, strike out "(A)" and all that follows through "(B)" on line 19 and insert in lieu thereof a comma.

On page 3, lines 7 and 8, strike out "and the management of land, water, and related resources" and insert in lieu thereof "programs".

On page 3, line 9, strike out "timely" and insert in lieu thereof "in a timely manner".

On page 3, line 13, strike out "1984" and insert in lieu thereof "1985".

On page 3, line 16, strike out "1984" and insert in lieu thereof "1985".

On page 3, strike out lines 17, 18, and 19 and insert in lieu thereof the following: "(c) If a change in the number of local administrative areas in a county under section 8(b) of the Soil Conservation and Domestic Allotment Act under the amendment made by subsection".

On page 3, line 22, strike out "to be designated" and all that follows through "Act" on line 24.

On page 4, line 1, strike out "the" and insert in lieu thereof "a".

On page 4, line 2, strike out "1984" and insert in lieu thereof "1985".

On page 4, line 3, strike out "increases" and insert in lieu thereof "increase".

On page 4, line 4, strike out "so designated".

On page 4, line 7, strike out "1984" and insert in lieu thereof "1985".

On page 4, line 19, strike out "1984" and insert in lieu thereof "1985".

CULTURAL PROPERTY REPOSE ACT

BENTSEN AMENDMENT NO. 3376

(Ordered referred to the Committee on the Judiciary.)

Mr. BENTSEN submitted an amendment intended to be proposed by him to the bill (S. 311) to amend title 28 of the United States Code to set up a regime of repose for certain archeological and ethnological material and cultural property; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Cultural Property Repose Act of 1984".

SEC. 2. (a) Title 28, United States Code, is amended by adding the following new chapter after chapter 99:

"CHAPTER 101.—REPOSE FOR CERTAIN ITEMS OF ARCHEOLOGICAL AND ETHNOLOGICAL MATERIAL AND CULTURAL PROPERTY

"§ 1641. Repose for certain items of archeological and ethnological material and cultural property

"(a) Notwithstanding any other provision of Federal or State law, no foreign state shall, except as provided in subsection (b) of this section, bring an action in any court of the United States or of any State, including the District of Columbia, to recover possession of, or to obtain damages related to, any archeological or ethnological material or any article of cultural property which, before the institution of such action—

"(1) has been held in the United States for five years prior to the date of enactment of this Act, and no such action shall be maintained if, on the date of enactment of this Act, the archeological or ethnological material or cultural property, with respect to which such action was instituted, has been held in the United States for five years; or

"(2) has been held in the United States for two years irrespective of the date of enactment of this Act by a recognized museum or religious or secular monument or similar institution, if, for that period, the institution has exhibited the item or has made knowledge of it available through publication, cataloguing or otherwise; or

"(3) has been held in the United States for five years irrespective of the date of enactment of this Act if, for three years of that period, that fact of such holding was public through public exhibition or publication, through consultation by the holder with scholars or experts, through published studies or otherwise; or

"(4) has been held in the United States for ten years irrespective of the date of enactment of this Act unless the foreign state establishes that the United States holder acquired the item with actual knowledge that it had been removed from the possession of the country of origin in violation of the law of the country of origin, in which event the foreign state shall have two years from the date such state acquired knowledge of the identity of the holder in which to bring such action.

"(b) Notwithstanding any other provision of Federal or State law, no foreign state shall bring an action in any court of the United States or of any State, including the District of Columbia, to recover possession of, or to obtain damages related to, particular archeological or ethnological material or any article of cultural property, which was exported from the country of origin after designation pursuant to the Convention on Cultural Property Implementation Act, Pub. L. No. 97-446, tit. III, § 305, 96 Stat. 2355-56 (1983), or after the President has applied import restrictions pursuant to that Act, Pub. L. No. 97-446, tit. III, § 304, 96 Stat. 2354-55 (1983), and which, before the institution of such action, qualified for exemption pursuant to that Act, Pub. L. No. 97-446, tit. III, § 312, 96 Stat. 2362 (1983).

"(c) For purposes of this section—

"(1) the term 'any archeological or ethnological material or any article of cultural property' means any article described in Article 1(a) through (k) of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, adopted by the General Conference of the United Nations Educational, Scientific, and Cultural Organization on November 14, 1970, whether or not any such article has been designated as such by a foreign state for the purposes of such article; and

"(2) the term 'foreign state' means a foreign state as defined in section 1603 of title 28, United States Code, and any assignee or successor in interest thereof.".

(b) The chapter analysis of part IV of title 28, United States Code, is amended by adding at the end thereof the following:

"101. Repose for Certain Items of Archeological and Ethnological Material and Cultural Property ..... 1641".

SEC. 3. The amendments made by this Act shall apply with respect to any proceeding which is pending on or after the date of the enactment of this Act.

TECHNICAL CORRECTIONS IN THE ENROLLMENT OF H.R. 4170

DOLE AMENDMENT NO. 3377

Mr. DOLE proposed an amendment to the concurrent resolution (H. Con. Res. 328) to correct technical errors in the enrollment of the bill H.R. 4170; as follows:

Strike out all after the resolving clause and insert in lieu thereof the following:

That, in the enrollment of the bill (H.R. 4170) to provide for tax reform, and for other purposes, the Clerk of the House of Representatives shall make the following corrections:

DIVISION A—TAX REFORM ACT OF 1984

(1) In section 168(j) of the Code (as added by section 31(a) of the bill) strike out "15" and insert in lieu thereof "18" in each of the following provisions of section 168(j):

(A) Subclause (III) of paragraph (1)(B).

(B) Clause (i) of paragraph (2)(B) (including the heading thereof).

(C) Clause (ii) of paragraph (2)(B) (including the heading thereof).:

(D) Paragraph (2)(D).

(E) Paragraph (3)(A) (including the heading thereof).

(F) The heading of paragraph (3)(B).

(G) Clause (i) of paragraph (3)(B).

(H) Clause (ii) of paragraph (3)(C).

(I) Paragraph (6)(C) (including the heading thereof).

(2) In clause (ii) of section 168(j)(2)(B) of the Code (as added by section 31(a) of the bill) insert "(using a mid-month convention)" after "months".

(3) In section 168(j)(2) of the Code (as added by section 31(a) of the bill) strike out subparagraph (F) and insert:

"(F) 18-YEAR REAL PROPERTY—For purposes of this subsection, the term '18-year real property' includes—

"(i) low-income housing, and

"(ii) any property which was treated as 15-year real property under this section (as in effect before the amendments made by the Tax Reform Act of 1984).

(4) In subclause (II) of section 168(j)(4)(E)(ii) of the Code (as added by section 31(a) of the bill) insert "under the lease" after "placed in service".

(5) In subclause (I) of section 48(a)(5)(B)(ii) of the Code (as added by section 31(b) of the bill) strike out "and" at the end thereof and insert in lieu thereof "or".

(6) In subclause (I) of section 48(a)(5)(B)(iii) (as added by section 31(b) of the bill), strike out "to which section 47(a)(7) applies" and insert in lieu thereof "used under a qualifying lease (as defined in section 47(a)(7)(C))".

(7) In subclause (II) of section 48(a)(5)(B)(iii) of the Code (as added by section 31(b) of the bill), strike out "the lease" and insert in lieu thereof "a lease".

(8) In section 7701(e)(3) of the Code (as added by section 31(e) of the bill), strike out the matter following subparagraph (B) thereof and preceding subparagraph (C) thereof.

(9) In each of subparagraphs (C), (D), and (E) of section 7701(e)(3) of the Code (as added by section 31(e) of the bill) strike out "The" and insert in lieu thereof "For purposes of subpargraph (A), the".

(10) In subparagraph (A) of section 7701(e)(4) of the Code (as added by section 31(e) of the bill), insert, "congeneration facility, alternative energy facility, or water treatment works facility" after "qualified solid waste disposal facility" in the matter preceding clause (i).

(11) In paragraph (5) of section 7701(e) of the Code (as added by section 31(e) of the bill) strike out "section 168" and insert in lieu thereof "section 168(c)(2)(F)".

(12) In subparagraph (A) of section 31(g)(8) of the bill, insert at the end thereof "For purposes of the preceding sentence, the term '15-year real property' includes 18-year real property."

(13) In clause (i) of section 31(g)(11)(B) of the bill, strike out "maximum of units" and insert in lieu thereof "maximum number of units".

(14) In clause (i) of section 31(g)(15)(A) of the bill, insert "by the taxpayer" after "placed in service".

(15) In paragraph (17) of section 31(g) of the bill, strike out "section 168(c)(1)(D)" in the matter preceding subparagraph (A) and insert in lieu thereof "section 168(c)(2)(D)".

(16) In clause (ii) of section 31(g)(17)(J) of the bill, insert "written" before "commitment".

(17) In clause (ii) of section 31(g)(17)(L) of the bill—

(A) strike out "Internal Revenue Code" and insert in lieu thereof "Internal Revenue Code of 1954", and

(B) strike out "in existence".

(18) In paragraph (M) of section 31(g)(17) of the bill, insert "and" after "center,".

(19) In paragraph (D) of section 31(g)(20) of the bill—

(A) insert "to a tax-exempt entity" after "sublease", and

(B) insert ", 168(j)(8)(A)," after "sections 168(j)(6)(A)".

(20) In section 1274(c)(2) of the Code (as added by section 41(a) of the bill), strike out "is less than" and insert in lieu thereof "is less than or equal to",

(21) In the subpart heading for subpart B of part V of subchapter P of chapter 1 of Code (as added by section 41(a) of the bill), strike out "on Bonds".

(22) In section 163(e)(2) of the Code (as added by section 42(a) of the bill), strike out subparagraph (C).

Strike out paragraph (23) of the corrections to DIVISION A—TAX REFORM ACT OF 1984 AND INSERT THE FOLLOWING NEW PARAGRAPH:

(23) In section 483 of the Code (as added by section 41(b) of the bill), redesignate subsections (e), (f), and (g) as subsections (f), (g), and (h) respectively, and insert after subsection (d) the following new subsection:

"(e) Interest Rates in Case of Sales of Principal Residences or Farm Lands,—

"(1) IN GENERAL,—in the case of any debt instrument arising from a sale or exchange to which this subsection applies, subsections (b) and (c)(1)B) shall be applied by using, in lieu of the discount rates determined under such subsections, discount rates determined under subsections (b) and (c)(1), respectively, of this section as it was in effect before the amendments made by the Tax Reform Act of 1984.

"(2) SALES OR EXCHANGES TO WHICH SUBSECTION APPLIES.—This subsection shall apply—

"(A) to any sale or exchange by an individual or his principal residence (within the meaning of section 1034), and

"(B) to any sale or exchange by a person of land used by such person as a farm (within the meaning of section 6420(C)(2)).

"(3) LIMITATION—Paragraph (1) shall apply to any sale or exchange by an individual of his principal residence (within the meaning of section 1034), only to the extent the purchase price of such residence does not exceed $250,000."

For purposes of the preceding sentence, the purchase price of a residence shall be determined without regard to this section.

(24) In paragraph (1) of section 53(b) of the bill, strike out "section 246(c)" and insert in lieu thereof "section 246".

(25) In section 301(e)(2) of the Code (as added by section 54(b) of the bill), strike out "section 1248(f)(2)" and insert in lieu thereof "section 1248".

(26) In the section heading for section 59 of the bill, strike out "EXCEPTIONS" and insert in lieu thereof "EXCEPTION" and amend the table of contents of the bill accordingly.

(27) Strike out paragraph (2) of section 67(e) of the bill and insert in lieu thereof the following:

"(2) SPECIAL RULE FOR CONTRACT AMENDMENTS.—Any contract entered into before June 15, 1984, which is amended after June 14, 1984, in any significant relevant aspect shall be treated as a contract entered into after June 14, 1984."

(28) In section 291(a)(4) of the Code (as amended by section 68(b) of the bill), strike out subparagraphs (A) and (B) and insert the following:

"(A) '30 percent' for '32 percent' in paragraph (2); and

"(B) '15/23' for '16/23' in paragraph (3)."

(29) Strike out subparagraphs (C) and (D) of section 706(d)(2) of the Code (as added by section 72(a) of the bill) and insert in lieu thereof the following:

"(C) ITEMS ATTRIBUTABLE TO PERIODS NOT WITHIN TAXABLE YEAR.—If any portion of any allocable cash basis item is attributable to—

"(i) any period before the beginning of the taxable year, such portion shall be assigned under subparagraph (A)(i) to the first day of such taxable year, or

"(ii) any period after the close of the taxable year, such portion shall be assigned under subparagraph (A)(i) to the last day of the taxable year.

"(D) TREATMENT OF DEDUCTIBLE ITEMS ATTRIBUTABLE TO PRIOR PERIODS.—If any portion of a deductible cash basis item is assigned under subparagraph (C)(i) to the first day of any taxable year—

"(i) such portion shall be allocated among persons who are partners in the partnership during the period to which such portion is attributable in accordance with their varying interests in the partnership during such period, and

"(ii) any amount allocated under clause (i) to a person who is not a partner in the partnership on such first day shall be capitalized by the partnership and treated in the manner provided for in section 755.

(30) In paragraph (5) of section 77(b) of the bill, insert "and which was executed on or before March 31, 1984," after "March 29, 1984,".

(31) In section 77(b)(5) of the bill, strike out "on, or before" and insert in lieu thereof "on or before".

(32) In section 91(g) of the bill, strike out paragraphs (1) and (2) and insert the following:

(1) IN GENERAL.—Except as provided in this subsection and subsections (h) and (i), the amendments made by this section shall apply to amounts with respect to which a deduction would be allowable under chapter 1 of the Internal Revenue Code of 1954 (determined without regard to such amendments) after—

(A) in the case of amounts to which section 461(h) of such Code (as added by such amendments) applies, the date of the enactment of this Act, and

(B) in the case of amounts to which section 461(i) of such Code (as so added) applies, after March 31, 1984.

(2) *Taxpayer may elect earlier applications.*—"

(A) IN GENERAL.—In the case of amounts described in paragraph (1)(A), a taxpayer may elect to have the amendments made by this section apply to amounts which—

(i) are incurred before the date of the enactment of this Act (determined without regard to such amendments), and

(ii) are incurred on or after the date of the enactment of this Act (determined with regard to such amendments).

(B) ELECTION TREATED AS CHANGE IN THE METHOD OF ACCOUNTING.—For purposes of section 481 of the Internal Revenue Code of 1954, if an election is made under subparagraph (A) with respect to any amount, the application of the amendments made by this section shall be treated as a change in method of accounting—

(i) initiated by the taxpayer,

(ii) made with the consent of the Secretary of the Treasury, and

(iii) with respect to which section 481 of such Code shall be applied by substituting a 3-year adjustment period for a 10-year adjustment period.

(33) In the table contained in section 467(e)(3)(A) of the Code (as added by section 92(a)), after the item relating to "10-year property", insert the following new item:

"Low-income housing ..... 15 years."

(34) In clause (ii) of section 92(c)(2)(C) of the bill insert "(for purposes of this clause)" after "assuming" in the matter preceding subclause (I).

(35) Strike out the last two sentences of section 92(c)(2) of the bill and insert:

Paragraph (3)(B)(ii)(II) shall apply for purposes of clauses (ii) and (iii) of subparagraph (C), as if, as of the beginning of the last stage, the separate agreements were treated as 1 single agreement relating to all property covered by the agreements, including any property placed in service before the property to which the agreement for the last stage relates. If the lessor under the agreement described in subparagraph (C) leases the property from another person, this exception shall also apply to any agreement between the lessor and such person which is integrally related to, and entered into at the same time as, such agreement, and which calls for comparable payments of rent over the primary term of the agreement.

(36) In paragraph (2) of section 195(b) of the Code (as added by section 94(a)); insert "attributable to such trade or business" after "deferred expenses".

(37) In paragraph (2) of section 1092(f) of the Code (as added by section 101(c) of the bill), strike out "The holding period" and insert in lieu thereof "Except for purposes of section 851(b)(3), the holding period".

(38) Strike out subparagraph (C) of section 1256(g)(4) of the Code (as amended by section 102(a) of the bill) and insert in lieu thereof the following:

"(C) is listed on the qualified board or exchange on which such options dealer is registered.

(39) In subparagraph (A) of section 211(h)(1) of the Social Security Act, as added by section 102(c)(2) of the bill, insert "activity of" before "dealing in or trading".

(40) In subsection (d) of section 102 of the bill, strike out paragraph (3) and insert in lieu thereof the following:

(3) SUBCHAPTER S ELECTION.—If a commodities dealer or an options dealer—

(A) becomes a small business corporation (as defined in section 1361(b) of the Internal Revenue Code of 1954) at any time before the close of the 75th day after the date of the enactment of this Act, and

(B) makes the election under section 1362(a) of such Code before the close of such 75th day,

then such dealer shall be treated as having received approval for and adopted a taxable year beginning on the first day during 1984 on which it was a small business corporation

(as so defined) and ending on the date determined under section 1378 of such Code and such election shall be effective for such taxable year.

(41) In the subsection heading to subsection (b) of section 106 of the bill, strike out "Business" and insert in lieu thereof "Dealer"

(42) In paragraph (2) of section 108(a) of the bill, strike out "such Act' and insert in lieu thereof "the Economic Recovery Tax Act of 1981".

(43) Strike out subsection (d) of section 111 of the bill and insert in lieu thereof the following:

"(d) Use of Mid-Month Convention.—Subparagraphs (A) and (B) of section 168(b)(2) are each amended by inserting '(using a mid-month convention)' after 'months'."

(44) In paragraph (2) of section 111(g) of the bill, strike out "but only if property is not" and insert in lieu thereof "but only if the property is not".

(45) In subparagraph (B) of section 111(g)(3) of the bill, strike out "March 1984" and insert in lieu thereof "March 16, 1984".

(46) In paragraph (1) of section 48(r) of the Code (as added by section 113(a)(1) of the bill), strike out "commences with taxpayer" and insert in lieu thereof "commences with the taxpayer".

(47) In paragraph (1) of section 113(b) of the bill, strike out "FILM" and insert in lieu thereof "FILMS".

(48) Strike out subsection (c) of section 113 of the bill and insert in lieu thereof the following:

(c) EFFECTIVE DATES.—

(1) SOUND RECORDINGS.—The amendments made by subsection (a) shall apply to property placed in service after March 15, 1984, in taxable years ending after such date.

(2) FILMS AND OTHER PROPERTY.—

(A) The amendment made by paragraph (1) of subsection (b) shall apply to any motion picture film or video tape placed in service before, on, or after the date of the enactment of this Act, except that such amendment shall not apply to—

(i) any qualified film placed in service by the taxpayer before March 15, 1984, if the taxpayer treated such film as recovery property for purposes of section 168 of the Internal Revenue Code of 1954 on a return of tax under chapter 1 of such Code filed before March 16, 1984, or

(ii) any qualified film placed in service by the taxpayer before January 1, 1985, if—

(I) 20 percent or more of the production costs of such film were incurred before March 16, 1984, and

(II) the taxpayer treats such film as recovery property for purposes of section 168 of such Code.

No credit shall be allowable under section 38 of such Code with respect to any qualified film described in clause (ii), except to the extent provided in section 48(k) of such Code.

(B) The amendments made by paragraphs (2) and (3) of subsection (b) shall apply as if included in the amendments made by sections 201(a), 211(a)(1), and 211(f)(1) of the Economic Recovery Tax Act of 1981.

(C) The amendment made by paragraph (4) of subsection (b) shall take effect as if included in the amendments made by section 205(a)(1) of the Tax Equity and Fiscal Responsibility Act of 1982.

(D) For purposes of this paragraph, the terms "qualified film" and "production costs" have the same respective meanings as when used in section 48(k) of the Internal Revenue Code of 1954.

(49) In paragraph (1) of section 121(b) of the bill, strike out "the taxable year of any United States-owned foreign corporation in which occurs" and insert in lieu thereof "any taxable year of any United States-owned foreign corporation ending after".

(50) In paragraph (D) of section 121(b)(2) of the bill, strike out "and the holding of short-term" and insert in lieu thereof "or the holding of short-term".

(51) In paragraph (5) of section 121(b) of the bill, strike out "paragraphs (2) or (3)" and insert in lieu thereof "paragraph (2) or (3)".

(52) In paragraph (6) of section 121(b) of the bill—

(A) strike out "issued obligations on" and insert in lieu thereof "issued certificates with respect to obligations on", and

(B) strike out "income received or accrued on such obligations" and insert in lieu thereof "the proceeds from relending such obligations or related capital".

(53) In clause (ii) of section 904(d)(3)(E) of the Code (as added by section 122(a) of the bill), strike out "the taxpayer" and insert in lieu thereof "a United States person".

(54) In paragraph (J) of section 904(d)(3) of the Code (as added by secton 122(a) of the bill), strike out "under such interest" and insert in lieu thereof "unless such interest".

(55) In paragraph (B) of section 122(b)(2) of the bill, strike out "designated payor" each place it appears and insert in lieu thereof "designated payor corporation".

(56) In paragraph (3) of section 122(b) of the bill—

(A) strike out "corporations which are not" in the heading and insert in lieu thereof "corporation which is not", and

(B) strike out "section 131(b)(2)(D)" and insert in lieu thereof "section 121(b)(2)(D)".

(57) In paragraph (6) of section 864(d) of the Code (as added by section 123(a) of the bill)—

(A) strike out "other than a related person",

(B) strike out "such related person" in subparagraph (A) and (B) and insert in lieu thereof "a related person".

(58) In paragraph (2) of section 123(c) of the bill—

(A) Strike out "March 1, 1984" the second place it appears and insert in lieu thereof "March 1, 1994",

(B) strike out "investment in United States property of such corporation" and insert in lieu thereof "amount includible in gross income by reason of section 956 of the Internal Revenue Code of 1954 with respect to such corporation", and

(C) strike out "investment on or before March 1, 1984" and insert in lieu thereof "adjusted basis on March 1, 1984".

(59) In paragraph (1) of section 127(a) of the bill, strike out "by redesignating subsection (i) as subsection (j) and by adding at the end thereof the following new subsection" and insert "by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection".

(60) Subsection (i) of section 871 of the Code (as added by section 127(a)) is redesignated as subsection (h).

(61) In subsection (h) of section 871 of the Code (as redesignated by the preceding paragraph and as added by section 127(a) of the bill)—

(A) strike out "who is, or would otherwise be," in paragraph (2)(B)(ii) and insert "who would otherwise be", and

(B) strike out "owner" in paragraph (3)(C)(ii) and insert "owning".

(62) In subsection (c) of section 881 of the Code (as added by section 127(b) of the bill)—

(A) Strike out "paragraph (1) of subsection (a)" in paragraph (1) and insert in lieu thereof "paragraph (1) or (3) of subsection (a)".

(B) Strike out "section 871(i)(2)(A)" in paragraph (2)(A) and insert in lieu thereof "section 871(h)(2)(A)".

(C) Strike out "who is, or would otherwise be," in paragraph (2)(B) and insert in lieu thereof "who would otherwise be".

(D) Strike out "section 871(i)(4)" in paragraph (2)(B) and insert in lieu thereof "section 871(h)(4)".

(E) Strike out "or" at the end of paragraph (3)(A).

(F) Strike out subparagraph (B) of paragraph (3) and insert in lieu thereof the following:

"(B) is received by a 10-percent shareholder (within the meaning of section 871(h)(3)(B)), or

"(C) is received by a controlled foreign corporation from a related person (within the meaning of section 864(d)(4)."

(G) Strike out "not found or avoided" in paragraph (4)(A)(ii) and insert in lieu thereof "not formed or availed".

(H) Strike out subparagraphs (B) and (C) of paragraph (4) and insert in lieu thereof the following:

"(B) CONTROLLED FOREIGN CORPORATION.—For purposes of this subsection, the term 'controlled foreign corporation' has the meaning given to such term by section 957(a).

(I) Strike out "section 871(i)(5)" each place it appears in paragraph (5) and insert in lieu thereof "section 871(h)(5)".

(63) In subsection (c) of section 127 of the bill, strike out "section 871(i)" and insert in lieu thereof "section 871(h),".

(64) In section 2105(b) of the Code (as added by section 127(d) of the bill—

(A) strike out "section 871(i)(4)" and insert in lieu thereof "section 871(h)(4)", and

(B) strike out "section 871(i)(1)" and insert in lieu thereof "section 871(h)(1)".

(65) In paragraph (9) of section 1441(c) of the Code (as added by section 127(e) of the bill)—

(A) strike out "section 871(i)(2)" and insert in lieu thereof "section 871(h)(2)", and

(B) strike out "section 871(i)(3)" and insert in lieu thereof "section 871(h)(3)".

(66) Strike out paragraph (2) of section 127(e) of the bill and insert the following:

(2) FOREIGN CORPORATIONS.—The last sentence of section 1442(a) is amended—

(A) by striking out "and" after "section 881(a)(4)," and

(B) by inserting before the period at the end thereof the following: ", and the references in section 1449(c)(9) to sections 871(h)(2) and 871(h)(3) shall be treated as referring to sections 881(c)(2) and 881(c)(3)".

(67) In paragraph (3)(A) of section 127(g) of the bill, strike out "application" and insert in lieu thereof "applicable".

(68) In subparagraph (C) of section 127(g)(3) of the bill—

(A) strike out "131(b)(2)(D)" and insert in lieu thereof "121(b)(2)(D)", and

(B) strike out "section 131(b)(2)(F)" and insert in lieu thereof "section 121(b)(2)(F)".

(69) In section 1445(b)(2) of the Code (as added by section 129(a) of the bill), strike

out "penalty or perjury" and insert in lieu thereof "penalty of perjury".

(70) Strike out subparagraph (B) of section 1445(d)(1) of the Code (as added by section 129(a) of the bill) and insert in lieu thereof the following:

"(B) in the case of—

"(i) any transferor's agent, the transferor is a foreign corporation or such agent has actual knowledge that such affidavit is false, or

"(ii) any transferee's agent, such agent has actual knowledge that such affidavit is false,

(71) In clause (ii) of section 367(a)(3)(B) of the Code (as added by section 131(a) of the bill), strike out "installment obligation" and insert in lieu thereof "installment obligations".

(72) In clause (i) of section 136(c)(7)(A) of the bill, strike out "before April 15, 1984" and insert in lieu thereof "on April 5, 1984".

(73) In section 879(a) of the Code (as amended by section 139(a) of the bill), strike out "community" and insert in lieu thereof "community income".

(74) In subsection (c) of section 111 of the Code (as added by section 171 of the bill), insert "or adjustment" after "the recovery".

(75) At the end of subparagraph (B) of section 179(d)(1) of the bill, add the following new sentence:

For purposes of the preceding sentence, the term "15-year real property" includes 18-year real property.

(76) In paragraph (6) of section 809(g) of the Code (as added by section 211 of the bill) insert "of a subsidiary" after "tax reserves".

(77) In paragraph (1) of section 817(h) of the Code (as added by section 211 of the bill) strike out "For purposes of the preceding sentence" and insert in lieu thereof "For purposes of this paragraph and paragraph (2)".

(78) In section 219 of the bill—

(A) strike out "APPLICATION OF SECTION 6001" and insert in lieu thereof "AUTHORITY TO REQUIRE CERTAIN INFORMATION". and

(B) Strike out "exercising his authority under section 6001 of the Internal Revenue Code of 1954 to require" and insert in lieu thereof "requiring".

(79) In the table of contents of the bill after the item relating to section 218, insert the following new item:

Sec. 219. Clarification of authority to require certain information

(80) In subclause (II) of section 465(c)(7)(D)(ii) of the Code (as added by section 432(a) of the bill), strike out "20 percent" and insert in lieu thereof "10 percent".

(81) In section 419(a)(2) of the Code (as added by section 511 of the bill), strike out "they testify" and insert in lieu thereof "they satisfy".

(82) In section 419(c)(3)(A) of the Code (as added by section 511 of the bill), strike out "the aggregate amount" and insert in lieu thereof "the aggregate amount (including administrative expenses)".

(83) In paragraph (4) of section 419A(a) of the Code (as added by section 511 of the bill), strike out "life insurance benefit" and insert in lieu thereof "life insurance benefits".

(84) Strike our paragraph (2) of section 419A(c) of the Code (as added by section 511 of the bill) and insert in lieu thereof the following:

"(2) ADDITIONAL RESERVE FOR POST-RETIREMENT MEDICAL AND LIFE INSURANCE BENEFITS.—The account limit for any taxable year may include a reserve funded over the working lives of the covered employees and actuarially determined on a level basis (using assumptions that are reasonable in the aggregate) as necessary for—

"(A) post-retirement medical benefits to be provided to covered employees (determined on the basis of current medical costs), or

"(B) post-retirement life insurance benefits to be provided to covered employees.

(85) Strike out subparagraph (A) of section 419A(c)(3) of the Code (as added by section 511 of the bill) and insert the following:

"(A) IN GENERAL.—The account limit for any taxable year with respect to SUB or severance pay benefits is 75 percent of the average annual qualified direct costs for SUB or severance pay benefits for any 2 of the immediately preceding 7 taxable years (as selected by the fund),

(86) Strike out clauses (i) and (ii) of section 419(c)(5)(B) and insert in lieu thereof the following:

"(i) SHORT-TERM DISABILITY BENEFITS.—In the case of short-term disability benefits, the safe harbor limit for any taxable year is 17.5 percent of the qualified direct costs (other than insurance premiums) for the immediately preceding taxable year with respect to such benefits.

(ii) MEDICAL BENEFITS.—In the case of medical benefits, the safe harbor limit for any taxable year is 35 percent of the qualified direct costs (other than insurance premiums) for the immediately preceding taxable year with respect to medical benefits.

(87) In paragraph (1) of section 419A(e) of the Code (as added by section 511 of the bill), strike out "medical benefits or life insurance benefits provided to retired employees" and insert in lieu thereof "post-retirement medical benefits or life insurance benefits to be provided to covered employees".

(88) In paragraph (2) of section 419A(g) of the Code (as added by section 511 of the bill), strike out "referred to in paragraph (1)".

(89) Strike out paragraph (5) of section 511(e) of the bill and insert in lieu thereof the following:

(5) BINDING CONTRACT EXCEPTIONS TO PARAGRAPH (4).—Paragraph (4) shall not apply to any facility placed in service before January 1, 1987—

(A) which is acquired by the fund (or contributed to the fund) pursuant to a binding contract in effect on June 22, 1984, and at all times thereafter or

(B) the construction of which by or for the fund began before June 22, 1984.

(90) In clause (i) of section 512(a)(3)(E) of the Code (as added by section 511(b)(2) of the bill), strike out "any reserve for medical benefits provided to retired employees" and insert in lieu thereof "any reserve described in section 419A(c)(2)(A) for post-retirement medical benefits".

(91) Strike out clause (iii) of section 512(a)(3)(E) of the Code (as added by section 511(b)(2) of the bill) and insert the following:

"(iii) TREATMENT OF EXISTING RESERVES FOR POST-RETIREMENT MEDICAL OR LIFE INSURANCE BENEFITS.—

"(I) Clause (i) shall not apply to any income attributable to a existing reserve for post-retirement medical or life insurance benefits.

"(II) For purposes of subclause (I), the term 'existing reserve or post-retirement medical or life insurance benefit' means the amount of assets set aside as of the close of the last plan year ending before the date of the enactment of the post-retirement medical benefits or life insurance benefits to be provided to covered employees.

"(III) All payments during plan years ending on or after the date of the enactment of the Tax Reform Act of 1984 of post-retirement medical benefits or life insurance benefits shall be charged against the reserve referred to in subclause (II). Except to the extent provided in regulations prescribed by the Secretary, all plans of an employer shall be treated as 1 plan for purposes of the preceding sentence.

(92) Strike out paragraph (2) of section 4976(b) of the Code (as added by section 511(c)(1) of the bill) and insert the following:

"(2) any post-retirement medical or life insurance benefit unless the plan meets the requirements of section 505(b)(1) with respect to such benefit, and

(93) In the item added by section 511(c)(2) of the bill, strike out "4977" and insert in lieu thereof "4976".

(94) In paragraph (4) of section 511(e) of the bill, strike out "to be used to acquire" and insert in lieu thereof "to be used to acquire or improve".

(95) In paragraph (5) of section 511(e) of the bill, strike out "acquired pursuant to" and insert in lieu thereof "acquired or improved pursuant to".

(96) In the subsection heading for subsection (a) of section 505 of the Code (as added by section 513(a) of the bill), strike out "(9), (17), OR (20)" and insert in lieu thereof "(9) OR (20)"

(97) Redesignate paragraph (3) of section 505(a) of the Code (as added by section 513 of the bill) as paragraph (2).

(98) In subparagraph (B) of section 505(b)(1) of the Code (as added by section 513(a) of the bill), strike out "benefits for not discriminate" and insert in lieu thereof "benefits do not discriminate".

(99) At the end of subtitle E of title V of the bill, insert the following new section:

SEC. 561. LIMITATION ON ACCRUAL OF VACATION PAY.

(a) GENERAL RULE.—Paragraph (1) of section 463(a) (relating to accrual of vacation pay) is amended by striking out "and payable during" and inserting in lieu thereof "and expected to be paid during".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after March 31, 1984.

(100) In the table of contents of the bill, insert after the item relating to section 560 the following new item:

Sec. 561. Limitation on accrual of vacation pay.

(101) In section 403(b)(8)(B) of the Code (as added by section 522(d)(10) of the bill), strike out clause (iii) and insert closing quotation marks at the end of clause (ii).

(102) In paragraph (1) of section 219(f), as amended by section 529 of the bill, strike out "paragraph (1)" and all that follows and insert in lieu thereof "section 71 with respect to a divorce or separation instrument described in subparagraph (A) of section 71(b)(2)."

(103) In paragraph (1) of section 125(h) of the Code (as added by section 531(b)(4)(A) of the bill), strike out "taxable" each place it appears.

(104) In section 4977 of the Code (as added by section 531(e)(1) of the bill), strike out subsection (e) and insert in lieu thereof the following new subsection:

"(e) TREATMENT OF CONTROLLED GROUPS.—All employees treated as employed by a

single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section."

(105) In subparagraph (A) of section 103A(j)(3) of the Code (as added by section 611(b)(1) of the bill), strike out "a statement concerning" and insert in lieu thereof "(or such later time as the Secretary may prescribe with respect to any portion of the statement) a statement concerning".

(106) In subparagraph (A) of section 103A(j)(4) of the Code (as added by section 611(b)(1) of the bill), strike out "certifies that" and insert in lieu thereof "certifies in the manner prescribed by regulations that".

(107) In subparagraph (B) of section 103A(j)(4) of the Code (as added by section 611(b)(1) of the bill), strike out "paragraph (3)" and insert in lieu thereof "paragraph (3) or such other time as the Secretary may prescribe".

(108) In subparagraph (C) of section 103A(j)(4) of the Code (as added by section 611(b)(1) of the bill), strike out "constitutional home rule cities" and insert in lieu thereof "any constitutional home rule city".

(109) In subparagraph (B) of section 103A(j)(5) of the Code (as added by section 611(b)(1) of the bill)—

(A) strike out clause (i) and insert in lieu thereof the following:

"(i) a statement of the policies with respect to housing, development, an low-income housing assistance which such governmental unit is to follow in issuing qualified mortgage bonds and mortgage credit certificates, and

(B) strike out "great extent feasible" in clause (ii)(II) and insert in lieu thereof "greatest extent feasible".

(110) In subparagraph (B) of section 103A(o)(3) of the Code (as added by section 611(c)(2) of the bill) and insert in lieu thereof the following:

"(B) STATE VETERANS LIMIT.—A State veterans limit for any calendar year is the amount equal to—

"(i) the aggregate amount of qualified veterans bonds issued by such State during the period beginning on January 1, 1979, and ending on June 22, 1984 (but not including the amount of any qualified veterans bond issued by such State during the calendar year (or portion thereof) in such period for which the amount of such bonds so issued was the lowest), divided by

"(ii) the number (not to exceed 5) of calendar years after 1979 and before 1985 during which the State issued qualified veterans bonds (determined by only taking into account bonds issued on or before June 22, 1984).

(111) In subparagraph (C) of section 611(d)(3) of the bill—

(A) strike out "section 103(o)(3)" and insert in lieu thereof "section 103A(o)(3)", and

(B) strike out "such bond is authorized" and insert in lieu thereof "such bond was authorized".

(112) In subparagraph (7) of section 611(d) of the bill—

(A) strike out "Annual report" in the paragraph heading and insert in lieu thereof "Report", and

(B) strike out "shall submit an annual report" and insert in lieu thereof "shall, not later than January 1, 1987, submit a report".

(113) In section 25(d)(2)(A) of the Code (as added by section 612(a) of the bill), strike out "or, if lesser, the aggregate amount of certified indebtedness referred to in clause (i)".

(114) At the end of subsection (d) of section 25 of the Code (as added by section 612(a) of the bill) insert the following:

"(3) ADDITIONAL LIMIT IN CERTAIN CASES.—In the case of a qualified mortgage credit certificate program in a State which—

"(A) has a State ceiling (as defined in section 103A(g)(4)) for the year an election is made that exceeds 20 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single family owner-occupied residences located within the jurisdiction of such State, or

"(B) issued qualifies mortgage bonds in an aggregate amount less than $150,000,000 for calendar year 1983,

the certificate credit rate for any mortgage credit certificate shall not exceed 20 percent unless the issuing authority submits a plan to the Secretary to ensure that the weighted average of the certificate credit rates in such mortgage credit certificate program does not exceed 20 percent and the Secretary approves such plan.

(115) In paragraph (2) of section 25(e) of the Code (as added by section 612(a) of the bill), strike out "(g) and (j) of section 103A" and insert in lieu thereof "and (j) of section 103A and clauses (iv), (v), and (vii) of subsection (c)(2)(A)".

(116) Strike out paragraph (4) of section 25(e) of the Code (as added by section 612(a) of the bill) and insert in lieu thereof the following:

"(4) REISSUANCE OF MORTGAGE CREDIT CERTIFICATES.—The Secretary may prescribe regulations which allow the administrator of a mortgage credit certificate program to reissue a mortgage credit certificate specifying a certified mortgage indebtedness that replaces the outstanding balance of the certified mortgage indebtedness specified on the original certificate to any taxpayer to whom the original certificate was issued, under such terms and conditions as the Secretary determines are necessary to ensure that the amount of the credit allowable under subsection (a) with respect to such reissued certificate is equal to or less than the amount of credit which would be allowable under subsection (a) with respect to the original certificate for any taxable year ending after such reissuance.

(117) In paragraph (1) of section 25(f) of the Code (as added by section 612(a) of the bill), strike out the first sentence and insert in lieu thereof the following: "If for any calendar year any mortgage credit certificate program which satisfies procedural requirements with respect to volume limitations prescribed by the Secretary fails to meet the requirements of paragraph (2) of subsection (d), such requirements shall be treated as satisfied with respect to any certified indebtedness of such program, but the applicable State ceiling under paragraph (4) of section 103A(g) for the State in which such program operates shall be reduced by 1.25 times the correction amount with respect to such failure."

(118) Strike out subparagraph (A) of section 25(f)(2) of the Code (as added by section 612(a) of the bill) and insert the following:

(A) IN GENERAL.—For purposes of paragraph (1), the term "correction amount" means an amount equal to the excess credit amount divided by 0.20.

(119) In subsection (h) of section 25 of the Code (as added by section 612(a) of the bill), strike out "1978" and insert in lieu thereof "1987".

(120) In paragraph (1) of section 6708(a) of the Code (as added by section 612(d) of the bill), strike out "a misstatement" and insert in lieu thereof "a material misstatement".

(121) Add at the end of subsection (c) of section 6708 of the Code (as added by section 612(d) of the bill) the following new sentence: "In the case of any report required under the second sentence of section 25(g), the aggregate amount of the penalty imposed by the preceding sentence shall not exceed $2,000."

(122) In the heading of subparagraph (C) of section 103(n)(4) of the Code (as added by section 621 of the bill), strike out "termination" and insert in lieu thereof "partial termination".

(123) In clause (i) of section 103(n)(7)(C) of the Code (as added by section 621 of the bill), strike out "section 103(b)(4)" and insert in lieu thereof "subsection (b)(4)".

(124) Strike out clause (ii) of section 103(n)(7)(C) of the code (as added by section 621 of the bill) and insert in lieu thereof the following:

"(ii) EXCEPTION NOT TO APPLY TO CERTAIN PARKING FACILITIES.—For purposes of clause (i), subparagraph (D) of subsection (b)(4) shall be applied as if it did not contain the phrase 'parking facilities'.

(125) In section 622 of the bill, strike out "certain obligations must not be" and insert in lieu thereof "certain obligations which must not be".

(126) In clause (iv) of section 103(h)(3)(A) of the Code (as amended by section 622 of the bill), strike out "of 1984" and insert in lieu thereof "of 1984 with respect to any obligation issued before July 1, 1989".

(127) In clause (ii) of section 103(b)(15)(B) of the Code (as added by section 623 of the bill), strike out "for the later issue" and insert in lieu thereof "of the later issue".

(128) Strike out subparagraph (C) of section 103(b)(15) of the Code (as added by section 623 of the bill) and insert in lieu thereof the following:

(C) ALLOCATION OF FACE AMOUNT OF AN ISSUE.—

"(i) IN GENERAL.—Except as otherwise provided in regulations, the portion of the face amount of an issue allocated to any test-period beneficiary of a facility financed by the proceeds of such issue (other than an owner of such facility) is an amount which bears the same relationship to the entire face amount of such issue as the portion of such facility used by such beneficiary bears to the entire facility.

"(ii) OWNERS.—Except as otherwise provided in regulations, the portion of the face amount of an issue allocated to any test-period beneficiary who is an owner of a facility financed by the proceeds of such issue is an amount which bears the same relationship to the entire face amount of such issue as the portion of such facility owned by such beneficiary bears to the entire facility.

(129) In subparagraph (D) of section 103(b)(15) of the Code (as added by section 623 of the bill), strike out "principal user of" and insert in lieu thereof "a principal user of".

(130) In clause (ii) of section 103(c)(6)(F) of the Code (as added by section 624 of the bill)—

(A) strike out "Notwithstanding subparagraph (D)" and insert in lieu thereof "Under regulations prescribed by the Secretary", and

(B) strike out "this paragraph only" and insert in lieu thereof "this clause only".

(131) In the heading of section 625 of the bill, strike out "BOND" and insert in lieu thereof "BONDS" and amend the table of contents accordingly.

(133) In section 625(a)(3)(C) of the bill, strike out "section 625(c)(5)" and insert in lieu thereof "section 626(b)(4)".

(132) In the paragraph heading of paragraph (3) of section 103(o) of the Code (as added by section 626(a) of the bill), strike out "student loans" and insert in lieu thereof "student loan bonds".

(133) In subsection (b) of section 626 of the bill, redesignate paragraphs (4), (5), (6), and (7) as paragraphs (3), (4), (5), and (6), respectively.

(134) In section 626(b)(5) of the bill (as redesignated by this resolution), strike out "amounts made" and insert in lieu thereof "amendments made".

(135) In subparagraph (C) of section 103(b)(16) of the Code (as added by section 627(a) of the bill), strike out "port development project" and insert in lieu thereof "port development project which consists of facilities described in paragraph (4)(D)".

(136) In paragraph (17) of section 103(b) of the Code (as added by section 627(b) of the bill), strike out the quotation marks at the end of subparagraph (C)(iii) and add at the end thereof the following new subparagraph:

"(D) Special rule for certain projects—In the case of a project involving 2 or more buildings, this paragraph shall be applied on a project basis."

(137) Strike out paragraphs (2) and (3) of section 628(a) of the bill and insert in lieu thereof the following:

(2) Subparagraph (B) of section 103(m)(2) is amended to read as follows:

"(B) is exempt from tax under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act."

(3) Subsection (m) of section 103 is amended by adding at the end thereof the following new paragraph:

"(3) EXCEPTIONS.—The following obligations shall be treated as obligations described in paragraph (1) (without regard to the second sentence thereof):

"(A) Any obligation issued pursuant to the Northwest Power Act (16 U.S.C. 839d) as in effect on the date of the enactment of the Tax Reform Act of 1984.

"(B) Any obligation issued pursuant to section 608(6)(A) of Public Law 97-468.

"(C) Any obligation issued before June 19, 1984, under section 11(b) of the United States Housing Act of 1937."

(138) At the end of section 628 of the bill, add the following new subsection:

(h) SMALL ISSUE LIMIT IN CASE OF CERTAIN URBAN DEVELOPMENT ACTION GRANTS.—In the case of any obligation issued on December 11, 1981, section 103(b)(6)(I) of the Internal Revenue Code of 1954 shall be applied by substituting "$15,000,000" for "$10,000,000" if—

(1) such obligation is part of an issue,

(2) substantially all of the proceeds of such issue are used to provide facilities with respect to which an urban development action grant under section 119 of the Housing and Community Development Act of 1974 was preliminarily approved by the Secretary of Housing and Urban Development on January 10, 1980, and

(3) the Secretary of Housing and Urban Development determines, at the time such grant is approved, that the amount of such grant will equal or exceed 5 percent of the total capital expenditures incurred with respect to such facilities.

(139) In paragraph (1) of section 631(c) of the bill, strike out "this section" and insert in lieu thereof "this subtitle".

(140) In clause (ii) of section 631(c)(3)(A) of the bill, strike out "significant expenditure" and insert in lieu thereof "significant expenditures".

(141) In section 631(c)(4) of the bill, strike out "section 628(j)" and insert in lieu thereof "section 628(g)".

(142) Strike out paragraphs (1) and (2) of section 631(d) of the bill and insert in lieu thereof the following:

(1) Any property described in paragraph (5), (6), or (7) of section 31(g) of this Act.

(2) Any property described in paragraph (4), (8), or (17) of section 31(g) of this Act but only if the obligation is issued before January 1, 1985, and only if before June 19, 1984, the issuer had evidenced an intent to issue obligations exempt from taxation under the Internal Revenue Code of 1954 in connection with such property.

(143) In subsection (f) of section 631 of the bill—

(A) strike out "June 1, 1984" and insert in lieu thereof "June 19, 1984", and

(B) strike out "such issues" and insert in lieu thereof "such issue".

(144) In subsection (a) of section 632 of the bill, strike out "title" each place it appears and insert in lieu thereof "subtitle".

(145) In paragraph (6) of section 632(a) of the bill, strike out "November 23, 1983" and insert in lieu thereof "November 3, 1983".

(146) In paragraph (6) of section 632(a) of the bill, strike out "issued pursuant to" and insert in lieu thereof "issued in connection with".

(147) In subsection (d) of section 632 of the bill—

(A) strike out "were issued with respect to" and insert in lieu there of "are issued with respect to", and

(B) strike out "or any facility related to such facility".

(148) In subsection (b) of section 644 of the bill, strike out "take into account in 1984" and insert in lieu thereof "use in 1984".

(149) In subsection (a) of section 646 of the bill, strike out "a hearing and".

(150) In section 647 of the bill, strike out "any other provision of law" and insert in lieu thereof "any other provision of law, in the case of obligations issued before July 1, 1987".

(151) In paragraph (3) of section 712(k) of the bill, strike out subparagraph (B) and insert in lieu thereof the following:

(B) by inserting "or" at the end of subparagraph (C), and

(152) In paragraph (2) of section 1362(e) of the Code, as amended by section 721(g)(2) of the bill, strike out "paragraphs (3) and (6)(C)" and insert in lieu thereof "paragraph (3) and subparagraphs (C) and (D) of paragraph (6)".

(153) In subsection (a) of section 518 of the Highway Revenue Act of 1982, as amended by section 734(i) of the bill, insert ", except as provided in regulations prescribed by the Secretary of the Treasury or his delegate," before "any Federal Reserve Bank".

(154) In paragraph (2) of section 921(d) of the Code (as added by section 801 of the bill), insert "or accrued" after "received".

(155) In paragraph (3) of section 921(d) of the Code (as added by section 801(a) of the bill), insert "or accrued" after "received".

(156) In section 921(d) of the Code (as added by section 801(a)) strike out "the conduct of" in the matter following paragraph (3).

(157) In clause (i) of section 922(a)(1)(D) (as added by section 801(a) of the bill), insert before the comma at the end thereof "or in any possession of the United States".

(158) In the last sentence of section 924(a) of the Code (as added by section 801(a) of the bill), insert "derived" before "from activities".

(159) In paragraph (3) of section 927(e) of the Code (as added by section 801(a) of the bill) strike out "credited or organized" and insert in lieu thereof "created or organized".

(160) In section 927(e) of the Code (as added by section 801(a) of the bill), strike out paragraph (5) and insert:

"(5) EXEMPTION FROM CERTAIN OTHER TAXES.—No tax shall be imposed by any jurisdiction described in subsection (d)(5) on any foreign trade income derived before January 1, 1987.

(161) In section 801(d) of the bill, add at the end thereof the following new paragraphs:

(11) Section 936(f) (relating to DISC or former DISC ineligible for credit) is amended to read as follows:

"(f) LIMITATION ON CREDIT FOR DISCS AND FSCS.—No credit shall be allowed under this section to a corporation for any taxable year—

"(1) for which it is a DISC or former DISC, or

"(2) in which it owns at any time stock in a—

"(A) DISC or former DISC, or

"(B) FSC or former FSC."

(12) Section 6011(c) (relating to returns of DISCs and former DISCs) is amended—

(A) by inserting "or a FSC or former FSC" after "former DISC" in paragraph (1), and

(B) by inserting "and FSCs and Former FSCs" after "Former DISCs" in the heading thereof.

(13) Section 6072(c) (relating to returns by nonresident alien individuals and foreign corporations) is amended by inserting "or a FSC or former FSC" after "United States".

(14) Section 6501(g)(3) (relating to income tax returns of DISCs) is amended by striking out "section 6011(e)(2)" and inserting in lieu thereof "section 6011(c)(2)".

(15) (A) Section 6686 (relating to failure of DISC to file returns) is amended—

(i) by striking out "section 6011(e)" and inserting in lieu thereof "section 6011(c)", and

(ii) by striking out the heading thereof and inserting in lieu thereof the following:

"SEC. 6686. FAILURE TO FILE RETURNS OR SUPPLY INFORMATION BY DISC OR FSC.".

(B) The table of sections for subchapter B of chapter 68 is amended by striking out the item relating to section 6686 and inserting in lieu thereof the following new item:

"Sec. 6686. Failure to file returns or supply information by DISC or FSC.".

(162) Section 995(f)(2)(B) (as added by section 802(a)(3)) is amended by striking out "and carrybacks of losses and credits".

(163) In section 805(b)(2)(A) of the bill, insert "with respect to which there had previously been a deemed distribution to which section 996(e)(1) of such Code applied" immediately before the period at the end thereof.

(164) In paragraph (2) of section 4051(d) of the Code, as amended by section 921 of the bill, strike out subparagraph (B) and insert in lieu thereof the following:

"(B)(i) both the seller and the purchaser of which are registered in a manner similar to registration under section 4222, and

"(ii) with respect to which the purchaser certifies (at such time and in such form and manner as the Secretary prescribes by regulations) to the seller that such trailer or semitrailer—

"(I) will be used, or resold for use, principally in connection with such service, or

"(II) will be incorporated into an article which will be so used or resold.".

(165) Strike out section 1020 of the bill.

(166) Strike out the item relating to section 1020 in the table of contents of the bill.

(167) In clause (iii) of section 6166(b)(9)(B) of the Code, as added by section 1021 of the bill, insert before the period at the end of the first sentence "for purposes of clause (ii)".

(168) In clause (i) of the section 1034(c)(2)(B) of the bill, strike out "account of interest" and insert in lieu thereof "number of units".

(169) In clause (iii) of section 1034(c)(2)(B) of the bill, strike out "amount of interests" and insert in lieu thereof "number of units".

(170) In subsection (j) of section 51 of the Code, as added by subsection (c) of section 1041 of the bill—

(A) strike out "allowable under section 44B" in paragraph (1) thereof and insert in lieu thereof "under this section", and

(B) strike out "allowed under section 44B" in paragraph (2) thereof and insert in lieu thereof "determined under this section".

(171) In paragraph (1) of section 1072(c) of the bill, strike out "section 6056(c)" and insert in lieu thereof "section 6053(c)".

(172) In section 1079 of the bill, strike out all that follows the parenthetical material and insert in lieu thereof ", as amended by section 2813 of the bill, is amended by striking out subparagraph (A) thereof and inserting in lieu thereof the following:

"(A) is exempt from Federal income taxes—

"(i) under such Act as amended and supplemented before the date of the enactment of the Tax Reform Act of 1984, or

"(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(173) Section 217 of the bill is amended by adding at the end thereof the following new subsection:

(n) SPECIAL RULE FOR COMPANIES USING NET LEVEL RESERVE METHOD FOR NONCANCELLABLE ACCIDENT AND HEALTH INSURANCE CONTRACTS.—A company shall be treated as meeting the requirement of section 807 (d)(3)(A)(iii) of the Internal Revenue Code of 1954, as amended by this Act, with respect to any noncancellable accident and health insurance contract for any taxable year if such company—

(1) uses the net level reserve method to compute its tax reserves under section 807 of such Code on such contracts for such taxable year,

(2) was using the net level reserve method to compute its statutory reserves on such contracts as of December 31, 1982, and

(3) has continuously used such method for computing such reserves on such contracts after December 31, 1982, and through such taxable year.

(174) In section 521 of the bill redesignate subsection (d) as subsection (e) and insert after subsection (c) the following new subsection:

(d) CERTAIN DISTRIBUTION REQUIREMENTS TO APPLY TO 5-PERCENT OWNERS RATHER THAN KEY EMPLOYEES.—Section 72 (m)(5) (relating to penalties applicable to certain amounts received by owner-employees) is amended—

(1) by striking out "key employee" each place it appears in subparagraph (A) and inserting in lieu thereof "5-percent owner";

(2) by striking out "in a top-heavy plan" in clause (i) of subparagraph (A), and

(3) by striking out "the terms 'key employee' and 'top-heavy plan' " in subparagraph (C) and inserting in lieu thereof "the term '5 percent owner' ".

(175) In section 168(b)(4)(A) of the Code (as added by section 111(b)(1) of the bill), insert "(without regard to the mid-month convention)" after "paragraph (2)" in the matter preceding clause (i).

(176) In paragraphs (2) and (3)(C) of section 1042(b) of the Code (as added by section 541(a) of the bill), strike out "qualified securities" and insert "employer securities (within the meaning of section 409(1)".

(177) In section 4978 of the Code (as added by section 545 (a))—

(A) strike out "qualified securities" in paragraph (1) of subsection (a) and insert "employer securities",

(B) strike out "qualified securities" the second place it appears in paragraph (2) of subsection (a) and insert "employer securities",

(C) amend subsection (e)(1) to read as follows:

"(1) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' has the meaning given to such term by section 4975(e)(7).",

(D) strike out the closing quotation marks at the end of subsection (e)(4), and

(E) insert at the end of subsection (e) the following:

"(5) EMPLOYER SECURITIES.—The term 'employer securities' has the meaning given to such term by section 409(1).".

(178) In section 1276 (a)(2)(A) of the Code (as added by section 41(a) of the bill), insert "(determined without regard to paragraph (2) thereof)" after "section 1272 (a)".

(179) In section 48(a)(5)(B)(ii)(II) of the Code (as amended by section 31(b) of the bill), strike out "section 48(a)(2)(B)(vi)" and insert "section 48(a)(2)(B)(v)".

(180) In section 112(b)(2) of the bill, strike out "act" and insert "section".

(181) In subparagraph (D) of section 31(g)(15) of the bill, strike out "passenger" in the matter preceding clause (i).

(182) In section 111(g) of the bill, insert the following new paragraph at the end thereof:

(5) SPECIAL RULE FOR MID-MONTH CONVENTION.—In the case of the amendment made by subsection (d)—

(A) paragraph (1) shall be applied by substituting "June 22, 1984" for "March 15, 1984", and

(B) paragraph (2) shall be applied by substituting "June 23, 1984" for "March 16, 1984" each place it appears.

(183) In paragraph (3) of section 523(b) of the Highway Revenue Act of 1982 (as amended by section 734(a)(2)(A) of the bill) strike out "solely by reason of the parenthetical matter in paragraph (1)" and insert in lieu thereof "solely by reason of the amendment made by subsection (a)(1) or (d) of section 734 of the Tax Reform Act of 1984".

(184) Insert at the end of section 112(b), the following new paragraph:

(3) SPECIAL RULE FOR CERTAIN DISPOSITIONS BEFORE OCTOBER 1, 1984.—The amendments made by this section shall not apply to any disposition before October 1, 1984, of all or substantially all of the personal property of a cable television business pursuant to a written offer delivered by the seller on June 20, 1984, but only if the last payment under the installment contract is due no later than October 1, 1989.

DIVISION B—SPENDING REDUCTION ACT OF 1984

(a) In title III of Division B of the bill—

(1) In the clause (D) amended by section 2303(a) of the bill, strike out the semicolon and insert in lieu thereof a comma.

(2) In section 2303(b)(1) of the bill, strike out "(c)" and insert in lieu thereof "(C)".

(3) In subsection (h) of section 1833 of the Social Security Act (as amended by section 2303(d) of the bill)—

(A) insert "of" in paragraph (5)(A)(ii) after "in the case",

(B) insert "in accordance with section 1842(b)(6)(B)," in paragraph (5)(C) after "1842(b)(3)(B)(ii),", and

(C) strike out "which is not paid" in paragraph (6) and insert in lieu thereof "payment for which is not made".

(4) In section 2303(i)(1)(A) of the bill, strike out "services" and insert in lieu thereof "tests".

(5) In section 2304(a)(1) of the bill, insert "of the Health and Human Services" after "Secretary".

(6) In section 1862(h)(4) of the Social Security Act (as added by section 2304(c) of the bill), insert "paragraphs (2) and (3) of" before "subsection (d)".

(7) In section 1842(b)(4)(D) of the Social Security Act (as added by section 2306(a) of the bill), strike out "who is not a participating physician" and all that follows through "October 1, 1984" and insert in lieu thereof "who at no time for any services furnished during the 12-month period beginning October 1, 1984, was a participating physician (as defined in subsection (h)(1))".

(8) In section 2306(c) of the bill, insert", as amended by section 2303(e) of this title," after "Section 1842 of such Act".

(9) Redesignate subsections (j), (k) and (l) of section 1842 of the Social Security Act (added by section 2306(c) of the bill) as subsections (h), (i), and (j), respectively.

(10) In section 1842(i) of the Social Security Act (as added by inserting 2306(c) of the bill and as redesignated under the previous paragraph in this concurrent resolution)—

(A) strike out "subsection (j)(1)" in paragraph (2) and insert in lieu thereof "subsection (h)(1)", and

(B) insert "list and" before "directory" each place it appears in paragraphs (3) and (4).

(11) In section 1128(a)(2)(C) of the Social Security Act (as added by section 2306(f)(1) of the bill), strike out "1842(j)(1)" and insert in lieu thereof "1842(h)(1)".

(12) In section 1877(d) of the Social Security Act (as amended by section 2306(f)(2)(A) of the bill), strike out "1842(j)(1)" and insert in lieu thereof "1842(h)(1)".

(13) In section 2309(b) of the bill, strike out "and used by them in making the 1984 reasonable charge updates" and insert in lieu thereof "for charges in 1983".

(14) In the matter added at the end of section 1886(d)(5)(C)(i) of the Social Security Act by section 2311(a) of the bill, strike out "in case" and insert in lieu thereof "in the case".

(15) In the matter added at the end of section 1886(d)(2)(D) of the Social Security Act by section 2311(b) of the bill, strike out "majority" and insert in lieu thereof "the largest number".

(16) In section 2311(d)(2) of the bill, strike out "reclassified under" and insert in lieu

thereof "the region of which is deemed to be changed pursuant to".

(17) In section 2312(b) of the bill, insert "costs of" before "anesthesia" in the matter proposed to be inserted and strike out "education" and insert in lieu thereof "educational".

(18) In the matter inserted by section 2313(b)(2) of the bill, strike out "U.S.C" and insert in lieu thereof "U.S.C.".

(19) In the matter added to section 1886(e)(6)(C) of the Social Security Act by section 2313(b)(3) of the bill, strike out "the" before "such meeting".

(20) In section 2313(c) of the bill, insert ", as amended by section 2304(c) of this title," after "1862 of such Act".

(21) In section 1861(v)(1)(0)(i) of the Social Security Act (added by section 2314(a) of the bill), strike out "the first owner of record on or after the date of the enactment of this subparagraph" and insert in lieu thereof, "the owner of record as of the date of the enactment of this subparagraph (or, in the case of an asset not in existence as of such date, the first owner of record of the asset after such date)".

(22) In sections 2314(c)(3)(B) and 2367(c)(2) of the bill, strike out "the additional requirements" and "these additional requirements" and insert in lieu thereof "the additional requirement" and "this additional requirement", respectively.

(23) In the matter proposed to be inserted in section 1886(c)(4)(A) of the Social Security Act by section 2315(a) of the bill, insert a comma after "(D)".

(24) In section 2315(c)(2), strike out the comma after "fiscal year".

(25) In section 2315(h)(1) of the bill, strike out "hospital that serves" and insert in thereof "hospitals that serve".

(26) In section 2316(c) of the bill, insert "on" after "Congress".

(27) In section 2321(d)(4)(B) of the bill, strike out "1888" and insert in lieu thereof "1889".

(28) In section 2321(f)(1) of the bill, insert "subparagraphs" after "(B) and (C) as".

(29)(A) Move the alignment of the left margin of the subparagraph (B) added by section 2323(a)(3) of the bill so that the subparagraph is indented two ems from the left margin.

(B) In section 2323(b) of the bill, strike out paragraph (3) and redesignate paragraph (4) as paragraph (3).

(30) In section 2326(a) of the bill, strike out "1984 and 1985" and insert in lieu thereof "1985 and 1986".

(31) In section 2326(b) of the bill, strike out "such Act" and insert in lieu thereof "the Social Security Act".

(32) In section 2326(e)(1)(A) of the bill, strike out "Health Care Financing Administrator" and insert in lieu thereof "Administrator of the Health Care Financing Administration".

(33) In section 1861(dd)(5)(B) of the Social Security Act (as added by section 2343(b) of the bill), insert "the date" after "60 days after".

(34) In section 1876(g)(5) of the Social Security Act (as added by section 2350(b)(2) of the bill), insert "the" before "Federal Supplementary".

(35) In section 2350(b)(3) of the bill, strike out "use" and insert in lieu thereof "establishment" and insert "contract" after "Act for any".

(36) In the matter inserted by section 2350(c)(2) of the bill, strike out "another" and insert in lieu thereof "or other".

(37) In section 2354(b)(14) of the bill, strike out "ninth" and insert in lieu thereof "seventh".

(38) In section 2361(a) of the bill, strike out "1902(a)(10)(A)(i)" and insert in lieu thereof "1902(a)(10)(A)".

(39) In section 2363(b) of the bill, strike out "Such section" and insert in lieu thereof "Section 1903 of such Act".

(40) In section 2363(c) of the bill, strike out "this section" and insert in lieu thereof "such subsection".

(41) In section 1903(m)(2)(F)(ii)(I) of the Social Security Act (as added by section 2364(2) of the bill), strike out "or has received" and insert in lieu thereof "or is receiving (and has received during the previous two years)".

(42) In section 1902(a)(26) of the Social Security Act (as amended by section 2368(b) of the bill), insert a comma before "provide—".

(43) In section 1622(c)(2)(B)(iii) of the Public Health Service Act (as amended by section 2381(b) of the bill), strike out "changessation" and insert thereof "changes of use".

(b) In title VI of Division B of the bill—

(1) In the table of contents for such Division, strike out the item relating to section 2643 and insert in lieu thereof the following:

PART 2—GENERAL EFFECTIVE DATE

SEC. 2646. General effective date.

(2) In section 2616 of the bill—

(A) insert "(a)" after "SEC. 2616."; and

(B) add at the end of the section the following new subsection:

(b) The amendment made by subsection (a) shall become effective on the date of the enactment of this Act.

(3) In section 2638(a)(3)(B) of the bill, strike out the colon after "thereof".

(4) In the heading of section 2640 of the bill, strike out "DISREGARD OF'".

(5) In section 2651(a) of the bill (at the beginning of the new section being added to part A of title XI of the Social Security Act), strike out "SEC. 1136." and insert in lieu thereof "SEC. 1137.".

(6) In section 2661(1)(3) of the bill, strike out the parenthesis after "Act)".

(7) In section 2662(h) of the bill—

(A) insert "(1)" after "(h)";

(B) strike out "further"; and

(C) strike out "(3) The amendments" and insert in lieu thereof "(2) The amendment".

(8) In section 2681 of the bill—

(A) in subsection (a) (in subsection (d) of section 7652 of the Internal Revenue Code of 1954 as added by such subsection (a)), strike out "subsection (a)(3) and (b)(3)" and insert in lieu thereof "subsections (a)(3) and (b)(3)";

(B) in subsection (b)(2)(B), before the period at the end of clause (ii), insert ", and which would not meet the requirements of section 7652(c) of such Code"; and

(C) in subsection (b), strike out paragraphs (2)(C) and (3) and insert in lieu thereof the following:

(C) $75,000,000 LIMITATION.—The aggregate amount payable to Puerto Rico by reason of subparagraph (A) shall not exceed $75,000,000 in the case of articles—

(i) brought into the United States after June 30, 1984, and before January 1, 1985,

(ii) which would not meet the requirements of section 7652(c) of such Code,

(iii) which have been redistilled in Puerto Rico, and

(iv) which do not contain distilled spirits derived from cane.

(3) LIMITATION ON INCENTIVE PAYMENTS TO UNITED STATES DISTILLERS.—

(A) IN GENERAL.—In the case of articles to which this paragraph applies, the aggregate amount of incentive payments paid to any United States distiller with respect to such articles shall not exceed the limitation described in subparagraph (C).

(B) ARTICLES TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any article containing distilled spirits described in clauses (i) through (iv) of paragraph (2)(C).

(C) Limitation.—

(i) IN GENERAL.—The limitation described in this subparagraph in $1,500,000.

(ii) SPECIAL RULE.—The limitation described in this subparagraph shall be zero with respect to any distiller who was not entitled to or receiving incentive payments as of March 1, 1984,

(D) PAYMENTS IN EXCESS OF LIMITATION.—If any United States distiller receives any incentive payment with respect to articles to which this paragraph applies in excess of the limitation described in subparagraph (C), such distiller shall pay to the United States the total amount of such incentive payments with respect to such articles in the same manner, and subject to the same penalties, as if such amount were tax due and payable under section 5001 of such Code on the date such payments were received.

(E) INCENTIVE PAYMENTS.—

(i) IN GENERAL.—For purposes of this paragraph, the term "incentive payment" means any payment made directly or indirectly by the Commonwealth of Puerto Rico to any United States distiller as an incentive to engage in redistillation operations.

(ii) TRANSPORTATION PAYMENTS EXCLUDED.—Such term shall not include any payment of a direct cost of transportation to or from Puerto Rico with respect to any article to which this paragraph applies.

(9) In section 2601(c) of the bill, after "United States Code," insert "or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services),".

(10) In section 2612(b) of the bill, strike out "date of the enactment of this Act" and insert in lieu thereof "effective date of this section".

(11) In subsections (a)(1) and (a)(2) of section 2653 of the bill, renumber the new section being added to title 31 of the United States Code as section 3720A.

(c) In title VIII of Division B of the bill—

(1) In section 2813(b)(1) of the bill—

(A) strike out "is amended by redesignating" and all that follows down through the colon and insert in lieu thereof the following: ", as amended by section 1032(a) of this Act, is amended by redesignating subsection (l) as subsection (m) and by adding after subsection (k) the following new subsection:"; and

(B) strike out "(k)" at the beginning of the new subsection being added to section 501 of the Internal Revenue Code of 1954 and insert in lieu thereof "(l)".

(2) In section 2813(b)(2) of the bill, in the new paragraph (1) being added to section 501(c) of the Internal Revenue Code of 1954, strike out "subsection, (k)" in subparagraph (B) of such paragraph and insert in lieu thereof "subsection (l)".

(d) In title IX of Division B of the bill—

(1) In section 2904 of the bill, strike out "section 1609" and insert in lieu thereof "section 2903".

(2) In section 2905(a)(3) of the bill, before the first period insert "would improve the

accuracy of budget estimates used by the Congress".

SEC. 2. In the enrollment of the bill (H.R. 4170) to provide for tax reform, and for other purposes, the Clerk of the House of Representatives may correct spelling, punctuation, size type, indentions, margins, paragraphing, quotation marks, numbering and lettering, cross references, and similar typographical matters.

MELCHER (AND OTHERS) AMENDMENT NO. 3378

Mr. MELCHER (for himself, Mr. BAUCUS, Mr. BOSCHWITZ, Mr. DIXON, Mr. DURENBERGER, Mr. JEPSEN, Mr. SYMMS, Mr. BOREN, Mr. RANDOLPH, and Mr. HATFIELD) proposed an amendment to amendment No. 3377 proposed by Mr. DOLE to the concurrent resolution H. Con. Res. 328, supra; as follows:

On page 8, line 4, strike out paragraph (23) of the corrections to Division 1—Tax Reform Act of 1984 and insert the following new paragraph:

(23) In section 483 of the Code (as added by section 41(b) of the bill), redesignate subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively, and insert after subsection (d) the following new subsection:

"(e) INTEREST RATES IN CASE OF SALES OF PRINCIPAL RESIDENCES OR FARM LANDS.—

"(1) IN GENERAL.—In the case of any debt instrument arising from a sale or exchange to which this subsection applies, subsections (b) and (c)(1)(B) shall be applied by using, in lieu of the discount rates determined under such subsections, discount rates determined under subsections (b) and (c)(1), respectively, of this section as in effect before the amendments made by the Tax Reform Act of 1984.

"(2) Sales or exchanges to which subsection applies.—This subsection shall apply—

"(A) to any sale or exchange by a person of real property to be used by the purchase as a personal residence but only to the extent that the sale price that the real property does not exceed $250,000

"(B) to any sale or exchange by a person of land used by such person as a farm (within the meaning of section 6420 (C) (2)), and

"(C) to any sale or exchange by a person of real property pursuant to the sale or exchange of a business, but only to the extent that the sale price that the real property does not exceed $500,000.

FEDERAL CONTRIBUTIONS TO PRESIDENTIAL NOMINATING CONVENTIONS

LONG AMENDMENT NO. 3379

Mr. LONG proposed an amendment to the bill (H.R. 5950) to increase the Federal contribution for the Quadrennial Political Party Presidential National Nominating Conventions; as follows:

At the end of the bill, add the following new section:

SEC. . Any increase in any payment to a major party under section 9008(b) of the Internal Revenue Code of 1954 made solely by reason of the amendments made by this Act shall only be used to provide police protection, capital or other improvements made substantially for security reasons, and other similar security measures.

ADOLESCENT FAMILY LIFE DEMONSTRATION PROGRAM

DENTON AMENDMENT NO. 3380

Mr. DOLE (for Mr. DENTON) proposed an amendment to the bill S. 2616, to extend the Adolescent Family Life Demonstration Program, as follows:

At the end of the bill, add the following:

(e) Section 2008(g) of such Act is repealed.

INSIDER TRADER SANCTIONS ACT

D'AMATO AMENDMENT NO. 3381

Mr. DOLE (for Mr. D'AMATO) proposed an amendment to the bill S. 910, to amend the Securities Exchange Act of 1934 to increase the sanctions against trading in securities while in possession of material nonpublic information, as follows:

Beginning with page 3, line 19, strike out all through page 4, line 2.

On page 3, line 1, after "Section 20" insert "(a)".

PATENT LAW AMENDMENTS OF 1983

THURMOND AMENDMENT NO. 3382

Mr. DOLE (for Mr. THURMOND) proposed an amendment to the bill S. 1538, to amend the patent laws of the United States, as follows:

Redesignate section 24 as section 25.

Between section 23 and section 25, as redesignated, insert the following new section:

SEC. 24. (a) Title 35 of the United States Code is amended by adding immediately following section 155 the following new section:

"§ 155A. Patent extension.

"(a) Notwithstanding section 154 of this title, the term of any patent which encompasses within its scope a composition of matter which is a new drug product, if such new drug product is subject to the labeling requirements for oral hypoglycemic drugs of the sulfonylurea class as promulgated by the Food and Drug Administration in its final rule of March 22, 1984 (FR Doc. 84-9640) and was approved by the Food and Drug Administration for marketing after promulgation of such final rule and prior to the date of enactment of this law, shall be extended until April 21, 1992.

"(b) The patentee or licensee or authorized representative of any patent described in such subsection (a) shall, within ninety days after the date of enactment of such subsection, notify the Commissioner of Patents and Trademarks of the number of any patent so extended. On receipt of such notice, the Commissioner shall confirm such extension by placing a notice thereof in the official file of such patent and publishing an appropriate notice of such extension in the Official Gazette of the Patent and Trademark Office.".

(b) The table of sections for chapter 14 of title 35, United States Code is amended by adding after the item relating to section 155 the following new item:

"155A. Patent extension.".

Section 25 (a) of the bill, as redesignated, is amended by striking out "9 and 10" and inserting in lieu thereof "9, 10, and 24".

THURMOND (AND HOLLINGS) AMENDMENT NO. 3383

Mr. DOLE (for Mr. THURMOND and Mr. HOLLINGS) proposed an amendment to the bill S. 1538, supra; as follows:

At the end of the bill insert the following new title:

TITLE —

SEC. . This title may be cited as the "Textile Fiber and Wool Products Identification Improvement Act".

SEC. 2. Subsection (b) of section 4 of the Textile Fiber Products Identification Act (15 U.S.C. 70b(b)) is amended by adding at the end thereof the following new paragraph:

"(5) If it is a textile fiber product processed or manufactured in the United States, it be so identified.".

SEC. 3. Subsection (e) of section 4 of the Textile Fiber Products Identification Act (15 U.S.C. 70b(e)) is amended to read as follows:

"(e) For purposes of this Act, in addition to the textile fiber products contained therein, a package of textile fiber products intended for sale to the ultimate consumer shall be misbranded unless such package has affixed to it a stamp, tag, label, or other means of identification bearing the information required by subsection (b), with respect to such contained textile fiber products, or is transparent to the extent it allows for the clear reading of the stamp, tag, label, or other means of identification on the textile fiber product, or in the case of hosiery items, this section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each hosiery product contained in a package if (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products contained therein, the information required by subsection (b), and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each textile fiber product contained therein.".

SEC. 4. Section 4 of the Textile Fiber Products Identification Act (15 U.S.C. 70b) is amended by adding at the end thereof the following new subsections:

"(i) For the purposes of this Act, a textile fiber product shall be considered to be falsely or deceptively advertised in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, unless such textile fiber product description states in a clear and conspicuous manner that such textile fiber product is processed or manufactured in the United States, or imported, or both.

"(j) For purposes of this Act, a textile fiber product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the inside center of the neck midway between the shoulder seams, or if such product does not contain a neck in the most conspicuous place on the inner side of such product, unless it is on or affixed on the outer side of such product, or in the case of hosiery items on the outer side of such product or package.".

SEC. 5. Paragraph (2) of section 4(a) of the Wool Products Labeling Act of 1939 (15 U.S.C. 68b(a)(2) is amended by adding at the end thereof the following new subparagraphs:

"(D) the name of the country where processed or manufactured.".

SEC. 6. Section 4 of the Wool Products Labeling Act of 1939 (15 U.S.C. 68b) is amended by adding at the end thereof the following new subsections:

"(e) For the purposes of this Act, a wool product shall be considered to be falsely or deceptively advertised in any mail order promotional material which is used in the direct sale or direct offering for sale of such wool product, unless such wool product description states in a clear and conspicuous manner that such wool product is processed or manufactured in the United States, or imported, or both.

"(f) For purposes of this Act, a wool product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the inside center of the next midway between the shoulder seams, or if such product does not contain a neck in the most conspicuous place on the inner side of such product, unless it is on or affixed on the outer side of such product or in the case of hosiery items, on the outer side of such product or package.".

SEC. 7. Section 5 of the Wool Products Labeling Act of 1939 (15 U.S.C. 68c) is amended—

(1) by striking out "Any person" in the first paragraph and inserting in lieu thereof "(a) Any person";

(2) by striking out "Any person" in the second paragraph and inserting in lieu thereof "(b) Any person"; and

(3) by inserting after subsection (b) (as designated by this section) the following new subsection:

"(c) For the purposes of subsections (a) and (b) of this section, any package of wool products intended for sale to the ultimate consumer shall also be considered a wool product and shall have affixed to it a stamp, tag, label, or other means of identification bearing the information required by section 4, with respect to the wool products contained therein, unless such package of wool products is transparent to the extent that it allows for the clear reading of the stamp, tag, label or other means of identification affixed to the wool product, or in the case of hosiery items this section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each hosiery product contained in a package if (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products contained therein, the information required by subsection (4), and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each hosiery product contained therein.".

SEC. 8. The amendments made by this Act shall be effective 90 days after the date of enactment of this Act.

MATHIAS AMENDMENT NO. 3384

Mr. DOLE (for Mr. MATHIAS) proposed an amendment to the bill S. 1538, supra, as follows:

Section 156(a) of title 35, United States Code, as added by section 2(a) of the bill is amended in the first sentence by striking our "registration" after "statutory invention" and inserting in lieu thereof "recording".

Section 156(c) of such title 35, as added by section 2(a) is amended by striking out the final quotation marks and final period.

Section 156 of such title 35 is further amended by adding at the end thereof the following new subsection:

"(d) The Secretary of Commerce shall convene an interagency committee to coordinate policy on the use of the statutory invention recording procedure by agencies of the United States. Such policy shall ordinarily require use of the statutory invention recording procedure for inventions as to which the United States may have the right of ownership that do not have commercial potential. The interagency committee shall also, after obtaining views from the public, establish standards for evaluating the commercial potential of inventions to which the government may have the right of ownership. The head of each agency which has a significant research program (as determined by the Secretary of Commerce) shall designate either the senior technology transfer official or the senior research policy official to participate as a member of the interagency committee. The Secretary of Commerce shall report to the Congress annually on the use of statutory invention recordings. Such report shall include an assessment of the degree to which agencies of the Federal Government are making use of the statutory invention recording system, the degree to which it aids the management of federally developed technology, and an assessment of the cost savings to the Federal Government of the use of such procedures.".

Strike out section 2 (c) of the bill.

Section 21(a) of the bill is amended by striking out paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

CHILD ABUSE PREVENTION AND TREATMENT ACT AND CHILD ABUSE PREVENTION AND TREATMENT AND ADOPTION REFORM ACT AMENDMENTS

HATCH (AND OTHERS) AMENDMENT NO. 3385

(Ordered to lie on the table.)

Mr. HATCH (for himself, Mr. DODD, Mr. DENTON, Mr. CRANSTON, Mr. Nickles, and Mrs. KASSEBAUM) submitted an amendment intended to be proposed by them to the bill (S. 1003) to extend and revise the provisions of the Child Abuse Prevention and Treatment Act and the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978; as follows:

On page 11, beginning with line 11, strike out all through line 2 on page 12.

On page 12, line 3, strike out "(c)" the first time it appears and insert in lieu thereof "(b)".

On page 12, line 8, strike out "SEXUAL ABUSE".

On page 12, lines 10 and 11, strike out "title" and insert in lieu thereof "Act" in both places.

On page 12, lines 14 and 15, strike out "comma and the word 'and' " and insert in lieu thereof "semicolon".

On page 12, line 24, strike out the end quotation marks and the period the second time it appears and insert in lieu thereof a semicolon and "and".

On page 12, after line 24, insert the following:

"(3) the term 'withholding of medically indicated treatment' means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment, (A) the infant is chronically and irreversibly comatose; (B) the provision of such treatment would (i) merely prolong dying, (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or (iii) otherwise be futile in terms of the survival of the infant; or (C) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.".

On page 13, strike out line 10 through line 17 and insert in lieu thereof the following: "$32,500,000 for fiscal year 1984, $39,000,000 for fiscal year 1985, $40,500,000 for fiscal year 1986, and $42,080,000 for fiscal year 1987 to carry out the provisions of this Act. Of the sums appropriated for each fiscal year, $9,500,000 shall be available in each fiscal year to carry out the provisions of section 4(b)(1) of this Act, relating to State grants, $4,000,000 shall be available in each such year for identification, treatment, and prevention of sexual abuse, and $5,000,000 shall be available in each such year for the purpose of making additional grants to the States to carry out the provisions of section 4(c) of this Act (as amended by section 201(c)(2) of the Child Abuse Prevention and Treatment and Adoption Reform Act).".

On page 14, line 25, and page 15, line 1, strike out "infants at risk with life-threatening congenital impairments" and insert in lieu thereof "disabled infants with life-threatening conditions".

On page 15, line 11 and 12, strike out "infants at risk with life-threatening congenital impairments" and insert in lieu thereof "disabled infants with life-threatening conditions".

On page 16, lines 20 and 21, strike out "infants at risk with life-threatening congenital impairments" and insert in lieu thereof "disabled infants with life-threatening conditions".

On page 17, lines 9 and 10, strike out "children with life-threatening congenital impairments" and insert in lieu thereof "disabled infants with life-threatening conditions".

On page 19, beginning with line 9, strike out all through line 20 on page 22 and insert in lieu thereof the following new title:

TITLE II—SERVICES AND TREATMENT FOR DISABLED INFANTS

SEC. 201. (a) Section 4(b)(2) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5103(b)(2), hereinafter in this title referred to as "the Act") is amended by—

(1) striking out "and" at the end of clause (I);

(2) striking out the period at the end of clause (J) and inserting in lieu thereof a semicolon and the word "and"; and

(3) inserting after clause (J) the following new clause:

"(K) have in place for the purpose of responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), procedures or programs, or both (within the state child protective services system), to provide for (i) coordination and consultation with individuals designated by and within appropriate health-care facilities, (ii) prompt notification by individuals designated by and within appropriate health-care facilities of cases of suspected medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), and (iii) authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.".

(b) Section 4 (b)(3) of the Act is amended by striking out "and (F)" and inserting in lieu thereof "(F), and (K)".

(c) Section 4 of the Act is further amended by—

(1) redesignating subsection (c) as subsection (d), subsection (d) as subsection (e), and subsection (e) as subsection (f); and

(2) inserting after subsection (b) the following new subsection (c):

"(c) The Secretary is authorized to make additional grants to the States for the purpose of developing, establishing, and operating or implementing—

"(1) the procedures or programs required under clause (K) of subsection (b)(2);

"(2) information and education programs or training programs for the purpose of improving the provision of services to disabled infants with life-threatening conditions for (i) professional and paraprofessional personnel concerned with the welfare of disabled infants with life-threatening conditions, including personnel employed in child protective services programs and health-care facilities, and (ii) the parents of such infants; and

"(3) programs to help in obtaining or coordinating necessary services, including existing social and health services and financial assistance for families with disabled infants with life-threatening conditions, and those services necessary to facilitate adoptive placement of such infants who have been relinquished for adoption.".

REGULATIONS AND GUIDELINES

SEC. 202. (a)(1) Not later than 90 days after the date of the enactment of this Act, the Secretary of Health and Human Services (hereinafter in this title referred to as the "Secretary") shall publish proposed regulations to implement the requirements of section 4(b)(2)(K) of the Act (as amended by section 201(a)(3) of this Act).

(2) Not later than 180 days after the date of the enactment of this Act and after notice and opportunity for public comment, the Secretary shall publish final regulations under this subsection.

(b)(1) Not later than 60 days after the date of the enactment of this Act, the Secretary shall publish interim model guidelines to encourage the establishment within health-care facilities of committees which would serve the purposes of educating hospital personnel and families of disabled infants with life-threatening conditions, recommending institutional policies and guidelines concerning the withholding of medically indicated treatment from such infants, and offering counsel and review in cases involving disabled infants with life-threatening conditions.

(2) Not later than 150 days after the date of the enactment of this Act and after notice and opportunity for public comment, the Secretary shall publish the model guidelines.

REPORT ON FINANCIAL RESOURCES

SEC. 203. The Secretary shall conduct a study to determine the most effective means of providing Federal financial support, other than the use of funds provided through the Social Security Act, for the provision of medical treatment, general care, and appropriate social services for disabled infants with life-threatening conditions. The Secretary shall report the results of the study to the appropriate Committees of the Congress not later than 270 days after the date of the enactment of this Act and shall include in the report such recommendations for legislation to provide such financial support as the Secretary considers appropriate.

TRAINING, TECHNICAL ASSISTANCE, AND CLEARINGHOUSE ACTIVITIES

SEC. 204. The Secretary shall provide, directly or through grants or contracts with public or private nonprofit organizations, for (1) training and technical assistance programs to assist States in developing, establishing, and operating or implementing programs and procedures meeting the requirements of section 4(b)(2)(K) of the Act (as amended by section 201(a)(3) of this Act); and (2) for the establishment and operation of national and regional information and resource clearinghouses for the purpose of providing the most current and complete information regarding medical treatment procedures and resources and community resources for the provision of services and treatment for disabled infants with life-threatening conditions.

STATUTORY CONSTRUCTION

SEC. 205. (a) No provision of this Act or any amendment made by this Act is intended to affect any right or protection under section 504 of the Rehabilitation Act of 1973.

(b) No provision of this Act or any amendment made by this Act may be so construed as to authorize the Secretary or any other governmental entity to establish standards prescribing specific medical treatments for specific conditions, except to the extent that such standards are authorized by other laws.

(c) If the provisions of any part of this Act or any amendment made by this Act or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby.

EFFECTIVE DATES

SEC. 207. (a) Except as provided in subsection (b), the provisions of this Act or any amendment made by this Act shall be effective on the date of the enactment of this Act.

(b)(1) Except as provided in paragraph (2), the amendment made by section 201(a)(3) of this Act shall become effective one year after the date of such enactment.

(2) In the event that, prior to such effective date, funds have not been appropriated pursuant to section 5 of the Act (as amended by section 104 of this Act) for the purpose of grants under section 4(c) of the Act (as amended by section 201(c) of this Act), the Secretary may grant to any State which has not met the requirements of section 4(b)(2)(K) of the Act (as amended by section 201(a)(3) of this Act) a waiver of such requirements for a period of not more than one year, if the Secretary finds that such State is making a good faith effort to comply with such requirements.

Mr. HATCH. Mr. President, I rise before you at this time to submit an amendment to S. 1003, the Child Abuse Prevention and Treatment and Adoption Reform Act, which is intended to provide protection for newborn handicapped infants.

At this time, I would like to thank my colleagues, Senator DENTON, Senator DODD, Senator CRANSTON, Senator KASSEBAUM, and Senator NICKLES. In addition, I would like to express my gratitude to the groups and staffs who spent countless hours, late nights and made many difficult decisions to come to agreement on the provisions concerning the protection of newborn handicapped infants. There were many organizations present at the table; I am pleased to announce that almost all of them have joined in endorsement of this amendment and I am certain that many other organizations will quickly join with us. The organizations include:

The American Hospital Association.

The Catholic Health Association.

The National Association of Children's Hospital and Related Institutions.

The American Academy of Pediatrics.

The American College of Obstetricians and Gynecologists.

American Nurses Association.

American College of Physicians.

California Association of Children's Hospitals.

Nurse Association of the America College of Obstetricians and Gynecologists.

American Association of Mental Deficiency.

Association for Retarded Citizens, U.S. Spina-Bifida Association of America.

Downs-Syndrome Congress.

People First of Nebraska.

The Association for Persons with Severe Handicaps (TASH).

Disability Rights Center.

Operation Real Rights.

Christian Action Council.

National Right to Life Committee.

American Life Lobby.

We as Americans recognize the inherent responsibility of adults to ensure the physical, mental, and emotional well-being of children and

young adults. We would never abandon a child injured in an accident, and we protect children from adults who abuse them. Therefore, we should not turn our heads and deprive necessary medical care ensuring life to children born seriously ill.

But, my respected colleagues, the time has come when we must take an action on behalf of these newborn infants. We can no longer force upon heartbroken parents the tremendous obligation of determining the entire destiny of their handicapped child. Nor can we pass the responsibility of decisionmaking solely on to the medical profession. This is a difficult decision for parents to make about treatment for their child. We want to help, not hinder that process.

Should this baby live or die? Perhaps that is a question that not one of us is prepared or wants the responsibility of answering. Maybe our obligation is to give that child the best chance of survival. But that is a difficult decision to make and it must be made at a very difficult time. As legislators representing our various States, we have the opportunity to make a decision that will enable the citizens of this greatly blessed Nation to act together to assist the parents with the advice of their doctors to ensure proper decisions are made about the treatment of a seriously ill newborn. I urge you to join with me in this difficult, yet respectable legislative initiative.

This amendment will be attached to S. 1003. This bill has been awaiting action on the Senate floor for over 1 year. Differing views on this issue have been resolved on many fronts. We need to get this legislation enacted. It is broad legislation which would continue vital Federal programs which support the prevention and treatment of child abuse. This legislation also continues Federal programs supporting the adoption of special needs children, and now creates a mechanism to ensure proper decisions regarding the treatment for seriously ill infants. I urge my colleagues to join me in support of this amendment, and I would like to ask that the leadership consider designating floor time for the consideration of S. 1003 with this amendment, once we return from the July 4 recess.

Also, included in S. 1003 is a section that has come to be known as the savings provision. As I understand, there is some concern over the wording of this provision, its purpose and its potential application. I am confident that in the immediate future those parties interested in this provision will be able to resolve any problems that may exist with the statutory language and its proper interpretation.

At this time I ask unanimous consent that an editorial by Nat Hentoff, and a joint explanatory statement by the principal sponsors be printed in the RECORD.

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

BABY DOE AND LOCAL OPTION

(By Nat Hentoff)

In a remarkable act of political ecumenicism during a presidential election year, staff of six liberal and conservative senators have been working for weeks to try to shape a bill that will protect the lives of handicapped newborns. The senators represented are Alan Cranston, Orrin Hatch, Edward Kennedy, Jeremiah Denton, Christopher Dodd and Don Nickles.

The staff people have had to deal not only with the differing priorities of their respective employers but also with the bitter conflicts between medical organizations, on the one hand, and, on the other, disability groups and right-to-lifers. The last two disagree on a lot of things, including abortion. But they are united in their conviction that the killing of handicapped newborns has been going on for years and that since babies are not chattel, these infants have independent constitutional rights to due process which at last must be attended to.

The medical organizations would much prefer that the decision as to whether a handicapped baby lives or dies be left to the parents and doctors, as has been the case for millennia. However, after several widely publicized cases of babies being starved to death only because they might eventually be severely retarded (though no one knew for sure) physicians have grudgingly accepted the creation of hospital review committees. These groups would look in on decisions to terminate sustenance and medical treatment.

The other side does not believe that these review committees are protection enough for the handicapped infant. They are convinced that an independent representative of the baby's interests should have the power, as a last resort, to go to court to try to save the infant's life.

Most doctors see no need for such "extreme" measures although, as I have pointed out to a number of them, convicts on death row have lawyers.

Nonetheless, the American Medical Association is so appalled at the possibility of Congress enacting legislation to give babies the same rights as convicts that it has voted to urge that local communities and hospitals set their own guidelines for treatment—or non-treatment—of "incurably ill" infants. (Do they mean "incurable" to be synonymous with "terminal" or do they mean a condition that cannot be corrected during what could be a long life?)

This quite startling move by the AMA's House of Delegates would mean that community standards—as in obscenity cases—would for the first time our history determine who shall live and who shall die. (Shirley Jackson was certainly prescient in "The Lottery.")

A spina bifida baby, for instance, born in Chicago, where Dr. David McLone's spina bifida clinic at Children's Memorial Hospital is known and admired, would get thumbs up because McLone's patients grow up intelligent and ambulatory. But in a small town where the local doctors ignorantly believe that spina bifida inexorably leads to a dreadful "quality of life," an infant with that condition would be terminated with extreme prejudice.

Having made so bold a beginning in putting infanticide on the ballot, the AMA can be expected at one of its future assemblies to extend the ultimate local option to the incurable elderly. The proposition can be printed just below whether hard liquor should be sold in supermarkets.

As for the handicapped newborns, if a national plebiscite on the issue were held, the medical groups would get the support of the vast majority of citizens with regard to keeping lawyers, and judges out of the neonatal intensive care units. After all, the press—print and broadcast—has covered the Baby Doe stories with great compassion for the parents, and only a dutiful dab at the eyes when the baby comes into the conversation.

Few news accounts have indicated that other infants with the same conditions as the particular Baby Doe in the story have gone on to do well through the years and are pleased with their "quality of life." Some reports, such as those concerning Baby Jane Doe on "60 Minutes" and "20/20" don't even get the medical facts straight. But both programs readily agreed that the parents had been much abused by "intrusive" government. Yet, if this were a Jehovah's Witness baby being denied a blood transfusion, what would Ed Bradley and Tom Jarriel say then?

It is not surprising that the Baby Does have a very small constituency out there. They are terribly inconvenient—to their parents and to the rest of us who would rather think about more pleasant things. But some Senate staff members are looking right at these infants. They don't believe parents are entitled to a 30-day return privilege on defective babies.

JOINT EXPLANATORY STATEMENT BY PRINCIPAL SPONSORS OF COMPROMISE AMENDMENT REGARDING SERVICES AND TREATMENT FOR DISABLED INFANTS

This explanatory statement is a product of the six principal sponsors of this compromise measure: Senators HATCH, DODD, DENTON, CRANSTON, NICKLES, and KASSEBAUM. It is their intention that this statement serve in lieu of a Committee report on the compromise agreement and thus be the definitive legislative history in the Senate on it. Any remarks of individual Senators, including the principal sponsors, on this legislation express only their personal views and do not, therefore, constitute authoritative interpretation or explanation of the measure.

The provisions of the amendment are discussed below:

AMENDMENTS TO THE CHILD ABUSE PREVENTION AND TREATMENT ACT

The amendment would add a new clause (K) to section 4(b)(2) of the Child Abuse Prevention and Treatment Act (hereinafter referred to as "the Act"). Section 4(b)(2) authorizes grants to carry out child abuse prevention and treatment programs to be made to States which meet the requirements of the Act.

New clause (K) would require States which participate in the State grant program to have in place procedures and/or programs (within the State child protective service system) for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions. The new clause specifies that these procedures and/or programs will provide for (i) coordination

and consultation with individuals within appropriate health care facilities who have been designated by such health-care facilities, (ii) prompt notification by such individuals to the child protective services system of cases of suspected medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions, and (iii) the authority, under State law, for the State child protective services system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

The term "withholding of medically-indicated treatment" is defined (in a new definition to be added to section 3 of the Act) as the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment, (A) the infant is chronically and irreversibly comatose; (B) the provision of such treatment would (i) merely prolong dying, (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or (iii) otherwise be futile in terms of the survival of the infant; or (C) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane. The use of the term "inhumane" in exception (C), above, is not intended to suggest that consideration of the humaneness of a particular treatment is not legitimate in any other context; rather, it is recognized that it is appropriate for a physician, in the exercise of reasonable medical judgment, to consider that factor in selecting among effective treatments.

Under the definition, if a disabled infant suffers from more than one life-threatening condition and, in the treating physician's or physicians' reasonable medical judgment, there is no effective treatment for one of those conditions, then that infant is not covered by the terms of the amendment (except with respect to appropriate nutrition, hydration, and medication) concerning the withholding of medically indicated treatment.

The term "infant" as used in this definition is intended to mean infants less than one year of age although it may include older infants who have been continuously hospitalized since birth, who were born extremely prematurely or who have long-term disabilities. The reference to less than one year of age is not intended to imply that treatment should be changed or discontinued when an infant reaches one year of age. Nor is it intended to affect or limit any existing protections available under State laws regarding medical neglect of children over one year of age.

The reference to "reasonable medical judgment" of the treating physician or physicians means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

With respect to the procedures and/or programs to be utilized to comply with the requirements in new clause (K), the Act now requires States which receive funds under section 4(b)(2) to provide certain mechanisms for the reporting of abuse or neglect cases. The same reporting mechanisms and standards set forth in the Act and existing regulations would be applicable to the reporting of cases of medical neglect covered under new clause (K).

Similarly, the Act now requires the appointment of a guardian *ad litem* for children involved in judicial proceedings relating to abuse or neglect. This provision would be applicable in judicial proceedings with respect to cases under new clause (K).

The Act and regulations also now already require States receiving funds under section 4(b)(1) to take appropriate steps to protect the health and welfare of abused or neglected children, including instituting legal proceedings. The new clause (K) includes specific statutory reference to the authority to institute legal proceedings only because questions have occasionally been raised about the authority of particular child protective services agencies to take such actions in cases involving withholding of medically-indicated treatment from disabled infants with life-threatening conditions. Under new clause (K), States have the flexibility to determine the specific agency or agencies, within their child protective services systems, to exercise that authority. State authority to utilize other agencies, in addition to the child protective services system, for these purposes would be unaffected by the legislation.

ADDITIONAL GRANTS TO STATES

The amendment (in section 201(c)(2)) would add a new subsection 4(c) to the Act to authorize the Secretary to make additional grants to the States for the purposes of developing, establishing, and operating or implementing (1) the procedures or programs required under the new clause (K), (2) information and education programs or training programs (for the purposes of improving the provision of services to disabled infants with life-threatening conditions) for professional and paraprofessional personnel concerned with the welfare of such infants, including personnel employed in child protective services programs and health-care facilities, and for parents of such infants, and (3) programs to help obtain or coordinate necessary services, including existing social and health services and financial assistance for families with disabled infants with life-threatening conditions as well as those services necessary to facilitate adoptive placement of such infants who have been relinquished for adoption.

REGULATIONS AND GUIDELINES

The amendment (in section 202) would direct the Secretary, within 90 days of the date of enactment, to publish for public comment proposed regulations to implement the requirements of the new clause (K), and to publish final such regulations within 180 days after enactment.

It also would direct the Secretary to publish, within 60 days after enactment, interim model guidelines to encourage the establishment within health-care facilities of committees which would serve the purposes of educating hospital personnel and families of disabled infants with life-threatening conditions, recommending institutional policies and guidelines concerning the withholding of medically indicated treatment from such infants, and offering counsel and review in cases involving disabled infants with life-threatening conditions. Not later than 150 days after the date of enactment and after notice and opportunity for public comment, the Secretary would be required to publish the model guidelines.

REPORT ON FINANCIAL RESOURCES

The amendment (in section 203) would require the Secretary to conduct a study to determine the most effective means of providing Federal financial support other than the use of funds provided through the Social Security Act, for the provision of medical treatment, general care, and appropriate social services for disabled infants with life-threatening conditions and report the results of such study to the appropriate committees of the Congress not later than 270 days after the date of enactment. The report to the appropriate Committees would also be required to contain such recommendations for legislation to provide such financial support as the Secretary considers appropriate.

TRAINING, TECHNICAL ASSISTANCE, AND CLEARINGHOUSE ACTIVITIES

The amendment (in section 204) would direct the Secretary to provide, directly or through grants or contracts with public or private nonprofit organizations, for training and technical assistance programs to assist states in meeting the requirements of new clause (K) and for establishing and operating national and regional information and resource clearinghouses to provide the most current and complete information regardng medical treatment procedures and resources and community resources for services and treatment for disabled infants with life-threatening conditions. The funds to carry out these activities would be provided from the funds, other than those funds made available for basic States grants under section 4(b)(1), otherwise available to the Secretary to carry out activities under the Act (meaning the Child Abuse Prevention and Treatment Act).

STATUTORY CONSTRUCTION

The amendment (in section 205) would provide that no provision of or any amendment made by the Act is intended to affect any right or protection under section 504 of the Rehabilitation Act of 1973.

It would also provide that no provision of or any amendment made by the Act may be construed to authorize the Secretary or any other governmental entity to establish standards prescribing specific medical treatments for specific conditions, except to the extent that such standards are authorized by other laws.

It would also contain a standard severability provision in the event that a particular provision of or any amendment made by the Act is declared unconstitutional by a court.

AUTHORIZATION OF APPROPRIATIONS

The amendment (in section 206) would increase the authorizations of appropriations—from the levels in the bill as reported ($27 million for FY 1984, $34 million for FY 1985, $35.5 million for FY 1986, and $37.08 million for FY 1987)—under the Act by $5,000,000 for each fiscal year for the purpose of making the additional grants to the states to implement the provisions of new clause (K) and to establish the information and education and training programs and the programs to help obtain or coordinate necessary services for disabled infants with life-threatening conditions authorized under the new section 4(c).

The amendment would retain the earmark contained in S. 1003 as reported of $9,500,000 in each fiscal year for the carrying out of the provisions of section 4(b)(1), relating to basic state grants, and $4,000,000 in each fiscal year for identification, treatment, and prevention of sexual abuse.

It is the firm intention of the sponsors that appropriations for the new section 4(c) program should be in addition to appropriations at the authorization levels contained in the amendment for the section 4(b)(1) basic state grant program and for the sexual abuse, identification, treatment, and prevention program and that neither of these existing programs should be reduced in funding in order to provide funds for the new section 4(c) program.

EFFECTIVE DATES

The provisions of the Act and amendments made by the Act would be effective upon the date of enactment, except that the amendment establishing new clause (K) as a requirement for participation in the state grant program does not become effective until one year after the date of enactment.

The amendment further provides that in the event that, prior to the clause (K) effective date, funds have not been appropriated pursuant to section 5 of the Act (as amended by section 104 of this Act) for the purpose of grants under new section 4(c), the Secretary may grant to any State which has not met the requirements of new clause (K) a waiver of such requirements for a period of not more than one year, if the Secretary finds that such State is making a good faith effort to comply with such provisions.

● Mr. CRANSTON. Mr. President, I am pleased to join with the distinguished chairman of the Labor and Human Resources Committee, the Senator from Utah [Mr. HATCH], the chairman and ranking minority members of the Family and Human Services Subcommittee of the Labor and Human Resources Committee, the Senators from Alabama [Mr. DENTON] and Connecticut [Mr. DODD], the Senator from Oklahoma [Mr. NICKLES] as well as the Senator from Kansas [Mrs. KASSEBAUM] in cosponsoring this amendment to deal with the difficult and troubling problems surrounding the provision of medical care to disabled infants with life-threatening conditions. As the spectrum of the coalition of sponsors indicates, this compromise approach enjoys broad bipartisan support.

As my colleagues know, the underlying legislation to reauthorize appropriations for the Federal child abuse program and the adoption reform program has been pending on the Senate calendar for over a year. The inability to devise a satisfactory solution to the problems relating to disabled infants with life-threatening conditions has been the principal reason for this body not yet having moved forward with reauthorization of the very important underlying legislation. As the Senate author of the 1978 Child Abuse Prevention and Treatment and Adoption Reform Act and the former chairman of the authorizing subcommittee for these two programs, failure to resolve this impasse has been a matter of deep personal concern to me. I know that this concern is shared very deeply by my friend from Connecticut [Mr. DODD], who worked very hard to get the Labor and Human Resources Committee to agree to the higher authorization levels for the child abuse program which are contained in S. 1003.

Mr. President, as one of the principal sponsors of other legislation recognizing and protecting the rights of disabled individuals, I have been equally concerned about the need to deal with the issues related to medical care for disabled infants with life-threatening conditions.

For the past several months, the staffs of the principal sponsors of this amendment and representatives from the disability community, the healthcare community, and the prolife community have engaged in extensive, indepth negotiations to attempt to fashion an appropriate response to these problems that would be acceptable to all of the parties to these negotiations.

Mr. President, these negotiations have been absolutely remarkable in every respect. These divergent groups have met repeatedly with the Senate staff to attempt to hammer out an agreement. Some of the parties to the negotiations would have preferred no Federal legislation in this area; others would have preferred a stronger Federal role. Nevertheless, in an effort to develop a workable and appropriate amendment, they all worked constructively together. The result which we are submitting for printing in the Senate today represents the product of those long hours of negotiations and discussions.

It has the support of virtually all of the groups involved, including the American Association on Mental Deficiency, Association for Retarded Citizens, U.S., Spina-Bifida Association of America, Downs-Syndrome Congress, People First of Nebraska, the Association for Persons with Severe Handicaps [TASH], Disability Rights Center, Operation Real Rights, Christian Action Council, National Right to Life Committee, American Life Lobby, American Hospital Association, Catholic Health Association, National Association of Children's Hospital & Related Institutions, American Academy of Pediatrics, American College of Obstetricians & Gynecologists, American Nurses Association, American College of Physicians, California Association of Children's Hospitals, and Nurses Association of the American College of Obstetricians & Gynecologists.

This approach, I believe, is an appropriate response to a very difficult problem. It relies upon the existing State child protective services system to respond to reports of medical neglect involving the withholding of medically indicated treatment from disabled infants with life-threatening conditions. It includes carefully worded provisions to delineate the areas of concern regarding medical treatment for these infants. It relies heavily upon reasonable medical judgment as a determinative factor in decisionmaking. It provides for coordination and consultation with designated individuals within health-care facilities to enhance the decisionmaking process involving these cases. It authorizes the establishment of training and technical assistance programs to improve the provision of services to these infants and programs to assist their families in finding the necessary support services, including financial assistance.

I think it is a reasonable, rational, and carefully crafted response to a difficult area; it represents an approach which is likely to improve the decisionmaking process without unnecessary Government intervention. It also includes a provision for additional funding so that the already sorely overtaxed child protective services agencies will receive some additional resources to carry out their responsibilities in an effective manner.

Mr. President, I would like to applaud all of the individuals and organizations who participated in this effort.●

Mr. DODD. Mr. President, few steps are more essential in promoting the well-being of coming generations of Americans than the treatment and overall prevention of child abuse.

For over a year, controversy has impeded Senate floor consideration of S. 1003, reauthorization of the Child Abuse Prevention and Treatment Act of 1978. Today, I join with five other principal sponsors in introducing an amendment designed to reach a compromise on the controversy surrounding treatment for disabled infants with life-threatening conditions.

I commend the distinguished chairman of the Labor Committee, Senator HATCH; the distinguished chairman of the Family and Human Services Subcommittee I serve on, Senator DENTON; and my distinguished colleagues from California, Oklahoma, and Kansas, Senators CRANSTON, NICKLES, and KASSEBAUM in sponsoring this amendment with me. They share my hope that this compromise measure will allow S. 1003 to be brought to the floor immediately following the July 4 recess.

A broad spectrum of parent and disability rights, health, and prolife organizations have worked extremely hard with Senate staff to arrive at a compromise package which all can support. I am pleased to report that the following organizations support this compromise: the American Hospital Association, Catholic Health Association, National Association of Children's Hospitals & Related Institutions, American Academy of Pediat-

rics, American College of Obstetricians & Gynecologists, American Nurses Association, American College of Physicians, California Association of Children's Hospitals, Nurses Association of the American College of Obstetricians & Gynecologists, American Association on Mental Deficiency, Association for Retarded Citizens (U.S.), Spina-Bifida Association of America, Downs-Syndrome Congress, People First of Nebraska, the Association for Persons with Severe Handicaps [TASH], Disability Rights Center, Operational Real Rights, Christian Action Council, National Right to Life Committee, and the American Life Lobby.

I applaud these groups for all their fine efforts.

I must also express my heartfelt appreciation to Rachel and Carl Rossow in Connecticut and their 15 children. Rachel and Carl, who have 3 children of their own, have given a permanent home to 12 handicapped young people. What Rachel and Carl focus on is not what these 12 children cannot do, but rather what they can do. The Rossow family has taught me the importance of, first and foremost, assisting the parents of handicapped infants with life-threatening conditions. The compromise measure being introduced today attempts to do just that.

In summary, Mr. President, I urge my colleagues to support this amendment. And, I urge my colleagues to also press for immediate consideration of S. 1003 upon our return as one means of helping National, State, and local agencies meet the truly national emergency posed by child abuse.

Mr. DENTON. Mr. President, as the sponsor of S. 1003, which reauthorizes the Federal child abuse program and the Federal adoption opportunities program, I am pleased to join several colleagues in cosponsoring this amendment, which seeks to prevent the withholding of medically indicated treatment from handicapped infants.

Mr. President, the amendment is the product of literally months of negotiations among Senate staff and representatives from the medical, disability and pro-life communities. The negotiation process has been long and often frustrating, and I want to commend the cosponsoring Senators and their staffs for their diligence and their good faith efforts to resolve a difficult issue. I believe that the final product is a good one, and I strongly urge my colleagues to support the amendment when it is offered to S. 1003.

Unfortunately, reauthorization of the Federal child abuse and adoption opportunities programs has been delayed for over a year, pending the resolution of this and other issues. I hope that the compromise contained in the amendment will enable the Senate promptly to consider S. 1003, and that it will be acted upon favorably.

Mr. President, in closing, I would like to list the organizations which support this amendment:

American Hospital Association; Catholic Health Association; National Association of Children's Hospitals and Related Institutions; American Academy of Pediatrics; American College of Obstetricians and Gynecologists; American Nurses Association; American College of Physicians; California Association of Children's Hospitals; Nurses Association of the American College of Obstetricians and Gynecologists; American Association on Mental Deficiency; Association for Retarded Citizens, U.S.; Spina-Bifida Association of America; Downs-Syndrome Congress; People First of Nebraska; The Association for Persons with Severe Handicaps; Disability Rights Center; Operation Real Rights; Christian Action Council; National Right to Life Committee; and American Life Lobby.

Mr. NICKLES. Mr. President, I am happy to join with Senators HATCH, DENTON DODD, CRANSTON, and KASSEBAUM in introducing an amendment on the withholding of medically indicated treatment from, infants born with one or more handicaps. The amendment is to be offered to S. 1003, the reauthorization of the Child Abuse Prevention and Treatment and Adoption Reform Act. Although S. 1003 has not yet been considered by the full Senate, it was reported out by the Labor and Human Resources Committee on which I serve, is on the calandar, and is expected to be debated in the near future. By placing this amendment in the RECORD today in advance of consideration of S. 1003, it is our intention to give other Senators and all interested parties the opportunity to review the language and the stated intent of its sponsors.

The amendment pertains to what has become known as the Baby Doe issue. As many of my colleagues know, this has been an issue of ongoing interest both by Congress and the public since the first widely publicized case in Bloomington, IN, in 1982. The crux of the debate is over the right of a physician and the family of a disabled child to withhold medical care needed by the child. At a second tier, is what role the Government has in this matter, and, at a third tier, is how that role should be defined.

Anyone viewing the names on this amendment can see that we represent the full spectrum of political philosophy. Likewise, the organizations who played an active part in the crafting of the bill cover an array of interests in the medical, hospital, disability, and pro-life fields. Thus, it is significant that an agreement, not only in concept, but on actual language has been entered into by all parties. For the RECORD, I would like to list the organizations which are in support of the bill we are introducing today:

The American Academy of Pediatricians, the American College of Obstetricians and Gynocologists, the Americna Hospital Association, the Catholic Hospital Association, the National Association of Children's Hospital and Related Institutions, the American Nurses Association, the American College of Physicians, the Association for Retarded Citizens, the Downs Syndrome Congress, the Spina Bifida Association of America, the American Association on Mental Deficiency, The Association of Persons with Severe Handicaps, Disability Rights Center, Operation Real Rights, the National Right to Life, the Christian Action Council, the Association of Catholic Bishops, the American Life Lobby, the California Association of Children's Hospitals, and the Nurses Association of the American College of Obstetricians, and Gynecologists.

Although I will leave the full explanation of the amendment to the joint statement filed by the other Senators and me, I would like to make a few observations on the objectives that I, personally, felt were important for this legislation to address.

It is an understatement to say that defining what constitutes medical neglect, particularly in cases of infants born with handicaps, it fraught with difficulties, sensitivities, and very fine lines. No one wants Washington establishing medical standards and practices for every case and diagnosis, least of all me. Yet, on the other side of the equation, no one wants to condone the discriminate denial of medical treatment to infants simply because they may suffer some degree of retardation, paralysis, or other disability. Thus, in working on this issue over the last 2 years, I have found myself struggling to find a proper balance between two objectives: One, keeping Government interference at an absolute minimum, and, two, ensuring that adequate legal protection of the civil rights of all Americans exists, regardless of age, handicap, race, or sex. I believe that this compromise amendment, crafted with the input of all the organizations I mentioned, represents that delicate balance.

I encourage my colleagues and all interested parties to review the legislation and the corresponding explanatory statement. It is my expectation that this language will be found to be a satisfactory and even commendable approach to a very difficult problem. I congratulate those Senators who participated in the often lengthy negotiations and all of the organizations and individuals who lent their expertise and input. I look forward to discussing the bill with any Member who has questions or wishes to be added as a cosponsor.

LICENSING OF VESSEL "NORDEN" FOR COASTWISE TRADE

STEVENS AMENDMENT NO. 3386

(Ordered to lie on the table.)

Mr. STEVENS submitted an amendment intended to be proposed by him

to the bill (S. 1234) to clear certain impediments to the licensing of the vessel *Norden* for employment in the coastwise trade; as follows:

Strike all after the enacting clause and insert in lieu thereof the following: That this Act may be cited as the "Merchant Marine Promotion Act of 1984".

SEC. 2. (a) Section 607 (a) and (k)(2)(C) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1177 (a) and (k)(2)(C) is amended by striking", Great Lakes, or noncontiguous" and inserting in lieu thereof "or".

(b) Section 607(k)(5) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1177(k)(5)) is amended to read as follows:

"(5) The term 'United States Foreign Trade' means foreign trade, as defined in section 905(a) of this Act.".

(d) Section 607(k)(8) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1177(k)(8)) is amended to read as follows:

"(8) The term 'domestic trade' means trade within the coastwise laws of the United States, excluding the operation of vessels on the inland waterways of the United States.".

SEC. 3. Section 615(a) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1185(a)) is amended to read as follows:

"(a) For a period of 18 months after the date of enactment of the Merchant Marine Promotion Act of 1984, the Secretary of Transportation may authorize a liner operator receiving or applying for an operating-differential subsidy under this title to construct vessels in a foreign shipyard, or acquire vessels outside the United States. The Secretary shall not authorize the acquisition of any vessel unless the Secretary determines that the vessel is less than three years of age. Vessels constructed or acquired pursuant to this section and section 134 of the joint resolution entitled "A joint resolution making further continuing appropriations for the fiscal year 1984." (Public Law 98-151; 97 Stat. 981), upon documentation under the laws of the United States, shall be deemed to have been United States built for purposes of (1) this title, except section 607 of this title, (2) section 901(b) of this Act, and (3) chapter 37 of title 46, United States Code.".

(b) Section 615(b) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1185(b)) is repealed.

SEC. 4. The Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.) is amended by adding at the end thereof the following:

"TITLE XIV—ENERGY CONSERVATION PROGRAM

"SEC. 1401. For purposes of this title—

(1) the term "grant" means an energy conservation grant made pursuant to this title;

(2) the term 'owner' means any citizen of the United States who owns a vessel documented under the laws of the United States; and

(3) the term "Secretary" means the Secretary of Transportation.

"SEC. 1402. (a) Any owner may apply to the Secretary for a grant to aid in the replacement or upgrading of the propulsion machinery of any vessel documented under the laws of the United States. No such application shall be approved by the Secretary unless the Secretary determines that—

"(1) the application provides for the replacement or upgrading of such vessel's propulsion machinery;

"(2) making such grant will provide the maximum engine room automation realistically attainable, and result in a fuel savings of not less than 25 percent; and

"(3) the owner has complied with such other terms and conditions as the Secretary may prescribe.

"(b) If such vessel was constructed by means of a construction-differential subsidy under title V of this Act, the Secretary shall, within 30 days after such application is received, submit it to the Department of the Navy for examination and suggestions for such modifications as may be necessary in order that the vessel shall be suitable for economical and speedy conversion into a Naval or military auxiliary, or otherwise suitable for the use of the United States Government, in time of war or national emergency. The Secretary of the Navy shall approve or disapprove such application within 60 days after it is submitted by the Secretary. If the Secretary of the Navy does not approve or disapprove such application within such time period, the application shall be considered to be approved. If the Secretary of the Navy approves the application as submitted, or as modified in accordance with the provisions of this subsection, the Secretary of the Navy shall certify such approval to the Secretary. The Secretary shall not approve any such application unless the application is approved by the Secretary of the Navy or is considered to be approved under this subsection.

"(c) The Secretary shall approve or disapprove any application made under this section within 120 days after the Secretary receives such application.

"SEC. 1403. The amount of any grant made under this title shall be equal to the bid of the shipbuilder performing the agreed-upon work minus a fair and reasonable estimate of the cost, as determined by the Secretary, of having the work provided for in the application performed in a foreign shipbuilding center. In making such determination, the Secretary shall select a foreign shipbuilding center which is a fair and representative example. The amount of any grant made by the Secretary under this title shall not exceed 50 percent of the cost of the replacement or upgrading of the propulsion machinery provided for in the approved application.

"SEC. 1404. (a) For a period of three years from the date of enactment of the Merchant Marine Promotion Act of 1984, there is established in the Treasury of the United States an Energy Conservation Account to be used by the Secretary for making grants under this title, and for the purchase of vessels for the National Defense Reserve Fleet pursuant to section 510(i)(2) of this Act. The Account shall consist of amounts, including interest, of the unobligated balance of operating-differential subsidy funds that are transferred pursuant to subsection (b) of this section. Not more than one-third of the amounts in such Account may be used to purchase vessels for the National Defense Reserve Fleet.

"(b) Notwithstanding any restriction in the authorizing and appropriation Acts providing the operating-differential subsidy funds available for use under this title, the Secretary shall, at the end of fiscal years 1983 through 1986, transfer the unobligated balance of all such funds for each such fiscal year to the Account established by this section.".

SEC. 5. Section 510(i) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1160(i)) is amended—

(1) by inserting "(1)" immediately after "(i)", and

(2) by adding at the end thereof the following:

"(2) For a period of three years after the date of enactment of the Merchant Marine Promotion Act of 1984, the Secretary of Transportation may purchase suitable vessels for lay-up in the National Defense Reserve Fleet. Any sale pursuant to this paragraph shall be subject to terms and conditions required by the Secretary, including reasonable assurances by a shipowner that the proceeds of sale of any such vessel will be used to purchase from domestic shipyards one or more new vessels with fuel-efficient engines that generally meet the technical requirements of title XIV of the Merchant Marine Act, 1936.".

SEC. 6. Section 46 of the Internal Revenue Code of 1954 (26 U.S.C. 46) is amended by adding at the end thereof the following:

"(i) Energy Tax Credit for vessels.

"Where the propulsion machinery of a vessel is replaced or upgraded pursuant to title XIV of the Merchant Marine Act, 1936, in addition to the credit provided by this section, there shall be allowed as a credit against the tax imposed by this chapter an energy tax credit in the amount of 15 percent of the amount specified in a contract approved by the Secretary of Transportation in accordance with such title.".

SEC. 7. (a) Notwithstanding the provisions of sections 111 and 112 of the Vessel Documentation Act (46 U.S.C. 65i and 65j), section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 883), section 8 of the Act of June 19, 1886 (46 U.S.C. 289), and any other provision of law, the Secretary of the department in which the Coast Guard is operating shall cause the vessels Cunard Princess (ABS numbered 7437321) and Cunard Countess (ABS numbered 7531420), upon the application of Cruise America Line, Incorporated, to be documented as vessels of the United States upon compliance with all other requirements of law except as modified in this Act, with the privilege of engaging in the coastwise trade.

(b) A vessel named in subsection (a) of this section may not be documented under such subsection unless all alterations, repairs and rebuilding of such vessel that are necessary to bring the vessel into compliance with part B of subtitle II of title 46, United States Code, are done in the United States.

(c) A vessel named in subsection (a) of this section may retain the privilege of engaging in the coastwise trade only if all nonemergency alterations, repairs or rebuilding of such vessel are done in the United States.

(d) For hire carriage in the coastwise trade under this section is limited to passengers, their accompanying baggage and personal property.

Mr. STEVENS. Mr. President, I am introducing today an amendment in the nature of a substitute to S. 1234. This amendment is composed of four promotional initiatives for the U.S. maritime and shipbuilding industries, which have been suffering their worst depression in over 50 years. While these measures will provide some much needed assistance, they are not a panacea for the long term. Next year, the other members of the Commerce Committee and I will be looking at the problems of these industries in a comprehensive way. In the meantime, this package offers modest, but

significant assistance to every segment of these industries with minimal or no cost to the Government.

The first initiative, as set out in section 2, allows deposits in Capital Construction Funds [CCF] establish pursuant to section 607 of the Merchant Marine Act of 1936 to be used to construct vessels for use in all the foreign and domestic trades, excluding the inland waters of the United States. Under present law, vessels built with these funds are limited, the foreign Great Lakes, and noncontiguous—that is Alaska, Hawaii, and Puerto Rico—trades. Vessels calling between ports located along the coastline of the contiguous 48 States are not eligible for use of these funds.

Shipping is a capital intensive business, and the function of the CCF is to assist U.S.-flag operators in acquiring the vast amounts of capital required for their operations. The problems of capital formation are not limited to U.S.-flag vessel operators in the foreign, Great Lakes, or noncontiguous trades. It is a problem confronted by all U.S.-flag operators. This is especially true during the current period of fiscal constraint. At the present time, the operators of U.S.-flag vessels operating in the coastwise or intercoastal continental U.S. trades are in the anomalous position of being authorized to set up a CCF, but are precluded by statute from using it for the construction of vessels for these same trades.

Over the past decade, total intercity freight traffic has increased significantly. However, the overall marine segment of this traffic has been relatively stagnant, with the coastwise and intercoastal services experiencing dramatic reductions in traffic carriage. The high-market entry, replacement and expansion costs associated with marine services create grave risks for operators and financial backers. It has discouraged both expansion and replacement within the coastwise and intercoastal fleets. Failure to take immediate action to help the coastwise and intercoastal marine services would also be inconsistent with the nation's current policy to conserve energy. Water carriage requires one-fifth the amount of petroleum per ton-mile of transit consumed by trucking, one-third of that consumed by pipeline transport, and two-thirds that of rail. The magnitude of these differences translates into potentially vast savings in energy consumption. Finally, the domestic ocean fleet continues to be a national resource that should not be lost. In a wartime or national emergency situation, the ships of this fleet would be available for varied assignments. Containerships and roll-on/roll-off vessels, as well as handy-size tankers, could be rapidly placed on military loading berths. Larger tankers would be deployed in distributing Alaskan crude oil to counter interruptions of foreign supplies.

Section 2 of the amendment would mitigate the capital formation problems of these U.S.-flag operators and thus encourage the maintenance and development of this transportation system. It would do so by amending section 607 to expand the benefits of the CCF to include the construction of U.S.-flag vessels for operation in the coastwise and intercoastal continental U.S. trades.

The second element of the amendment, set forth in section 3, would amend the Merchant Marine Act, 1936, to provide temporary authority for subsidized U.S.-flag ship operators to construct or acquire vessels outside the United States and still be eligible to receive operating-differential subsidies [ODS]. Since the enactment of the Merchant Marine Act in 1936, ODS vessels have been required to be constructed in the United States. Such vessels were generally built with the aid of construction differential subsidy [CDS]. In order to assist subsidized operators in meeting their contractual obligations to replace overaged ships, Public Law 97-35—approved August 13, 1981—added a section 615 to the Merchant Marine Act, 1936, that authorizes the payment of ODS for the operation of foreign-built, U.S.-flag vessels in the absence of available CDS until the end of fiscal year 1983. However, restrictions placed on this authority for fiscal year 1983 mean that, for all practical purposes, the authority provided by section 615 was available only in fiscal year 1982. Similar authority was provided for two U.S.-flag operators in section 134 of Public Law 98-151—approved November 14, 1983.

Section 3 would amend section 615 so that for a period of 18 months from the date of enactment, the Secretary of Transportation (Secretary) could continue to authorize U.S.-flag operators to construct or acquire vessels outside the United States and still be eligible to receive ODS. It would also clarify current authority under section 615 to acquire existing vessels outside the United States to be reflagged and made eligible to receive ODS. Section 615 authority would be effective upon a determination by the Secretary that the foreign-built vessel is less than 3 years of age. This provision would allow replacement of overaged vessels to continue on schedule and thus avert a decline in the size of the U.S.-flag liner fleet, which is the primary U.S. source of military sealift capability.

The third initiative, set forth in sections 4-6 of the amendment would add a new title XIV to the Merchant Marine Act, 1936 for the purpose of promoting energy conservation on U.S.-documented vessels. Owners of such vessels would be eligible for grants to replace or upgrade propulsion machinery provided that a fuel savings of at least 25 percent and maximum engine room automation are achieved. Grants would be equal to the difference between the cost of having the work done in a U.S. shipyard and a foreign yard but shall not exceed 50 percent of the total cost of replacing or upgrading the machinery.

These grants would come from a special account consisting of the unobligated balance of operating differential subsidy funds for the years 1983 through 1986. Up to one-third of the amount in the account may be used to purchase vessels for the National Defense Reserve Fleet, subject to reasonable assurance that the proceeds from such sale will be used to purchase one or more new vessels with fuel-efficient engines from domestic shipyards. In addition, owners who replace or upgrade propulsion machinery will be eligible for a 15-percent energy tax credit.

This program would offer enormous benefits at a relatively modest cost. First of all, it would be a significant step in making the American Merchant Marine more competitive by dramatically reducing fuel costs and crew costs for the vessels that would be re-engined. Second, it would prevent the economic wastage of a number of relatively new American-flag vessels that would otherwise be uncompetitive. Third, it would be consistent with the national fuel conservation effort of the United States. Fourth, it would provide a great amount of shipyard work for some domestic yards that are urgently in need of such work. This program would be far more effective in creating shipbuilding work than any traditional construction subsidy program or any government shipbuilding program.

The fourth initiative, as set forth in section 7, would allow two foreign-built cruise ships to be documented as vessels of the United States with coastwise trading privileges. This provision presents the only viable alternative for developing a U.S.-flag presence in the booming U.S.-cruise market which is overwhelmingly dominated today by foreign operators.

Last year, over 90 foreign-flag cruise ships visited American ports and carried 1.4 million North American passengers. Unless this provision is enacted, Americans will be deprived of the opportunity to cruise on U.S.-flag ships manned by American crews visiting American ports.

Furthermore, this provision creates jobs for Americans. These ships would directly employ over 1,000 American seamen. Their operation would create numerous shoreside jobs to the ports visited by the vessels and in the travel, tourism, entertainment, and airline industries. The refurbishing and annual overhaul of the ships would provide

jobs for domestic shipyards. These jobs and the tax revenues flowing into our economy would be created at no cost to the U.S. taxpayer.

Finally, this provision has important implications for our national defense. The potential military use of civilian commercial vessels during conflict or wartime is significant, as demonstrated by Britain's use of one of these vessels for 9 months of active duty during the Falklands crisis. Our own State Department requested that this vessel be on standby for the evacuation of American citizens during the recent invasion of Grenada. Reflagging these vessels would make available to the military two large, modern, shallow-draft vessels manned by American citizens for use as auxiliary troop carriers, supply transports, and floating dormitories or hospitals in times of national emergency.

NOTICES OF HEARINGS

SUBCOMMITTEE ON ENERGY REGULATION

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public the scheduling of a public hearing before the Subcommittee on Energy Regulation to complete consideration of the following bills: S. 1069, to amend the Federal Power Act to limit the recovery by public utilities of certain costs of construction work in progress through rate increases; S. 817, to amend section 205 of the Federal Power Act (16 U.S.C. 824D) relating to inclusion of construction work in progress in the wholesale rate base of public utilities; and H.R. 555, to amend the Federal Power Act to limit the recovery by public utilities of certain costs of construction work in progress through rate increases.

The hearing will be held on Thursday, August 2, beginning at 9 a.m. in room SD-366 of the Dirksen Senate Office Building.

Those wishing to testify or who wish to submit written statements for the hearing record should write to the Subcommittee on Energy Regulation, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510.

For further information regarding this hearing you may wish to contact Mr. Howard Useem of the subcommittee staff at 224-5205.

ADDITIONAL STATEMENTS

THE SETON-NEUMANN LECTURE

● Mr. DURENBERGER. Mr. President, my colleague, Senator DANIEL PATRICK MOYNIHAN has long been recognized as a foremost scholar in the field of education and social policy. His background and knowledge of the Catholic Church further enriches his perspective on education and social change, but particularly enhances his recognition of the importance of private education in America.

Senator MOYNIHAN recently presented the second annual Seton-Neumann lecture sponsored by the U.S. Catholic Conference and Grolier Educational Services. In his address, Senator MOYNIHAN articulately identified the progress of social change and education in America and the importance of the role of the Catholic Church in our development.

Senator MOYNIHAN, long recognized as a leader in the fight for tuition tax credits, noted in his speech the irony of the entrapment of aid to private education in the liberal-conservative debate. He identifies the reluctance of Catholic scholars and intellectuals to confront their liberal friends on the issue of aid to private education and insist that it be discussed in a context larger than today's narrow political dialog.

Mr. President, Senator MOYNIHAN has eloquently identified the need to support private education in America and the role the Catholic Church can play in our social change. I hope that my colleagues will read Senator MOYNIHAN's speech with care because it will undoubtedly provide them with greater vision into these issues. I ask that the entire text of Senator MOYNIHAN's Seton-Neumann lecture be printed in the RECORD.

The material follows:

CATHOLIC TRADITION AND SOCIAL CHANGE

(By Senator Daniel Patrick Moynihan)

It is now just one century from the time the Third Plenary Council of the American Catholic Bishops convened at Baltimore, under the tutelage, if that is the term, of Cardinal Gibbons. It was this Council which issued the famous Pastoral Letter so central to the history of Catholic education in our country. The Bishops decided the time had come to establish a Catholic University of America—whose current President, William J. Byron, S.J., inaugurated this lecture series in so auspicious a manner just last year—and "legislated" the establishment of parochial schools in each of the Catholic parishes of the land.

The Letter reads wonderfully well at this distance: a tract of high Victorian earnestness which at moments attains to Matthew Arnold's criterion of "sweetness and light." It is notable not least for its insistence on the centrality of education in the vocation of the church.

"Popular education has always been a chief object of the Church's care; in fact, it is not too much to say that the history of civilization and education is the history of the Church's work. In the rude ages, when semibarbarous chieftans boasted of their illiteracy, she succeeded in diffusing that love of learning which covered Europe with schools and universities and thus from the barbarous tribes of the early middle ages, she built up the civilized nations of modern times." [1]

Footnotes at end of article.

Which is only fair: the idea of a "liberal education" grew out of the universities of medieval Europe, and prompts a twentieth century American to ponder the paradox that a modern liberal society such as ours has such difficulty accepting the idea of Catholic schools, more generally religious schools, as a legitimate object of public support. Indeed opposition to such support is becoming rather a test of political liberalism in many sectors of the American polity. I am aware that I have already used the terms liberal and liberalism in a variety of their meanings, but that is one of the themes I should like to address.

I first encountered the confusion as a youth, sitting at Sunday mass in Manhattan listening to pastoral letters from assorted ancient Irishmen denouncing "liberalism" and all its works. Now I had, at most, a tentative hold on that term, but I did know that President Roosevelt was a "liberal"—the Daily News has seen to that—and I had to assume the Bishops were denouncing him and all his works. Not least would have been the recently enacted Fair Labor Standards Act, which, by setting a minimum wage of 25¢ an hour, had probably increased the family income of considerable numbers of our congregation. It was not until I got to City College that it was explained to me that a socially conscious episcopate had in fact been denouncing the Manchester School of Economics and the doctrine of the iron law of wages, in full accord with both Rerum Novarum and the New Deal.

It comes to this. Much of the movement for social change in the 20th Century has involved a critique of the 19th Century economic "liberalism" a set of doctrines that emanated mainly from Britain and attained to doctrinal orthodoxy through much of the world.* In the United States, at least, this classical liberalism achieved the status of cultural orthodoxy as well, often of an evengelical degree. (What 16th Century Jesuit can have discerned the stirring of Christianity among the heathen Chinese with greater joy than that with which President Reagan learned recently that those sometime Chicoms of Beijing are beginning to experiment with capitalism!)

Now the shortcomings of 19th Century laissez-faire economic regimes tend to be exaggerated. Not least of their strengths was their openness to criticism of their weaknesses. Vide Schumpeter. But no matter: apart from the anti-imperialist movement, the history of social change for the past century or so had involved the critique of those ideas, and, more importantly in my view, of industrialism, a new condition of man, inextricably associated with these new ideas.

The concept of alienation is central to this critique. Hegel had raised the question of "the alienated spirit" in the modernizing world. Marx went on to take this as his central concept: the alienated proletarian in a capitalist world without God. Work is a man's essential activity. But as work becomes more valued, man becomes devalued, for the product of his work is taken from him. In George Lichtheim's words, ". . . The Worker is related to the product of his labor as to an alien object." He con-

* Thus in his regular dispatch to the New York Daily Tribune on March 15, 1853, Karl Marx, reporting on a Ten-Hours Bill in the British Parliament, wrote of the "liberal rhetorics" which the "factory-despots" extracted from the press, and of the cunning with which the "liberal mill-lords" had evaded earlier labor legislation.

tinues: "Alienated labor creates a world in which the real producer cannot recognize himself. Work, man's existential activity, estranges him both from nature and from himself."[2] A reordered economy would resolve everything.

In time, it became clear that Marxism or its mutants both destroyed the political freedoms of the classical liberal economy and could scarcely match its economic product either. History, as the scientists might say, falsified Marxism. Yet the modern problem of alienation remained.

Enter the Catholic tradition. This is of course but one element in the more general Christian tradition, and imbued with Judaic concepts from which so much of Christianity derives. Yet there was something specifically of the Church of Rome in the matter. If there were to be critiques of capitalism, some would be heard from Rome where 19th Century economics were regarded, as the blessed Michael Novak puts it, as a kind of Protestant heresy.

Alienation was a concern that came easily to these writers, out of the elemental, central belief in man as a creation of God. Pope John Paul II in his encyclical Redemptor Hominis writes of this with great explicitness:

"In reality the name for that deep amazement at man's worth and dignity is the Gospel, that is to say the good news. It is also called Christianity. This amazement determines the church's mission in the world and perhaps even more so, in the modern world."[3]

In just these terms he told a gathering of some 200,000 Koreans in May of this year that workers are more important than the goods they produce:

"Even the biggest city, the most complicated computer, the greatest nation, is only something made by man and is meant to serve man, to benefit man."[4]

John Paul was, of course, a professor of philosophy; more specifically, a phenomenologist, a school that traces itself to the work of a Bohemian-born Jew, Edmund Husserl (1859-1938). Phenomenology is the study of appearances (in the Platonists' sense), a traditional task of philosophy and science. While it clearly led to the existentialist schools of post-war Europe, it retains, paradoxically, perhaps, a strong affinity with the pragmatism and empiricism of William James. It is, then, at minimum post-Cartesian, rejecting cognition as the measure of man and considerably elevating man in the process. But most important, it is emphatically post modern.

And so to a paradox: Catholic tradition is developing a coherent basis on which to advance the cause of humane social change in the modern age. Or, as a better polemicist than I put it, echoing the great pronouncement of 1848, "There is a spectre haunting Europe: the spectre of Catholicism." For of course the problems of 19th Century laissez-faire seem minimal indeed when contrasted with the greatest challenge of social change the world may yet have known, which is nothing less than the transformation of the totalitarian Marxist-Leninist state, which itself grew out of the critique of classical liberalism.

And so to another paradox, and a most ingenious one at that. Catholic tradition has proved a lively and, generally speaking, rewarding source of argument and conviction in the effort to promote progressive social change. Moreover, by the middle of the 20th Century, as Andrew Greeley has shown, the American Catholic electorate was consistently more liberal in the modern sense in politics than the population as a whole. How is it then that opposition to support for Catholic education has become something of a measure of modern liberalism?

I find in this one of the great regularities of American history. (I have another. Whatever the American labor movement is for, the Harvard faculty is against.) To wit: whatever are the opinions to which the more prestigious leaders of American society subscribe, one of them will be opposition to aid to Catholic schools.

I believe we can discern with fairly definable boundaries three stages in this ongoing antagonism.

Colonial schooling, as Orestes Brownson wrote, "was simply a system of parochial schools."[5] Post-colonial schooling was hardly different. (Elizabeth Ann Seton founded the first Catholic school in Baltimore in 1808.) At first funds were wholly private, but gradually bits and pieces of public aid were provided. All participated. In New York, Torah schools received aid from both the City and the State as did schools of Christian denomination.* Catholic schools received their mite along with the others. To abbreviate a lengthy analysis of which I have written elsewere, there came a time when more was at stake—more money, that is—and in the competition for this money, the dominant Protestant forces simply won out. (Thus, in New York a dispute arose over which Bible to use. The present dual school system dates from that time: say the 1840s in New York City.)

By then, the public school movement had begun, and the secular, Americanizing schools became a social and political cause. A second state of conflict began. By now, Catholics had greater political strength, but were quite unequal to the ideological arguments: they could not make their case for modernity.

We are slowly retrieving both these histories. (A generation ago I found they had quite vanished.) I will only touch upon this middle period. Schooling was becoming important to Americans. The idea of universal education was coming to be associated with the well-being of the polity, and the right to such education was beginning to be seen as an attribute of citizenship. Yet the anomaly remained that, in many jurisdictions, one set of public schools was financed wholly with public funds, while another set (now beginning to be called parochial—note the several meanings) was financed through private contributions from, generally speaking, a low-income population.

Most things American happen first in New York—you will indulge me that!—and as with the controversy in the first period, an archtypical event of the second period involved the fine old quarrel between Tammany Hall and The New-York Times. As James M. McDonnell has recorded, in 1868 "Boss William Marcy Tweed had inserted into the annual tax levy bill for New York City a school provision that reserved twenty percent of the excise funds received during 1868 to support schools that educated children gratuitiously other than in common schools."[6] $200,000 of $3 million was involved. The bill became law and the new church-state issue was raised. I emphasize new. None previously had thought there to be any such conflict when the state helped a denominational school; now they did. The following year, an editorial appearing in The New-York Times expressed the gravest alarm:

". . . The preservation of our school system has long been held to be the one great safeguard against the growing evils of Democracy in our large cities. While the children of the poor foreigners can have the same instruction with our native citizens, while they can read the same books and catch the unconscious influence of modern science and progress, we need fear less the dangers from the votes of their ignorant fathers. The public felt sure that every year a new class of intelligent and Americanized youth—though of foreign parentage—were being added to the great population of City voters. It was evident that out public schools, though teaching nothing of religion, were breaking the power of priestcraft, simply by the spread of intelligence, and that the multitude of low foreign electors who had so long ruled in such cities as New York, was being counter-balanced by a more intelligent and better educated set of young men, who were the legitimate fruit of our public school system.

"With such an immense foreign class here of ignorant people, already blindly following their priests, it seemed in the highest degree dangerous to deliver up anything of our public instruction to religious bodies."[7]

In the spring of 1869, the Times Albany correspondent reported that the Legislature reversed itself and "killed Tweed's bill for endowing all the sectarian schools of the State with money from the common school fund."[8] Even so, controversy still raged between the editorialists of the Times and the Tablet, with the latter getting rather the worst of it. In one exchange the Times wrote:

"The Tablet again charges us with unfairness in refusing to acknowledge that the question of reading the Bible in the schools is not the issue for which the Catholics are contending. In answer to this charge we have to say that we were among the first to warn the public that the Catholics were only using the Bible as a stalking horse, and that their real object of attack was the public school system."

* * * * *

"Of course its proposition would involve the destruction of the present common school system, and lead to the establishment of denominational schools".[9]

Orestes Brownson, again to cite McDonnell, accused the Times of being unfair by reinserting the question of the Bible, charging that Catholics demanded its exclusion from the public schools. This had been the issue of the earlier era: i.e., which Bible to use. But Catholics were now asking for something quite different. They assumed that the public schools would be non-denominational, but they wanted public support for their own schools. Some such arrangement was worked out in Poughkeepsie, and became much favored by Archbishop Ireland. But nothing came of it all. To the contrary, beginning with President Grant's speech to the Army of the Tennessee in 1875, opposition to public support for Catholic schools became almost an issue of patriotism. The era of the Blaine amendment commenced (note, however, that these men assumed that the Constitution would have to be amended to forbid such aid) and the movement for aid to Catholic schools more or less receded.

The third era of which I speak began with the movement for federal aid to education following the Second World War. This

*I know of only one, but assume there were others. No principle of the time precluded such aid.

struggle was brought on as much by demography—the baby boom—as by anything else, but came to involve deep conflicts of region and race and genuine concerns of federalism. To favor federal aid was to be a political liberal, as now defined. It followed, as James L. Sundquist notes of the saga, "support for the legislation to aid public schools was, in fact, stronger among Catholics than non-Catholics." [10] On the other hand, the notion that Catholics might share in such aid hardly occurred to the progressive advocates of such legislation.

Then a crisis occurred. With the election of John F. Kennedy, a President came to office and proposed a bill. Catholic schools were not included; the President himself had stated during his campaign that such aid would be unconstitutional. Almost immediately, however, Catholics demanded a share.

I joined the Kennedy administration at about this time, and became involved with the issue, beginning with an article in the old Reporter magazine of May, 1961, entitled "How Catholics Feel About Federal School Aid." (The Reporter was then the embodiment of moderate Liberal opinion. So much so, that with the Kennedy administration in office, it felt little left to do and ceased publication!) Reading the article now, I am struck by three things. First, I took as given the proposition that, "of late the American liberal has commonly encountered a high proportion of Catholics among his . . . detractors." I believe this is a defensible description of perceptions of the time, especially in the aftermath of that jumble of class and ideological conflicts associated with "McCarthyism." Second, I took it for granted that Catholic schools were not as good as public schools and that much of the difference was to be accounted for by the fact that (as in New York City) the per-pupil expenditure of parochial schools was "not one-third that of the public schools." These will be remembered as the days when there was a growing concern among Catholic authors about a kind of generalized educational deficit among the Catholic population, a concern not much alleviated by the seeming indifference of the hierarchy. ("Where are the Catholic Einsteins?" was the question. "Where are the Catholic atheists?" was the retort. The state of science education was at the center of it. The Pastoral Letter of 1884 had been much less defensive. It had noted the need for Catholic students to equip themselves to deal with scientific questions, adding, gently, "We should be glad to see thoroughly solid and popular works on these important subjects, from able Catholic writers, become more numerous.") But such relative deprivation, or whatever, evoked no "liberal" concern. Indeed, I wrote, "to be blunt, there is a growing suspicion that many . . . liberals would not be dissatisfied to see Catholics remain—of their own volition—a relatively impotent because relatively uneducated group." Harsh words, for which I ask forgiveness. And yet I would report that in the Kennedy administration, men of the utmost goodwill would urge upon you the thought that Catholic education mustn't be encouraged for the simple reason that Catholic schools just weren't good enough. It wasn't fair to the children!

My third point wears better. Viewing the Congressional scene, it could hardly have been more clear that a coalition had to be formed, that there had to be "dialog" and that to raise the Constitutional issue was a means of avoiding such dialog rather than commencing it.

". . . At this point it has become a matter of urgency that representatives of the Protestant and Jewish communities realize that if aid to parochial schools is unconstitutional, it is in the way the income tax was unconstitutional: a matter of public policy rather than of democratic faith. Public policy is open to discussion."

In the end, of course, nothing came of President Kennedy's legislation: Catholic opposition stopped it in the House of Representatives. With the assassination, however, a wholly new mood descended on Washington: remorse and expatiation. Why had we not done the simple things the President had proposed? Simple, decent, everyday things, common almost everywhere else in the democratic world. A measure of dialog, in fact, did begin, in large measure owing to the openness of the Commissioner of Education, Francis Keppel, to any idea that might help him get his program and to the extraordinary willingness of a group of young priests at the National Catholic Welfare Conference, notably Francis Hurley, now Archbishop of Anchorage, to put up with any amount of misunderstanding and even bad faith in the pursuit of a good cause.

In the end, an understanding was reached. It was agreed that if the Democratic Platform for 1964 were to contain a simple, good faith commitment to find a means to aid parochial schools, the Catholics would not just withdraw their opposition to federal legislation but enthusiastically endorse it. I drafted the passage, and later saw to its inclusion in the Platform. It read:

". . . We believe that education is the surest and most profitable investment a nation can make.

"Regardless of family financial status, therefore, education should be open to every boy or girl in America up to the highest level which he or she is able to master . . . .

". . . New methods of financial aid must be explored, including the channeling of federally collected revenues to all levels of education, and, to the extent permitted by the Constitution, to all schools." [11]

The Elementary and Secondary Education Act of 1965 was signed by President Johnson on April 11, 1965. A struggle of two decades was resolved in ten months. The key concept in the breakthrough was that Congress would support aid for the education of poor children—a fallout of the antipoverty program. But the key political element—as Sundquist attests—was Catholic support. No great claims were made. All that Monsignor Hochwalt said in testimony supporting the bill was that "all children in need will benefit." But that was enough. [12]

It was an agreement: but it wasn't kept. Some aid made its way to parochial schools, but it was meager and grudging, and threatened to disappear altogether. (At the outset of the Carter administration, it was thought progressive to abolish the small office that administered that aspect of federal aid to education.)

In frustration, Catholics turned to tuition tax credits as a possible solution to this now one-hundred-and-fifty-year old-debate. Again the theory was, help the child, rather than the school. In 1977, Senator Packwood and I introduced legislation providing such assistance. [13] At first our prospects seemed excellent. There was a general setting of increasing aid to education; all boats were rising on an incoming tide of federal expenditure. Why not these? But then, of a sudden, the Carter administration embraced the proposition that such aid would constitute a grievous threat to the public school system and, worse an unconscionable aid to the resegregation of American education.

American liberalism had ceased to be merely indifferent to denominational schools: it had begun to oppose them with a measure of animus, not all that different from The New-York Times editorials of a century earlier. With the advent of the Carter administration opposition to racial segregation was allowed to enter the discussion of aid to church-related schools. It is painful to report, but necessary: the word "racist" began to be whispered.

That the facts were so clearly otherwise counted for little. Catholic schools were busy doing what they had always done, administering to the poorest of their communities as well as to the increasingly well-to-do portions of it, and in the case of many urban dioceses going out of their way to bring in youth who were not Catholic at all, but merely poor and in need of schooling. But few wished to know this.

In 1981 James S. Coleman and his associates at the National Opinion Research Center of the University of Chicago published their extraordinary study Public and Private Schools. Contrary to what, at all events, had been the conventional wisdom, it turned out that Catholic elementary and secondary schools were very good schools indeed, that they were especially good at the education of minorities, and that they managed it all for a third to half the cost.

As with Coleman's previous study, Equality of Educational Opportunity (1966), his findings were at least in some measure "counter-intuitive," but no less impressive for that fact. Coleman writes of his findings with a conviction that is rare in this master of mathematical sociological inquiry: a calling which instills naught if not caution.

"The most striking finding is the greater homogeneity of achievement of students with different parental education levels in Catholic schools than in public schools . . . . That is, the performance of children from parents with different educational levels is more similar in Catholic schools than in public schools (as well as being, in general, higher) . . . .

"Thus we have the paradoxical result that the Catholic schools come closer to the American ideal of the "common schools," educating all alike, than do the public schools. Furthermore, a similar result holds for race and ethnicity. The achievement of blacks is closer to that of whites, and the achievement of Hispanics is closer to that of non-Hispanics in Catholic schools than in public schools." [14]

And so it emerged that it was the despised or feared Catholic schools, with their "immense . . . class . . . of ignorant people . . . blindly following their priests," [15] that had come closest to the great liberal American ideal of a school where everyone rises and differences tend to disappear.

But there was a second event. As in the Sherlock Holmes tale Silver Blaze, the dog didn't bark. Obviously a judgment in this regard is largely subjective, but I would contend that there has been nothing like the response to Coleman's findings that we might expect to attend the discovery of a seemingly exceptionally effective and efficient educational arrangement, at a time when the nation once again was abuzz with talk of the crisis of the schools. (A crisis so severe as to put "A Nation At Risk.") [16]

To the contrary, nothing changed in the litany of charges: that these schools, to cite the Congressional testimony of a Vice Presi-

dent of the National Education Association, were for "mostly privileged private school students" who would be gaining government assistance at the expense of public school students; and that aid to such schools would be aid to resegregation.[17]

Whatever, a political shift now commenced. Aid to nonpublic schools began to attract support in politically conservative circles, which a generation earlier had opposed educational aid of any kind. In part, this was a response to the rise of Protestant fundamentalist schools in several regions of the country but also, if my judgment is correct, part of a simple analysis by political strategists that if the perceived interests of a large body of the electorate are rejected by liberals, then why ought they not be embraced by conservatives.

This is normal politics and fair politics. There are likely, however, to be larger consequences than might be expected.

Let me put two propositions. First, that the American Catholic hierarchy and the religious communities of the church—the priests, the sisters, the brothers—are more involved with political issues than at any time in their history. At some level I suppose this is merely part of the long process of getting to feel at home in the new world. But I believe it to be true generally that the religious sensibility of our age finds itself more involved with secular issues than in the past. (Is this not notably the case among evangelical Protestant denominations?) I cannot "prove" this proposition, but surely it warrants consideration as a hypothesis. It was not until 1917 that the Catholic bishops of the United States felt secure enough to form a national organization, ostensibly to be of help with the war effort, and given the curious name, the National Catholic Welfare Conference. It was still so named when I dealt with ten-Father Hurley in 1964. Now there is a U.S. Catholic Conference, and the Bishops do not hesitate to offer the most explicit views as to what is an acceptable nuclear strategy for the United States Government. (And do so, in this view, very well indeed.)

Now to a second proposition. Most Catholic pronouncements on social matters will be found on the liberal points of the political compass. This is not in itself especially new; what is new is the explicitness and commitment with which these pronouncements are made. (I speak of social issues; on matters of personal morality Catholic views tend to be in the "conservative" cluster.) This social liberalism is not especially new; but the explictness and intensity of these views is new. I believe it reasonable to assume that the sort of political conservative now embracing the cause of aid to Catholic and other denominational schools will not find himself in agreement with much contemporary Catholic thought on social matters. Here we have the potential for some wrenching divisions along political, and, yes, sectarian, lines.

Consider the relations of laity and clergy: In the realm of religion the most important trait of American Catholics is that they are Catholic; in the realm of politics, however, the most important trait of Catholic Americans is that they are American. As Americans, schools—education—will come pretty close to first among the things they expect the polity to provide. (After, that is, the basic Hobbesian needs are seen to.) Now if these Americans find that political conservatives are anxious to help support their parochial schools, while political liberals are quite opposed, this will translate into political advantage. I believe it already has. That in turn will work to the disadvantage of the social agenda of the Church in most obvious ways.

I put the matter plain. If it should become clear to a significant element of the laity that support for their schools is concentrated in one sector of political opinion, I fear that the social commitments of the clergy will become hostage to the political supporters of church schools.

This would not be a paper by a sometime political scientist if voting statistics were wholly absent, and I have toyed some with the records of the two Senate votes on tuition tax credits between 1978 and 1983.[18] Weighed in terms of the ratings of three "liberal" organizations, the AFL-CIO, Americans for Democratic Action, and the American Civil Liberties Union, Democrats voting for and against tuition tax credits have about the same overall "liberal" rating. Among Republicans, those opposed to tax credits were generally about twice as "liberal" as those in favor. (In the AFL-CIO ratings, Republicans supporting tuition tax credits had an overall score of 28.7 percent; those opposed scored 48.2.)[19] Given that Democrats are a somewhat more homogeneous group in the Senate just now, the best measure of ideological spread is among Republicans, and there the pattern is clear. Aid to non-public schools has become an issue embraced by the more conservative political forces of the present, and opposed by the more liberal. Among the Democrats, it is fair to say that the most liberal are the most opposed.

Beyond this, I detect a continuing disinclination among Catholic scholars and intellectuals to confront their liberal friends on this issue, and to insist that it be talked about. To repeat, this argument has been going on for one hundred and fifty years. It is not growing any more edifying.

I go back to my Reporter article of 1961. There is a need for dialogue. Else the coalition of 1964-65 will never be reconstituted, and the Federal role in aid to education will continue to diminish. But this time, at much higher degrees of complexity than was required to figure out a coalition of 218 votes in the House of Representatives. The modernity of Catholic social thought needs to be asserted, acknowledging without apology that it derives from tradition. Otherwise, I see a time of estrangement among advocates of social change that would be devastatingly wasteful. And, to repeat, a gap opening between clergy and laity, in which the laity asks whose side are the clergy on? If one political party promises what another political party denies, and if these promises are of elemental importance . . . well? On such details are great coalitions shattered.

To liberals generally, I would repeat the gentle challenge of Father Byron in the first Seton-Neumann Lecture.

"The very existence of church-related schools, colleges and universities in our day needs fuller notice and wider appreciation. Their present existence, if recognized and appreciated for what it contributes to the preservation of freedom and pluralism in America will, of itself, make a very strong case for their continued existence through all of the tomorrows of American education."[20]

Surely this is of interest: it wasn't supposed to happen. But then neither was there to be a Pope who had been a professor.

FOOTNOTES

[1] "The Pastoral Letter of 1884," adopted at the Third Plenary Council of Baltimore, December 7, 1884; reprinted in *The Pastorals of the American Hierarchy, 1792-1970*, collated by Hugh Nolan (Huntington, Indiana: Our Sunday Visitor Press), 1971, p. 243.

[2] George Lichtheim, as cited in D.P. Moynihan, "The Pope and Modern Man", *Washington Post*, October 7, 1979.

[3] John Paul II, *Redemptor Hominus*, March 4, 1979.

[4] Quoted in Henry Kamm, "Pope, In Korean Port, Defends Workers," *The New York Times*, May 6, 1984, p. A-3.

[5] Orestes A. Brownson, "The School Question," Catholic World, XI (April, 1870), pp. 91-106, quoted in James M. McDonnell, "Orestes A. Brownson: Catholic Schools, Public Schools, and Education—A Centennial Reappraisal," *Notre Dame Journal of Education*, Volume 7, Number 2, Summer 1976, p. 116.

[6] James M. McDonnell, "Orestes A. Brownson: Catholic Schools, Public Schools, and Education—A Centennial Reappraisal," *Notre Dame Journal of Education*," Volume 7, Number 2, Summer 1976, p. 116.

[7] Editorial, "Sectarian Schools—The Tax Levy," *The New-York Times*, May 12, 1869.

[8] "Albany: Closing Scenes of the Legislature," *The New-York Times*, May 12, 1869, p. 8.

[9] Editorial, "The Catholics and the Schools," *The New York Times*, April 13, 1870.

[10] James L. Sundquist, *Politics and Policy: The Eisenhower, Kennedy, and Johnson Years* (Washington, D.C.: The Brookings Institution), 1968, p. 443.

[11] 1964 Democratic Party Platform, adopted August 25, 1964, Atlantic City, N.J.

[12] Sundquist, p. 212.

[13] "Tuition Tax Credit Act of 1977," introduced in the 95th Congress, First Session (September 26, 1977).

[14] James Coleman, Thomas Hoffer, and Sally Kilgore, *Public and Private Schools: An Analysis of High School and Beyond*, (Washington, D.C.: National Center for Educational Statistics), November, 1981, p. 209.

[15] Editorial, "Sectarian Schools—The Tax Levy," *The New York Times*, May 12, 1869.

[16] *A Nation At Risk*, National Commission on Excellence in Education, (Washington, D.C.: U.S. Department of Education): Coleman's findings are being disputed, notably by Sassenrath, Croce and Penaloza of the University of California at Davis. This is normal in social science, as in any discipline. Even so, the terms of the debate have changed. With respect to the question of school quality, the burden of proof has shifted. I hold no view on this matter. I believe the issue of public assistance to non-public schools is one of equity, not efficiency, and should be resolved in a spirit of mutual support and accommodation. May I be allowed to note however that Coleman's *Equality of Educational Opportunity* (1965) was fiercely challenged when it appeared. With Thomas Pettigrew I chaired a year-long faculty seminar on the report at Harvard and M.I.T. With Frederick Mosteller I later edited the papers of the seminar, *On Equality of Educational Opportunity* (1972). The younger faculty tended to find that Coleman had done his analysis wrong but somehow emerged with the correct findings! No one—that I know of—disputes either any longer.

[17] Testimony of Bernie Freitag, Hearing, on "Tuition Tax Credit Act of 1983," Senate Committee on Finance, 98th Congress, First Session (April 28, 1983), p. 433.

[18] *August 15, 1978:* Vote on amendment (#1655) proposed by Senator Ernest F. Hollings, to exclude elementary and secondary private school expenses from H.R. 12050, the "Tuition Tas Relief Act of 1978;" passed 56-41. (In the end, no bill was enacted.) *November 16, 1983:* Vote on an amendment (#2617) proposed by Senator Robert Dole to attach the language of S. 528 (Educational Opportunity and Equity Act of 1983, which would authorize a non-refundable tax credit for a portion of tuition paid to certain private schools), to H.J. Res. 290, the "Olympic Tariff Bill." Amendment tabled 59-38.

[19] "A Report on Congress—1978," *AFL-CIO News* (Washington, D.C.: AFL-CIO), September 9, 1978.

[20] William J. Byron, "Does the Church Have Anything to Say to American Education?" First Annual Seton-Neumann Lecture, delivered at the Intercul-

tural Center, Georgetown University, Washington, D.C., December 5, 1983.●

LEONARD THOMAS—50 YEARS OF OUTSTANDING SERVICE TO THE LEGAL COMMUNITY

● Mr. DOLE. Mr. President, it was 50 years ago this month that Mr. Leonard O. Thomas, a fellow Kansan and distinguished member of my State's legal community, began what has proved to be a truly exceptional legal career. On June 21, 1934, Leonard Thomas was first admitted as a member of the Kansas Bar, and over the following half century has made tremendous contributions not only to his beloved profession but to his community and State as well. The following biographical sketch is offered to commemorate this occasion and honor Mr. Thomas for his many years of hard work and dedication. Throughout his life he has served his profession and his community with great distinction. His community spirit and unselfish dedication have truly served as an example and inspiration to others. As his friends and colleagues gather to honor him this weekend, let me pause to reflect that it is people like Leonard that form the backbone of and guarantee the success of American society.

LIFELONG KANSAS RESIDENT

Leonard Thomas was born in Eugene, OR, on June 30, 1911, but soon moved to the Midwest. He graduated from Southwest High School, Kansas City, MO, in 1929, from Kansas City, MO, Junior College in 1931, and received his LL.B. from the Kansas University School of Law in 1934. Upon graduation he was elected a member of the Order of the COIF. The first indication that this man was to be no ordinary lawyer is evidenced by the fact that he took and passed the Missouri Bar exam before he finished law school. He was admitted to the bar of the State of Kansas, in July 1934. He continued practice in Kansas City, KS, as a sole practitioner until 1942, at which time he joined the firm of Stanley, Stanley, Schroeder & Weeks. He has continued practice with that firm to this date and is president of the firm, now Weeks, Thomas & Lysaught, chartered. In 1958 Mr. Thomas was elected fellow of the American College of Trial Lawyers, and in 1975 a fellow of the American Bar Foundation.

RESPECTED LEADER AND ADVISER TO KANSAS LEGAL COMMUNITY

He is a member of the Phi Delta Phi Legal Fraternity and the American Federation of Insurance Counsel, the National Association of Railroad Trial Counsel, the American Society of Hospital Attorneys, Defense Research Institute, the Wyandotte County, KS, Kansas and American Bar Associations, and various other associations. In 1958, he was elected president of the Wyandotte County Bar Association. He was the recipient of the association's outstanding service award in 1975. In 1965, he was elected to the executive council of the Kansas Bar Association as the representative of the first district. He was reelected to the council for succeeding terms until elected an officer of the Kansas Bar Association. He served as president of the Kansas Bar Association from 1974–75.

As can be expected of a man of such abilities and experience, Mr. Thomas has often been called upon to contribute articles and writings to various legal publications. He is a coauthor of "Kansas Practice Methods" and an adviser to the preparation of Vernon's Kansas Statutes Annotated—Code of Civil Procedure. He has been a member of the civil code advisory committee appointed by the judicial council since its inception in 1960. He has contributed articles for publication in the University of Kansas Law Review, the Journal of the Kansas Bar Association, the Judicial Council Bulletin, and the University of Kansas City Law Review, and he has been a lecturer at numerous legal seminars.

Mr. Thomas has committed a great deal of time and energy to the improvement of the legal profession in Kansas. He presently serves the bar as a member of the 10th judicial circuit's bench and bar committee and by his recent appointment as a member of the committee for the selection of nominees to fill the new Federal judgeship position in Kansas. He was appointed by Governor Bennett first as a member and then for a term ending in January of 1979 as chairman of the Kansas Governmental Ethics Commission. He was reappointed to a second term as chairman of the commission by Governor Carlin in January of 1979.

In 1977 he received the University of Kansas Law School's distinguished alumnus citation.

In May 1979, he was awarded the 1978 Distinguished Service Award by the Kansas Bar Association.

Despite his tremendous success over the years, nothing has been more important to Leonard Thomas than his family. He was married to Helen Lenora Owens on April 22, 1933, at Liberty, MO. They had been married for 45 years at the time of her death in December 1978. On May 24, 1980, he was married to Peggy June Sargeant. He has three children: Anna Lee Hoerner, a graduate of Kansas University who lives in Summit, NJ; Charles O. Thomas, a graduate of Kansas University School of Law who lives in Leavenworth County, KS, and practices law with his father; and Thomas James Thomas, a graduate of Ottawa University who lives in Lawrence, KS, and is in business in that city.

Mr. President, I think it is fair to say that the record speaks for itself. I congratulate Leonard Thomas on his first 50 years in the practice of law, and hope that his next 50 prove to be equally as enjoyable and productive.●

THE NATIONAL PRODUCTIVITY AND INNOVATION ACT

● Mr. DECONCINI. Mr. President, I rise today to voice my support for S. 1841, The National Productivity and Innovation Act. This bill has been reported from the Senate Judiciary Committee, and it is my sincere hope that it will soon be brought before the Senate. S. 1841 has strong bipartisan support. It would modify the Federal antitrust and intellectual property laws in ways which will stimulate this country's productivity, innovation, and efficiency in the increasingly competitive international marketplace.

In my view joint research and development programs can have procompetitive effects. They reduce duplication and thereby promote the efficient use of scarce technical personnel and capital resources. They can also provide small firms with big ideas the opportunity to collaborate in joint R&D projects, which, because of prohibitive costs, could not otherwise be undertaken.

Domestic and international competition is enhanced when U.S. firms are allowed to work together toward a common, procompetitive, economically efficient goal.

This bill is partially a response to what is happening abroad. Our major trade competitors have focused upon the efficiency of joint R&D programs and are therefore seeking and receiving governmental encouragement to engage in such projects. The gap between the United States as a technological leader and our foreign competitors is quickly narrowing as foreign research partnerships gain popularity. Of particular concern is that Japanese antitrust law does not prohibit companies from conducting joint research and development in such areas as computers, microelectronics, electronic instruments, optical communication, lasers, robots, and aerospace.

The director of Japan's Institute for New Generation Computer Technology, announced that a 10-year collaborative effort will yield a fifth-generation computer. This program could effectively cause Japan to jump to the lead in the technological arena where the United States has long stood as a world leader.

Similarly, France, West Germany, and many other European countries specifically exempt joint reseach and development from their antitrust laws.

If we are to remain world leaders in technology, it is imperative that we encourage joint research and develop-

ment by providing explicit congressional recognition that such ventures will generally encourage domestic and international competition. It is essential to our economic well-being that we compete successfully on a worldwide scale.

U.S. firms have consistently cited antitrust laws as the primary barrier to joint research and development ventures. They are hesitant to invest heavily in joint ventures because of the fear of antitrust violations. The misperception of antitrust laws as they affect joint R&D have persisted despite the Department of Justice's attempts to clarify how antitrust laws apply in differing fact patterns. The business review procedure of the Department of Justice has also been unsuccessful in dispelling industry's fear in this area. It does not shield the ventures from future Department of Justice challenges nor is it binding on the courts in private suits against a firm.

When one considers the financial risks involved in large cooperative ventures and couples that with the fear of antitrust litigation then the need for this bill becomes readily evident.

The fear of antitrust liability that placed U.S. industry at a disadvantage in the international arena must be removed.

Title II of S. 1841 makes the changes possible in the antitrust laws which are needed to encourage more joint R&D activity. Title II would not change the antitrust laws' impact upon marketing strategies or the sale of products. All illegal activities, such as price fixing and monopolization will continue to feel the full weight of our country's antitrust laws. But, S. 1841 will level the barriers that have in the past hindered the effectiveness of the United States in the international market.●

10 YEARS OF TURKISH OCCUPATION IN CYPRUS

● Mr. D'AMATO. Mr. President, I rise this afternoon to reiterate my concern over the continuous occupation of Cyprus by Turkey. On July 15, we will commemorate the 10th anniversary of the Turkish armed invasion of the independent and sovereign nation of Cyprus. More than 40,000 Turkish troops occupied the northern portion of the nation. An estimated 10,000 men, women, and children were killed during the invasion. An additional 1,000, including a number of U.S. citizens, were taken prisoners. The welfare of many of these individuals is still unknown. Furthermore, over 200,000 Greek Cypriots were forced to flee from their homes, many remain refugees in their own country.

Today, a Turkish force of more than 20,000 remains in Cyprus. The continued presence of these troops is a flagrant violation of the sovereignty of the Cypriot Government. It is time this occupying army left the island.

The situation on Cyprus today is grave. During November of last year, the Turkish Cypriots, under the leadership of Rauf Denktash, declared the establishment of a Turkish Republic on Cyprus. This action was clearly designed to drive a wedge between the people of Cyprus and undermine the legitimate government of President Spyros Kyprianou. The United States immediately condemned this action and called upon other nations not to recognize this illegal entity. I pressed for the adoption of a Senate resolution expressing congressional outrage over this unilateral declaration and demanding the immediate withdrawal of Turkish forces from Cyprus. Despite the clear statement of U.S. policy, Turkey was quick to grant formal recognition. To date, Turkey is the only nation to take such action. It is time that we send a clear signal to Ankara that we will not conduct business as usual as long as Turkish troops remain on the island.

Earlier this week, the Senate Committee on Appropriations marked up the fiscal year 1985 foreign assistance appropriations bill. At that time, I cosponsored an amendment offered by my distinguished colleague from Hawaii [Mr. INOUYE] which withholds $216 million of assistance from Turkey. I plan to work for the adoption of this amendment by the full Senate. The level represents the costs to the Turkish Government of maintaining its force on Cyprus.

Some have proposed that we continue to pursue quiet diplomacy with the Turks. Others have suggested that we rely upon the United Nations. The simple truth is that these methods have not worked. A reduction in U.S. assistance to Turkey would send a clear signal that our patience has come to an end. Therefore, I urge my colleagues tosupport this amendment.●

THE SMALL BUSINESS COMPUTER SECURITY AND EDUCATION ACT OF 1984

● Mr. WEICKER. Mr. President, Wednesday the Senate accepted certain House amendments to H.R. 3075, The Small Business Computer Security and Education Act of 1984, thereby clearing this measure for the President.

H.R. 3075, as amended, will require the SBA to establish a "Small Business Computer Security and Education Program" that will provide needed education, training, and information on computer security and the prevention of computer crime to a rapidly expanding audience of small business computer users. The Small Business Administration will establish an advisory council composed of representatives from the public and private sector to advise the agency of appropriate functions for the education and training program.

This legislation will also permit the Small Business Administration for the first time to utilize the expertise in the private, for-profit sector to provide training, counseling, and other types of management assistance to small businesses.

This authority was requested by the administration and was incorporated by amendment to H.R. 3075 from a bill I introduced a year ago. According to the SBA, this expanded authority to develop training programs with the private sector "will more than triple the agency's training capacity at no increase in Government cost."

Mr. President, the House amendment to the Senate amendment to H.R. 3075 establishes certain limitations on this authority. The House amendment does establish a 4 year time limitation on the new authority of the Small Business Administration to cosponsor training activities with profit-making concerns and requires the SBA to take certain actions to ensure that this new authority is not abused to the detriment of small business. It is my expectation that during this 4-year test period, the Small Business Administration will be able to maximize the potential opportunities of this new authority and document the benefits realized by small business.

I want to thank my colleague from the State of Massachusetts, Senator TSONGAS for his leadership on this bill. Through his efforts, the purpose of H.R. 3075 has been directed to the prevention of computer crime through education and training.

A recent report of the computer crime task force of the American Bar Association concluded that "there is disturbing and undeniable evidence that the scope and significance of computer crime and its potentially devastating effects, are broad and deep."●

HUMAN RIGHTS

● Mr. HUDDLESTON. Mr. President, for several years the Kentucky General Assembly has been deeply concerned about human rights violations, especially religious persecution, in Romania. In 1982 Kentucky Representative Tom Riner and State Senator Gene Huff went to Romania to meet with Government leaders regarding the bulldozing of churches and the mysterious deaths of Christian leaders there. Earlier this year the Kentucky General Assembly adopted a resolution condemning human rights violations and urging that most-favored-nations status for Romania not be extended.

I share the concern expressed by the Kentucky Legislature regarding the

lack of religious freedom in Romania and want to bring the resolution adopted by the Kentucky General Assembly to the attention of my colleagues.

Mr. President, I ask that the resolution be printed in the RECORD.

The resolution follows:

RESOLUTION

(A resolution concerning human rights violations by the Socialist Republic of Romania and declaring a boycott of Romanian products)

Whereas, the Romanian Orthodox Priest Gheoghe Calciu was arrested March 10, 1979, and given a ten year sentence for his leadership in organizing a free trade union; and

Whereas, upon appeal, a Romanian court increased the sentence of a Seventh-Day Adventist member, Dorel Catarama, from twelve to fourteen years for refusing to report to work on his Sabbath day; and

Whereas, the Romanian government falsely charged Dorel Catarama with embezzeling funds; and

Whereas, school teachers seen attending Baptist and Pentecostal churches are being fired and notified of the Romanian Educational Code No. 67 which states that they are incapable of giving students a proper atheistic and communistic indoctrination because of their church attendance; and

Whereas, recent firings include Florica Farcas, a French language teacher at school No. 51 in Oradea; Monica Dan, an English teacher in Cluj who was fired on September 10, 1983; and Victoria Faur, an instructor at General School in the Borod-Behor district; and

Whereas, students at the Hungarian Roman Catholic Seminary in Alba Iulia have been threatened with expulsion if they refuse to report to the secret police about the activities of their instructors; and

Whereas, the families of Vioan Stef and Benjamin Cocor (pastors of the Medias Baptist Church) are the targets of constant harassment and intimidation by the Department of Cults, the Romanian secret police and their sympathizers because of the tremendous growth of the Baptist Church and Stef's and Cocor's boldness as evangelists; and

Whereas, the Romanian government refuses to allow Baptist, Pentecostal or Army of the Lord's Churches to print or import enough Bibles or songbooks for use in Romanian churches; and

Whereas, like many other Romanians, Teofil Bucur of Ploesti and Florina Tarasuti of Sighisoara have been fired from their jobs after becoming engaged to U.S. residents and applying to emigrate to the United States; and

Whereas, during the past two years the Romanian government has not permitted any new students to enter either the Baptist or Pentecostal seminaries in Bucharest; and

Whereas, in December of 1983, Nicolae Traian Bogdan became the third member of the Christian Committee for the Defense of Believers' Rights to die under suspicious circumstances; and

Whereas, like Petre Clipa and Sabin Teodosiu who died earlier, Bogdan had been harassed by the Romanian secret police prior to his mysterious death; and

Whereas, on February 24, 1984, Iosif Stefanut, a Baptist pastor in Braila, was fined $1,300 and dismissed as Secretary of the Baptist Community in Bucharest for illegally distributing Bible study manuals; and

Whereas, all pastors are expected to file reports concerning their activities with the state security police every Monday morning; and

Whereas, the Romanian government continues long and unnecessary delays in the approval of passports for certain believers, including the Paul and Palina Dragu family, who have waited three years for passports and have been warned by Romanian authorities that they will never be allowed to emigrate; and

Whereas, the Vicovu-de-sus Baptist Church from the district of Suceava has waited since 1973 for government authorization to build and operate as a church; and

Whereas, the Mangalia Baptist Church from the district of Constanza has waited since January 25, 1978, for government authorization to build and operate as a church; and

Whereas, the Slatina Baptist Church from the district of Olt has been waiting since October 24, 1976, for government authorization to build and operate as a church; and

Whereas, the Eforea Sud Baptist Church of the district of Constanza has been waiting since December 21, 1976, for government authorization to build and operate as a church; and

Whereas, the Falcia Baptist Church of the district of Teleorman has been waiting since January 3, 1976, for government authorization to build and operate as a church; and

Whereas, the Bica Chei Baptist Church of the district of Neamt has been waiting since March 4, 1979, for government authorization to build and operate as a church; and

Whereas, the Dorohy Baptist Church of the district of Botosani has waited since March 10, 1978, for government authorization to build and operate as a church; and

Whereas, the Faurei Baptist Church of the Braila district has waited since 1975 for government authorization to build and operate as a church; and

Whereas, the Bassrabi Baptist Church of the Constanza district has waited since 1977 for government authorization to build and operate as a church; and

Whereas, the Baptist Church in Motru was closed by government action on March 1, 1979; and

Whereas, the Aradol Nov Baptist Church in the Arad district was bulldozed by the government in the fall of 1983; and

Whereas, the Resita Baptist Church in the Caranbesh district was bulldozed for building code violations in 1983 because the church was built one-half meter beyond government specifications—they were forbidden to rebuild; and

Whereas, the Pentecostal Church in Camp Turzei was bulldozed by the government for a building code violation in which the church was one foot beyond government specifications; and

Whereas, the Baptist Church of Tiganesti was destroyed by an earthquake in March of 1977 and the Romanian government has refused the church permission to rebuild; and

Whereas, more than eight hundred members of the Mihai Bravu (SFinte Trieme) Baptist Church in Bucharest are without adequate facilities since the government bulldozed the church building in December of 1983 and has reneged on promises to provide a new meeting place; and

Whereas, the Baptist church in Petrugrosa was bulldozed by the government in 1983 and has not been granted authorization to rebuild; and

Whereas, over one hundred people must stand outdoors to worship because the government has refused to issue a building permit to the Baptist Church in Hateg; and

Whereas, for over twenty years the Baptist Church in Bala-Mare has sought a building permit; and

Whereas, having been denied a building permit since 1978, the leaders of Baptist Church No. 5 (Betenia) in Timisoara are being fined 100 lei each day for conducting church meetings in a home; and

Whereas, for ten years the Romanian authorities have refused to grant a building permit to the Baptist Church from the village of Ivanesti; and

Whereas, for nine years Romanian authorities have denied a building permit to the Baptist Church in the Vasluli district; and

Whereas, the Baptist Church in Marghita has sought a building permit since 1969; and

Whereas, Romanian authorities have forbidden the Baptist Church in Alesd to meet in their old building, yet for eight years have denied the church a permit to renovate the building; and

Whereas, for over ten years the government has denied Baptist Church No. 3 in Oradea permission to building; and

Whereas, since 1962 the members of the Baptist Church in Giulesti have sought government permission to open their church and have had to meet illegally in their homes; and

Whereas, since 1962 the members of Baptist Church No. 5 in Oradea have been subject to fines for conducting meetings in their homes because the Romanian government refuses to grant them a building permit; and

Whereas, the Hungarian, Baptist Church in Cluj has been waiting for permission to rebuild since 1967; and

Whereas, Baptist congregations in Zalau, Resita, Alexandria and Transylvania are also awaiting government approval to rebuild churches; and

Whereas, more than 30 churches throughout Romania have been closed by the government; and

Whereas, the Baptist community in Bucharest has waited since 1971 for government approval to operate Baptist centers in the districts of Botosani, Galati and Bacau;

Now, therefore,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. That the Commonwealth of Kentucky boycott all products manufactured in the Socialist Republic of Romania until substantial progress is made by that government in resolving the specific human rights violations set out in this resolution.

Section 2. That the House urges President Reagan not to renew the Most Favored Nation trading status which the Socialist Republic of Romania now enjoys with the United States.

Section 3. That this honorable body directs the Clerk of the House to send a copy of this resolution to every member of the United States Congress along with a cover letter requesting them to reply to this honorable body on whether or not they would be willing to testify before the U.S. House Subcommittee on Trade and the U.S. Senate Subcommittee on International Trade against the renewal of Romania's Most Favored Nation trading status in protest of the repression of Christian believers by the Romanian government.

Section 4. That the Clerk of the House is directed to transmit a copy of this resolution to President Reagan, the U.S. State Department, the Commission for Security and Cooperation in Europe, the Embassy of the Socialist Republic of Romania, Radio Free Europe/Radio Liberty and the Voice of America, the Associated Press Wire Service, the United Press International Wire Service and the Kentucky Network.

Section 5. That the Clerk of the House is directed to transmit a copy of this resolution to the legislatures of the remaining forty-nine states and request them to take concurrent action on this resolution.●

JOHN H. CHAFEE CLEAN WATER ACT AMENDMENTS

● Mr. CHAFEE. Mr. President, as many of my colleagues know, the House of Representatives recently passed amendments to the Clean Water Act. Given that action I wanted to bring my colleagues up to date on the status of S. 431, the Clean Water Act Amendments here in the Senate. The Committee on Environment and Public Works reported S. 431 last fall and the legislation has been pending on the calendar since then. Our efforts to bring this legislation to the floor has been stymied by holds and objections of some Senators about provisions in the bill. Many obstacles have been overcome; however, several sticking points remain. We are continuing our efforts to move this legislation forward. I remain optimistic that we can get a bill passed the Senate and—although S. 431 is sharply different from the House-passed bill—work our way through a conference with the House so the President can sign a bill before Congress adjourns.

I look forward to continue working with my colleagues on the Clean Water Act amendments.●

INTERNATIONAL WEEK OF SOLIDARITY WITH ETHIOPIAN JEWS

● Mr. LEVIN. Mr. President, I would like to call attention to this week which has been designated the International Week of Solidarity with Ethiopian Jews.

All throughout the week, people from the United States, Canada, Europe, and Israel will be staging candlelight vigils, rallies, and clothing drives not only to celebrate the arrival of 7,000 Ethiopian Jews in Israel, but also to remember the plight of some 14,000 to 17,000 Jews still trapped in Ethiopia and in refugee camps of neighboring countries. Events have been planned around the world to underscore the need for the ongoing rescue of Ethiopian Jewish refugees and to educate the public about the plight of Ethiopian Jews.

Jews in Ethiopia—sometimes referred to as Falashas, meaning exile or stranger—are an ancient Herbrew community residing primarily in the northwest area of Ethiopia. For many centuries, they enjoyed political and economic independence under their own kings and queens. Beginning about the 15th century, however, expanding new dynasties sought to overpower the Ethiopian Jewish community. Jews were denied the right to own land—their very means of existence. They were forbidden from observing Jewish laws. Many were enslaved. Others were forced to convert to different religions.

This outright suppression of a people has continued to the present. A community which only 200 years ago numbered over 500,000 now consists of a mere 25,000. Approximately 85 percent of the Ethiopian Jewish population is currently located in the Gondar Province, where they are constantly subjected to the anti-Jewish whims of the province's Governor—Major Melaku, a member of the seven-man, Soviet-backed ruling party. Melaku's practices amount to nothing less than outright persecution for Ethiopian Jews living in Gondar. Jewish villages have been closed to outsiders. Border security has been tightened. Jews are prohibited from emigrating and those attempting to escape are often detained and tortured. The international development program, which was supplying them with aid and education, was suspended in 1981. This exacerbates the problem of poverty in a nation which already has one of the lowest standards of living in the world, shamefully boasting an average lifespan of 36 years for its citizens. Not only, therefore, are these Jews subjected to outright poverty and a denial of basic human rights, but they remain imprisoned in this misery by the current provincial regime.

The only hope for relocation of Ethiopian Jews has been Israel. Although emigration is forbidden, some manage to reach neighboring countries where they languish as refugees. Israel, facing a limited diplomatic status in Africa, has managed to resettle over 3,000 of these refugees to their long-awaited destination. The Ethiopian Jews who arrive in Israel are often uneducated. They are unfamiliar with modern society and much Jewish history and tradition. Consequently, Israel has taken the initiative of setting up absorption centers where Ethiopian Jews are housed, educated, and prepared to enter the community at large.

The Ethiopian Jews are Zionists who remain outside of Israel. Let us hope that they may realize their dream of someday reaching their promised land.●

SUPPORTING OUR DOMESTIC STEEL INDUSTRY

● Mr. D'AMATO. Mr. President, I rise this afternoon to express my support for S. 2380, the Fair Trade in Steel Act. Today, the domestic steel industry production has plummeted. Capacity utilization has fallen well below 50 percent. This situation has not developed overnight, but is the result of at least three key factors: plant obsolescence, recessionary pressures, and foreign competition.

The depressed demand for new automobiles and the decline in construction activities dealt a serious blow to the U.S. steel industry, particularly during the last half of the 1970's.

This situation was further exacerbated by the obsolete condition of some steel plants here in the United States. A report issued by the General Accounting Office in 1981 found that nearly one out of every four of the industry's plants were too old to effectively compete with foreign plants. According to the American Iron & Steel Institute, the domestic industry will have to make a significant capital investment if it is to survive.

Meanwhile, organizations representing steel workers have demonstrated their willingness to make concessions in an attempt to prevent even higher levels of unemployment in the industry. Employment figures have fallen from 168,196 in 1979 to 98,440 in 1983. I am very concerned over the loss of American jobs, not only in the steel industry itself, but in related industries as well.

Import penetration of the domestic market has been substantial. It cannot be attributed solely to general economic conditions, labor pressures, or plant obsolescence.

Today many foreign steel producers are engaged in unfair, and sometimes illegal, actions which have serious consequences for the U.S. steel industry. Some foreign producers have resorted to "dumping" of steel in the United States. In other words, foreign producers are selling their steel in the the United States at prices lower than production cost in country of origin. We cannot, and must not, tolerate such unfair practices as dumping and government subsidization.

The Fair Trade in Steel Act contains provisions designed to provide the domestic steel industry with an opportunity to prove that it can compete with foreign producers. I am pleased to be a cosponsor of this important legislation and urge adoption of this proposal.●

COSTA RICA

● Mr. BINGAMAN. Mr. President, the nation of Costa Rica has, for nearly four decades, been an oasis of peace, relative prosperity, and social justice in Central America. One reason for this good fortune appears to be the fact that it abolished its standing army in the late 1940's, after an attempt by uncumbent politicians, sup-

ported by the military, to nullify the results of an election.

Since then, Costa Rica has been a model democracy, with power transferred back and forth between the major parties, following free elections. Costa Rica has also studiously avoided military conflicts in the region and today its Government is trying to maintain a policy of strict neutrality relative to the various wars which are going on there. Perhaps as a result of these policies, that nation has remained impervious to Marxist inroads.

I have been disturbed by recent reports that the administration, through the Department of Defense, is moving toward military involvement in Costa Rica in a number of ways. A summary of the situation has been prepared by the respected Council on Hemispheric Affairs.

In the past, my distinguished colleague from Tennessee, Senator SASSER, has expressed concern about the new direction U.S. policy appears to be taking in Costa Rica. His concerns are noted in this report, and I commend him for his actions in this field. While I have not personally verified all the information in the summary, many items mentioned are in accord with reports I have seen. The article does present a point of view not always available to many of us, and I recommend it to my distinguished colleagues for study. In our future deliberations concerning United States policy in Central America, the Costa Rican example may be instructive. It would appear to be in our interest not to try to upset that country's carefully established equilibrium.

I ask that the Council's report be printed in the RECORD.

The report follows:

COSTA RICA: USSOUTHCOM MOVING IN WHILE PASTORA IS OUT

(A Council on Hemispheric Affairs staff report by Kevin J. Kecskes, COHA Research Associate)

With time running out for the anti-Sandinista Democratic Revolutionary Alliance (ARDE) guerrillas to come up with new sources of funding, last month's bombing assassination attempt against military chieftain Eden Pastora Gomez brought to the fore the CIA's unequivocal manipulation in the region.

Pastora, badly injured in the explosion while holding a press conference in La Penca, Nicaragua, May 30, has vowed to return to Costa Rica to pick up his fight. In the interim, he is convalescing from his severe burns under the comforting wing of an old friend, former Venezuelan Vice President Carlos Andres Perez in Caracas.

The author of the blast remains unknown. The Costa Rican investigation, with the assistance of the F.B.I. and the International Criminal Police Organization (Interpol), is weltered in rumors and false accusations. However, the attack's timing—after a widening rift between ARDE factions had erupted into public view—initially led some to suspect CIA involvement.

CIA pressure on the ARDE leaders to amalgamate their forces with the Honduras-based Nicaraguan Democratic Force (FDN) peaked in May. Pastora, who views the recent CIA aid cut-off as a clear attempt to manipulate his political and military alliances, complained recently that "in the last three months, we have received no aid, not even a pair of boots or a uniform, and over the last 30 days it has been unbearable." This pressure, however, has thusfar done little to alter Pastora's adamant rejection of unification plans with the FDN unless that group purges its leadership of several former members of Somoza's National Guard.

But ARDE's political spokesman and fund-raiser, Alfonzo Robelo, stepped up his majority faction's push for unification after receiving a CIA ultimatum threatening a total funding cutoff unless a contra alliance was consummated. The ideological chasm between the two rebel leaders was reflected just days before the blast in a 17-10 vote by ARDE's "democratic assembly" in favor of Robelo's pro-alliance position.

The CIA has exhausted many energies to unify the northern and southern guerrilla forces, a sine qua non for CIA strategists. The agency is desperate to produce positive results as Congress considered President Reagan's request for $28 million in covert assistance for the rebels for FY 1985.

With Pastora temporarily out of the ARDE picture, the FDN enjoying relative free reign in Honduras, and the Honduran armed forces themselves benefitting from the seemingly interminable presence of growing U.S. military command in that country, only the firm cooperation of the Costa Rican government stands in the way of finalizing a pincer apparatus surrounding Nicaragua. Accordingly, many on Capitol Hill are keeping a wary eye on the Pentagon's plans for that country.

ALL THE WAY TO SAN JOSE

Senator Jim Sasser (D-Tenn.), previously an outspoken critic of U.S. military construction in Honduras, recently queried Secretary of Defense Caspar Weinberger on plans for military construction "exercises" slated to take place in Costa Rica later this year. Fred C. Ikle, undersecretary of defense for policy, responded on Weinberger's behalf that "the Joint Staff is in the process of studying a USSOUTHCOM (U.S. Southern Command) exercise proposal for Costa Rica." Ikle denied Sasser any further details until "an agreement has been reached" with the Costa Rican government.

The controversial U.S. Ambassador to Costa Rica, Curtin A. Winsor, Jr., has been pivotal in strong-arming Costa Rican President Luis Alberto Monge to increase his country's defense capabilities. In March, Foreign Minister Carlos Jose Gutierrez announced—after an accord had been reached between the Costa Rican Ministry of the President and Winsor—that U.S. engineers would construct various facilities in the country. The "exercises," tentatively slated for September, include extensive work on two airstrips: San Isidro del General in the south and Llano Grande Internacional near the northwestern Nicaraguan border.

The announcement of the planned "joint maneuvers" has fueled congressional skepticism over the Reagan administration's designs for Costa Rica. Senator Sasser has denounced the administration's tireless efforts to wrangle military-related concessions from San Jose, as well as to promote U.S. arms sales to the country. Monge's request last month for $7.8 million in "emergency supplies"— coupled with a leaked internal State Department policy memorandum which advocated the use of the military aid request as an opening to shift Costa Rica from its "neutralist tightrope act and push it more explicitly and publicly into the anti-Sandinista camp"—compounded the Senators' arguments that the White House is keeping a tight lid on its ultimate designs for the militarization of Costa Rica.

President Monge privately has admitted that he is under heavy pressure to go along with U.S. demands, and risk going against popular sentiment in his country, because of the government's desperate dependence on U.S. economic aid. Costa Rica has received nearly $300 million in assistance over the past two years, second only to El Salvador in the hemisphere.

Bending to the arguments of Winsor and Gen. Paul Gorman, chief of the Panama-based SOUTHCOM, Monge has accepted the deployment of U.S. Army Mobile Training Teams to train his Rural Guard. Since last October, the teams have trekked to Costs Rica four times; a mortar group was there in April and a communications squad left this month.

Domestic critics of Monge charge that the Rural Guard, the smaller of the country's two security forces, has long been associated with ARDE's operations in Costa Rica. In early June, a spokesperson for the Costa Rican Defense of Democratic Liberties (CODELINE) stated that were the Civil Guard—the country's major police force—to crack down on the rebel group, a total of 3,500 Rural Guardsmen would support Commander Zero's stakes in the country. Whether the Rural Guard is as cohesive as the CODELINE leader claims is unknown, but its collaboration with ARDE forces has been documented. Vice Security Minister Johnny Campos recently admitted that several Rural Guard subordinates have been lured by large cash payments into harboring and assisting the rebels in their activities staged from Costa Rican soil.

The U.S. Agency for International Development (AID) has paved the way for ominous road construction in areas adjacent to Nicaragua since last year. The pressure began in 1979 when John Hull, an enterprising U.S. citizen with large farm holdings in Los Chiles, Costa Rica, near the Nicaraguan border, pushed AID and Costa Rican officials for development of the border area. In August 1983, AID signed a $14.2 million loan agreement for an "infrastructure improvement project," including road-building in the region. A State Department official told COHA that the roads are part of a combined effort to "open the area to cultivation."

Hull has been a "key contra collaborator" for some time, claims an August 1982 article in the Mexican daily Excelsior. Reportedly, an airstrip located at his farm has been used to airlift ARDE personnel into Nicaraguan territory, and the bombing of Managua's Sandino Airport last fall is said to have originated from Hull's farm. Last month, Vice Minister Campos announced that a number U.S. citizens had been arrested on Hull's farm.

On more than one occasion, Costa Rican authorities have felt compelled to expel U.S. operatives working in the country. Last September, over 100 U.S. Vietnam veterans, reportedly Green Berets, were kicked out of Costa Rica after being detained near the Nicaraguan border in the eastern town of Barra de Colorado, the location of the main ARDE hospital.

Such internal measures and congressional opposition, however, are unlikely to dis-

suade the White House and Pentagon from their concerted efforts to militarize once-neutral Costa Rica. The forthcoming ARDE/FDN alliance and next fall's U.S. construction exercises make it evident that the Reagan administration's plans to asphyxiate Nicaragua are rapidly moving toward fulfillment.●

SUPPORT FOR ESTUARINE POLLUTION PREVENTION

● Mr. WEICKER. Mr President, I am pleased to note the passage of H.R. 5713, a bill making appropriations for the Department of HUD and Independent Agencies for fiscal year 1985. This bill includes a total of $4 million under title II for the purpose of water quality monitoring and environmental assessment activities in Long Island Sound, Narragansett Bay, Buzzards Bay, and Puget Sound. This initiative is designed to develop a data base on the magnitude of pollutant loadings and the impact of such loadings on the living organisms in these waters. These activities were funded in anticipation of the authorization of a national estuarine pollution prevention program involving the cooperative efforts of the Environmental Protection Agency [EPA] and the National Oceanic and Atmospheric Administration [NOAA] as intended over a decade ago in section 104(A)(5) of the Federal Water Pollution Control Act.

The primary intent of structuring this provision as a cooperative program of estuarine pollution prevention is to make available to the EPA the substantial marine pollution monitoring and assessment capability created at Federal expense within NOAA's National Marine Pollution Program Office and the National Marine Fisheries Service. Such interagency cooperation is essential if the enormous task of monitoring and assessing the health of the Nation's estuarine environment is to be accomplished in a timely, consistent, and efficient manner.

This provision is not intended in any way to weaken EPA's primary responsibility for ensuring that adequate water quality standards are developed for the designated estuaries.

In implementing this cooperative program, it is intended that EPA retain the primary responsibility for ensuring that adequate water quality standards are developed for the four listed estuaries. So that this is accomplished in a timely fashion, the provision directs the Office of Water to determine what units of Government have management responsibility for the environmental quality of Long Island Sound, Narragansett Bay, Buzzards Bay, and Puget Sound. EPA should also define how such management responsibility can best be coordinated among the respective units of Government, research, and educational institutions, and groups of individuals concerned with the water quality of these estuaries.

The Office of Water shall also encourage the States to engage in cooperative efforts to prevent, reduce, and/or eliminate pollution through the formation of State compacts and/or the adoption of uniform laws relating to the prevention and control of pollution. The Office shall, where possible, coordinate the development and implementation of and make recommendations on interstate pollution management and abatement activities in these estuaries.

It is expected that the Office of Water shall also recommend corrective actions and compliance schedules to address high priority point and nonpoint sources of pollution.

This provision seeks to use the expertise of the National Marine Pollution Office and the National Marine Fisheries Service to review and analyze all environmental sampling data presently collected from the designated estuaries. In addition, after consulation with the Office of Water and interested State or interstate agencies, NOAA shall develop a comprehensive water quality sampling program for the continuous monitoring of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including synthetic organic chemicals and metals. This monitoring program shall evaluate and conduct research to determine the impact of sediment deposition in these waters, and shall identify the sources, rates, routes, distribution patterns, and pollutant loadings of such deposition. The intent of this research is to evaluate the impact of pollutants on the living resources in these estuaries and to quantify the effects on the resources of pollution management and abatement measures developed or implemented by the Administrator, States interstate agencies, municipalities, and industry.

It is intended that NOAA's responsibility for monitoring and assessing the effects of pollutant loadings in these waters should directly support and be compatible with EPA's requirements for ensuring that adequate water quality standards are maintained within the designated estuaries.

The estuarine research provision requires NOAA to provide an annual report for the EPA administrator and to Congress on the agency's activities under title II of H.R. 5713. This report shall include a synthesis of all scientific findings which point out factors having adverse effects on the environmental quality of these waters. This report shall also suggest pollution management and abatement measures which would improve the chemical, biological, and physical integrity of the designated estuaries.

Mr. President, I commend Congress for addressing estuarine pollution problems through the cost effective and prudent measures included in H.R. 5713. I look forward to following the development and implementation of the monitoring and assessment activities required under this program and eagerly await the renewed biological vitality of these estuaries following the cleanup of the pollution problems which have plagued these priceless ecological resources.●

THE TALE OF TWO CONTINENTALS

● Mr. BOREN. Mr. President, recently, a series of events took place that might be called "The Tale of Two Continentals." What took place raises issues that merit the attention of every Member of Congress. Two banks, both with the name "Continental," experienced difficulty within the same week. One was the very large and well-known Continental Illinois Bank. The other is the relatively small—about $100 million in deposits, Continental Bank of Del City, OK.

In the case of the Continental Illinois Bank, the FDIC acted to put together a package which protected the security of all depositors, both those below and those above the $100,000 insurance limit for each account. Well over $1 billion was committed to that effort. However, in the case of the small Continental Bank of Del City, only a partial acquisition of the bank was arranged by the FDIC and only the insured depositors were protected, those with accounts below the insurance limits of $100,000.

I am certainly not criticizing the FDIC for acting to provide full protection for the Continental Illinois Bank. Failure to protect all depositors would have had a devastating effect on the entire national economy and could have undermined public confidence in the entire financial system.

What is disturbing is the apparent difference in the way in which small and large institutions are treated. The recent pattern of regulatory action could end up encouraging depositors with accounts above the insured limits to use only large banks. This would unfairly impact the competitive balance between institutions.

We in Oklahoma are particularly sensitive to the most recent problem because of the devastating impact which the failure of the Penn Square Bank had on the States economy. We are still reeling from the aftershocks caused by the wave of bankruptcies in the aftermath of the bank's failure. In that case, the FDIC not only failed to protect all depositors, it has also charged the expenses of its liquidation against the amount which will ultimately be distributed pro-rata to the uninsured depositors. Thus far, approximately $16 million in expenses have been incurred by the Federal

agency. In spite of a request by the Oklahoma congressional delegation, there has not yet been an itemized and detailed public disclosure of these expenses.

My purpose, Mr. President, is not to engage in a public dispute with the FDIC or other Federal regulatory agencies. I know that their task is a difficult one. I raise these issues to point out that there are important policy decisions which need to be made in this area. It is neither responsible nor appropriate for Congress to leave these basic policy decisions to be made by the regulators. They need our input.

Recently I received a memorandum on the situation involving the two Continental Banks and the Penn Square Bank. It was sent to me by one of the most able and thoughtful business leaders in my State, Morrison G. Tucker. Mr. Tucker is in a unique position to place recent events in perspective. He was one of the earliest staff members of the FDIC, joining it in 1933. He is completely aware of the philosophies and attitudes of its founders. He has had almost 50 years of experience in the banking field. Recently, a banking institution which he directs made a partial acquisition of the First Continental Bank of Del City.

Mr. Tucker is balanced in his viewpoint. He is sympathetic to the problems of the regulators. Not only should every member of the Banking Committees of both Houses take the time to read his words, it would be well worth the time of every Member of Congress and all of the major regulators as well.

I ask that the text of the memorandum by Mr. Tucker be printed in the RECORD at this point.

The memorandum follows:

MEMORANDUM

To: Senator DAVID BOREN.
From: Morrison G. Tucker.
Subject: The Continental Banks of Illinois and Oklahoma—and deposit insurance.

We are pleased to respond to your request for a statement of our views concerning the contrasting policies followed by the Federal Deposit Insurance Corporation with respect to the First Continental Bank of Del City, Oklahoma, and the Continental Illinois Bank of Chicago.

First, a summarization of the facts concerning the two Continentals and the action taken by the FDIC.

First Continental of Del City. With regard to this institution, it was declared insolvent by the Oklahoma State Bank Commissioner on Friday, May 11, 1984, as a result of mounting loan losses and unsound lending practices, with the FDIC becoming the Liquidating Agent or Receiver. Immediately following closure, certain banks in Oklahoma of recognized strength were offered the opportunity to bid for the insured deposits, with the FDIC to provide an offsetting amount of cash, high grade installment loans from the closed bank at book value, and the securities portfolio and the bank premises at market value. The bidding procedure required the bidder to specify an amount of new equity capital for a new bank, and the payment of a premium to the FDIC to partially offset losses from the liquidation.

As you know, United Oklahoma Bankshares, Inc., of which I am Chairman, was the successful bidder, and a new bank, United Del City Bank, was immediately chartered by the Oklahoma State Banking Board. The new bank assumed the insured deposit liabilities of the failed Continental Bank and received from the FDIC an equal amount of cash, marketable securities, installment loans, and fixed assets. United Oklahoma Bankshares, Inc., the parent company of the United Oklahoma Bank, paid in $5 million of new equity capital and paid a premium to the FDIC of $1.7 million.

The new bank was opened for business on Monday, May 14th. In line with a relatively new policy developed by the FDIC and styled "A Modified Pay-off Plan", the uninsured depositors in the closed Continental Bank were paid the insured portion of their deposits plus 40% of the excess over the present $100,000 limit.

In my opinion, the FDIC erred and should have provided for the protection of all depositors and arranged the bidding procedures accordingly.

Continental Illinois Bank. With regard to this major Money Center banking institution, it has unquestionably severe loan problems, in part but not totally, stemming from the Penn Square failure and also from a substantial portfolio of Latin American credits of doubtful short-run viability. In addition, and perhaps because of questionable lending practices, the Continental has been subject to intense liquidity pressures resulting from large withdrawals by major corporations and others, both domestic and foreign. Whether the Continental was, or is, insolvent in the sense of a negative net worth is academic, probably not known, and probably not subject to determination. To meet these problems, the FDIC and the Federal Reserve have acted to augment capital and insure liquidity and, therefore, to assure its survival. In these efforts, many of the nation's major financial institutions are to be applauded for coming together to provide needed additional funding. Thus all depositors, insured and uninsured, have been provided protection.

In my opinion, the FDIC and the Federal Reserve System acted promptly and properly in the case of the Continental Illinois Bank and deserve praise and commendation.

But what are the probable results and implications of the obviously inconsistent policies of the FDIC as they were applied to the large Continental Illinois and the small Continental Bank of Del City, Oklahoma, all in a period of one week? In my view, the implications are important and serious and will result in further driving deposits from smaller banks to larger banks, especially Money Center banks. Thus, the allocation of deposits and liquid capital will be dictated by size of bank—and I know of no criteria that would justify such a method of allocation.

"Large" Banks and "Sound" Banks. We recognize that in many quarters there exists a perception that bigness in banks is "better" or "sounder". This perception has been able to survive the substantial investments in Real Estate Investment Trusts (REIT's) by many of our larger banks only a few years back, and has survived the more recent vogue of loans to the Eastern European block of nations, as well as to less developed countries generally. To those of us in banking in Oklahoma City, we were appalled at the eager willingness of such banks as Chase, Northern Trust, Continental Illinois, Michigan National and Seattle First National to participate in loans originated by the Penn Square Bank. This was in sharp contrast to the general absence of such participations by Oklahoma and Texas banks. In short, we do not believe there is valid evidence that "big" in banking is "better" or that size of bank is a valid basis for allocating bank deposits—yet this is the clear implication of FDIC policies.

Historic Policies of FDIC. The next question must be: what are the appropriate policies for the FDIC to follow? In looking at this issue, we need to review some of the history of Federal Deposit Insurance. As a general proposition, the Corporation throughout most of its fifty-year history has tended to provide financial assistance through mergers, purchase and assumption arrangements, and other means when failure of an insured bank was imminent. We believe this policy has in general been a very successful one.

As a result, in such notable failures and near failures as the Franklin National in New York City, the United States National in San Diego, First Pennsylvania, First National of Midland and United American of Knoxville, all depositors have been protected. In Oklahoma, a small bank, the Bank of Red Oak, very recently failed, but all of its deposits were assumed by a neighboring strong bank with FDIC assistance. The facts of the matter are that something approaching 99% of all depositors in all banks which have failed in the fifty-year history of the FDIC have been fully protected—not just protected within the technical limits of deposit insurance. In those exceptional cases where a payoff procedure has been followed, there has usually been no available merger partner or recapitalization prospect, or there have been other unusual circumstances which were deemed to preclude a rescue of the failed institution.

The payoff of Penn Square National Bank of Oklahoma City was also an exception, and perhaps a justified one, to the policy the FDIC has usually followed, especially in larger banks. The fact that it was an exception was illustrated by the almost contemporaneous failure of the Abilene National Bank of Abilene, Texas (also a bank like Penn Square, with $500 million in deposits) for which a rescue was arranged and all depositors were protected. However, as time has marched on, I have increasingly come to believe that a rescue of the Penn Square Bank should have been developed. The damage of this failure is still ricocheting throughout the entire nation, with losses to our economy many times the cost of a saving merger, even assuming that such rescue would have been expensive.

FDIC Policy for Non-Money Center Banks. We therefore advocate that the FDIC follow what we believe to be its historic policy of endeavoring to save failing banks, particularly with reference to Non-Money Center banks. Such a policy will, of course, result in all depositors in Non-Money Center banks being protected. We also advocate either eliminating deposit insurance limits or radically increasing insurance beyond the $100,000 figure. Such policies, upon adoption, should be publicly proclaimed and stated. We believe that the cost of such policies would not be greater than the cost of present policies, and perhaps not as great.

It is my view that such full or greater protection of bank deposits is consistent with the most fundamental purposes of the FDIC. I say this as a person who first went to work for the Corporation in June of 1933 (you could not start any earlier than that) and who ultimately became a part of the senior management of the Corporation under the Chairmanship of Leo T. Crowley. Our view of the FDIC during this formative period was of course dominated by crisis banking years of 1933 and before. We held the belief that the most important purpose of the FDIC was to preserve the money supply. We believed that the depths of the Great Depression were increased by the wholesale closing of banks in 1930, 1931, 1932 and 1933, and by the radical reduction in the money supply which such closures caused. We further believed that bank deposits were as much money as currency and that a major policy objective was to make both forms of money always equal and interchangeable. In other words, we held that an important purpose of the FDIC was to guarantee the equality of currency and bank deposits. We did not think of the FDIC as an insurance agency, a concept which has surfaced in some recent writings.

The FDIC as an "Insurance" Company. In this connection, I recall rather vividly a conversion at the apartment of Senator Arthur Vandenberg of Michigan some time in the mid-1930's. His son, Arthur, Jr., and I had been contemporaries at Dartmouth College and were good friends. As a result, I was a somewhat frequent guest. The Senator was of the view that use of the word "insurance" as contrasted with the perhaps more apt term of "guarantee" was somewhat responsible for the passage of the Federal Deposit Insurance Act. The Senator, as a prominent Republican, an ardent supporter of the legislation and importantly responsible for its passage, believed that the word "insurance" made the legislation more politically saleable,—but he never viewed the FDIC as an insurance company.

I also remember the Senator relating how he regarded the FDIC as a most interesting American political invention which has solved a perennial banking problem. The problem was to provide bank depositors in a banking system, with thousands of units, the same protection as bank depositors had in countries such as Canada with only a few banks. The Senator recognized that *de facto* deposit insurance was provided to all depositors in Canada by the Bank of Canada. It was always obvious from his remarks that he felt the American banking structure, with its many units and many financial options, had very genuine virtues. He was certainly of the view that the American system fostered competition in all fields of economic endeavor and was less likely to lead to undue concentration of economic power.

"Market Discipline" as a Substitute for Bank Supervision. The FDIC has through the years been an impressively successful agency of Government. We therefore note with great skepticism that the present generation of managers of the Corporation has proposed that "market discipline" be utilized to police the operation of banks. The phrase "market discipline" has great appeal to my free enterprise instincts, but the concept, in my judgment, is out of place as a bank supervisory technique. The proponents envision policing banks by providing depositors with certain information concerning the condition of banks, so that "safe" banks would receive deposits and "unsafe" banks would be disciplined by withdrawals. Carrying this view through to its logical conclusion would probably mean ultimately the publication of Confidential Reports of Examination (which are not always accurate as to their facts or their conclusions). It would be difficult to imagine a policy which would be more destabilizing to our banking structure or our economy. And yet it is advocated by the FDIC, which should be in the business of stabilizing banking.

This leads me to a few comments on bank supervision. Surely its most important purpose is the protection of bank depositors and the deposit insurance fund. In a system of 14,000 banks, there will always be failures in the supervisory process and therefore bank failures. The reason is simple: bank supervision is managed by humans who make errors of judgment. And banks are also managed by humans who make errors and who are not always paragons of virtue. But for the most part, bank supervision in the United States is to be praised and is effective. Its failures we know about, since they are in the headlines, but its successes, which number in the thousands, are left unsung. In general, the bank supervisory apparatus of the nation has been non-political in the best sense and has attracted a dedicated and competent group of public servants.

Depositor Protection in Money Center Banks. Many of our large Money Center banks face substantial reductions in income if interest and principal compromises become essential, as I believe they will be, as a result of the large volume of loans which these institutions have outstanding to many countries in Latin America and to less developed countries in other areas of the world. In the absence of appropriate public policy safeguards, the liability structures of such banks could suffer in much the same way as the Continental Illinois Bank.

The banking system needs to be prepared for these problems that may lie ahead—and much of this burden, in our judgment, will have to be borne by the Federal Reserve, rather than by the Federal Deposit Insurance Corporation. We are also hopeful that when these problems and policies are debated, the debate will not turn on "bailing out the banks". What is really important is the political stability in developing countries and the restoration and maintenance of confidence in the post-war economy.

Accordingly, we would like to recommend as follows with respect to Money Center banks:

(1) That the Federal Reserve be armed with explicit power and authority to purchase without significant limitations nonvoting preferred stock in the nation's Money Center banks, perhaps twenty to twenty-five in number, so that the equity capital structures of such institutions do not fall below 5½ percent to 6 percent of assets. Perhaps all Money Center banks should be required to sell some preferred stock to the Federal Reserve, so that the presence of such outstanding stock in the capital structures of such institutions will not be regarded as unusual. Dividends on such stock should be cumulative and no dividends should be payable on common stock in the event of arrearages with respect to dividends on the non-voting preferred.

(2) The Banking Act of 1935 provided the Federal Reserve with ample power to lend to banks. The Board of Governors should publicly and promptly announce their determination to meet all of the liquidity needs of Money Center banks. In general, the Federal Reserve is in a position to neutralize the monetary aspects of such lending and of the purchase of preferred stock in Money Center banks by reduction in its holdings of U.S. Securities.

(3) Deposit Insurance by the Federal Deposit Insurance Corporation should be optional with Money Center banks. With the Federal Reserve providing both equity and liquidity support, deposit insurance is not essential and the cost savings to the Money Center banks would assist in meeting their preferred stock dividend requirements.

(4) We further advocate that the capital requirements for banks as established by the Regulatory Authorities, which are usually expressed as percentages of assets, should be made uniform for all banks, large and small. The lower capital requirements of larger banks have given these institutions a significant competitive pricing advantage over small banks, and this advantage should be eliminated.

Questions are also raised as to whether price, product and geographic deregulation will impair the present banking structure. I think not. These are of course important and somewhat separate current issues, and I would like to discuss them with you some time in the near future. There may be a few casualties as we deregulate, but fewer than some prophets would predict. Community banks have great value to our economy and to our economic culture, and their staying power is substantial. We trust the Congress will recognize these factors as they ponder the inconsistencies of present depositor protection as between large and small banks.●

TEENAGE ALCOHOL ABUSE

● Mr. D'AMATO. Mr. President, this week the Senate passed legislation encouraging the States to raise the drinking age to 21. During the debate, we heard about the dangers of drinking and driving, but driving while under the influence of alcohol is only one symptom of the overall problem of teenage alcohol abuse.

Our children have noticed that people who drink alcohol are considered healthy and normal, and that drinking is fun. In America, it is the people who do not drink at all who are considered strange. So it is not surprising that a significant number of our teenagers are drinkers.

According to a 1982 National Institutes on Drug Abuse survey, over 65 percent of 12- to 17-year-old children have used alcohol. The National Institute on Alcoholism and Alcohol Abuse estimates that 3 million children age 14 to 17 are problem drinkers. As Senator HAWKINS has pointed out, peer pressure, rebellion, and the need to feel adult are all contributing factors to teenage drinking.

A "National Study of Adolescent Drinking Behavior" classified over 31 percent of 10th to 12th graders as alcohol misusers. This means that these children drank at least five drinks at a time, once a week. The same study found that the average age of first use of alcohol is 13 years.

Although these young drinkers are not yet experiencing the disease caused by long-term use of alcohol, they are still being killed by it. Through its role in accidents, alcohol is the No. 1 killer of teenagers.

We must educate our teenagers to the dangers of alcohol abuse. Our young people must realize the effects of alcohol on their minds and bodies. I am, therefore, pleased to cosponsor Senate Joint Resolution 305 to designate the week of September 10, 1984, as "Teenage Alcohol Abuse Awareness Week." This week will be the focus of programs and events directed at both teenagers and their families. It will bring the teenage-drinking problem to the forefront, thereby helping to save young lives and promising futures.●

CALL FOR RELIGIOUS FREEDOM IN THE WARSAW PACT

● Mr. LAUTENBERG. Mr. President, I rise today to express my support for Senate Concurrent Resolution 119. Infringement of religious freedom in the Warsaw Pact States continues. Our Nation, which was founded upon the principle of freedom of worship, must be particularly attentive to the plight of nations which are denied this basic right.

Soviet religious repression persists, despite continuing efforts to bring about a greater degree of religious freedom. By now, sadly, there are few of us who are surprised when we hear that people like Anatoly Scharansky are incarcerated for having dared to be a vocal supporter of the right to worship freely. The fact that Jewish emigration has literally ceased has been reported over and over again. Soviet maltreatment of religious groups is not unique to Jews; it touches Baptists, Pentecostals, the Russian Orthodox, and anyone else who is suspected of adhering to a religious lifestyle.

Unfortunately, Mr. President, it seems sometimes that attention has been riveted exclusively on the Soviet Union when it should also be focused on other countries where religious policies are equally oppressive and worthy of condemnation. States within the Warsaw Pact pursue restrictive religious policies which are in direct contradiction to at least three internationally recognized agreements: The Universal Declaration of Human Rights, The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Helsinki Final Act.

Mr. President, I would like to quote from a section of the Helsinki Final Act; a section to which signatories have formally committed themselves but which they have in practice shamefully ignored. Signatories are bound to "recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience."

It is all too clear that these promises and agreements have relegated to meaningless rhetoric. Word has been emerging from the Warsaw Pact states detailing substantive restrictions on religious activity and describing the harassment which inevitably descends upon he or she who is brave enough to exercise "the dictates of his own conscience."

In Czechoslovakia, leaders are fearful that religion could become a vital political force as it was in Poland with the advent of Solidarity. So, authorities have resorted to "questioning," detention, arrest and anything else aimed toward the end of discouraging religious freedom. In addition, the Government of Czechoslovakia should be particularly condemned for its deliberate and conspicous failure to cooperate with the Catholic community. To date, the Vatican's efforts to fill vacant bishoprics have been futile and nearly 1,000 parishes lack proper spiritual leadership.

The governments of Lithuania, Romania, Poland and Hungary are also guilty of creating restrictive religious policies. The citizens of these nations have recently experienced increased and intensified persecution of Catholic and Baptist leaders and followers. Moreover, acting in concert with the Soviet Union, these nations too have virtually closed the doors on emigration. In sum, the Warsaw Pact States continue to enforce the tragic dual policy of repression, which dampens the human spirit, and a ban on emigration for those desiring to flee from repression.

Mr. President, it is our duty to remind these countries of the commitments which they have undertaken as parties to the well recognized documents which espouse the fundamental human right of freedom of religion. It is not enough that we protect religious freedom here in America. It must also be our mission to establish universal acceptance of this basic right which inspired the birth of our Nation. Swift adoption of Senate Concurrent Resolution 119 would be an appropriate step in this direction.●

AMERICAN HEALTH CARE SYSTEM

● Mr. DURENBERGER. Mr. President, last October the Equitable Life Assurance Society of the United States released the results of a survey, conducted by Louis Harris & Associates on public attitudes on health care costs in America.

Included in this study were the opinions of physician leaders, hospital administrators, health insurance executives, labor leaders, corporate health benefits officers, as well as a cross-section of the general public. The findings of this survey "The Equitable Healthcare Survey: Options for Controlling Costs," showed that there is a consensus that fundamental changes are needed to make the United States' health care system work better and that the American public is ready to accept a broad range of cost-containment proposals.

The Equitable has just released the results of another survey, "The Equitable Healthcare Survey II: Physicians' Attitudes Toward Cost Containment." The survey was identical to the earlier study but focused on physician attitudes on health care costs. I am encouraged that physicians can and will continue to play a valuable role in the effort to reform our Nation's health care system to make it affordable and accessible to all Americans.

Mr. President, I would like to submit for the RECORD a summary of the findings of this second study. I urge my colleagues to consider these attitudes when, in the days ahead, we confront the problem of controlling health costs.

The summary follows:

SUMMARY

1. Less than half of all physicians believe that the American health care system works well and needs only minor changes. This finding contrasts sharply with the views of physicians who head state, local and specialty medical societies (physician leaders), two-thirds of whom believe that the nation's health care system works well.

These responses are strikingly different from those of the American people, only 21% of whom believed, in 1983, that the health care system was working pretty well, and most of whom felt that fundamental changes were needed or that the system needed to be completely rebuilt.

2. There is no consensus among physicians with regard to priorities for change in the nation's health care system.

The answers given most frequently in reply to a question concerning which one change they would most like to see relate to improved access to health care, cost containment, and less government interference and regulation of the health care system.

3. Most physicians are satisfied with the availability and quality of health care generally, with their own health insurance benefits, and with the cost of health care.

However, fully 41% of physicians are dissatisfied with the total cost of care, and 32% are dissatisfied with out-of-pocket costs.

4. A majority (59%) of physicians think that the cost of hospitalization is unreasonably high.

However, sizable majorities believe that the costs of doctors' visits, laboratory tests, and health insurance are reasonable. In contrast to the opinion of a majority of physician leaders who think the cost of prescription drugs is reasonable, physicians reveal only a plurality of opinion regarding this issue.

5. Majorities, in most cases large majorities, of physicians think that seven different factors have contributed to the rise of health care spending over the last few years.

However, only a minority (17%) think that unit-cost inflation—the increasing cost of the same services—is the main reason. This latter view contrasts sharply with that of the American public, 44% of whom feel that unit-cost inflation is the main reason for increased spending.

The factors most widely believed to have had a major impact on health care spending are:

The increasing use of expensive equipment and technology;

The fact that the population as a whole is getting older;

The growth of expensive malpractice suits and malpractice insurance;

The increased availability of government-funded programs such as Medicare and Medicaid;

The increased availability of employer-provided health insurance;

Doctors ordering more laboratory tests than are necessary; and

Unnecessary hospitalization.

6. A majority of physicians believe that the third-party payment system, as it exists today, is a major contributor to increased health care spending.

While large majorities of physicians believe that the third-party payment system, the practice of defensive medicine, and the aging of the population have contributed to increased health care spending, there is a plurality of opinion on the idea that the increase is due to a lack of competitive pricing in the health care industry.

Younger physicians and physicians who are not members of AMA tend to agree that a lack of price competition contributes to health care cost inflation.

7. A majority of physicians believe that the present health care system is price competitive.

Physicians' views on this subject are in sharp contrast to those of hospital administrators and the public. A majority of the public (76%) believe that one of the problems of health care is that there is no competition to keep prices down. Furthermore, majorities of hospital administrators, insurance executives corporate benefits officers, and union leaders all share the public's view that the nation does not have a price-competitive system.

In this context, it is important to note that only 16% of the public have ever chosen a physician because his or her fees were lower than those of another doctor.

8. There is no agreement among physicians as to the proportion of all health care costs that are incurred by the highest spending 10% of the population.

The median response is that 56% of all spending can be attributed to this 10% of the population, a figure somewhat lower than available data and other estimates would suggest.

Physicians believe that the main reason for the increased concentration of health care spending on a small proportion of the public are: the aging of the population, the use of more expensive procedures to save or prolong life, the unhealthy lifestyles of some Americans, the use of new medical technology, and the overuse of health care services by a few people.

9. Reactions to specific health care cost-containment policies vary from almost unanimous acceptance to overwhelming opposition.

In general, there is a relatively high correlation between the perceived effectiveness of a policy and its acceptability. Where a policy is perceived to be effective, it is generally acceptable. Where it is not acceptable, it is generally not thought to be effective. However, there are a few important exceptions to this rule.

10. By large majorities, physicians believe that most policies which would increase cost-sharing by patients would be both effective and acceptable.

Specified policies endorsed by large numbers of physicians relate to increased deductibles and copayments, and requiring patients to pay a part of their employer-paid insurance premiums. On the other hand, less than half of the physicians view a new tax on the top portion of large health insurance premiums as an effective or acceptable cost-containment measure.

11. Overwhelming majorities of physicians endorse change in the health care system that would reduce hospitalization.

Alternatives to hospitalization in the care of the chronically ill or for tests and minor surgery are considered both effective and acceptable in containing health care spending. However, certification by insurance companies prior to non-emergency hospitalization is acceptable to less than half of the physicians.

12. Physicians view the proposal to require second opinions prior to non-emergency surgery as generally acceptable.

However, there is some doubt about its effectiveness in controlling costs.

13. Discouraging the duplication of expensive equipment and specialists at nearby hospitals is a proposal acceptable to almost two-thirds of physicians.

Almost three-fourths of the group consider this an effective means for containing health care costs.

14. Utilization reviews are thought to be at least somewhat effective, but a sizable minority (44%) do not regard them as acceptable.

The proposal to fix fees paid to doctors and hospitals based on diagnosis-related groups (DRG's) is unacceptable to a clear majority of physicians.

However, over half of the physicians concede that it is an effecitve cost-containment strategy.

15. The notion of government price controls draws the greatest concensus of negative responses from physicians.

Although almost half agree that such controls would reduce health care spending, fully 85% find the proposal unacceptable.

16. Health Maintenance Organizations (HMO's) and preferred provider plans are unacceptable to a majority of physicians. However, medical opinion is more receptive to a system where a primary care physician receives a predetermined fee for providing basic medical care and is also responsible for authorizing additional health care services.

17. Large majorities of physicians consider insurance plans that provide individual incentives for healthy living or group incentives for below target expenditures to be both effective and acceptable in controlling health care costs.

18. Changes in laws relating to malpractice that would reduce the pressure on doctors to practice defensive medicine are generally thought to be both effective and acceptable.

19. Most physicians believe that changing antitrust laws so that third-party payers can join together to negotiate fees with providers would be an effective cost containment strategy.

A smaller majority consider this proposal acceptable.

20. Business coalitions formed to control health care costs are seen as both effective and acceptable by a majority of physicians.

21. There is some resistance among physicians to encourage the use of nurse practitioners, midwives, and physicians' assistants instead of physicians.

While over 50% find this change unacceptable, a large minority (46%) also believe that this would not be an effective means for controlling costs.

22. While most physicians believe that reducing the use of so-called "heroic" medicine would be effective in controlling health care spending, a smaller majority find this proposal acceptable.

23. There is overwhelming disapproval of the concept of cost-shifting.

Policies that result in a shift in the cost of treatment for Medicare and Medicaid patients to fees paid by private-sector patients are looked upon with disfavor by most physicians.

24. Health care coverage for the unemployed is favored by most physicians, even if it means additional direct or indirect cost to other people.

While the majority of physicians favor providing this coverage by extending employer-paid insurance or by encouraging each state to finance it, they oppose financing this coverage through a federal program or from any type of new tax.

25. In general, physicians in the South are more conservative.

They are more satisfied with the status quo and are least likely to accept policies which would adversely affect their income.

26. In most instances, younger physicians (i.e., physicians who have graduated more recently) are more receptive to the proposed changes in the health care system than are older physicians.

The changes that older physicians endorse in larger numbers than younger physicians are those that would shift additional costs to the patient. AMA members, who tend to be older than nonmembers, also tend to be more conservative than nonmembers in accepting changes in the health care system that would place constraints on the price or use of health care services and on equipment purchases.

27. Physicians are out of step with the nation on many key issues.

They are less critical of the status quo, much more likely to believe that the health care system is price competitive, and much less willing to accept alternatives to the traditional fee-for-service, doctor-patient relationship than the public, hospital administrators, employers, union leaders, or insurance executives.

28. However, practicing physicians are more likely to see the need for change than are their elected leaders.

They are also somewhat more willing to accept alternative delivery systems.●

CABINET STATUS FOR THE VETERANS' ADMINISTRATION

● Mr. PRYOR. Mr. President, the Veterans' Administration is the largest independent agency in the U.S. Government and is charged with the responsibility of implementing our Nation's historic and deeply rooted commitment to provide benefits and services to those who served in the Armed Forces. As such, the Veterans' Administration was created as an independ-

ent agency in the executive branch specifically for the purpose of administering laws relating to the provision of benefits to veterans, their dependents, and beneficiaries. In accordance with this mandate, the Veterans' Administration provides medical care and treatment, disability and death compensation, income maintenance, education-related benefits, loan guarantees, insurance, and burial benefits. In addition, the Administrator of Veterans' Affairs is the primary adviser to the President on veterans' matters.

As the largest independent agency within the Federal Government, the Veterans' Administration has the sixth largest budget among Federal departments and agencies. In terms of personnel, it ranks second only to the Department of Defense with 235,000 employees. Despite the size of its budget, the number of its employees, and the importance its programs have on the life of our Nation, the Veterans' Administration does not have the same departmental status accorded many smaller agencies.

The time has come for the President to include the Administrator of Veterans' Affairs as a member of his Cabinet and to submit legislation to establish a Department of Veterans' Affairs. This action is necessary to recognize the Veterans' Administration size, mission, and the significance of its accomplishments during its long history of service to our Nation.

Last year, Congress expressed its will on this issue in Public Law 98-160. Section 502 of that act says:

It is the sense of the Congress that the Administrator of Veterans' Affairs should be designated by the President as a member of, and a full participant in all activities of, the Cabinet and as the President's principal adviser on all matters relating to veterans and their dependents.

Organizations representing veterans have expressed their views on this subject. The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, Amvets, Paralyzed Veterans of America, and others have gone on record in support of such action. I commend those distinguished organizations for their efforts on this important matter affecting veterans and their families.

Likewise, I commend the chairman and ranking minority member of the House Veterans' Affairs Committee Congressman G.V. "SONNY" MONTGOMERY and Congressman JOHN PAUL HAMMERSCHMIDT, as well as my distinguished colleague, Senator STROM THURMOND, for their leadership on this issue.

When the Veterans' Administration was established in July 1930, its role was to bring together under a single agency the responsibility for providing Federal benefits for veterans and their dependents. After more than half a century of service and growth, the magnitude of VA services and its need to be elevated to Cabinet level status has increased.

The VA and its contributions to America have been of significant proportions. Training under the GI bill has been provided to more than 18 million persons. More than 870,000 disabled veterans have received vocational rehabilitation counseling and training. The number of medical centers has increased dramatically from 54 in 1930 to 172 medical centers today. These medical centers treat 1.4 million patients each year and the outpatient clinics serve more than 18 million visits each year. The VA cares for 29,000 veterans each year in its nursing homes and domiciliaries.

In addition to operating the Nation's largest medical care system and being a major economic force in the Nation's housing and insurance industries, the VA continues to provide compensation and pension benefits, and burial assistance to veterans and their dependents. Over 4.3 million veterans, widows, and survivors are being paid death compensation or death pension benefits. Each year compassionate burial assistance is provided to approximately 350,000 veterans.

The compassionate care and benefits the Veterans' Administration provides veterans and their dependents spans centuries. Benefits have been provided for veterans and their families who served in the Revolutionary War, War of 1812, Mexican War, Civil War, Indian War, and Spanish American War. And the veterans of World War I, World War II, the Korean war, and the Vietnam war are well aware of the continuing service of the VA to them and their families.

I invite my colleagues in the Senate to join me in urging the President to act now to respond to the sense of the Congress in designating the Administrator of Veterans' Affairs as a member of his Cabinet, and to submit legislation to establish a Department of Veterans' Affairs. This action is necessary to make sure that our Nation's commitment to our veterans remains strong.

I ask that the full text of sections 501 and 502 of Public Law 98-160 be printed in the RECORD.

The material follows:

TITLE V—STATUS AND ROLE OF ADMINISTRATOR OF VETERANS' AFFAIRS

CONGRESSIONAL FINDINGS

SEC. 501. The Congress finds that—

(1) the Nation has an historic and deeply-rooted commitment to providing benefits and services to those who served in the Armed Forces.

(2) this commitment must be continued and maintained, both to fulfill moral obligations to those who served in the past and to assure current and potential members of the Armed Forces that the Nation's obligations to those who serve will always be honored;

(3) the Veterans' Administration is the principal Federal entity responsibile for veterans' benefits and programs;

(4) the Veterans' Administration has a potential population of beneficiaries of over 55 million veterans and over 55 million survivors and dependents;

(5) the Veterans' Administration will distribute over $13.8 billion in income maintenance payments and over $1.5 billion in education, training, and rehabilitation assistance payments during fiscal year 1984, operates one of the Federal Government's two major home loan guaranty programs, with over four million loans currently guaranteed, administers the largest direct insurance program in the Nation, and operates 108 national cemeteries and provides burial assistance for nearly 350,000 deceased veterans annually;

(6) the Veterans' Administration operates the largest centrally administered health-care system—consisting of, among other facilities, 172 hospitals, 226 outpatient clinics, and 99 nursing home care units—in the United States;

(7) the Veterans' Administration health-care system serves as the primary backup to the medical resources of the Department of Defense in time of war or national emergency involving the use of the Armed Forces in armed conflict;

(8) in terms of share of the annual Federal budget, the Veterans' Administration ranks sixth among Federal departments and agencies, and among Federal departments and agencies only the Department of Defense employs more personnel;

(9) the Administrator of Veterans' Affairs is the principal executive branch official responsible for the administration of the benefits, services, and programs of the Veterans' Administration and for seeking the coordination of veterans' programs administered by other Federal departments and agencies;

(10) there is a need for greater coordination between the Veterans' Administration and other Federal entities administering veterans programs and between the Veterans' Administration and other Federal entities providing similar benefits to individuals on a basis other than their status as veterans;

(11) by virtue of the Administrator of Veterans' Affairs not being included in the President's Cabinet, the Administrator generally is not included in Cabinet meetings and deliberations and generally does not have the ready access to the President and senior advisers on the President's staff that Cabinet members have; and

(12) as a consequence, Presidential decisions affecting veterans and the Veterans' Administration are made from time to time without an understanding of their full impact on veterans and on the Veterans' Administration's performance of its statutory missions.

SENSE OF THE CONGRESS

SEC. 502. In view of the findings in section 501, it is the sense of the Congress that the Administrator of Veterans' Affairs should be designated by the President as a member of, and a full participant in all activities of, the Cabinet and as the President's principal adviser on all matters relating to veterans and their dependents.●

THE CRISIS IN INSTITUTIONAL CARE

● Mr. DURENBERGER. Mr. President, the Citizens League of Minnesota is an independent nonpartisan, nonprofit, educational corporation dedicated to helping solve the complex problems of metropolitan area of Minneapolis and St. Paul. I have been active in the Citizens league and over the years, the league's research reports have provided valuable information to Government and civic leaders and others involved in the public decisionmaking process.

The Citizens League recently released a report on the use of institutional-based services in the State of Minnesota, "Meeting the Crisis in Institutional Care, Towards Better Choices, Financing and Results." This study examined the manner in which care is provided to disabled elderly, the mentally retarded, the mentally ill, the chemically dependent and children involved in the juvenile justice and child welfare systems in the State of Minnesota.

Although the league recognizes that there will always be some need for institutional care, the study found that the State of Minnesota has come to make too much use of the institutional option. I submit for the RECORD, Mr. President, a copy of this report's "Executive Summary" which outlines the results of the League's findings.

I also submit two articles that appeared in the Minneapolis Star and Tribune in reaction to the Citizen League's report. The first article by Patrick Marx, describes some of the league's findings and their recommendations for change. The article by Ann Wynia describes what the State of Minnesota is doing to address this problem. The Minnesota State Legislature has been quite active in passing legislation that seeks to increase the options for care for the elderly, people with disabilities, children and their families.

I commend the Citizens League for once again providing a valuable report that will help and encourage the State of Minnesota to address the problem of its over-reliance on institutional forms of care. I hope that other States will take a serious look at their own use of institutional care and encourage their legislatures to look for innovative ways to provide a continuum of care for those in need with choice as an integral component of reform.

The articles follow:

[Executive Summary]

MEETING THE CRISIS IN INSTITUTIONAL CARE: TOWARD BETTER CHOICES, FINANCING AND RESULTS

Minnesota makes much more extensive use of a variety of institutional arrangements than other states.

In a major new study, the Citizens League has examined the use of residential treatment facilities across five different populations—including the elderly, the mentally ill, the mentally retarded, the chemically dependent and the juvenile justice/child welfare population.

The major conclusion of the study is that too much use is made of residential facilities in all of the systems. Minnesota's over-reliance on institutional forms of care is causing a crisis of sizeable human and economic proportions.

The human crisis in the state's welfare policies does not concern the quality of care in residential facilities, but rather the quality of life. Too often, life in a residential facility is accompanied by an unhealthy degree of dependence on caregivers. Too often, human service professionals unintentionally supplant, rather than supplement, the support of family members, friends and neighbors. Finally, the assumption that these populations can best be cared for outside the home environment runs contrary to much of the latest research in each of these fields.

We will continue to need residential treatment facilities, the League says, but utilizing them should be our last option rather than our first one.

The financial crisis in the state's welfare policies deals with the fact that the cost of treating people in institutions is one of the most rapidly growing portions of the state budget. Within the Minnesota Department of Public Welfare's F.Y. 1982 budget, for example, nearly 70 percent of all expenditures were directly related to institutional care. If costs continue to escalate at their present rates in these systems, the state will not succeed in controlling expenditures.

Ironically, there are less costly alternatives available in each system, but they tend to be underutilized. Often these alternatives involve day-treatment or even care in the person's home. Many of these options are not available to people today because reimbursement in these systems has been directly tied to utilization of in-patient or residential facilities.

Minnesota makes more use of residential treatment than most other States. Statistics show that Minnesota ranked:

First, nationally, in Medicaid-reimbursed days of nursing home care per 1,000 persons age 65 or over in F.Y. 1979.

Third, nationally, in the number of mentally retarded people in residential care per 100,000 in 1982. (In 1977-78, Minnesota ranked first nationally.)

Eight, nationally, in the number of mentally ill patients discharged from private hospitals in 1977. Minnesota ranked 19th nationally in the number of such patients discharged from state and county hospitals in 1979.

Eleventh, nationally, in juvenile commitments to training schools per 100,000 in 1982.

Despite the fact that Minnesota ranks 25th nationally in per-capita alcohol consumption and had the 6th lowest rate of alcohol-related problems among the 50 states in 1983, Minnesota has more chemical dependency beds on a per-capita basis than any other state. Minnesota represents only three percent of the nation's population but has 15 percent of its chemical dependency beds.

The explanation for Minnesota's high rate of institutionalization varies from system to system.

Four major factors have contributed to the high use of nursing homes in Minnesota: (1) Minnesota has a hgher proportion of elderly people than the rest of the U.S. (2) Minnesota's elderly tend to live longer than the national average, thereby increasing their likelihood of needing nursing home care; (3) the lack of available alternatives to nursing homes contributes to nursing home utilization; and (4) Minnesota's Scandinavian heritage also appears to be a factor since Scandinavians rely heavily on social institutions.

The intensity of residential treatment provided to Minnesota's mentally retarded population may be attributed to: (1) the state's over-reliance on Intermediate Care Facilities for the Mentally Retarded (ICF-MRs); (2) limited public funding for in-home care; and (3) the state's failure to limit new admissions to state hospitals. The League committee found that the manner in which public programs for the mentally retarded are funded contain strong fiscal disincentives to move people from state hospitals to community group homes and from community group homes to less intensive, non-residential settings.

Public funding programs and private insurance programs have provided people with incentives to seek treatment for chemical dependency and mental illness in in-patient settings opposed to out/patient or less formal settings.

A variety of reasons have been used to account for Minnesota's high rate of juvenile out-of-home placements. The juvenile court's goal of "rehabilitation" has tended to increase the likelihood of intervention and treatment outside the home. The availability of private insurance for chemical dependency and mental health offers some juveniles, their parents, and the courts an option that seems preferable to the stigma of the law. The different set of legal standards in the juvenile justice system may provide incentives to police officers to arrest juveniles in order to succeed in "doing something about crime". Finally, deficiencies in Minnesota's juvenile justice laws sanction unnecessary removal of juveniles from their homes.

While much of this care is appropriate, data suggest that some Minnesotans are being inappropriately retained in residential treatment facilities.

Experts disagree over the percentage of the nursing home population which could be successfully de-institutionalized. Estimates typically range from 20 to 66 percent. The most recent data indicate that 22 percent of Minnesota's nursing home residents had similar demographic and functional characteristics as home care clients. Newly enacted pre-admission screening programs successfully diverted 58 percent of the nursing home eligible population in the last six months of 1983.

Despite Minnesota's efforts to de-institutionalize the mentally retarded, it appears that our state has only re-institutionalized this population in ICF-MRs and group homes. In fact, there are now more mentally retarded people living in residential facilities throughout the state than there were prior to the de-institutionalization movement. Research indicates that as many as 200-1000 residents of ICF-MRs are ready for placement in less costly, more home-like settings such as foster care or semi-independent living arrangements.

Recent data indicate that at least 50 percent of all state hospital admissions for mental illness were re-admissions, largely due to the lack of funded community group homes and after-care. Additionally, there has been a troublingly high increase in juvenile psychiatric admissions to metropolitan

hospitals in recent years. From 1976 to 1983, juvenile psychiatric admissions went from 1,123 to 2,031; patient days grew from 46,718 to 76,899; and the juvenile psychiatric admission rate doubled, moving from 91 to 184 admissions per 100,000.

Inappropriate retention in residential treatment facilities is especially apparent in the juvenile justice system. Despite decreases in the juvenile population and the juvenile crime rate, Minnesota's juvenile incarceration rate has risen in recent years. Although national standards have urged an all-out ban on the use of jails for juvenile detention, 4,000 Minnesota children were admitted to jails in 1981. Some children in this system are held "hostage"—detained in treatment longer than normal simply to allow providers to continue to collect public reimbursement. There is also a troublingly high number of "serial placements"—children placed outside their homes again and again.

A special review program by Minnesota Blue Cross/Blue Shield denied payment for 3,891 days of medically unnecessary chemical dependency and psychiatric care in 1982. Most (72 percent) of the unnecessary care was for chemical dependency.

A growing body of research shows that nonresidential forms of care can be as effective or even better than residential care for some people and much less expensive.

A 1982 report by the General Accounting Office found that "when expanded home care services were made available to the chronically ill elderly, longevity and client-reported satisfaction improved." Studies comparing the adaptive progress of mentally retarded people in community residential facilities and state hospitals show that community treatment is generally more effective. A recent review of studies of the effectiveness of in-patient versus out-patient treatment of mental illness in the New England Journal of Medicine concluded that non-hospital psychiatric treatment was as good as or better than in-hospital treatment. An innovative home-based services project in Ramsey County has found that "not placing children out of their home is no more or less harmful than having them remain at home, at least as long as service continues to be provided to the family." A Twin Cities hospital-based chemical dependency evaluation program (CATOR) concluded in its 1982 report that "it is noteworthy that out-patient services with their lower costs are adequate for a substantial portion of the population."

The congruence of these findings should be good news for legislators since the cost of treating people in institutions is one of the most rapidly growing portions of the state budget. This is clearly seen in the following trends:

Between 1976 and 1980 Minnesota Medicaid costs for persons in nursing homes increased twice as fast as the Medical Consumer Price Index. Nursing home expenditures are the largest cost component of Medicaid, amounting to 48 percent of the total in Minnesota. In fiscal year 1982 persons 65 and older accounted for nearly 60 percent of Medicaid expenditures but represented only 20 percent of the recipients. Minnesota's elderly population will increase by 24.3 percent between 1970 and 2000, with obvious implications for rising costs.

Between 1976 and 1980 the cost of caring for Minnesota's mentally ill population more than doubled, from $139 million to $295 million, counting both public and private expenditures.

Out-of-home placement of juveniles cost more that $185 million in 1981, according to a study by the Minnesota House of Representatives. The expenditure is equivalent to about one-fifth of state school aids spent on children's education in grades K-12 but it is being spent on only 2 percent of the state's juvenile population.

A 1983 report of the Chemical Dependency Division of the Department of Public Welfare found that total public and private chemical dependency costs rose from $101.8 million in fiscal year 1981 to $115 million in fiscal year 1983. But it also found that state and local public shares are decreasing while private and federal shares are increasing.

According to a 1983 report by the Office of the Legislative Auditor, residential care costs amounted to 75 percent of the $175 million spent on the care of the mentally retarded in 1982.

In general, where options to institutional care exist, they cost considerably less, the League study found.

For example, the League committee received a report of a patient who was visited once a day at home by a licensed practical nurse at a cost of $588 a month. Nursing home care would run nearly $2,000 a month.

Care for the developmentally disabled in a state hospital averaged $109.50 daily in 1983. Care in intermediate care facilities in the community averaged $49.97; semi-independent living services cost $24.82 per day; and foster care was $12.

For children in the juvenile justice system the cost in a residential treatment center was $84 a day, in a juvenile correctional center $77 a day, in a welfare group home $41 a day and in a corrections group home $20.

Unfortunately, however, public and private reimbursement systems in each of the five systems studied by the committee often preclude the use of these less costly and often more effective alternatives. Because of the institutional bias inherent in these reimbursement streams, the kind of assistance people are provided is often more a function of what will be paid for rather than what people may in fact need. Frequently, people are only able to obtain service if they live in a residential facility.

The Citizens League recommendations attempt to provide a strategic policy framework for the State in the years ahead as it continues to grapple with the problem of providing compassionate yet cost-effective care to these populations.

Some of the League's recommendations cut across all populations. For example:

(1) State and local government should make sure that alternatives to residential care are pursued prior to admission into any treatment facility. The Legislature should require that counties establish pre-admission screening programs for all publicly subsidized persons afflicted by mental illness, chemical dependency and mental retardation.

(2) Federal, state, and local programs which pay for residential care should be changed so that payment for housing is separated from payment for service. If the U.S. Congress were to follow the committee's recommendation, major impacts would occur in Medicare, Medicaid, and Title XX of the Social Security Act. These changes would affect all of the population included in our study. If the Minnesota Legislature made similar changes, the resulting impacts would affect the state's General Assistance Medical Care Program, the Community Social Service Act, the Community Corrections Act, the Catastrophic Health Expense Protection Program, and several other programs.

This recommendation responds to the central problem in each of the five systems examined by the committee. Under current public and private reimbursement incentives, some people only receive access to needed services if they live in a residential facility. That problem would be removed if payment for the housing function were separated from payment for the care function. If separate funding streams were created for housing and service, and if people were permitted to decide how to spend available dollars, they could exercise choices both about where they live and from whom they receive care. This would remove not only the present institutional bias from these systems but also the medical bias as well. Government should decide how much money should be made available to meet the needs of a given individual. But individuals or their surrogates should decide how the money should be spent.

(3) The federal and state governments should provide people in need of care with prospectively determined allowances for housing and care.

a. Housing allowances should be modeled after existing federal housing allowance programs.

b. Service allowances should be determined prospectively, based on the extent of individual functional impairment and on providers' performance.

(4) Individuals should have incentives to use high-quality, low-cost, preferred providers, regardless of whether their care is provided at public or private expense.

Other recommendations are specifically targeted to each of the five population groups:

(5) For the chemically dependent and the mentally ill.—The League recommends that Congress move to include these illnesses in its prospective reimbursement system. The Legislature should change current laws to specify that employers need not provide in-patient coverage for in-patient treatment of chemical dependency or mental illness for stays longer than statewide averages.

(6) For juveniles.—The League recommends that the Legislature repeal status offenses from the jurisdiction of the juvenile court. (These are offenses which would not be crimes if committed by adults, such as truancy, running away, and wayward behavior.) The Legislature should also redefine the purpose of pre-trial detention and training schools and set criteria for their use, separate the judicial and administrative responsibilities of the state's juvenile courts and require that, in cases of child abuse, more consideration be given to removing the offending parent from the home rather than the victimized child. The League also urges greater use of diversion and restitution for juvenile offenders who do not have a long history of crime. Finally, the League commends the Legislature for opening up the possibility of non-judicial resolution of some juvenile cases.

(7) For the elderly.—The League encourages consideration of new private financial mechanisms to assist the aged in meeting their financial obligations as well as to defray some public costs. Specifically, the League proposes further examination and debate on three strategies:

Minnesota insurance companies could review the potential for developing long term care insurance as a marketable product. Today, neither Medicare nor Medicaid

protect the elderly from incurring potentially catastrophic costs in nursing homes. The rapid spend-down of elderly people's assets serves no useful public or private purpose as it eliminates elderly people's financial independence and makes them dependent on public subsidies. Unlike the acute care system, there is no insurance mechanism in long term care to protect individuals and the public from these results. Perhaps there should be. If such policies were developed, they should be indemnity plans, and cover both nursing home care and home care with incentives to substitute the latter for the former.

The concept of home-equity conversion has a great deal of potential for supplementing elderly people's retirement income and could be especially applicable to Minnesotans.

Under innovative home-equity conversion schemes being developed around the country, people could sell their homes and lease them back at a price well below the monthly amount they receive on the sale. The arrangement would permit people to continue to live in their homes as well as to have additional income.

An analysis by Bruce Jacobs of the Brookings Institution shows that reverse annuity mortgages have the capacity to substantially reduce the incidence of poverty among the elderly. Nationally, the poverty rate for elderly homeowners was determined to be about 14 percent but rises to 20 percent for those over 75. After potential reverse annuity mortgage income was added, however, substantial decreases in poverty rates were observed. Fully 25 percent or more of elderly home-owners living below the poverty line would have risen above it. For those over 75, the corresponding figure was 41 percent.

Nationally, 75 percent of persons over age 65 own their own homes. Of those, fully 85 percent have paid off their mortgages. The net home equity of older Americans is greater than $550 billion. To put that in perspective, if those assets were freed up (say, at a rate of 10 percent per year) the income released would be approximately $7 billion a year—almost enough to fund total 1979 Medicaid payments to the elderly—$7.6 billion.

Minnesotans, and particularly elderly Twin Cities homeowners would have an advantage in the use of home-equity conversion loans when compared to the rest of the nation's elderly. Not only do a higher percentage of elderly Minnesotans own their homes outright, but those homes are typically worth more than the homes of the elderly in other states.

According to Metropolitan Council figures, there are 139,600 older people in the region who live in single family homes. They comprise 74 percent of the region's total elderly population. If conservative estimates of the value of an average Twin Cities home is $70,000, the net worth of the region's "senior" housing stock is $9.7 billion. Since 90 percent of the region's elderly own their homes outright, their available net home equity is at least $8.7 billion.

Instead of encouraging elderly people to spend down their assets, Minnesota's Medicaid program could encourage people approaching retirement age to conserve their assets in order to preserve their financial independence.

For those people already living in nursing homes and dependent upon medical assistance, this suggestion would bring no further changes save the previously discussed separation of reimbursement for service and housing.

For those people however, aged 60 and over, who will become eligible for Medical Assistance after July 1, 1986, the Minnesota Legislature could provide an annual sum with which to purchase long-term care insurance from private insurers. The amount of this sum could be capitated in advance and could be accompanied by a small consumer co-payment.

Minnesota's state Medical Assistance eligibility standards could be modified to include the home as an asset, in those instances where the circumstances would not force an able-bodied spouse into a nursing home. But rather than simply placing a lien on the home of the elderly person as was done in the past, the state could offer the individual the option of entering into a split-equity arrangement. Such arrangements could be administered by the state Housing and Finance Agency. In return for a share of the equity in the person's house and its future appreciation, the state would provide monthly income payments, plus a deferral of all property taxes until after the person's death or sale of the home.

STUDY ASKS LONG-TERM CARE ALTERNATIVE

(By Patrick Marx)

Too many Minnesotans unnecessarily are put in nursing homes, mental hospitals and other residential treatment centers for long-term care, according to a major new study issued Tuesday by the Citizens League.

Institutionalizing people, which the league said imposes immense human and economic costs, should be sharply curtailed in favor of alternative care programs that separate direct service from housing costs, the study recommends.

It also seeks "de-institutionalization," including long-term care insurance and home-equity conversion plans.

Statistics cited in the study show.

In 1979, Minnesota was first in the 50 states in percentage of people over 65.

In 1982, the state's ratio of mentally retarded people in residential care was third in the nation.

Minnesota has the largest number of beds for treatment of the chemically dependent in the nation, even though the state has the sixth lowest rate of alcohol-related problems.

"Residential treatment is appropriate in some cases, but too often it has been used indiscriminately," said the 119-page study. "Residential care must become our last option rather than our first option."

Emily Anne Staples, a former legislator who chaired the study group, said, "The quality of care in most residential centers is high, but the quality of life suffers."

Staples said most people would prefer to retain their independence rather than go to a nursing home.

The cost of treating people in residential settings is one of the fastest growing portions of the state budget, said the study.

In 1982 nearly 70 percent of $756.1 million in welfare went for institutional care, according to the study. Costs included 20 percent for the mentally ill, the mentally retarded and the chemically dependent, but most went to nursing homes and hospitals under the state's medical assistance program for the elderly.

The study also found more than $185 million in public and private money was spent in 1981 to institutionalize less than 2 percent of the state's school-age children.

The league study said the state needs a strategy for long-term care costs.

"There is an immediate need to begin developing a market for long-term care insurance," said the study.

Another possibility, which the study called a "most exciting prospect," would be to apply the equity in homes to finance long-term care. Under a home-equity conversion plan, a family could sell its home to a bank or investors and lease it back, freeing cash for the family.

The league recommended new laws that would encourage officials to:

Adopt pre-admission programs and standards that encourage alternative care programs. The state already has pre-admission programs for nursing homes, according to Staples, but similar programs should be extended to the mentally retarded, chemically dependent and juveniles.

Current data suggest, according to the study, that up to 40 percent of the elderly screened for nursing home admissions could be cared for elsewhere.

Separating payment for housing from the costs of service in state, local and federal programs.

The present reimbursement and payment system is biased in favor of residential care, according to the study.

[From Minneapolis Star and Tribune, June 21, 1984]

BUILDING CHOICES INTO CARE SYSTEM

(By Ann Wynia)

A recent Citizens League report is a thoughtful analysis of a major issue—that Minnesota institutionalizes its elderly, mentally retarded, mentally ill and chemically dependent people, its lawbreakers and its juvenile offenders at a higher rate than most states. This policy has a high cost not only in money but in the experiences of institutionalized people.

However, the league's characterization of the current situation as a "crisis" obscures recent changes in state policy. Although much remains to be done, the state is increasing options for people with disabilities and for children and their families.

For example, nursing homes and state hospitals were once the only options available to disabled people, largely as a result of federal fiscal incentives that allowed reimbursement only for care provided in institutions. (Because the best-run institutions are frequently far from the handicapped person's home, that person has few opportunities to interact with the community.)

In the last two years, however, the state has obtained waivers to the medical-assistance program to fund services provided by outside institutions, thereby reducing incentives for institutionalization. The nursing home preadmission screening and alternative care program now covers the entire state, providing home-based and community programs to people aged 65 and over who would otherwise be in nursing homes. In the first three months of this year, 2,236 people were diverted from nursing homes and provided services in their own homes at an average monthly cost of $462, compared with average nursing home costs of $1,000 to $1,300 a month.

In 1983, the Legislature also authorized a social health maintenance organization project to provide a wide array of services to delay or avert hospital and nursing home stays for elderly individuals. However, approval is being held up by the federal administration.

Legislation similar to the nursing home alternative care program also was passed last year to provide family support and community services for the mentally retarded. The services will help parents of severely retarded children care for their children at home and will fund programs to integrate retarded adults into the community, Nearly 500 people are expected to be served in the program's first year.

Legislation passed this spring has permitted exploration of similar programs for chronically ill children and physically disabled adults. All of the alternative, community-based programs separate reimbursement for housing services from care, thereby allowing more consumer and purchaser flexibility.

A further indication of the Legislature's commitment to reduce reliance on institutional care was the adoption of a moratorium on adding nursing-home and intermediate-care beds for the mentally retarded to the health-care system. The saving this biennium from this action alone is estimated at more than $26 million.

In other areas addressed by the league, efforts are under way to improve the laws and programs affecting children and youth. For example, perpetrators of child abuse—instead of the victims—may now be removed from the home. And a bill establishing foster-care review boards, passed last session, will attempt to determine if the length of time children are in foster care and group homes can be reduced.

Though desirable, these efforts bring with them complex associated issues. For instance, deinstitutionalizing state hospitals could mean employee layoffs. To minimize such effects (and to ensure coordinated deinstitutionalization), legislators, employee union representatives and advocate groups worked together last session to develop a planning process on state hospital reductions. The Legislature also authorized a study to help large community institutions for the mentally retarded reduce bed counts and convert to smaller, more home-like programs.

Deinstitutionalization challenges us in new ways. But clients will be better served if we admit the problems of monitoring and preventing abuse in noninstitutional settings and seek to resolve them creatively. Similarly, services to the home-bound must meet the need for social interaction, not just maintenance and health care.

Much work remains but the system is changing.●

ARKANSAS OLYMPIANS

● Mr. PRYOR. Mr. President, I should like to pay tribute to the many Arkansas athletes who qualified for tryouts for the U.S. Olympic team. Seven Arkansans survived the trials; five of them will represent the United States in the games this summer in Los Angeles. Two will represent other nations.

With their successes, the State of Arkansas is once again well represented. Not only are the athletes very deserving of being named to the teams, they are also persons of high character. Not all of the athletes are native Arkansans, but the people of the State certainly claim them as their own.

I am proud to say, first, that two University of Arkansas athletes made the U.S. Olympic basketball team—Alvin Robertson and Joe Kleine. Alvin was the first guard, the seventh pick overall, taken in the National Basketball Association's player draft last week. He was voted all-Southwest Conference and all-American for his stellar performance this past season. Joe a 6'11" junior center, led the Arkansas Razorbacks in scoring and rebounding this year. Both were instrumental in the Razorbacks' 25 and 7 season, which included wins over the numbers 1, 2, and 6 teams in the Nation.

Another Razorback athlete, Mike Conley, qualified for the U.S. track team by winning the triple jump. That effort was his personal best and set a University of Arkansas record. Mike is only the second athlete ever to win the NCAA's outdoor and indoor championships in the same year and he was instrumental in the Razorbacks' third consecutive Southwest Conference outdoor championship.

Al Joyner of Arkansas State University placed second behind Conley in the triple jump also made the team. Northeast Arkansas and the entire State are proud of him.

Earl Bell, a native of Jonesboro and a former world record holder in the pole vault, will participate in his second Olympics. Earl was the first American ever to clear 19 feet outdoors, and set an American record in the Olympic trials, only to be broken 12 days later.

Arkansas is also proud of the two University of Arkansas athletes who will compete for their native countries. What America lost became Ireland's and Canada's gains as Frank O'Mara and Peter Ward qualified for the teams of those nations. Frank, who led the Razorback cross country team to its 10th straight conference title, will compete in the 1,500-meter run. Pete, who has signed a letter-of-intent with the university, will swim for the Canadians.

These athletes have worked long and hard for this moment. The State of Arkansas is especially proud and will cheer for them in victory, feel for them in defeat, and certainly share the athletes' excitement for the games.●

STEPHEN J. BOLLINGER

● Mr. HUDDLESTON. Mr. President, we were all saddened to learn of the death on June 18 of Stephen J. Bollinger, Assistant Secretary for Community Planning and Development in the Department of Housing and Urban Development.

Steve was born in Louisville, KY. He served as a legislative assistant to Representative GENE SNYDER of Kentucky. He was at one time president of WNOP radio in Newport, KY. Thus, although he considered Ohio as home, he certainly had his Kentucky connections.

We in Kentucky are proud of these connections and proud of Steve. He was a fine, dedicated public servant, a man who worked well with all people, a person who could find compromise when it had eluded others, and who could do so with fairness and a sense of humor. He had qualities which government needs and yet often lacks. I want to express my sympathy to his wife, his children, and his parents.●

IGOR OGURTSOV

● Mr. RIEGLE. Mr. President, I am gratified that the Senate has unanimously voted its approval of Senate Resolution 294, expressing the sense of the Senate that the renowned Soviet dissident, Igor Ogurtsov, should be released from internal exile in the Soviet Union, and that he and his parents be granted permission to emigrate to the West.

Mr. President, 40 Senators joined me in cosponsoring this legislation, and the entire Senate, by its action, has shown its solidarity with the cause of Igor Ogurtsov and the thousands of others like him, who continue to suffer under the Soviet Government's policy of denying its citizens their basic human rights.

A scholar of philosophy, political science, history and economics, Igor Ogurtsov is one of the finest intellectuals to emerge from the Soviet dissident movement. Since being convicted of treason in 1967 because of his role in establishing the religious-political organization known as the All-Russian Social Christian Alliance for the Liberation of the People [VSKhSON], Ogurtsov has been imprisoned and is currently serving the remaining years of his 20-year sentence in exile in Komi Assar.

According to the U.S. State Department's 1983 "Report on Human Rights Practices," the estimated 10,000 dissidents in the Soviet Union are subjected to treatment not unlike that inflicted upon Igor Ogurtsov. According to the State Department's report:

Soviet performance in the realm of human rights fails to meet accepted international standards. The regime's common response to efforts to exercise freedom of expression is to incarcerate those concerned in prison or labor camps. Mistreatment of political prisoners has a long history and continued in 1983. Inadequate food, clothing and shelter, heavy manual labor, unsatisfactory medical care, isolation, extended interrogation, and threats against prisoners' families are characteristic abuses. Many prisoners are denied the right to correspond with their families or to receive family visits. Some are confined to special psychiatric hospitals and to psychiatric wards in general hospitals where they are often subjected to cruel and degrading treatments and administered doses of powerful and painful drugs. The regime also continues to exile

prisoners to remote areas of the Soviet Union.

Dissidents who have made their way out of the Soviet Union to the West report that one of the most critical contributions those of us here can make to the efforts of those fighting for their freedom, is to speak out publicly on their behalf. It is precisely that effort to which the Russian-American community in my own State of Michigan, and all around this country, has committed itself.

The long and painful exile being endured by Igor Ogurtsov is a matter of deep concern to the Russian-American community, and members of the community have worked tirelessly to raise public awareness of his plight. Passage of this resolution by the Senate is a victory for all those who have invested a great deal of time and energy to securing strong Senate support for this measure. To all the members of the Russian-American community, and most particularly to Mrs. Vera Politis, chairwoman of the National Human Rights Committee of the Congress of Russian-Americans, I express my own personal gratitute for the commitment you have shown to this important effort.

Mr. President, since Igor Ogurtsov's imprisonment in 1967, a number of international organizations and prominent individuals, including Andrei Sakharov and Alexandr Solzhenitsyn, have campaigned for his release. It is my sincere hope that the resolution just passed by the Senate, will be met with a more positive response from the Soviet authorities than the appeals which have preceded it.

There can be no justification for the continued persecution of Igor Ogurtsov. Until he is released, the Soviet Government's professed commitment to honoring the human rights of its citizens is nothing more than a hollow promise.●

ARNOLD SIKES—CONGRESSIONAL SENIOR CITIZEN INTERN

● Mr. PRYOR. Mr. President, I should like to take a moment to recognize the importance of the Congressional Senior Citizen Intern Program and to pay tribute to an Arkansan who has served his State well for more than 23 years, and who, most recently, served as a senior intern in my office.

The program has made great strides since its inception in 1973; 275 citizens participated this year as opposed to only 9 the first year. Interest continues to grow.

The program's importance is twofold: These senior citizens often take active roles in their communities and by taking a part in these week-long programs, the citizen's and the community's knowledge of our Government is enhanced further. Also Members of Congress benefits through their service and ties with the elderly community are strengthened.

Arnold Sikes of North Little Rock, AR, was one of those 275 senior citizens who came to Washington, DC, to learn about the legislative process at the Federal level. Mr. Sikes retired in 1980 as North Little Rock's postmaster. But true public servants never really retire, and Mr. Sikes is no exception.

His distinguished career in public service began as a school teacher and superintendent in his hometown of Scranton, AR. He served in the Navy in World War II, and upon his return to Arkansas, he was elected tax assessor of Logan County in 1945. He served two terms, both without opposition in his election bids.

Mr. Sikes was selected in 1949 as the district revenue supervisor for 17 counties in northwestern Arkansas during the administration of Gov. Sid McMath. He was also appointed to a 6-year term on the State workers compensation commission.

Following the election of 1954, Mr. Sikes was named by Gov. Orval Faubus as his executive secretary. Nine years later, he was named postmaster for North Little Rock, a position he held for 18 years until his recent retirement.

He is an active member of his church, the Rotary Club, the Little Rock Water Commission, and the Metropolitan Planning Board for the Greater Little Rock area. He is a volunteer with the North Little Rock Boys Club, a local chairman of the Arkansas Association of Retired Persons, and never misses University of Arkansas Razorback football and basketball games.

The State of Arkansas is fortunate to have residents such as Mr. Sikes. This Senator is fortunate to have such a constituent, and I am proud that he agreed to represent my office in the 1984 Senior Citizen Intern Program.●

THE EDUCATION FOR ECONOMIC SECURITY ACT

● Mr. CHAFEE. Mr. President, as a cosponsor of the Education for Economic Security Act, I am extremely pleased that the Senate has approved this timely legislation.

Improving the ability of our Nation to compete in the rapidly changing field of high technology is one of the most critical challenges confronting us today. It is absolutely essential that our young people receive a strong foundation in mathematics, science, and technology.

While the demand for a scientific and engineering work force has risen dramatically, there is considerable evidence that the capacity of our education system to meet this demand is falling. A number of respected studies have revealed an alarming decline in the number of qualified math and science instructors in our schools. Not only are teachers in short supply, but many require retraining to improve their skills in this critical field.

This legislation provides assistance to enable the National Science Foundation to award grants to teacher institutes in colleges and universities, to enhance the training of qualified math and science instructors. In addition, support is provided to the States for the training and retraining of instructors to meet the critical need for improved teacher proficiency in these areas.

I am particularly pleased that the bill encourages the establishment of partnerships between educational institutions and business and industry. Industry can play an important role in providing technical expertise in upgrading science education.

Mr. President, passage of this legislation is long overdue. It is also gratifying that several extremely worthwhile proposals have been approved as amendments to the math-science bill.

These include establishment of a program within the Environmental Protection Agency to assist schools in their efforts to resolve the problem of hazardous asbestos. In addition, the bill includes legislation which I cosponsored to provide a modest program of incentive grants to schools implementing plans for improvement in a variety of areas. I am also pleased that the bill includes assistance for schools in promoting desegregation through the establishment of magnet programs.

It is my strong hope that a conference can be held and the bill signed into law at the earliest possible time.●

INDUSTRIAL DEVELOPMENT BONDS

● Mr. LAUTENBERG. Mr. President, this week the Senate approved the conference report on the so-called deficit reduction package. Included in the conference report were provisions to limit the use of industrial development bonds which I fear may be injurious to the IDB program in New Jersey.

During Senate consideration of the debt reduction package and its tax provisions, I strongly opposed efforts to inappropriately curtail the IDB program. In particular, I opposed efforts to place arbitrary caps on the ability of States to use IDB's to promote economic growth. The Senate did not go along with statewide caps on IDB's in its tax bill. Once the bill went to the

House—Senate conference, to resolve differences between the House of Representatives and Senate bills, I joined with many of my colleagues in urging the conferees on the tax bill to reject State-by-State caps on IDB programs.

Unfortunately, Mr. President, when the deficit reduction bill returned from the House—Senate conference, it contained the State-by-State cap on IDB programs which the Senate had removed from the bill. The conference report is a first, if modest step, toward reducing our deficits. It would have been a disastrous signal to the financial markets, to vote this package down. The provisions in the conference report dealing with changes in health programs, such as medicare, and with civil service retirement programs and budget allocations between defense and nondefense programs were also improvements over the Senate bill, which I had opposed. For these reasons, I voted for the deficit reduction conference report.

However, Mr. President, I do want to take this opportunity to express my dissatisfaction with the restrictions the conference report places on the IDB program. I do not condone the inappropriate use of IDB's or any other financial tool. But, in my State, we have adopted very strict regulations to govern the use of IDB's and prevent abuse of these tax exempt financing instruments. IDB's have made a significant contribution to economic development in New Jersey. Bonding authority under the IDB program has not wasted tax dollars, but enhanced tax revenues through economic development and job creation.

Mr. President, in this instance, I do not support the action of the conferees on the tax bill. If, in fact, the new limits placed on the State IDB program prove to be disadvantageous, as I fear they will, I hope the Senate Finance Committee and House Ways and Means Committee will act promptly to review their recommendations.●

WORDS OUT OF PLACE

● Mr. PRYOR. Mr. President, last night the Senate took the unusual but proper action of condemning the series of anti-Semitic statements by Louis Farrakhan.

Mr. Farrakhan surfaced earlier this year when he threatened the life of a Washington Post reporter who had reported some embarrassing remarks by Jesse Jackson. I had hoped that if we just ignored Mr. Farrakhan he would fade away after a while, but he has been in the public eye more than ever lately. I have seen him interviewed on the morning news, the evening news, and in journals of all description. Frankly, I do not understand why the press has chosen to spotlight his distorted and perverse pronouncements. He is not a leader of any significant group of people; he does not offer any fresh ideas or analysis; he is all sensation and no substance.

Worse, his message—if there is a message—is one of blind, unthinking hatred. That hatred is directed, for some reason, against one group—the Jews. He is not the first bigot to attack the Jewish people and the Jewish state, but he is currently the most visible. That visibility and the possibility that he might have some influence over some listeners demand a response from right-thinking people.

Most recently, Farrakhan has characterized Israel as an outlaw state which will never have peace "because there can be no peace structured on injustice, lying and deceit and using the name of God to shield your dirty religion under His holy and righteous name."

This denunciation of Israel is not based on fact or reason. What concerns me even more, however, is the inflammatory rhetoric directed against a valuable group of American citizens. For American Jews the words of Louis Farrakhan must carry echoes of the programs of Eastern Europe and the genocide of Hitler, whom Farrakhan professes to admire.

In this country and in this age Farrakhan's words are—to put it mildly—out of place. I am glad that Jesse Jackson has finally rejected his follower's anti-Semitic preachings and hope that the unanimous vote of the Senate last night reflects the sentiment of the people of this country.●

Mr. DOLE. 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. GORTON. 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 Senator from Washington is recognized.

ORDER OF BUSINESS

Mr. GORTON. Mr. President, I wish to ask the distinguished Senator from Kansas, who is managing the floor, a question, if he will yield.

Mr. DOLE. I am happy to yield to the Senator from Washington.

Mr. GORTON. I ask the Senator from Kansas whether or not the Senate has completed all of the business which it will undertake except the adjournment resolution.

Mr. DOLE. I say to the Senator that on the advice and direction of the distinguished majority leader, Senator BAKER, we have concluded all we intend to deal with except the adjournment resolution which we are awaiting the House of Representatives to send over.

But Senator BAKER indicated for me to take care of the matters before me and not to entertain other matters.

So the Senator is correct.

Mr. GORTON. I thank the Senator from Kansas, and 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. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PROGRAM

Mr. DOLE. Mr. President, under the provisions of H. Con. Res. 334, the Senate will reconvene on Monday, July 23, 1984, at 12 noon. Following the recognition of the two leaders under the standing order, there will be a special order for Senator PROXMIRE not to exceed 15 minutes.

Following the special order, there will be a period for the transaction of routine morning business not to exceed 1 hour with statements therein limited to 10 minutes each.

Following the conclusion of routine morning business, it will be the intention of the leadership to turn to any appropriations bills that are available on the calendar.

CONDITIONAL ADJOURNMENT OF THE TWO HOUSES OF CONGRESS

Mr. DOLE. Mr. President, I call up the concurrent resolution.

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

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 334) providing for a conditional adjournment of the House from June 29, 1984, until July 23, 1984, and a conditional adjournment of the Senate from June 29 or 30, 1984 until July 23, 1984.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The concurrent resolution (H. Con. Res. 334) was considered and agreed to.

The concurrent resolution reads as follows:

H. CON. RES. 334

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on Friday, June 29, 1984,

and that when the Senate adjourns on Friday, June 29, 1984, or on Saturday, June 30, 1984, pursuant to a motion made by the Majority Leader in accordance with this resolution, they stand adjourned until 12 o'clock meridian on Monday, July 23, 1984, or until 12 o'clock meridian on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

ADJOURNMENT UNTIL MONDAY, JULY 23, 1984

Mr. DOLE. Mr. President, I move that the Senate now stand in adjournment in accordance with the provisions of H. Con. Res. 334.

The motion was agreed to, and at 7:09 p.m. the Senate adjourned until Monday, July 23, 1984, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate June 29, 1984:

DEPARTMENT OF STATE

Alan Wood Lukens, of Pennsylvania, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the People's Republic of the Congo.

IN THE AIR FORCE

The following-named officer for appointment to the grade of general on the retired list pursuant to the provisions of title 10, United States Code, section 1370:

Gen. Wilbur L. Creech, [redacted], U.S. Air Force.

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

To be general

Gen. Jerome F. O'Malley, [redacted], U.S. Air Force.

IN THE AIR FORCE

The following persons for Reserve of the Air Force appointment, in grade indicated, under the provisions of section 593, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated.

MEDICAL CORPS

To be lieutenant colonel

Cook, Charles E., [redacted]
Culbertson, Clayton E., [redacted]
Cunningham, Paul J., [redacted]
Godell, Chester J., [redacted]
Kirby, Charles G., [redacted]
Lewis, Elbert H., [redacted]
O'Brien, Kenneth J., [redacted]
Pangalangan, August L., [redacted]
Rad, Shamsedian F., [redacted]
Rainone, Frank A., [redacted]
Swedarsky, Robert H., [redacted]

The following persons for Reserve of the Air Force appointment, in grade indicated, under the provisions of section 593, title 10, United States Code.

LINE

To be lieutenant colonel

Miller, James W., II, [redacted]
Ozuna, George (NMI), Jr., [redacted]

The following officer for Reserve of the Air Force (non-EAD) promotion in the grade indicated, under the provisions of section 8376, title 10, United States Code.

MEDICAL CORPS

To be lieutenant colonel

Berezoski, Robert N., [redacted]

IN THE ARMY

The following-named officers for promotion in the Reserve of the Army of the United States, under the provisions of title 10, United States Code, sections 3366 and 3367:

ARMY PROMOTION LIST

To be colonel

Gaines, John W., [redacted]
MacVay, James W., [redacted]
Norris., Dwight E., [redacted]
Schumacher., James R., [redacted]

CHAPLAIN

To be colonel

Shirley, William, [redacted]

ARMY PROMOTION LIST

To be lieutenant colonel

Albert, Harry, [redacted]
Barnette, Roy E., [redacted]
Battles, James, [redacted]
Beal, William J., [redacted]
Betts, Charlie D., [redacted]
Childress, Robert G., [redacted]
Conners, Ralph J., [redacted]
Dacre, Vincent J., [redacted]
Davila, Manuel, Jr., [redacted]
Deas, Thomas A., [redacted]
Doty, Millard L., [redacted]
Dunkle, Stephen W., [redacted]
Eichelberger, Merle, [redacted]
Elek, Steve J., [redacted]
Funk, Donald J., [redacted]
Ganzel, Terry J., [redacted]
Gates, Barrett L., [redacted]
Gore, Billy L., [redacted]
Graczyk, Richard R., [redacted]
Greene, Bobby F., [redacted]
Hodge, David E., [redacted]
Laird, John D., [redacted]
Lightcap, Ronald W., [redacted]
Lybrand, Charles W., [redacted]
Mason, Monty L., [redacted]
McMahon, William J., [redacted]
Michal, Neal J., [redacted]
Millendorf, David B., [redacted]
Mitchell, James W., [redacted]
Nelson, Ronald R., [redacted]
Nishimoto, Delbert, [redacted]
Ott, Kenneth L., [redacted]
Raskin, Edward S., [redacted]
Remsberg, Robert L., [redacted]
Robbins, David A., [redacted]
Rodier, Edward A., [redacted]
Roselle, Gordon M., [redacted]
Rozek, Thomas M., [redacted]
Ryan, Mark V., [redacted]
Sarra, Michael H., [redacted]
Schroll, Clemens L., [redacted]
Smyth, William A., [redacted]
Tate, Van B., [redacted]

The following-named officers for promotion in the Reserve of the Army of the United States, under the provisions of title 10, United States Code, section 3383:

ARMY PROMOTION LIST

To be colonel

Allen, John M., [redacted]
Anthony, William S., [redacted]
Doerrer, Eric A., [redacted]
Fager, Leland E., [redacted]
Fork, Allan C., [redacted]
Gaudet, Donald D., [redacted]
Kam, Grover Y.M., [redacted]
Kane, John G., [redacted]
Lester, Horace B., [redacted]
McAllister, John E., [redacted]
McClone, Robert J., [redacted]
McDonald, George T., [redacted]
Moore, Harry B., [redacted]

CHAPLAIN

To be colonel

Howells, Robert D., [redacted]
Lathrop, John C., [redacted]
Peterson, Frederic, [redacted]

VETERINARY CORPS

To be colonel

Bailey, Everett M., [redacted]

ARMY PROMOTION LIST

To be lieutenant colonel

Ackerman, Gary C., [redacted]
Arnold, Calvin G., [redacted]
Baldewicz, Michael, [redacted]
Barfield, Grover C., [redacted]
Blanchard, Norman L., [redacted]
Bost, William M., Jr., [redacted]
Bower, George V., [redacted]
Brake, Joseph A., [redacted]
Brannon, William R., [redacted]
Brown, James E., [redacted]
Butler, Johnny F., [redacted]
Casanova, Joseph G, [redacted]
Chapman, Edsel, V., [redacted]
Clarkson, Tommy G., [redacted]
Clubine, Delber E., [redacted]
Corcoran, James W., [redacted]
Deason, Edward H., [redacted]
DeHayes, Louis J., [redacted]
Droll, Gary J., [redacted]
Emerson, Charles D., [redacted]
Folfas, Paul A., [redacted]
Fromholtz, George A., [redacted]
Gaggini, Dennis A., [redacted]
Gates, Garrett L., [redacted]
Griffith, Michael L., [redacted]
Hales, Joe R., [redacted]
Hammett, William M., [redacted]
Hurtado, Arthur J., [redacted]
Hutchison, Robert L., [redacted]
Ito, Ronald T., [redacted]
Izzo, Richard J., [redacted]
Kehe, William L., [redacted]
Kent, Patrick D., [redacted]
Kimura, James S., [redacted]
Kocherhans, Donald, [redacted]
Kriefeldt, David R., [redacted]
Lamont, James M., [redacted]
Lane, Lawrence G., [redacted]
Larson, James C., [redacted]
Leary, Joseph P., [redacted]
Mason, Steven A., [redacted]
Maug, John V., [redacted]
McGee Calvin L., [redacted]
McInnis, Donald A., [redacted]
McMahan, Phillip E., [redacted]
Murry, Otto IV, [redacted]

Nelson, James W., [redacted]
Norene, Luther N., [redacted]
Oates, Daniel L., [redacted]
Owens, Thomas C., [redacted]
Pangborn, Douglas L., [redacted]
Pepper, Scott A., [redacted]
Pitillo, James, [redacted]
Pitts, Curtis D., [redacted]
Rambin, Meredith L., [redacted]
Rayburn, Ralph, [redacted]
Ridgeway, David L., [redacted]
Rytel, Thaddeus S., [redacted]
Sullivan, William H., [redacted]
Sullivan, Stonnie S., [redacted]
Tweedel, Ronald W., [redacted]
Wall, Charles I., [redacted]
Weaver, Allison L., [redacted]
Winslow, Michael J., [redacted]
Wolters, Max E., [redacted]
Wouczyna, James M., [redacted]
Wright, Thomas C., [redacted]
Zabel, William H., [redacted]
Zito, Alvin H., [redacted]

CHAPLAIN

To be lieutenant colonel

Hodson, Don F., [redacted]
Hyde, Frank M., [redacted]
Priest, John T., [redacted]

MEDICAL CORPS

To be lieutenant colonel

Merkel, Carl D., [redacted]

MEDICAL SERVICE CORPS

To be lieutenant colonel

Baker, Howard G., Jr., [redacted]
Cross, Ralph E., Jr., [redacted]
Hayman, Robert H., [redacted]
Lemoine, Albert N., [redacted]
Mason, John T., [redacted]
Nickelson, Ranzell, [redacted]

The following-named officers for appointment in the Reserve of the Army of the United States, under the provisions of title 10, United States Code, section 3353:

MEDICAL CORPS

To be colonel

Alfano, Guy S., [redacted]
Grauman, David W., [redacted]

MEDICAL CORPS

To be lieutenant colonel

Ahman, Thomas, [redacted]
Buchanan, Charles S., [redacted]
Crary, Paul D., [redacted]
Delos Santos, Manuel, [redacted]
Desai, Barin G., [redacted]
Fochtman, John, [redacted]
Gonzales, Pedro L., [redacted]
Henelt, Edmond, [redacted]
Imperial, Valentino, [redacted]
Jonas, Jaroslav G., [redacted]
Kaldor, George J., [redacted]
Killeffer, F.A., [redacted]
Litin, Robert B., [redacted]
Loew, Dolores A.Y., [redacted]
Moskowitz, Richard, [redacted]
Rhea, Ira E., [redacted]
Rosholm, John, [redacted]
Ryder, Geoffrey C., [redacted]
Somerville, Robert, [redacted]
Wood, Thomas R., [redacted]

The following-named Army National Guard officers for promotion in the Reserve of the Army of the United States, under the provisions of title 10, United States Code, section 3385:

ARMY PROMOTION LIST

To be colonel

Aepli, Emmett, C., [redacted]
Burchard, Lewis E., [redacted]
Davis, Derwin H., [redacted]
Dawson, George A., [redacted]
Derosier, Roy W., [redacted]
Devoe, Robert B., [redacted]
Ellison, James B., [redacted]
Gardner, Robert E., [redacted]
Herrick, Robert T., [redacted]
Hiner, Leroy H., [redacted]
Hinson, Elton F., [redacted]
Horton, Donald R., [redacted]
Husby, Paul W., [redacted]
Jackson, Robert L., [redacted]
Kifer, Allen L., [redacted]
Mader, Francis J., [redacted]
Maldonado-Albelo, E., [redacted]
Martin, John E., [redacted]
Mishoe, Sam B., [redacted]
Montgomery, J. R., [redacted]
Noles, Billy J., [redacted]
Perenick, Charles H., [redacted]
Taylor, Arnold H., [redacted]
Tkaczyk, Bernard R., [redacted]
Waynick, Andrew J., [redacted]
Whitaker, Charles W., [redacted]
Womack, James K., [redacted]

MEDICAL CORPS

To be colonel

Gurkow, Helen J., [redacted]
Hoberg, Glenn, [redacted]
Peacock, Russell B., [redacted]

MEDICAL SERVICE CORPS

To be colonel

Stults, Theodore M., [redacted]

ARMY PROMOTION LIST

To be lieutenant colonel

Adee, Bobby D., [redacted]
Arledge, Elzey J., [redacted]
Baumann, Roger M., [redacted]
Brass, William E., [redacted]
Bricker, William J., [redacted]
Brill, Roger L., [redacted]
Brinkley, Lehman M., [redacted]
Burnes, James E., [redacted]
Byron, David J., [redacted]
Carroll, Daniel F., [redacted]
Carter, Vandiver H., [redacted]
Chapman, James R., [redacted]
Clauser, George C., [redacted]
Crew, Daniel L., [redacted]
Dean, Jeffrey W., [redacted]
Deaner, Clifford M., [redacted]
Demars, Steven E., [redacted]
Dewitt, Wiley M., [redacted]
Dillon, Daniel J., [redacted]
Dorsey, John E., [redacted]
Dunning, William R., [redacted]
Ehnstrom, Eric L., [redacted]
Gasterland, Dirk L., [redacted]
Gates, George A., [redacted]
Gedmintas, Kestutis, [redacted]
Graffia, Joseph, [redacted]
Graham, Thomas C., [redacted]
Gray, Virgil S., [redacted]
Guarneri, Robert J., [redacted]
Hargett, Gus L., [redacted]
Haynie, James R., [redacted]
Hoffman, Norman A., [redacted]
Hopgood, Daniel K., [redacted]
Howard, James D., [redacted]
Hudson, Ronald D., [redacted]
Humphrey, Paul T., [redacted]
Iffert, Richard J., [redacted]
Kenneally, Dennis M., [redacted]
Landreneau, Bennett, [redacted]
Leiter, Jack A., [redacted]
Leonard, Lary A., [redacted]
Logsdon, Harold K., [redacted]
Majerick, Paul M., [redacted]
McCabe, John L., [redacted]
McInnis, John W., [redacted]
McPhaul, Elbert., [redacted]
Mehrmann, Harry F., [redacted]
Michelini, Henry S., [redacted]
Moore, James K., [redacted]
Nason, Condee C., [redacted]
Neihart, Kenneth J., [redacted]
Oliver, Troy B., [redacted]
Paciorek, John P., [redacted]
Pearce, Glenn A., [redacted]
Pfender, Melvin G., [redacted]
Pugh, Thomas C., [redacted]
Riley, Joseph B., [redacted]
Salka, Robert Y., [redacted]
Schick, Ronald C., [redacted]
Sperier, Edward C., [redacted]
Spirlet, Raymond J., [redacted]
Stacy, Larry D., [redacted]
Sydow, John H., [redacted]
Szczebak, Francis F., [redacted]
Trees, Darwin J., [redacted]
Valdez, Michael F., [redacted]
Vezina, Raymond A., [redacted]

ARMY NURSE CORPS

To be lieutenant colonel

Paxson, Rita M., [redacted]
Rose, Judith E., [redacted]
Tyler, Jacqueline, [redacted]

MEDICAL CORPS

To be lieutenant colonel

Berg, Robert B., [redacted]
Emmons, Galen G., [redacted]
Kearsley, Richard B., [redacted]
Worth, Dorothy J., [redacted]

MEDICAL SERVICE CORPS

To be lieutenant colonel

Gilmer, Michael S., [redacted]

IN THE NAVY

Robert K. Yoho, Naval Reserve Officers Training Corps Program candidate, to be appointed permanent ensign in the line or staff corps of the U.S. Navy, pursuant to title 10, United States Code, section 531.

The following-named Naval Reserve officers to be appointed permanent ensign in the line or staff corps of the U.S. Navy, pursuant to title 10, United States Code, section 531:

Cook, Matthew D.
Dolan, James R.
Eremic, John C.
Floyd, Gary S.
Geary, James R.
Gray, Kenneth L.
Helker, Scott T.
Lee, Richard K.
Lemmon, David A.
Leonard, Thomas
Morris, Dennis P.
Richter, Dean A.
Sykora, Charles

Richard A. Weiner, Naval Reserve officer, to be appointed permanent lieutenant in the Medical Corps of the U.S. Navy, pursuant to title 10, United States Code, section 531.

Michael J. Reiss, Navy enlisted candidate, to be appointed permanent chief warrant officer, W-2, in the U.S. Navy, pursuant to title 10, United States Code, section 555.

William R. Lomax, U.S. Navy officer, to be appointed permanent captain in the Medical Corps of the U.S. Navy, pursuant to title 10, United States Code, section 593.

Jay R. Shapiro, medical college graduate, to be appointed a permanent commander in the Medical Corps of the U.S. Navy, pursuant to title 10, United States Code, section 593.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 29, 1984:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

June Q. Koch, of Maryland, to be an Assistant Secretary of Housing and Urban Development.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

IN THE AIR FORCE

The following-named officer for appointment to the grade of general on the retired list pursuant to the provisions of title 10, United States Code, section 1370:

Gen. James P. Mullins, [redacted] U.S. Air Force.

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

To be general

Lt. Gen. Earl T. O'Loughlin, [redacted] U.S. Air Force.

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

To be lieutenant general

Maj. Gen. Marc C. Reynolds, [redacted], U.S. Air Force.