SENATE—*Wednesday, July 17, 1985*

(Legislative day of Tuesday, July 16, 1985)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Let us pray.

In a moment of silence, let us remember Senator ARMSTRONG and his family in the loss of his father yesterday.

(Moment of silence.)

Gracious God our Heavenly Father, the hearts of millions of Americans are lifted up to Thee in praise and gratitude for the extraordinary recovery of President Reagan. We thank Thee for his strength—his resilience—his incorrigible sense of humor—his indomitable spirit—his ability to unite the people and power to motivate, encourage, and stimulate hope. Be with him Lord, give him patience as the process of recovery continues to full health and vigor.

We thank Thee for Mrs. Reagan—for her poise and dignity through the difficult hours of surgery and subsequent recovery. Support her with Thy comfort and peace, and let her be reassured of the love, respect, admiration, and concern of all of us.

We thank Thee for Vice President BUSH—for his selfless response at a time of uncertainty to the responsibility of his office. We thank Thee for the encouragement and reassurance he communicated to the people during this traumatic time. Be with him and Mrs. Bush through the days of restoration for the President, and with all the partners in the White House. Use this time in the life of our Nation to draw us together as one people. To Thy glory we pray. Amen.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. DOLE. Mr. President, under the standing order, the leaders have 10 minutes each. There are special orders for Senators THURMOND and PROXMIRE, not to exceed 15 minutes each. Then there will be routine morning business not to extend beyond the hour of 12 noon, with statements limited therein to 5 minutes each.

At 12 noon, the Senate will resume consideration of the motion to proceed to S. 43, the line item veto.

It is my hope we might have a vote on that today rather than to go through a cloture vote tomorrow. That will depend on those who have strong feelings against the ultimate vote on the line item veto.

In any event, if there is no vote today, cloture will be voted on tomorrow.

Also, at some point later in the day, it is the hope of the majority leader that we could turn to a couple of calendar items which have been cleared, which could result in rollcall votes. We are looking at Calendar Order No. 212, S. 410, the Conservation Service Reform Act, and Calendar Order No. 214, S. 444, Alaska Native Claims Settlement Act. We hope to dispose of those two items today. There may be other items.

Again, I will be communicating with committee chairmen and ranking members that we are going to have a very full schedule in September and October. This may be the last resort for some of these items that hopefully can be disposed of in the next 2½ weeks before the August recess.

I would urge those who might tend to delay taking these up until a later time that there may not be any time later. Hopefully, we can dispose of a number of items in the next 2½ weeks.

I am not certain there will be a vote on the motion to proceed today, as I indicated. If there is, I assume that will come fairly late in the afternoon.

RECOGNITION OF THE MINORITY LEADER

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

RESPONSE TO THE MAJORITY LEADER

Mr. BYRD. Mr. President, I will say in response to the statement by the distinguished majority leader, I have asked the staff to quickly run the hot line on these two measures, Calendar Order No. 212 and Calendar Order No. 214, and see if there is any way we can accommodate the distinguished majority leader's desire to get action on these two measures. I will be reporting to the distinguished majority leader as soon as I gather that information.

THE REYNOLDS NOMINATION

Mr. BYRD. Mr. President, I read a story today which appeared in the Washington Post entitled "Democrats Oppose Reynolds Promotion," subtitled "Senators Warn Reagan Against Recess Appointment of Rejected Justice Department Nominee."

Mr. President, the story speaks for itself. I do not, at this point, intend to talk about Mr. Reynolds or any other nominee whose confirmation might be pending at the moment or at a later time.

I am, however, drawn to these paragraphs, which I excerpt from the Post story:

> Second, several administration officials contend that the President needs to have the Judiciary Committee "in line" before a possible Supreme Court nomination. They anticipate at least one opening soon, possibly to succeed Justice Lewis F. Powell Jr. who was recently hospitalized. "The tail is not going to wag the dog on these nominations," said a White House official. "That committee has to understand who is the President of the United States and this is not a good experience to have as we approach bigger battles.
>
> "We expect to get our people confirmed, not to expose them to shooting-gallery politics that embarrasses the President. There will not be a second Brad Reynolds . . . there shouldn't be a first."

Mr. President, I hesitate to give too much attention to this snide attack on the Judiciary Committee. I cannot, as a member of that committee, however, completely overlook this cheap talk on the part of a nameless, faceless, unidentified, anonymous White House official.

I have been a member of the Judiciary Committee for several years. When Mr. Johnson left the Senate, I took Mr. Johnson's seat on the Armed Services Committee. Later, when I graduated from American University Law School, I sought and secured appointment to the Judiciary Committee.

I have never thought that members of the Judiciary Committee or any other committee should or could be whipped into line by any administration or by any President.

Mr. President, what we see in this story is not something the President said. I do not agree with Mr. Reagan on a good many things. I did not agree with Mr. Carter on a good many things. I did not agree with Mr. Ford, Mr. Nixon, or Mr. Johnson all the time.

I do not believe that any of those former Presidents or this President

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

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would make a statement like this one, which was reported to have been made by "a White House official." Nor do I think there is a Senator on that committee who is going to be whipped into line. I try to give the same consideration to the positions and statements of other Members that I hope will be given to my own positions and statements—always the courtesy of listening, evaluating, and weighing the viewpoints of others, never questioning the integrity or the motivations of any member of the committee.

I would have to say that I have seen committees in the Congress, in the Senate, and I have seen the Senate itself respond at times on very controversial and great issues in a way that strengthened my belief in this institution. For example, I would have to say that about the Panama Canal treaties, when the opposition was so great; yet two-thirds plus one Member of this body stood against that opposition and voted for the treaties—voted for what they thought was in the best interests of this country. This is not to say that those who voted against the treaties did not display the same integrity. Of course, they did.

I should think that any administration would be embarrassed by this kind of talk that comes out of the White House.

I simply cannot envision the chairman of the Judiciary Committee, Mr. STROM THURMOND, being whipped into line on anything. I remember the late Senator Richard Russell one day when I spoke of the distinguished Senator from South Carolina [Mr. THURMOND]. Dick Russell said—I remember his words very clearly—that STROM THURMOND is "absolutely fearless." I think Dick Russell was right. I cannot imagine—if the chairman of the Judiciary Committee feels strongly on a particular matter—I do not think any administration is going to whip him into line. I say the same about others on the Judiciary.

Mr. President, this is an extraordinarily arrogant statement to be made by a White House official: "The tail is not going to wag the dog on these nominations. That committee has to understand who is the President of the United States." I do not know the identity of the official, but he, too, has to understand that there is a Constitution of the United States. I suppose he has not read it lately.

Let me just say, and I will have said enough about this impertinent so-called White House official: That is one of the most arrogant statements I have ever heard any person in the Government make. The Senate has a role in the confirmation and appointment of various high officials. It is not the tail wagging the dog, Mr. President. It is a matter of fulfilling our oaths when we take office as U.S. Senators. We subscribe to an oath, with the uplifting of a hand and a hand on the Bible, that we will support and defend the Constitution of the United States against all enemies, foreign and domestic. There are 100 Senators who have taken that oath. They all took it seriously.

This White House official does not help the administration when he makes such an asinine, arrogant, and impertinent statement as that which was reported to have been made. It will be remembered.

Mr. President, I ask unanimous consent that the news story to which I have referred be printed in the RECORD at this point.

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

DEMOCRATS OPPOSE REYNOLDS PROMOTION

(By Howard Kurtz and Juan Williams)

Senate Minority Leader Robert C. Byrd (D-W.Va.) urged President Reagan yesterday not to name William Bradford Reynolds as associate attorney general during Congress' August recess, saying such a move "would be an insult to the Senate and an affront to the Constitution."

In a letter to Reagan on behalf of all 47 Democratic senators, Byrd reminded the President that the Senate Judiciary Committee rejected Reynolds for the Justice Department's No. 3 position last month.

He said that "a recess appointment of the same individual to the same position would be inappropriate and unacceptable."

Even Republicans cautioned against a recess appointment. Senate Majority Whip Alan K. Simpson (R-Wyo.) said he did not want to see "a subterranean campaign of some kind that would be a distraction from the heavy work load we have around here."

The swift reaction appeared to let much of the steam out of efforts to revive the Reynolds nomination. However, Simpson and Majority Leader Robert J. Dole (Kan.) said they would support a "discharge petition" to force the nomination to the floor.

Dole said there was "widespread" GOP support for that idea.

Reynolds, who has headed the Justice Department's Civil Rights Division for the last four years, was voted down 10 to 8 amid criticism that he had been lax in enforcing civil rights laws and had misled the Senate Judiciary Committee in sworn testimony.

Republicans Arlen Specter (Pa.) and Charles McC. Mathias, Jr. (Md) joined the eight committee Democrats in opposition.

Byrd's letter to Reagan cited a report in yesterday's Washington Post which said that White House officials are calling senators to gauge whether they have enough support to force the Senate to vote on Reynolds' nomination.

But even if such a move is successful, key senators acknowledged, opponents would filibuster the nomination.

The Republicans are unlikely to bring the matter to the floor unless they can muster the 60 votes needed to break a filibuster—a prospect made more unlikely by yesterday's Democratic criticism.

The Post article also said that some administration officials, anticipating a filibuster, are considering giving Reynolds an unusual recess appointment that would allow him to serve through 1986 without Senate confirmation. "The president's lawyers know better than that," Byrd said. "That's not what the recess appointment is for." Sources said that if the administration promotes Reynolds in August, it would also have to give recess appointments to several top Justice Department officials because an angry Senate would refuse to approve them.

"You wouldn't even get a U.S. attorney through," a Senate official said.

Despite yesterday's negative reaction and the considerable obstacles in their path, some administration officials remain adamant in their desire to promote Reynolds.

These officials led by Attorney General Edwin Meese III, have argued strongly in the administration that the fight for the nomination should be continued.

First, they believe the Reynolds' defeat unfairly tarred the president's civil rights record.

Both White House and Justice Department officials are convinced that Reynolds was "nit-picked to death" by opponents who seized on discrepancies in his statements, rather than challenged on what they see as the heart of the administration's civil rights policy, its opposition to racial quotas.

Second, several administration officials contend that the president needs to have the Judiciary Committee "in line" before a possible Supreme Court nomination. They anticipate at least one opening soon, possibly to succeed Justice Lewis F. Powell, Jr. who was recently hospitalized. "The tail is not going to wag the dog on these nominations," said a White House official. "That committee has to understand who is the president of the United States and this is not a good experience to have as we approach bigger battles.

"We expect to get our people confirmed, not to expose them to shooting-gallery politics that embarrasses the president. There will not be a second Brad Reynolds . . . there shoudn't be a first."

Many in the administration believe they should not be in a position of defending their policies after a landslide reelection victory last November. They also want to respond to negative votes by Specter and Mathias.

"Winning starts with having your own team in line," a White House official said.

But some leading Republicans said the White House should accept defeat rather than spend more political capital on a fight it is unlikely to win.

RECOGNITION OF SENATOR THURMOND

The PRESIDING OFFICER. Under the previous order, the Senator from South Carolina [Mr. THURMOND] is recognized for not to exceed 5 minutes.

THE CLOSING OF A TEXTILE PLANT IN GREENVILLE, SC

Mr. THURMOND. Mr. President, last week, yet another clothing manufacturer in South Carolina announced that it will be forced to close its doors by the end of summer. This shutdown is just another indication of the pressing need to pass S. 680, the "Textile and Apparel Trade Enforcement Act of 1985."

Hearings on this bill began in the Senate Finance Committee's International Trade Subcommittee this week,

and I urge the Senate to take a firm stand in support of this legislation. It is crucial to the future of the textile industry, for if we fail to act now, there simply will not be an American textile industry in 10 years.

Mr. President, I ask unanimous consent that the following article taken from the State newspaper of Columbia, SC, on Thursday, July 11, 1985, be printed in the RECORD as further evidence of the urgency of passing this legislation expeditiously.

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

[From the Columbia (SC) State, July 11, 1985]

GREENVILLE PLANT TO CLOSE

The 170 employees of the Pleasantburg Manufacturing Co. plant in Greenville will lose their jobs by the end of August when the apparel maker closes the plant down, the company has announced.

Robert Frederick, vice president of manufacturing for S&S Manufacturing of Spartanburg, the parent firm, said Tuesday the company hopes to place a "pretty good percentage" of the employees in jobs at other Greenville sewing companies and at the other S&S facilities.

Some employees will be transferred to the Spartanburg plant or other facilities owned by S&S, depending on where they live, he said.

S&S Manufacturing is owned by the New York-based Land 'n' Sea Corp., which also is the parent company of Bobbie Dan Manufacturing Co. in Anderson, Richland Sportswear in Westminster and Williamston Manufacturing Co. in Williamston.

Frederick said employees were told Monday of the planned shutdown, which he attributed to "rising imports and other competition."

The plant, which manufactures ladies' blouses, has been operating for about 15 years, Frederick said. Operations will be phased out beginning in early August, and the plant will shut down by the end of the month, he said.

Pleasantburg Manufacturing in November announced it would lay off about 60 employees, citing "dramatic increases in foreign imports."

S&S has put the plant up for sale, and Frederick said it would be "in the best interest of the employees and the best interest of the company" if it were bought by another sewing company.

If the plant is bought by a sewing company, the rest of the employees will be available to work for that company, he said.

Pleasantburg Manufacturing will contact other sewing companies in the Greenville area, including direct and indirect competitors, about placing some employees, Frederick said.

Mr. THURMOND. Mr. President, this import situation has gotten completely out of hand. The letter I had from the President when he was running in 1980, and 2 years later, confirmed that he was going to work to keep the growth of imports in line with the domestic market growth. The people working under the President have simply not kept his commitment. The growth of imports in 1984 was about 33 percent, whereas the domestic growth was 1 to 2 percent. I sincerely hope that the administration will correct the situation, as more and more textile and apparel plants will close unless prompt action is taken.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin [Mr. PROXMIRE] is recognized for not to exceed 15 minutes.

Mr. PROXMIRE. Thank you, Mr. President. I should say Mr. Chairman and Mr. President, since he is presently both.

THE BEST ARTICLE EVER ON HOW TO REDUCE RISK OF NUCLEAR WAR

Mr. PROXMIRE. Mr. President, from time to time I have recommended to my fellow Senators that they read various articles on arms control or reducing the risk of nuclear war. For several years this Senator has read everything he can get his hands on regarding this most important subject of our time. What could be more vital than stopping nuclear war? If we fail to stop nuclear war, nothing else matters. Mr. President, if this Senator could select one single article as an absolute must for every Member of the Congress, for the top officials in the State and Defense Departments, for the President of the United States, and for anyone else who has any voice in determining American policy on nuclear arms control, I would unhesitatingly recommend the article that appears in the July 1985 issue of the Atlantic Monthly. That article was jointly written by former Defense Secretary Robert McNamara and Hans Bethe. Bethe is a Nobel prize winning physicist. He is known as the father of the hydrogen bomb.

McNamara and Bethe propose a drastic change in our arms control objectives and in our strategic military policy. Suprisingly, they would start at Geneva where the arms talks appear to be dead in the water. They contend the United States can press the President's expressed objective to reach an agreement that will persuade both sides to drastically reduce their nuclear arsenals, while at the same time pursuing a ballistic missile defense research program, which of course is precisely what the President has called for. The key to securing a Russian agreement, argue McNamara and Bethe, is to negotiate a strengthening of the Antiballistic Missile Treaty.

How can a strengthening of the ABM Treaty be reconciled with continued star wars research? After all, isn't the whole purpose of the star wars research to provide the technological basis for building an antiballistic missile system that would be expressly denied by the present ABM Treaty, let alone a strengthened ABM Treaty? McNamara and Bethe find their answer in the two criteria necessary for star wars to move ahead proposed by Paul Nitze, the administration's senior adviser on arms control. In a speech last February, Nitze proposed that the star wars defense must work even in the face of direct attack on itself. It must also be cheaper to augment the defense than the offense. Obviously, these criteria cannot be met today. So as Nitze himself has put it, during an initial period of "at least 10 years" no star wars defenses would be deployed. These 10 years or more offer a vital window of opportunity. The authors of the articles, however, call the window of opportunity fleeting. It is. Here's why: the treaty specifies that not simply the deployment but even the development of strategic defenses would provoke an offensive buildup. The treaty forbids some radars. It restricts the testing of components of an ABM. The Soviets appear to be in violation of the radar restriction. They certainly will be if and when the radar is completed. On the other hand, the United States will violate the treaty if it meets the schedule announced by General Abrahamson, the director of SDI, who has indicated that the end of the decade or the early 1990's would be the time the tests forbidden by the ABM Treaty would come.

So the United States should negotiate a quid pro quo: No tests by the United States, no completion of the forbidden radar by the Soviets. In addition, the authors call for a verifiable ban on the testing of antisatellite weapons as another strengthening of the ABM Treaty. With the ABM Treaty strengthened, a solid, logical basis for deep cuts in offensive missiles would be established. Both sides could be assured that the reductions in offensive missiles would not compromise their nuclear weapon deterrence. The deep cuts in warheads would reduce the fear of first strikes on both sides. The authors propose a 50-percent mutual cut to begin with, followed by an eventual reduction of 90 percent. The 90-percent reduction would also, of course, have to include corresponding reductions in the nuclear arsenals of the other nuclear powers.

Again and again, McNamara and Bethe stress the full implications of President Reagan's assertion that "a nuclear war cannot be won and must never be fought." Unfortunately, until this moment, both superpowers have followed policies designed to achieve the impossible: fight and win a nuclear war. For the first time in history, such an objective is impossible. So what? So our mission must be to do everything we can to prevent a nuclear war. This is an extraordinarily hard principle for

us to accept. It contradicts everything we have learned from history. Why is the present situation so different from any military dilemma we have ever faced? Because, as McNamara and Bethe write:

The superpowers arsenals hold some 50,000 nuclear warheads. Each on the average is far more destructive than the bomb that obliterated Hiroshima. Just one of our 36 strategic submarines has more firepower than man has shot against man throughout history.

Think of that, Mr. President. And what is current U.S. policy? Get this. Current U.S. defense policy calls for nuclear forces sufficient to support a "controlled and protracted" nuclear war that "could eliminate the Soviet leadership and that would permit the United States to prevail."

Mr. President, that policy makes absolutely no sense in this nuclear world. McNamara and Bethe conclude by stressing these themes:

First, each side must recognize that neither will permit the other to achieve a meaningful superiority. Again, this is a very hard policy for us to accept. We must accept the fact that the Soviets will not and cannot accept U.S. superiority or that our country could prevail.

Second, we must resist the forces pushing each side in the direction of a first strike.

Third, the U.S. technological edge should be used to enhance our security by improving our verification capability.

Fourth, we should strive for a bargain: Soviet acceptance of more intrusive verification, in return for American constraint on the application of its technological innovation.

Mr. President, once again I repeat what I said at the outset of this speech, that I hope and pray that the President of the United States, our top officials in the Defense and State Departments and Members of the Congress will carefully read this article by McNamara and Bethe. It is not saying too much to say that a full understanding of this article could go a long, long way towards saving the world.

I ask unanimous consent that the article "Reducing the Risk of Nuclear War" by McNamara and Bethe from the July issue of the Atlantic Monthly be printed in the RECORD at this point.

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

[From the Atlantic Monthly, July 1985]

REDUCING THE RISK OF NUCLEAR WAR

(By Robert S. McNamara and Hans A. Bethe)

Throughout history war has been the final arbiter of disputes and a finite disaster. Unbounded calamities—the apocalypse, Armageddon—were left for mythology. Forty years ago Hiroshima put an end to that distinction. This insight was expressed with exceptional clarity by President Reagan when he said that "a nuclear war cannot be won and must never be fought." And yet both superpowers' policies rely on thinking that is mired in the pre-nuclear past. Each strives ceaselessly to improve its arsenal and lays plans for fighting the war that must never be fought.

Although the risk of war between East and West seems low at present, should a military confrontation occur the chance that it would escalate to all-out nuclear war is very, very high. That danger will haunt us as long as we persist on our present course. The combination of these factors—a high probability that war would destroy our society, and an indefinitely long exposure to that danger—produces a risk that is unacceptable. There is a widespread intuitive awareness of this peril.

When the President proposes a "Star Wars" space defense that would make nuclear weapons "impotent and obsolete," there is, therefore, an understandable outpouring of public support, even though most technical experts, inside the government and out, consider his proposal to be a nostalgic dream without a descernible connection to the realities of nuclear physics.

Now, then, are we to escape our predicament? By heeding Einstein's admonition that "the unleashed power of the atom has changed everything save our modes of thinking." If we clearly face the implications of nuclear weapons, we will see the path through the hazards that science has forever unveiled. The path is not easy, but if it is followed with persistence, the risk of nuclear war will constantly recede and confidence that we are masters of our fate will be rebuilt.

The first large step toward our goal can be taken at the Geneva arms talks. It should be possible to pursue a ballistic-missile-defense research program, as desired by the President, and at the same time to negotiate a strengthening of the Anti-Ballistic-Missile Treaty. By that means the U.S. and Soviet positions on space could be reconciled and the way thereby opened to shape cuts in offensive forces shaped in a manner that would lead to a much safer world in the twenty-first century.

In developing this thesis we will discuss:

The situation today: a world with tens of thousands of nuclear weapons, with both sides pursuing nuclear war-fighting strategies, and with each fearing that the other is seeking to achieve a first-strike capability.

The President's recognition of the danger in the present situation; his proposal to substitute a defensive strategy, based on a perfect defense, that would permit the destruction of all nuclear weapons; and the reasons why virtually all the experts consider such a goal unattainable.

Alternative "partial" defensive systems, which would be added to, not substituted for, offensive nuclear weapons, and which would almost certainly lead to a rapid escalation of the arms race and its extension into space.

A totally different strategy, which would build on the ABM Treaty, move away from the nuclear-war-fighting mania, permit us to enter the twenty-first century with radically smaller nuclear forces (perhaps no more than five percent of the size of present inventories), and dramatically reduce the risk that our civilization will be destroyed by a nuclear conflagration.

The way in which the Geneva negotiations can be structured to lay a foundation for a more secure tomorrow.

THE SITUATION TODAY: NUCLEAR FORCES THAT REFLECT WAR-FIGHTING DOCTRINES

The superpowers' arsenals hold some 50,000 nuclear warheads. Each, on average, is far more destructive than the bomb that obliterated Hiroshima. Just one of our thirty-six strategic submarines has more firepower than man has shot against man throughout history. Thousands of nuclear weapons are ready for immediate use against targets close to hand on half a globe away, but just a few hundred warheads could utterly demolish the largest nation.

To deter war, each side seeks to persuade the other in itself, that it is prepared to wage a nuclear war that won't have the military objectives of a bygone age. What is known of Soviet nuclear-war plans is open to interpretation, but these plans appear to rely on tactics derived from Russia's pre-nuclear military experience. Current U.S. defense policy calls for nuclear forces that are sufficient to support a "controlled and protracted" nuclear war that could eliminate the Soviet leadership and that would even permit the United States to "prevail."

Nuclear-war-fighting notions lead to enormous target lists and huge forces. Our 11,000 strategic warheads are directed against some 5,000 targets. And NATO's war plans are based on early first use of some 6,000 tactical nuclear weapons in response to a Soviet conventional attack. Both NATO and the Warsaw Pact countries routinely train their forces for nuclear operations. War-fighting doctrines create a desire for increasingly sophisticated nuclear weapons which technology always promises to satisfy but never does. Today both sides are committed to programs that will threaten a growing portion of the adversary's most vital military assets with increasingly swift destruction.

These armories and war plans are more than macabre symbols for bolstering self-confidence. Both Moscow and Washington presume that nuclear weapons are likely to be used should hostilities break out. But neither knows how to control the escalation that would almost certainly follow. No one can tell in advance what response any nuclear attack might bring. No one knows who will still be able to communicate with whom, or what will be left to say, or whether any message could possibly be believed.

When our secretary of defense, Caspar Weinberger, was asked whether it really would be possible to control forces and make calculated decisions amid the destruction and confusion of nuclear battle, he replied, "I just don't have any idea. I don't know that anybody has any idea." Surely it is reckless to stake a nation's survival on detailed plans for something about which no one has any idea.

It would be vastly more reckless to attempt a disarming first strike. Nevertheless, the arms race is driven by deep-seated fears held by each side that the other has, or is seeking, the ability to execute just such a strike.

The large force of powerful and increasingly accurate Soviet ICBMs has created the fear of a first strike in the minds of many U.S. leaders. According to this scenario, the Soviet missiles could, at one stroke, eliminate most of our Minuteman ICBMs; our surviving submarines and bombers would enable us only to retaliate against Soviet cities; but we would not do so because of our fear of a Soviet counterattack on our urban population; and thus we would have no choice but to yield to all Soviet demands.

A more subtle variant of this nightmare would have the Soviets exacting political blackmail by merely threatening such an attack.

Those who accept the first-strike scenario view the Soviet ICBMs and the men who command them as objects in a universe decoupled from the real world. They assume that Soviet leaders are confident that their highly complex systems, which have been tested only individually and in a controlled environment, would perform their myriad tasks in perfect harmony during the most cataclysmic battle in history; that our electronic eavesdropping satellites would detect no hint of the intricate preparations that such a strike would require; that we would not launch our missiles when the attack was detected; and that the thousands of submarine-based and airborne warheads that would surely survive would not be used against a wide array of vulnerable Soviet military targets. Finally, they assume Soviet confidence that we would not use those vast surviving forces to retaliate against the Soviet population, even though tens of millions of Americans had been killed by the Soviet attack on our silos. Only madmen would contemplate such a gamble. Whatever else they may be, the leaders of the Soviet Union are not madmen.

That a first strike is not a rational Soviet option has also been stated by President Reagan's own Scowcroft Commission, which found that no combination of attacks from Soviet submarines and land-based ICBMs could catch our bombers on the ground as well as our Minutemen in their silos. In addition, our submarines at sea, which carry a substantial percentage of our strategic warheads, are invulnerable; in the race between techniques to hide submarines and those to find them, the fugitives have always been ahead and are widening their lead. As the chief of naval operations has said, the oceans are getting "more opaque" as we "learn more about them."

Despite all such facts, the war-fighting mania and the fear of a first strike are eroding confidence in deterrence. Though both sides are aware that a nuclear war that engaged even a small fraction of their arsenals would be an unparalleled disaster, each is vigorously developing and deploying new weapons systems that it will view as highly threatening when the opponent also acquires them. Thus our newest submarines will soon carry missiles accurate enough to destroy Soviet silos. When the Soviets follow suit, as they always do, their offshore submarines will for the first time pose a simultaneous threat to our command centers, bomber bases, and Minuteman ICBMs.

The absurd struggle to improve the ability to wage "the war that cannot be fought" has shaken confidence in the ability to avert that war. The conviction that we must change course is shared by groups and individuals as diverse as the freeze movement, the President, the Catholic bishops, the bulk of the nation's scientists, the President's chief arms-control negotiator, and ourselves. All are saying, directly or by implication, that nuclear warheads serve no military purpose whatsoever. They are not weapons. They are totally useless except to deter one's opponent from using his warheads. Beyond this point the consensus dissolves, because the changes of direction being advocated follow from very different diagnoses of the predicament.

THE STRATEGIC DEFENSE INITIATIVE

The President's approach has been to launch the Strategic Defense Initiative (SDI), a vast program for creating an impenetrable shield that would protect the entire nation against a missile attack and would therefore permit the destruction of all offensive nuclear weapons. The President and the Secretary of Defense remain convinced that this strategic revolution is at hand.

Virtually all others associated with the SDI now recognize that such a leakproof defense is so far in the future, if indeed it ever proves feasible, that it offers no solution to our present dilemma. They therefore advocate other forms of ballistic-missile defense. These alternative systems range from defense of hardened targets (for example, missile silos and command centers) to partial protection of our population.

For the sake of clarity we will call these alternative programs Star Wars II, to distinguish them from the President's original proposal, which will be labeled Star Wars I. It is essential to understand that these two versions of Star Wars have diametrically opposite objectives. The President's program, if achieved, would substitute defensive for offensive forces. In contrast, Star Wars II systems have one characteristic in common: they would all require that we continue with offensive forces but add the defensive systems to them.

And that is what causes the problem. President Reagan, in a little-remembered sentence in the speech announcing his Strategic Defense Initiative, on March 23, 1983, said, "If paired with offensive systems, [defensive systems] can be viewed as fostering an aggressive policy, and no one wants that." The President was concerned that the Soviets would regard a decision to supplement our offensive forces with defenses as an attempt to achieve a first-strike capability. That is exactly how they are interpreting our program; that is why they say there will be no agreement on offensive weapons until we give up Star Wars.

Before any further discussion of why Star Wars II will accelerate the arms race, it would be useful to examine why the President's original proposal, Star Wars I, will prove an unattainable dream in our lifetime.

The reason is clear. There is no evidence that any combination of the "defensive technologies" now on the most visionary of horizons can undo the revolution wrought by the invention of nuclear explosives. "War" is only one of the concepts whose meanings were changed forever at Hiroshima. "Defense" is another. Before Hiroshima, defense relied on attrition—exhausting an enemy's human, material, and moral resources. The Royal Air Force won the Battle of Britain by attaining a 10-percent attrition rate against the Nazi air force, because repeated attacks could not be sustained against such odds. The converse, a 90-percent-effective defense, could not preserve us against even one modest nuclear attack.

This example illustrates that strategic defense in the missile age is prodigiously difficult at best, an impression that is borne out by a detailed examination of all the schemes that propose to mount defenses in space. The term "defensive technologies" may conjure up images of mighty fortifications, but it refers to delicate instruments: huge mirrors of exquisite precision, ultra-sensitive detectors of heat and radiation, optical systems that must find and aim at a one-foot target thousands of miles away and moving at four miles per second, and so forth. All these marvels must work near the theoretical limit of perfection; even small losses in precision would lead to unacceptably poor performance. Quite feeble blows against orbiting "battle stations" bearing such crown jewels of technology could render them useless.

Such attacks need not be surgical. If the Soviets were about to demolish us with a nuclear attack, they would surely not shrink from destroying our unmanned space platforms. And they have had nuclear-armed ABM interceptors ideally suited to that task for two decades. Such weapons could punch a large hole in our shield of space platforms, through which the Soviet first strike could immediately be launched. Hence any defense based on orbiting platforms is fatally vulnerable, or, as Edward Teller has put it, "Lasers in space won't fill the bill—they must be deployed in great numbers at terrible cost and could be destroyed in advance of an attack." The wide variety of countermeasures that have been developed during decades of ABM research show that every other proposed space-defense scheme has its own Achilles' heel.

The prospect of achieving the goal of Star Wars I has been succinctly put by Robert S. Cooper, the Pentagon's director of advanced research: "There is no combination of gold or platinum bullets that we see in our technology arsenal . . . that would make it possible to do away with our strategic offensive ICBM forces." Until there are inventions that have not even been imagined, a defense robust and cheap enough to replace deterrence will remain a pipe dream. Emotional appeals that defense is morally superior to deterrence are therefore "pernicious," as former Secretary of Defense James Schlesinger has said, because "in our lifetime, and that of our children, cities will be protected by the forbearance of those on the other side, or through effective deterrence." Harold Brown, also a former secretary of defense, has expressed the same thought.

STAR WARS II

Virtually everyone in the administration now agrees that a leakproof defense of population is not in the cards for decades, if ever. Therefore, while the President and the Secretary of Defense adhere to their original proposal, the technicians and others working on the SDI program are producing less radical rationales that blur crucial distinctions between hard-point defense, which is technically feasible, and comprehensive defense, which is not. These ever-shifting and intermingled rationales for Star Wars II call for careful scrutiny.

The most prominent fallback position is that even a partially effective defense would introduce a vital element of uncertainty into Soviet attack plans and would thereby enhance deterrence. This assumes that the Soviet military's sole concern is to attack us and that any uncertainty in their minds is therefore to our advantage. But any suspicions they may harbor about our wishing to achieve a first-strike capability would be inflamed by a partially effective defense.

Why? Because a leaky umbrella offers no protection in a downpour but is quite useful in a drizzle. That is, such a defense would collapse under a full-scale Soviet first strike but might cope adequately with the depleted Soviet forces that had survived a U.S. first strike.

Americans often find it incredible that the Soviets could suspect us of such monstrous intentions, especially since we did not attack

them when we enjoyed overwhelming nuclear superiority.[1]

Nevertheless, the Russians distrust us deeply. They know that a first strike was not always excluded from U.S. strategic thinking, and they have never forgotten Hitler's surprise attack on them, in 1941, a disaster that dwarfed Pearl Harbor.

It would be foolhardy to dismiss as mere propaganda the Soviets' repeated warnings that a nationwide U.S. strategic defense is highly provocative. Their promise to respond with a large offensive buildup is no empty threat. Each superpower's highest priority has been a nuclear arsenal that can assuredly penetrate to its opponent's vital assets. No partially effective space defense can alter that priority.

Nor will those who now fear a Soviet first strike see their fears allayed by such a defense. On the contrary, these fears will be aggravated. The Soviet response will be based on traditional worst-case analysis, which will inevitably overestimate the effectiveness of our defense, just as in the 1960s and 1970s we targeted many more warheads on Moscow as soon as it was surrounded by dubious ABM defenses. Being keenly aware of the fragility of our defenses, we would feel compelled to respond with a build-up of our own.

The claim that a Star Wars II defense would be a catalyst for arms reduction is therefore specious. Furthermore, arms control has been difficult enough when it has had to deal only with large offensive forces whose capabilities are relatively clear. It would be vastly harder to strike a bargain over space defenses whose effectiveness would be a deep mystery even to their owners, because they could never be tested under remotely realistic conditions.

Important support for Star Wars II stems from the belief that it best exploits our technological advantage in the inescapable competition with the Soviet Union. Those who hold this view ignore post-Hiroshima history and have less respect than we for the Soviet regime's ability to match our weapons and extract sacrifices from its people.

The authors have personally observed and participated in the nuclear competition for decades. The U.S. invention of the atomic bomb was the most remarkable technical breakthrough in military history. And yet the Soviet Union, though devastated by war and operating from a technological base far weaker than ours, was able to create nuclear forces that gave it a plausible deterrent in an astonishingly short time. Virtually every technical initiative in the nuclear arms race has come from the United States, but the net result has been a steady erosion of American security. There is no evidence that space weapons will be an exception, for a crude nuclear blunderbuss can foil sophistication.

Then why are the Soviets so worried by Star Wars? Because strategic defense probably could succeed if the Russians played dead. For that reason they must respond. This will require vast expenditures they can ill afford, and will ultimately diminish their security. But that is equally true for us, whether we recognize it or not.

To summarize, these rationales for Star Wars II propose to achieve a superior strategic posture by combining unattainable technical goals with a policy rooted in concepts whose validity died at Hiroshima.

AN ALTERNATIVE VISION FOR THE TWENTY-FIRST CENTURY

The public's intuitive awareness of the unacceptable risk posed by our present nuclear strategy is well founded. Our security demands that we replace that policy with one that is in firm touch with nuclear reality. If neither Star Wars I nor Star Wars II is the answer, what is?

The risk of catastrophic escalation of nuclear operations, and the futility of defense, lead us to base our proposal on the axiom that the initiation of nuclear warfare against a similarly armed opponent would be an irrational act. Hence, as we have said, nuclear weapons have only one purpose—that of preventing their use. They must not do less; they cannot do more. Thus, a restructuring of nuclear forces designed to reduce the risk of nuclear war must be our goal. All policies, every existing program, and each new initiative must be judged in that light.

Post-Hiroshima history has taught us three lessons that shape the present proposal. First, all our technological genius and economic prowess cannot make us secure if they leave the Soviet Union insecure: we can have either mutual security or mutual insecurity. Second, while profound differences and severe competition will surely continue to mark U.S.-Soviet relations, the nuclear-arms race is a burden to both sides, and it is in our mutual interest to rid ourselves of its menace. And third, no realistic scheme that would rid us of all nuclear weapons has ever been formulated.

The ultimate goal, therefore, should be a state of mutual deterrence at the lowest force levels consistent with stability. That requires invulnerable forces that could unquestionably respond to any attack and inflict unacceptable damage. If those forces are to remain limited, it is equally essential that they not threaten the opponent's deterrent. These factors would combine to produce a stable equlibrium in which the risk of nuclear war would be very remote.

This kind of deterrence posture should not be confused with the one currently prevailing among U.S. and Soviet nuclear forces. The 25,000 warheads that each nation possesses did not come about through any plan but simply descended on the world as a consequence of continuing technical innovations and the persistent failure to recognize that nuclear explosives are not weapons in any traditional sense.

The forces we propose could include a mix of submarines, bombers, and ICBMs. The land-based components should be made invulnerable in themselves, by some combination of mobile ICBMs and reductions in the number of warheads per missile. Two considerations would determine the ultimate size of the force: that it deter attack with confidence, and that any undetected or sudden violation of arms-control treaties would not imperil this deterrence. We believe that, ultimately, strategic forces having as few as 10 percent of the currently deployed warheads would meet these criteria, and tactical forces could be eliminated entirely. In short, the present inventory of 50,000 warheads could be cut to perhaps 2,000.

Before this goal is reached, other nuclear powers (China, France, Great Britain, and possibly others) will have to be involved in the process of reducing nuclear arsenals, lest their weapons disturb the strategic equilibrium.

The proposed changes in U.S. and Soviet strategic and tactical forces would require, as would the President's SDI, complementary changes in NATO and Warsaw Pact conventional forces, or appropriate increases in NATO's conventional power. If the latter was necessary, it could be achieved at a fraction of the costs we will incur if we continue on our present course.

Having identified our goal, how can we move toward it? Some of our new policies would depend solely on the United States and its allies; others would require Soviet cooperation. The former should be governed by the dictum, attributed to President Eisenhower, that "we need what we need." Were we to drop futile war-fighting notions, we would see that many things we already have or are busily acquiring are either superfluous or downright dangerous to us, no matter what the Soviets do. Tactical nuclear weapons in Europe are a prime example, and the Administration's policy of reducing their numbers should be accelerated. Other examples are programs that will haunt us when the Soviets copy them: sophisticated anti-satellite weapons, sea-based cruise missiles, and highly accurate submarine-launched ballistic missiles. We are more dependent on satellites than the Soviets are, and more vulnerable to attack from the sea. Many of these weapons, are valid bargaining chips because they threaten the Soviets, just as so much of their arsenal gratuitously threatens us.

THE GENEVA NEGOTIATIONS

Geneva provides an invaluable opportunity to take a giant step toward our goals. Is that not a preposterous assertion, the reader may well ask, for have we not claimed that Star Wars, which the President refuses to abandon, precludes arms control and guarantees an arms race? Surprisingly enough, it is not, if one takes account of a remarkable speech that Paul Nitze, the Administration's senior adviser on arms control, gave in Philadelphia on February 20. If the points that Nitze made are accepted, it should be possible for the President to negotiate toward the goals we have set without abandoning a strategic-defense research program.

Mr. Nitze presented two criteria that must be met before the deployment of strategic defenses could be justified: the defense must work even in the face of direct attack on itself, and it must be cheaper to augment the defense than the offense.

As we have seen, nothing that satisfies these criteria is on the horizon—a judgment in which Nitze apparently concurs, for he foresaw that during an initial period of "at least the next ten years" no defenses would be deployed. During that period we would, in Nitze's words, "reverse the erosion" of the ABM Treaty. That is a window of opportunity, as we shall see.

Nitze envisioned the possibility of two additional periods following the first. In the second phase some form of Star Wars II would be deployed alongside our offensive weapons, provided the two criteria he laid down had been met. If we entered the second phase, it probably would last for at least decades.

Ultimately, if Star War I proved practical, the second phase would be followed by a third, in which the leak-proof shield would be deployed and offensive weapons destroyed.

[1] In terms of numbers of strategic nuclear warheads, for example, the United States in 1960 had 6,300 to the Soviets' 200; in 1965 the figures were 5,000 to 600; in 1970, 4,500 to 1,800; in 1975, 8,000 to 2,700; in 1890, 9,200 to 6,000; in 1985, 11,100 to 8,500; and by 1990, assuming that U.S. and Soviet strategic forces are constrained by the SALT II agreement, the figures will be 13,600 to 13,000.

Mr. Nitze acknowledged that the problem of how to write an arms-control agreement during the second phase that would limit offensive arms while permitting defensive systems has not been solved. He said it would be "tricky." We agree. We know of no one who has suggested how to do it. But by implication Nitze was saying that this is an issue for future negotiations and that it need not stand in the way of a new agreement at this time.

Now back to the first phase, the window of opportunity. Why the fixation during this phase on the ABM Treaty? Because the treaty formalizes the insight that not just the deployment but even the development of strategic defenses would stimulate an offensive buildup. Were the treaty to collapse, we could not move toward our goal of reducing the offensive threat. Hence the fleeting window of opportunity: strengthening of the ABM Treaty coupled with negotiations on offensive strategic forces.

The treaty forbids certain types of radars and severely restricts the testing of components of ABM systems. Both of these provisions are endangered.

The Soviets are building a radar in Siberia that apparently will violate the ABM Treaty once it is completed. While this radar is of marginal military significance, it has great political import and poses an issue that must be resolved to the satisfaction of the U.S. government.

In the near future the United States will be violating the restrictions on tests in spirit and probably in law if we place our research program on the schedule implied by Lieutenant General James Abrahamson, the director of the SDI, when he said, on March 15, that a "reasonably confident decision" on whether to build Star Wars could be made by the end of the decade or in the early 1990s. If we are unwilling to refrain from the tests associated with such a schedule, the Soviets will, with good reason, assume that we are preparing to deploy defenses. They will assiduously develop their response, and the prospect for offensive-arms agreements at Geneva will evaporate. The treaty's central purpose is to give each nation confidence that the other is not readying a sudden deployment of defenses: we must demonstrate that we will adhere to the treaty in that spirit.

The ABM Treaty does not forbid anti-satellite weapons, and unless that loophole is closed we will have an arms race in space long before we have any further understanding of what, if anything, space defense could accomplish. Hence a verifiable ban on the testing of anti-satellite weapons should become a part of the ABM Treaty regime. Because we are much more dependent on satellites than the Soviets are, such a ban would be very much in our interest.

A strengthened ABM Treaty would allow the Geneva negotiations to address the primary objective of offensive-arms control: increasing the stability of deterrence by eliminating the perceptions of both sides that the other has, or is seeking, a first-strike capability. This problem can be dealt with through hard-headed arms control. There is no need to rely on the adversary's intentions: his capabilities are visible. Mutual and verifiable reductions in the ratio of each side's accurate warheads to the number of the other side's vulnerable missile launchers could reduce the first-strike threat to the point at which it would be patently incredible to everyone. Both sides have such immense forces that they should concentrate on quickly reducing the most threatening components—those that stand in the way of stability and much lower force levels.

What is needed is deep cuts in the number of warheads, but cuts shaped to eliminate the fear of first strikes. Because the two sides have such dissimilar strategic forces, this process will be very difficult, but it should be possible in the first phase to accomplish reductions of 50 percent. It would be reasonable, for example, for the United States to insist on large reductions in the number of Soviet ICBM warheads, but in the bargaining we must be ready to make substantial cuts in our counterpart forces, including, for example, the silo-killing submarine-based D-5 missile.

CONCLUSION

In sum, the arms negotiations now beginning in Geneva represent a historic opportunity to lay the foundation for entering the twenty-first century with a totally different nuclear strategy, one of mutual security instead of war-fighting; with vastly smaller nuclear forces, perhaps 2,000 weapons in place of 50,000; and with a dramatically lower risk that our civilization will be destroyed by nuclear war.

Several themes should govern our attitudes and policies as we move through those negotiations toward our long-term objectives.

Each side must recognize that neither will permit the other to achieve a meaningful superiority; attempts to gain such an advantage are dangerous as well as futile.

The forces pushing each side in the direction of a "first-strike" posture must, at least from the standpoint of the adversary, be reversed. A stable balance at the lowest possible level should be the goal.

Our technological edge should be exploited vigorously to enhance our security, but in a manner that does not threaten the stability of deterrence. Space surveillance and data processing, which forms a large portion of the SDI program, illustrate what technology could contribute to treaty verification.

We must not forget Winston Churchill's warning that "the Stone Age may return on the gleaming wings of science," and we must learn to shed the fatalistic belief that new technologies, no matter how threatening, cannot be stopped. While laboratory research cannot be constrained by verifiable agreement, technology itself provides increasingly powerful tools that can be used to impede development and to stop deployment. For example, only an absence of political will hinders a verifiable agreement preventing the deployment of more-threatening ballistic missiles, because they require many observable flight tests.

We must also allay legitimate fears on both sides: the Soviets' fear of our technology, and our fear of their obsessive secrecy. These apprehensions provide an opportunity for a bargain: Soviet acceptance of more-intrusive verification in return for American constraints on applications of its technological innovation. Penetration of Soviet secrecy is to our mutual advantage, even if the Kremlin does not yet understand that. So is technological restraint, even though it runs against the American grain.

We have reached our absurd confrontation by a long series of steps, many of which seemed to be rational in their time. Step by step we can undo much of the damage. The program sketched in this article would initiate that process. It draws on traditional American virtues: striving with persistence and resourcefulness toward a high but attainable goal.

This program would steadily reduce the risks we now face and would begin to restore confidence in the future. It does not pretend to rid us totally of the nuclear menace. It addresses our first duty and obligation: to assure the survival of our civilization. Our descendants could then grapple with the problem that no one yet knows how to attack.

MYTH OF THE DAY: THAT THE AVERAGE CITIZEN CAN WIN ELECTION TO CONGRESS

Mr. PROXMIRE. Mr. President, the present campaign financing system means that Mr. Smith or Ms. Smith would never make it to Washington these days. Why not? Consider: it takes a small fortune to make a competitive run for a seat in Congress—$500,000 for the House, $2 million and up for the Senate.

Who provides the money? More and more of this money comes from organized special interests—PAC's. Contributions went up from $12 million a decade ago—16 percent of the total—to over $100 million during the 1984 election cycle, about one-third of the total.

Why can't the average citizen raise the money? Incumbents have a pipeline into this flood of money: for every $1,000 they receive challengers get a paltry $135.

Are the odds against Mr. or Ms. Smith really that prohibitive? The result is that challengers face odds of 65 to 1 against them if they run against an incumbent; 1,229 tried it in 1984 and 19 won.

So unpack, Mr. or Ms. Smith, your day has passed.

I DIDN'T SAY GOODBYE

Mr. PROXMIRE. Mr. President, in 1942, the French Vichy government sent its first group of French Jews to the German concentration camps.

More than 75,000 French Jews were deported over the next 2 years, the majority of whom never came back.

Claudine Vegh has written a book chronicling the experiences of 17 French men and women who lost one or both parents in the German death camps. Through interviewing children of the death camp victims, Mrs. Vegh has reported the tragic experiences of 17 children who never got to say goodbye to their parents. The book is appropriately entitled, "I Didn't Say Goodbye."

Claudine Vegh picked these children of victims because they had purposely chosen to keep quiet about their tragic experiences.

Many of them talked about their war experiences and the aftermath for the first time with Mrs. Vegh, sharing memories they had long chosen to suppress.

Mrs. Vegh had a keen awareness of these experiences since she also lost

her parents in German death camps. This is why many of the children of the victims agreed to break their silence on this bitter subject and grant interviews.

The surviving children quite naturally reported an overpowering sense of loneliness and withdrawal after the loss of their parents.

One woman said, "It's as though there is an immense vacuum around me, a vacuum, which in spite of all my efforts, I cannot fill."

This feeling was amplified by the fact that these children never got the chance to mourn their parents' deaths. Thus, in their own minds the loss of their parents was never really resolved.

Claudine Vegh stresses that because these children were not the orphans of normal wartime casualties, but rather of calculated genocide, they were forced to cover up the fate of their parents by changing their names, by hiding and by disavowing their families.

The most shameful memory of the surviving children has been anger at their parents for submitting to their fate.

This anger, however, is now laced with the knowledge that many of the children owed their lives to the sacrifices made by their parents.

The childrens' debt to their parents has been unbearable. The children have felt resentment at themselves for the ingratitude they showed to parents who made the ultimate sacrifice—giving their own lives so that their children could live.

Mr. President, the suffering of these children and the brutal deaths of their parents should never be allowed to happen again.

The United States should formally pledge that it will never happen again.

The United States should ratify the Genocide Treaty.

Mr. President, ratification of the Genocide Convention would firmly and formally commit the United States against the type of senseless killing that left these children without parents.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business, not to extend beyond 12 noon, with statements therein limited to 5 minutes each.

THE ATHENS AIRPORT

Mr. DENTON. Mr. President, with all of the controversy surrounding possible security problems in the Athens Airport and the broad criticisms which have been heaped upon that facility—of which the July 5 op-ed " 'Dirty' Airports" seems typical—I found Mr. Andrew E. Manatos' response to be both informative and refreshing.

I urge my colleagues to read Congressman MICA's criticisms which are the result of a staff study, as well as Mr. Manatos' rebuttal.

The material follows:

"DIRTY" AIRPORTS

The term "dirty" airport applies to a facility that provides fertile ground for terrorist activities. Athens International has been given that unsavory designation for several reasons. One is the large number of resident non-Greeks who are linked to Middle Eastern terrorist groups. A second is the Greek government's aparent lack of determination to take decisive action against them. The third reason is deplorable airport security.

As chairman of the House Foreign Affairs subcommittee on international operations, I dispatched a task force to Greece last November to assess the terrorist risk to U.S. diplomats and embassy personnel and to help the Greek government develop effective anti-terrorist programs. While the findings of our task force are classified, some examples of lax airport security must be made public if international pressure is to be brought against governments that allow such conditions to exist.

In American airports, we are accustomed to security guards' examining our baggage on X-ray monitors. Their diligence stems, in part, from limited shifts of 30 minutes on the X-ray monitor. In Athens, they stare at the X-ray screen for eight long hours. Inadequate training and equipment are the rule.

In America, airports are ringed with sturdy security fences and are routinely patrolled. In Athens last March, a truck drove onto the runwway, fired a rocket-propelled grenade at an airplane and raced off, unmolested by security guards.

In America, the Federal Aviation Administration requires screening of all passenger and carry-on baggage for aircraft of 60 seats or more. In Greece, as in other countries that subscribe to the looser standards of the International Civil Aviation Organization, the only requirement is that "necessary measures" be taken to prevent unauthorized weapons or explosives from being smuggled aboard.

Glaring as these shortcomings are, they are only symptoms of a deeper problem that is rooted in the attitude of top Greek officials. What was the the signal to terrorists when the Greek government released, over U.S. objections, the terrorist who tried to put a bomb on a commercial airliner last year? What was the signal when the Greek government refused a request by Pan American World Airways to install a new X-ray monitor at Athens International, just five days before the hijacking of TWA Flight 847?

I appeared on the "Today" show to discuss those overtures to the Greek government. My counterpart, a Greek government official, accused us of "politicizing" the hijacking. My response: If the majority of Greeks knew of their government's lackadaisical approach, they would be as outraged as we are. And if "politicizing" the issue means demanding that the Greek government and others take basic precautions to protect the lives of international travelers, so be it.

After the hijacking, Foreign Affairs Committee Chairman Dante B. Fascell and I recommended a State Department survey of all international airports and a boycott of those that fail to comply with FAA standards. Countries that remained in violation would be faced with travel advisories and the withholding of U.S. aid.

For Greece, those penalties would be substantial. Tourism is a staple of the Greek economy. A State Department warning on the hazards of a Greek vacation could deal a severe blow. Moreover, Greece receives $500 million a year in U.S. assistance.

Foreign aid, travel advisories and landing rights at U.S. airports are powerful leverage. So powerful, in fact, that three days after President Reagan's speech—in which he endorsed our proposals—the Greek government formally agreed to implement all U.S. security recommendations.

IN DEFENSE OF THE ATHENS AIRPORT

The column on July 5 regarding the Athens airport ["Dirty Airports," op-ed] and the president's warning to the American people about the danger of hijacking omitted a lot of information.

According to the Department of Transportation's latest published figures, the Athens airport ranks among the least hijack-prone in the world. Athens had only one hijacking, while other airports had 256. The world leader in the number of hijackings was Miami with 14. New York had 10. There were 9 hijackings in India, five each in Turkey and West Germany.

If one looks all this talk about the Athens airport's "lax security," one finds that experts are really referring to the airport's checking procedures which were different from our own. These experts are not referring to any loss of life, injury of actual hijackings.

People who put their faith in procedures rather than results should look at the cement-barricaded, electronically guarded State Department, which allowed a kid with a rifle to get into the building a few weeks ago and kill someone located very near the Secretary of State. I would hope that the people who select my children's school bus driver make their decision on his or her driving record rather than solely on what driving procedures are employed.

TWA officials have stated publicly that they felt the Athens airport was always safe. One of the hijacked American TWA crew draws from over 10 years of experience in going through X-ray checkers around the world on nearly a daily basis and says that the Athens airport does an effective job. She thinks Greece is being made a scapegoat.

It appears that the Shiite terrorists picked the Cairo airport, where the TWA plane sat overnight just prior to the hijacking, rather than the Athens airport as the place to hide the handgun and hand grenades on the TWA plane. The machine guns were taken on in Lebanon after the hijacking.

It was suggested that the travel advisory against Greece was good American public policy and good foreign policy. I think not. The prime minister of strategically located Greece began his second term a few months ago by cutting down the communist vote in the election and publicly stressing that he wanted to "substantially improve" relations with the United States. We have reacted foolishly by trying to divert American travelers to airports that have much worse records than Athens, in order to deprive the people of Greece of the American tourist dollar. This policy endangers our own people and has put all the people of Greece, who are aware of their good hijack record and who represent all parts of the political

spectrum, in a state of shock at their old ally. The airport issue is becoming a forum in this country for those who want to attack Greece.

Since the Shiite hijacking, the Athens airport has implemented every security checking procedure recommended, even though it won't make their hijack safety record any better over the next eight years as compared with the last eight years. Now, even those who focus on procedures, rather than how safe the airport actually is, are happy with the Athens airport. The International Air Transport Association said, "Security at the Athens airport has been raised to fully acceptable international standards."

ANDREW E. MANATOS.

U.S.-GROWN MARIJUANA

Mrs. HAWKINS. Mr. President, it has been proven that one of the most effective ways of eradicating drug abuse in our Nation is to stop drugs at the source. I agree with this view, and have exerted every possible effort on foreign drug producing nations to put a stop to their narcotics crop production. But can these efforts be as successful when our own beloved country becomes one of the major producers of illegal narcotics in the world?

A recent article featured in the Washington Post, reveals what I have long suspected, that, in the United States, "pot growing has blossomed into a gigantic business." It is stated in this well-researched and written article, that marijuana production has replaced the lumber business as a mainstay of northern California's economy. And while the cannabis plant has basically disappeared from along the highways in the west coast, it is now being cultivated, with care and in staggering amounts, in private gardens and secluded plots, In short, the homegrown pot business is a flourishing enterprise.

While our drug law enforcement officials are staging a tremendous effort to curb this drug production, it is remarked in the article that: "Most growers are a lot more worried about their business associates—the Mafia-like figures coming up from San Francisco or Los Angeles to buy their crops—than the law." It is estimated that marijuana production has become such big business in California, that the value of some grower's harvests "* * * is rumored to have topped $1 million."

And there is another aspect of danger in this situation: the new variant of marijuana that is being produced in our own country. It is reported that the growers rarely use their own product because "the high-grade sinsemilla strain now perfected in California is incredibly potent." It was said by one customer: "It makes you feel and see things that aren't there." So much for the reputed "harmlessness" of this drug.

It is encouraging to see that something is being done at the Federal and State level to put a stop to this situation. Both this administration, and the present State government of California, are redirecting moneys to aid in the fight against homegrown pot producers. It is stated in this article, ironically, that it was the Federal Government's own successful implementation of foreign policy—pressuring the Colombian Government to destroy marijuana crops and using Paraquat on Mexican pot fields—that stimulated marijuana production north of the border to the United States. Mr. President, to me it is as vital to stop marijuana production and export in Colombia and Mexico, as it is in California.

More so, for now we read that more than half the marijuana sold in the United States is now being grown in the United States. This industry has escalated from an estimated $1 billion in 1978, to an astonishing sum of $16.6 billion in 1984. And that figure is a national one—it is not exclusively a California problem.

Pot growers were arrested in every State except Rhode Island during the last year. There is even an national industry journal, which keeps growers updated on the high-tech growing technology that has made U.S.-grown pot so much more potent than foreign varieties.

Mr. President, this must stop. The estimated 200,000 marijuana producers must be made to understand what they are doing to their own countrymen and be aware of death and the destruction they are bringing about for millions of Americans. Present drug law enforcement efforts must be aided to close down these reprehensible operations. As chairman of both the Senate Drug Enforcement Caucus, and the Senate Subcommittee on Children, Family, Drugs and Alcoholism, I pledge to do all I possibly can to ensure that efforts to stop American marijuana producers, are as stringent as efforts to curb foreign drug producers.

THIRTIETH ANNIVERSARY OF DISNEYLAND

Mrs. HAWKINS. Mr. President, something very special happened 30 years ago, July 16. One of the most endearing and unique of America's institutions was begun.

A whole new world of wonder and magic was created when the doors to Disneyland were opened in 1955 in Anaheim, CA. Originally started as a new concept in amusement parks, Disneyland quickly became much, much more: "Children would fly in this place, and cruise jungle rivers, and touch beaming cartoon creatures who had walked off the movie screens; winged galleons would sail them over London at midnight, thundering rockets would carry them to the Moon, and whole freeways would fill with honking traffic scaled precisely to their size."

An implementation of a dream, Disneyland seems to take on that quality for everyone who sees it. It is a land of dreams coming true, of dreams not yet dreamed. The founder of Disneyland, Walter Elias Disney, combined his genius talent for animation, with innovative technological invention, and created an entire new world for children and adults alike. This combination became the stuff of dreams, and it was something that Walt Disney seemed to understand better than anyone. For example, still popular 30 years after their creation, are the slow boats and trains that carry visitors to Disneyland through lush pageants of brilliantly engineered movement and sound: "Great dinosaurs lunge at each other beside steaming lava pits. Sword-brandishing pirates clump around after shrieking ladies, the heads wagging, and the arms outstretched, while crackling sounds and flickering lights suggest the burning of the buildings around them." The world of the Magic Kingdom in Disneyland creates such a strong image that sometimes a journeyer through this world becomes disconcerted when confronted with a live human being.

The impression left by a visit to Disneyland can be so strong, and so lasting, that it becomes natural to compare reality to what has been created there. For example, a National Geographic article once described Utah's Bryce Canyon as looking like something created by Walt Disney. The attention to detail is remarkable, in the Disney re-creation of actual settings. There is a story which attests to this: "Walt Disney, whose hands-on persistence reportedly used to drive people to despair, (was sitting) down one day under the big artificial tree in the Tahitian Terrace. The tree, Disney decided, obscured the view of the waterfall. He wanted it made taller, which required inserting a complicated 4-foot extension into the tree trunk. When the tree was tall enough, Disney decided it was out of proportion; now he wanted the branches and foliage extended." Needless to say, all orders, designed to achieve perfection, were followed. Another dictum of Disney's was that the park never be completed—that it would always remain an up-to-date repository of American mythology. This order has been followed—negotiations are now underway, it has been reported, between star wars creator, George Lucas, and the newest Disneyland heads to re-create the characters of star wars to be placed in Tomorrowland. But, despite this attention to the future, one can still see children rush from their parents' sides to touch the hand of Mickey Mouse,

the most venerable of Disney characters.

Mr. President, I am fortunate to have an expanded version of the original Disneyland in my home State of Florida known as Disney World. This equally magical world attracts millions of visitors yearly and delights each and every one. I congratulate the founders of Disneyland and Disney World; and, like every American who has been lucky enough to indulge in this world of dreams, I thank them for providing 30 years of joy and magic and look forward to many more years of Disney magic.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

THE JENNINGS RANDOLPH PROGRAM FOR INTERNATIONAL PEACE

Mr. HATFIELD. Mr. President, today I rise to make additional comments regarding the U.S. Institute of Peace and its long legislative history. It is my pleasure to detail the contributions and strong leadership our former colleague from West Virginia, Senator Jennings Randolph, has provided this worthy program.

Since the days Jennings Randolph served as a Congressman for the great State of West Virginia, he has advocated the idea of a peace resource center, along with his colleague in the Senate, Matthew Neely. Senator Randolph has been a cornerstone of the effort to establish the institute for four decades, urging his colleagues that America needs to be well-equipped and educated on the subject of peace. This "crusade," as he called it, led Senator Randolph to give over 100 speeches on the idea and to author three articles in the 1940's detailing his proposal.

The former Senator from West Virginia watched an idea germinate over the span of years, gaining support among the constituency and here in Congress. Because of his commitment to the establishment of the institute, this body authorized the Jennings Randolph Program for International Peace to be included in the U.S. Institute of Peace. This program will provide grants and fellowships to scholars and leaders.

Jennings Randolph's contributions to the U.S. Institute of Peace are greater than any other individual's and I personally thank him for his unflagging efforts. I ask the administration to provide this body with the list of recommendations for the Board of Directors of the U.S. Institute of Peace, so the Jennings Randolph Program for International Peace may begin to fulfill the dreams of the distinguished former Senator of West Virginia.

Mr. HATFIELD. 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 (Mr. LAXALT). Without objection, it is so ordered.

THE FARM BILL

Mr. MELCHER. Mr. President, these are truly the dog days of decision for those of us on the Senate Agriculture Committee to determine whether or not we are going to have a bill ready for Senate consideration anytime in the near future.

While the bill will only affect 1986 crops, it is a matter of concern for us that come from the great wheat belt of this country of ours that for winter wheat producers we be in a position to tell them what the Wheat Program is for the coming year, because these wheat farmers will be in the position that they have to be in for planting winter wheat in late August and September and for some the first week of October.

They will have to make their preparations on how they are going to manage their wheat operation for the coming year and to delay much longer will jeopardize their opportunity to understand and participate in the Department of Agriculture Wheat Program for the coming year.

While we have had a very dramatic shift in the position of the Department of Agriculture in the past 48 hours concerning the Department's position on the safety net features of price supports for the basic seven commodities that our farmers produce, it is only fair to say that what the Senate Agriculture Committee has endeavored to do all of this year is to develop the type of comprehensive program that would do three things:

First of all, that would protect net farm income for agricultural producers. That is No. 1, because agricultural producers are in a very dire situation regarding the prices they receive for their commodities and the repayment schedules they have on outstanding loans and the effect it has on available credit supplies for the balance of this year and the years to come.

Second, we have endeavored to keep in mind that we produce so much abundance in this country of ours that unless we are able to export more of our agricultural farm commodities, we would fail both the farm producers of this country and fail in meeting the nutritional needs of people throughout the world that are not as fortunate as we are in having such food abundance.

Third, although we have given lip service during the past 10 or 15 years for the need for conservation of our agricultural lands, we have done precious little in safeguarding this most important resource that we have in our country, and that is our land and water resources.

The stumbling block that we have had, Mr. President, during the last several months in developing a sound agricultural bill has been the desire of the administration to curtail, decrease the budget outlays for the agricultural programs. We feared on the Senate Agricultural Committee that would be a drastic situation for agricultural producers and have resisted the administration's position on that point.

So I return to what I previously said: The dramatic shift by the Department of Agriculture in their position on this safety net price support program for agriculture producers is a very welcome shift. What they have indicated to us in the past 48 hours is that they recognize that that shift is necessary and, therefore, we are operating under the assumption that we will hold the cost to no greater than the baseline projections of the cost of the Federal outlays, Treasury costs for the coming 3 or 4 years.

Mr. President, we can operate on that basis and the committee will be voting at 3 o'clock this afternoon on a series of proposals, in one of which I have particular interest. It is a proposal that has been discussed in committee. It seems to meet the basic needs and our basic goals are for income production while moving more of our commodities into export. That proposal is staunchly advocated by Senator ANDREWS, Senator COCHRAN, myself, and several others on the committee, and hopefully in the voting this afternoon we can resolve this point.

Very briefly, I will use wheat as an illustration. Our proposal is that the loan rates for wheat be established at approximately what the target price is now for wheat which is around $4.38 per bushel; that the loan rate be available to producers up to a maximum amount of $200,000 per producer; that the producer being in the program also has an ARP, or acreage reserve program, of about 30 percent of his acreage; that the producer further agrees, upon getting the loan, that he will move his grain within a 7½-month period, and then repay to the Treasury the loan at that point; the loan will be repaid by the producer at the average price for grain, selling at that price during that particular week

whichever week he chooses to sell it, within that 7½-month period, and that the loan be repaid at that time.

Mr. President, this is a very simple program, much simpler than anything offered by the administration. It has that value of being understood, and the projected costs can easily be obtained. We believe that they will fall within the baseline projections that have been developed by the administration during the past several weeks on what the farm programs would cost for the coming 4-year period.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Time for morning business has expired.

LINE ITEM VETO

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

The bill clerk read as follows:

Motion to proceed to the consideration of S. 43, a bill to provide that each item of any general or special appropriation bill and any bill or joint resolution making supplemental, deficiency, or continuing appropriations that is agreed to by both Houses of the Congress in the same form shall be enrolled as a separate bill or joint resolution for presentation to the President.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, over the course of the next several days I expect to prove beyond any doubt that S. 43, termed by the New York Times this morning as the "Line-Item Diversion" is anathema to the system of our Government that deserves resounding defeat. My reasons are simple. Senate bill 43, No. 1, fails miserably to accomplish its objectives as a budget control device; No. 2, is structurally deficient; No. 3 is constitutional madness and a mindless affront to the concept of separate but equal branches of Government; No. 4 is an open invitation for political mischief; finally, based on experiences of the States which have the line item veto, S. 43 is a nasty swamp that will serve as a breeding ground for lawsuits, confusion, and escalated confrontation.

Mr. President, I ask unanimous consent to briefly yield the floor at this point to the chairman of the Rules Committee, the Senator from Maryland, and in yielding for that purpose, I ask unanimous consent that any resumption of my remarks on this matter not constitute a second speech.

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

The Senator from Maryland is recognized.

Mr. MATHIAS. Mr. President, I want to call the attention of the Senate to the report of the Committee on Rules and Administration submitted to accompany Senate bill 43. The essence of the report is very brief. I will read it.

The Committee on Rules and Administration, to which was referred the bill (S. 43) to provide that each item of any general or special appropriation bill and any bill on joint resolution making supplemental, deficiency, or continuing appropriations that is agreed to by both Houses of the Congress in the same form shall be enrolled as a separate bill or joint resolution for presentation to the President, having considered the same reports unfavorably thereon without amendment and recommends that the bill do not pass.

Mr. President, the Rules Committee is very serious in recommending that the bill do not pass, and the pending motion, of course, ignores that recommendation of the Rules Committee. I hope that Senators during the course of this debate will read not only the committee report but will read the testimony of witnesses as referred to in the transcript of the hearings that the Rules Committee held on this subject. It seems to me, Mr. President, that the pending motion to take up S. 43 raises two issues of great importance to Senators. One is whether this bill is really consistent with the oath of Senators to support and defend the Constitution of the United States. And the second is whether there is an interest on the part of Senators in a properly balanced relationship between the executive and the legislative branches of the Federal Government. As to the first, S. 43, the bill proposing to give the President the line item veto would empower the enrolling clerks of the Senate and the House, whatever their good qualities, who have not heretofore been distinguished for high profiles in our Government, to dissect each appropriation bill, item by item, and each item would then presumably be pasted with a little library glue onto a preprinted form containing a fictitious enacting clause and the composite would then be presented to the President as if it were an actual bill approved by both Houses of the Congress.

I shall not dwell, Mr. President, on the possibility that this process creates for errors of omission and commission, and I have full confidence that the enrolling clerks would never indulge in deliberate mischief. But there is the Constitution. Not only does the Constitution mandate the procedure for passing laws, but the Supreme Court in the recent Chadha case has required that the constitutional procedure be strictly and explicitly followed. In my opinion, the cut and paste process that is envisioned by Senate bill 43 does not meet that test and is unconstitutional. Since I have taken an oath to support and defend the Constitution, I cannot also support a bill that I think is unconstitutional. Whether my view is ultimately determined to be correct or not it would seem that the question is one that must be confronted by Members of the Senate if we are to decide to go forward with this debate.

The second issue, Mr. President, is best described by the retiring director of the Office of Management and Budget, Mr. David Stockman. Mr. Stockman recently said that the line-item veto does not have to do with deficits. It has to do with power. And I think the record proves him right. In the last decade the Congress has appropriated less money than the executive has requested. So the issue is not money. It is, as David Stockman says, power. For example, if President Reagan does not like my position on the issue of school prayer, and if he acquires the power to kill funds for the program that I have long supported to save the Chesapeake Bay without affecting his Pentagon program or any other administration request, then the President, whoever he may be, has a hostage.

He can hold the Chesapeake for the ransom of my support for a major change, for my support for State-sponsored prayer in school, or any other subject that he might want my support on. And it would be a major change in the relationship between the executive and the legislative branches. In my opinion, it would destroy the balance that exists between their coordinate but separate functions. I believe that a concern for the historic fabric of Government constitutes a valid reason for not proceeding with this debate. The legitimate question that merits debate is whether there is enough support for the change in our political power structure to adopt an amendment to the Constitution. If there is not, Mr. President, then a scissors-and-paste approach in the hands of the enrolling clerk is not an adequate substitute for the amending process provided by article V of the U.S. Constitution.

Mr. President, I am grateful to the Senator from Oregon for yielding to me at this point.

Mr. HATFIELD. Mr. President, I thank the Senator from Maryland for his comments. As the Senator indicated, he chaired this hearing as the chairman of the Senate Rules Committee. I would urge that our colleagues pick up the printed hearing that is on each of our desks here today and especially read that testimony given by a panel headed by Louis Fisher, Congressional Research Service, and Allen Schick, and Norman Ornstein of the American Enterprise Institute.

In that panel, along with the other experts and witnesses who appeared before Senator MATHIAS' Rules Committee, you have some of the most comprehensive arguments both for

and against this bill. I think you can find any position. I claim, of course, in reading it, perhaps from my own perspective, that that particular panel that I listed probably most eloquently stated the case that Senator MATHIAS and I represent. That is a case for the opposition. There is excellent testimony on both sides. I would certainly urge the Members of the Senate to read that particular testimony.

Mr. President, as I have indicated in my brief comments thus far, this is not really a simple issue. It is one that calls for careful analysis. I have heard, like most of my colleagues, various and sundry summaries of the issue, as one which would do this or do that. But actually, this issue has such profound importance to our constitutional system. It has such deep meaning for the procedures of the Senate and of the House of Representatives. The Senator from Massachusetts mentioned but one, namely, the procedure of dissecting an appropriation bill or a continuing resolution and to make it subject to this particular guideline embodied in Senate bill 43.

To illustrate that further, I would say it is estimated that in the current continuing resolution that was passed in the last session of the Congress, there would be literally somewhere between 400 and 500 separate cut-and-paste jobs that would have to be applied to that CR, 400 to 500 separate bills that would have to be sent down to the President.

It is conceivable that in a general appropriation year if the President vetoed but 10 percent of those hundreds of separate bills, that would be 40 to 50 vetoes the President would have to issue to the Congress. We who have been here for some time understand the difficulties and the efforts that have to be made to handle one veto. I want to say that it would certainly bring a stalemate to the machinery of the Congress just in the matter of handling the vetoes.

I do not think people really thought this thing through in the procedure or in the mechanics. That is one more reason why I hope that everybody will not only read the testimony, but I wish they would read the bill, read the bill carefully, and identify what the bill defines as a line item.

That is just one very simple point why I rise to oppose this proposal.

I also referred to the New York Times editorial this morning. I would like to quote from that editorial at this time.

> For more than a century, every President has wanted a veto power over individual items in appropriation bills. Congress, concerned more for its own power than for the Federal exchequer, has scotched the idea every time. The issue is once again before the Senate. It deserves the same fate.
>
> Line-item appropriation vetoes would relieve the President of the duty to weigh the pros and cons of bundled expenditures. Every President since Ulysses Grant has vowed to wield the veto against "waste"—none more insistently than President Reagan. But alarming extravagance can always be resisted by vetoing an entire package, too. The bundling annoys Presidents because it has been an important element in their annual negotiations with Congress. Presidents want to tip the power balance in their favor, but make no strong case for needing extra power.
>
> Mr. Reagan recalls his line-item veto power as California Governor, and notes that 42 other governors enjoy it too. So why not the President?
>
> Because a governor is not the President, Commander in Chief, Diplomat in Chief, Economist in Chief and Communicator in Chief. Governors may need the added authority to influence their legislatures. But Presidents, especially Mr. Reagan, have made no persuasive showing that they now need to destroy Congress' last significant power, the power of the purse.
>
> Much as it might alter the political power balance, the line-item veto would not directly affect most appropriations. It could not reach three-fourths of the Federal budget.

I might parenthetically editorialize that it is really more than three-fourths. This line item veto would probably only reach between 11 and 14 percent of the total budget. As I have often indicated, if you abolish entirely that amount, excise it from the budget, you would still have a $100 billion deficit.

> Social Security costs could not be vetoed without first rewriting the underlying law. The same goes for other entitlement programs, like Medicare or farm subsidies. Interest on the national debt is veto-proof, and so, by and large, is the defense budget.
>
> Ignoring these limitations, Presidents, like to protray the item veto as a scalpel for removing the pet projects of special interests that Congress won't resist. As if the White House served no special interest.

Mr. President, let me just digress here on another point. The Senator in the Chair, the Senator from Nevada [Mr. LAXALT], and my colleague in the State of Washington [Mr. EVANS], now on the floor, realize that one of the favorite targets in recent years has been Western water projects, termed by many as pork barrel, as wasteful expenditures of the Federal funds, as the Western States have their snout in the public trough. All kinds of picturesque language is portrayed with regard to Western water projects. It has been stated this will give the President an opportunity to get at these projects, the central Arizona project, or the Bonneville Lock, on the Mount St. Helens diversionary project.

Well, I would suggest that we could argue those projects obviously on their merits and justify those dollars. But, Mr. President, the President of the United States, if Senate bill 43 were enacted, could not get at these projects on an individual basis for they do not appear in the appropriations bill. They are in the report of the committee and the report to the bill. The President has power to get at those projects now through deferral and through rescission. Senate bill 43 does not give him the power to get to those individual projects. He would have to veto the entire construction account of the Corps of Engineers or the Bureau of Reclamation to get at one project or at two projects or at three.

This bill, as I say, is designed in a faulty way. It misrepresents the whole concept that somehow we are going to balance a budget or we are going to reduce the deficit or we are going to substantially reduce Federal spending.

Going back to the editorial:

> A further reason for opposing the item veto is that it might give Presidents excessive influence over individual members of Congress. The White House could, for example, threaten to veto perfectly legitimate expenditures of importance to individual legislators because they dare to oppose the President on other issues. Presidents loom large enough in the political careers of legislators.
>
> At best, this proposal would alter spending patterns at the margin. At worst it's a power grab, upsetting Federal checks and balances that have worked pretty well. This debate is a poor substitute for doing something substantial about the alarming budget deficits.

Mr. President, the editorial covers a number of the points that I have indicated I wish to cover in the next few days by in-depth commentary on the subject. I might say that today, I expect to offer the overture in an overview summary of these five points; then, as time moves along, whenever necessary, I shall raise these five in specific cases of in-depth analysis. I think that one of the first things I would like to suggest is what S. 43 does do and does not do and what it is and what it is not.

I have referred to the fact that, No. 1, S. 43 is not line item veto legislation in the pure sense. It is a statutory route, one lined with potholes and structural defects, which attempts to bypass the only permissible route of granting the President line item authority; namely, the constitutional amendment.

Why the shortcut? Why have we had presented to us a shortcut route on this issue? I suppose in part because the constitutional amendment process takes such a long time, is tedious, laborious.

That is one of the strengths of our constitutional system, that you cannot just amend the Constitution at will or whim, but you have to go through a process that filters out the trivial from the profound.

I think that something of this magnitude, which does affect the balance of power, that does affect the checks and balances of the Constitution, that affects the constitutional assignment to the Congress as the keeper of the purse strings, should have gone the constitutional amendment route. Be that as it may, Mr. President, S. 43

substitutes a winding, convoluted process through statutory sleight-of-hand.

Well, we might ask the question, how does S. 43 effectively grant the President line item veto authority? The answer: It turns the House enrolling clerk into a magician. The Senator from Maryland indicated a little while ago the process in this bill which would be required if this bill were enacted is a cut-and-paste activity for the enrolling clerk of the House. Let me review that.

This is how it works: The Senate and House pass an appropriations bill. They hand this bill to the House of Representatives' enrolling clerk. The enrolling clerk waves Senate bill 43, if it were enacted, over the appropriations bill and presto, as in the case of a magician, you have hundreds upon hundreds of appropriations bills that the President can sign, veto, or, better yet, barter and bargain with.

This is faster proliferation than any pair of rabbits in this country. Hundreds in one gesture—no gestation period; immediate birth is given to hundreds and hundreds of these bills. It would absolutely boggle the mind of Planned Parenthood or any other population control organization to think of this rapidity of proliferation.

Specifically, S. 43 permits the enrolling clerk to break down the appropriations bills into separate items. I would like to cite that particular area of the bill, on page 3, beginning on line 5, subsection (b). Quoting from S. 43, which is the guideline for the House of Representatives' enrolling clerk:

(b) A bill or joint resolution enrolled pursuant to paragraph (1) of subsection (a) with respect to an item shall be deemed to be a bill under Clauses 2 and 3 of Section 7 of Article 1 of the Constitution of the United States and shall be signed by the presiding officers of both Houses of the Congress and presented to the President for approval or disapproval (and otherwise treated for all purposes) in the manner provided for bills and joint resolutions generally.

(c) For purposes of this concurrent resolution, the term "item" means any numbered section and any unnumbered paragraph of—

(1) any general or special appropriation bill, and

(2) any bill or joint resolution making supplemental, deficiency, or continuing appropriations.

Mr. President, as I indicated a while ago, the current continuing resolution would be 400 to 500 bills that would be extracted out of one continuing resolution which the President now is called upon to either veto or sign; 400 to 500 coming out of one resolution.

It boggles my mind as well as, I am sure, many others' to think of the mechanics of implementing this bill efficiently. This invites trouble and I shall be going into depth on the kind of trouble this can invite later on.

Mr. President, as this debate progresses, let all of my colleagues be clear on this issue: We shall hear the proponents of S. 43 argue that this bill is not a line item veto. They are telling you the truth, but they are not telling the whole truth and nothing but the truth, so keep in mind what we are debating and what we are not debating.

We are not debating a proposal to significantly cut the Federal deficit. We are not debating a proposal to allow the President to delete funding for a single solitary project or activity he considers to be wasteful. Rather, we are debating a proposal which represents a significant abdication of power by the legislative branch in favor of the executive branch.

In short, S. 43 represents congressional cowardice, congressional buck-passing in a literal and figurative sense. And it represents congressional irresponsibility.

First, the line item veto is not a budget-control device. I make that claim because all one needs to do is look at the current composition of Federal spending.

S. 43 does not cover revenue or tax loopholes. S. 43 does not cover entitlements, Social Security, Medicare, civil service retirement—which comprise the fastest growing portion of the Federal budget. It does not cover the interest on the national debt. So, when you exempt these nonappropriated items, you have exempted nearly half of the $1 trillion that Government spends annually.

People say, oh, well, the Senator from Oregon is protecting his turf as chairman of the Appropriations Committee, that this is not an argument on deficit reduction, it is an argument on turf, jurisdiction, all the other parochial terms that are applied to Senate business at times.

Let me say to my dear colleagues, this is not true. I have often used the example, when people have introduced me as being chairman of the most powerful committee in the Senate, that 20 years ago that would have been true; it is not true today, the implication being that somehow the Appropriations Committee of the Senate controls Federal spending—we have the purse strings to dole out money, hither and thither.

Well, there are two things that have changed that. What should have been appropriated accounts turned into entitlements. When the Appropriations Committee of the Senate meets to allocate target figures to 13 subcommittees, we are allocating anywhere between 14 and perhaps 20 percent of the total budget for nondefense activities. That is all. Sometimes less. All the rest of that $973 billion that we are looking at for the potential budget for 1986 is predetermined by law or is provided for defense. That is one reason why this is no longer the most powerful committee of the Senate. It is not a question of turf.

The second reason, of course, is we are in a time of budgetary constriction. My good friend, Senator Magnuson, of Washington State, who chaired this committee just prior to my chairmanship, called me one time about 6 months after I had been chairman of the Appropriations Committee and said, "Mark, how do you like being chairman?" I said, "Well, Maggie, it is a different day than when you were chairman. When you were chairman, it was give, give, give to various and sundry requests and allocate, allocate, allocate." I said, "Our job today is how do we cut off the giving aspects of the committee, how do we cut down those programs, how do we cut down those expenditures, how do we cut down those budgets? Not quite the same day."

But, also, Mr. President, let me remind this Senate that in those appropriated accounts, those nonentitlement programs, in those areas where the Senate Appropriations Committee has had the power to affect the spending levels, we have made a reduction in those accounts of over 33 percent in the last 5 years. The only basic area of the budget that has experienced that degree of reduction in spending has been in those areas where the Appropriations Committee has had the power to affect the level of spending. One cannot call this a debate over turf. We have performed the spending reduction assignments given to us by the country, by the Budget Committee, by all who want to bring this problem of deficit spending into control.

That is where the reductions have been made. I find it really becomes fallacious to say that somehow the line item veto is an argument over turf. One might summarize in a facetious way by saying there is not enough turf to fight over within the appropriations process if you look at the total budget and look at how much of that total budget the Appropriations Committee can really affect. There is not enough turf left to fight over.

No, this is much more profound than a turf argument. This issue goes to the very heart of our constitutional system. I say to those who say, "Well, maybe the Congress has not been as effective as it should have been in the purse-string activity," then let us reform our own actions rather than buck it over to the White House.

I find another interesting point in talking to some of my colleagues, which I will get into in depth later, and that is, "If Franklin Roosevelt were in the White House, would you be supporting this?" Especially some of my conservative Republicans. One of them honestly responded and said, "No; I would not even do it if Jimmy Carter were in the White House."

Mr. President, this is not an issue we should decide over personalities,

whether a Democrat or Republican is in the White House. This goes far deeper—to the whole system of government, transcending political parties, transcending philosophies, transcending personalities. This is fundamental to our whole balance of power in this country. Another reason why I suppose it has been offered as a statute for a limited period of time, for the duration of President Reagan's term, is because we can trust President Reagan with it but we cannot trust maybe his successor, whether he is a Democrat or Republican, whoever it might be.

Well, we should not affect the balance of power in this country on the basis of a 2-year period, test or otherwise. I will take up the issue that is analogous later, and that is the court-packing plan proposed by Franklin Roosevelt in 1937, where every Republican stood shoulder to shoulder on this floor, what few there were, committed to that historic Republican philosophy of limiting the Executive power of this country and maintaining a check and a balance of power between those branches of Government. It amazes me at this time to see my party stray so far from its historic roots. I find it especially amusing to have been challenged by my own party chairman of my State of Oregon to change my party registration to Democrat because, after all, my party credentials were questionable as a liberal Republican. And then to find that this very idea emanates from within my party makes me feel like the old guard part of the party today to defend the traditional Republican position. Again I come back to that very basic political bottom line question: "Would you vote for this if Franklin Roosevelt were in the White House?" I am with the generation that divided the true Republican from the phony Republican. Of course, I say that facetiously, too. I can understand why the President supports this. After all, Franklin Roosevelt was his political hero for many years, at a time when my political hero was Herbert Hoover. But that gets back into heritage that is unnecessary and irrelevant to the case in point.

Mr. President, where do the rest of the Nation's tax and deficit dollars go besides the ones I have enumerated going to Medicare and Social Security and national debt? Well, over half of it goes to defense and foreign aid, a portion goes to entitlement programs, which are subject to annual appropriations—Medicaid, veterans' pensions, welfare benefits, farm price supports. I would like to ask my colleagues, "Is any Member in this body really willing to predict how much money will be slashed from these programs by the line item veto?" The defense budget is about $300 billion. Does anyone seriously think we are going to save a lot of money by a line item vote applied to the military budget? Foreign aid, veterans' pensions, welfare benefits, farm price supports? Just wait until we see that farm bill come out of the committee, at least what I have heard about the farm bill, and tell me we are going to apply any savings there with a line item veto when our party is running at a very low percentage rate of popularity in the Midwest, particularly in the Farm Belt, people facing elections in 1986.

Less than 15 percent in nondefense, domestic, discretionary appropriation items which includes education, law enforcement, medical research, energy development, environmental protection, that is what is made up in this part of the budget. As I indicated earlier, those are the very programs that the Appropriations Committee has cut 33 percent in that spending area since 1980, in real dollars. That is a remarkable record.

Now we also hear about the States. They will say: "You were a Governor. You had a line item veto. Why isn't it good for the President, if it is good for the Governor of Oregon?"

First of all, let us analyze that. There, again, we have a very superficial view that has been floating around. I think that, basically, you have to understand that comparing the States with the Federal Government and the role of the President of the United States is like comparing apples with alligators. There is no comparison. Would that there could be. Would that our federal system would function as the Founding Fathers intended it to function. Would that it was one of those systems whereby we experimented with ideas at the State level which eventually could be adopted at the Federal level.

Beginning with the New Deal period, we rushed into things that had never been proved anywhere and spent billions of dollars proving that they could not work at the Federal level. States like Oregon experimented with the income tax before it became a Federal law, and that was one of the examples of the strengths of our federal system, to experiment at the State level.

Remember, it was workman's compensation, the women's vote, child labor legislation, the initiative referendum—all that eventually, I hope, will be adopted at the Federal level—which proved so well at the State level. Many of these things were proved one way or the other at the State level.

What about the Governor's veto? Has that proved anything? Yes, it has proved a lot. Everything that has been proved indicates that we should not adopt it at the Federal level.

Take the February 1985 annual report of the President's Council of Economic Advisers:

> The experience of the States indicates that per capita spending is somewhat higher in States where the Governor has the authority for a line item veto, even when corrected for a major condition that affects the distribution of spending among the States.

That means, simply, that there are high service States, low service States, and moderate service States. Cranking in that factor would still indicate that that does not save great sums of money. It does not become the great panacea of protecting the runaway budgets.

I do not even have to state that States like mine have the constitutional provision for a balanced budget. That certainly diminishes any claim that can be made with respect to a Governor's line item veto. We do not have such a provision in the Federal Constitution. Would that we had. I support it. But let us not hear about Governors balancing budgets because of a line item veto. That is not a valid argument, because it is not a fact. Governors basically have the constitutional requirement to balance the budget.

In my State, we have a biennial budget. That means that we have to predict our revenues and our expenditures not over a 1-year but a 2-year period. For a State like mine, which has no sales tax, which has a personal income tax, which has an economic base of timber, which has all its vacillations and fluctuations because of building rates, and so forth, you can imagine how much more difficult it is to project your revenue base for 2 years or even 1 year.

One year, we faced—the figure may be wrong—a major deficit of $60 million. In those days, it was a major deficit. I could not wait until the end of the fiscal year and go back to the legislature and call a special session and say I have a $60 million deficit. We had to call the agency heads together and say, "Where are we going to cut $60 million from the budget in order to end up with the constitutional requirement of a balanced budget?"

It was not a line item veto. It was inconsequential in my exercise. I faced a Democratic legislature, except one 2-year period of my 8 years as Governor, when one house of the legislature was Republican. Frankly, I got along better with the Democratic legislature than the Republican legislature, because they had to prove their independence from a Republican Governor. My colleagues will understand that.

The point is, simply, that we had to balance our budget, and we did balance our budget at the State level, not with the power of the executive line item veto but with the power that was behind us, always overriding, ever guiding us in that direction—the constitution.

In looking at this again from the standpoint of what power would be vested in the President, the implication is that the President has no role to play now except in the veto or signing action on each bill. Mr. President, let me disabuse the Senate of that view.

All through the appropriations process, David Stockman or his representative has been at our elbow. David Stockman has been there as the representative of the White House, of the President of the United States. David Stockman has said, "Look, you pass this at this particular level, or include this program, and I will recommend a veto."

There is a continuity of input; there is a continuity of relationship between the White House and Congress all through the appropriations process. The President is not sitting down there as someone totally removed from the appropriations process and all of a sudden—surprise—he has an appropriations bill on his desk. Surprise—he never knew anything about it or had any idea of the content of it until it arrived. That is fallacious. That is an inaccurate image. The President of the United States is well represented.

At this point, I have a great urge to launch into a little soliloquy on David Stockman, because he and I butted heads many times over the years.

Let me summarize by saying in this soliloquy that I think David Stockman is the most capable man who has served in that post since I have been here. But the point is that I have had a day-to-day working relationship with him, and we have had our agreements and disagreements. A good case in point was last year's continuing appropriations bill. All the water projects in that bill, contained in the House and the Senate versions of the bill, were stripped from that bill in the conference between the Senate and the House because of a threatened Presidential veto.

We did not wait until that bill got to the President to know what his views were or what his actions would be. David Stockman told the Speaker of the House, the majority leader of the House, and the Democrats precisely what he told me; what he told Senator Baker, the majority leader of the Senate; what he told the Vice President, the President of the Senate; what he told the world: "You Members of Congress control the purse strings and you are exercising your constitutional function up there in so doing. You send that bill down to me as is and I will recommend a veto."

That was preceded by literally months and months of discussions, negotiations, debates, and everything else among the OMB, Jim Baker who was the Chief of Staff of the President at the time, Donald Regan who was the Secretary of the Treasury at that time, and members of the Appropriations Committee. That was the ongoing relationship of the executive input in the appropriations process.

So the argument is no longer valid that the President must approve appropriation bills or swallow the good with the bad or permit the Government to shut down.

Let me also say the short funding extensions are traditionally granted to allow time to negotiate out an acceptable measure. Anyone who has been here for more than 2 to 4 years knows that whenever we had those short-term extensions, they were only for one purpose: to negotiate with the White House to get an acceptable measure.

So we have this intimate ongoing relationship in the appropriations process. The President is not given a Friday surprise that we used to have weekly at the department stores in Oregon. We had to wake up Friday morning and find out what the sale item was. That was the surprise.

The President knows what the contents of these bills are before they reach the White House and its imprint is on the overwhelming majority of them.

Yes, we overrode one veto of a supplemental appropriation. We reached that point where the White House had moved to its bottom line, Congress moved to its bottom line, and we had to face the constitutional exercise of Presidential veto. We overrode the veto. That was again part of the constitutional process.

With that exception, we have worked these matters out with the White House and that has happened over the years that we had Democratic Presidents, Democratic Congresses or what few times we have had a Republican Congress, and it would probably continue because of the strong precedents and the role that OMB now plays in the whole financial process of appropriations and expenditures.

Let me say, too, that Senate bill 43 is structurally deficient. I have given that as an item where once again we will go into in depth in future presentations.

Under the terms of Senate bill 43 the President would not be able to veto funding for one water project, one Federal building, one military construction project, or one fish hatchery.

For these individual project expenditures are below the account level and do not fall within the bill's definition of items.

We have given careful analysis of this bill through our appropriations staff and other experts from outside of the Senate and the House. There is no question. This bill does not cover these items. It cannot cover these items by the very definition that is listed in the bill of what constitutes an item.

To stop the funding of one of these projects, the President would have to veto all the activities funded out of that same account.

I have cited numbers but I would like to have those Senators perhaps play a game of trivia. Only this is far from being trivia. I would like to have a guessing contest here on the floor as to how many separate appropriation bills would come out of our general appropriation program of 13 bills or a continuing resolution if S. 43 were applicable.

I am sure that some would be surprised at the figures above 200, above 500, above 700.

Let me suggest that in that process we could have a very interesting phenomena emerge, and that is the most powerful man in the United States in our political system could possibly become the House enrolling clerk. The House enrolling clerk, an unelected person, could become under this jungle of paper the most influential man in the entire political system.

Mr. President, I do not criticize my colleagues when I say that this is a complicated mechanical organizational process, and I am not sure that it has to be all this complicated but the fact is it is that complicated.

I came on the Appropriations Committee about 5 years after I arrived in the Senate. I taught political science for 7 years in a university. I had courses in constitutional government in my graduate work at Stanford. I suppose I could have said I was academically trained to know and understand government. I had been a State representative, a State senator, a secretary of state, a State Governor over a period of 16 years before I came to the Senate.

But I am going to tell you, Mr. President, I am learning even today, I am learning nuances, I am learning detail about the appropriations process that I never knew before. And I find that my colleagues on the committee have shared the same confession. This is a complicated process. I am talking about the detail of maintaining accuracy of what Congress really does.

Let me just recall to mind in this Senate we have been in session all night long, all day, all night and most of the following day on an appropriation bill. And in that period of time we have literally considered hundreds of proposals and adopted literally scores of those that we have considered.

Every one of those little amendments which may have been written on the back of an envelope, every one of those little amendments that the reading clerk gave a number to and we had a unanimous consent request granted not to read the amendment, and that little piece of paper up there

that had been sent to the desk by a Member for consideration, that little piece of paper then had a long journey, for when that little piece of paper was acted upon and assuming that it was adopted as an amendment to the pending appropriation bill or vehicle, it had to find its way from that desk into the RECORD, to the staff, chief clerk of the Appropriations Committee of the Senate, and that had to be pasted and put into the right paragraph, the right section of that bill, and that staff that had been up all day, all night, and all the following day had to stay up all the next night and all the following day in order to do the paperwork to get that bill together in order to go to conference with the House the following day.

Just to follow it through the Senate side. And then when we go to conference out of that conference with the House, as the Senator from Nevada knows, having been a conferee many times and as a subcommittee chairman of the Appropriations Committee, he knows of the discussion with the chairman to the chairman, from the Senate chairman to the House chairman, about what we are going to agree on to resolve the differences between the two bills and that verbal discussion then has to be translated to paper, it has to be brought back in some form to the conference to be acted upon by the full conference and then it has to go back to the staff to be incorporated in the final report and the final conference bill.

It really is nothing short of a miracle we are able to put in and handle the detail of paperwork now involved in the appropriations process without major mistakes, let alone minor. I asked a while ago of Keith Kennedy, the very able chief clerk of the Appropriations Committee, how many mistakes we have made over the years I served as chairman.

He said, "The mistakes that have been made have been technical and typographical." Substantive mistakes have not been made, in spite of all of this.

But, again, let me emphasize a simple point, and that is we have people who are familiar and expert in the subject matter which we are dealing with in the 13 separate appropriations bills. Each amendment that is offered from the floor falls into the category of one of those 13 appropriation bills.

We have in depth on the majority side, in depth on the minority side, and, more importantly, whether it is majority or minority, we function as a committee, not as two committees, minority and majority, under the aegis of one committee title.

We have in depth expertise in people who know the language, who know the nomenclature, who know the places in the bill, who know the bill mechanically, who know the bill substantively and, therefore, they can handle it.

Any clerk of the House is expected to be an expert in all of these areas as he is pasting and dividing and cutting and pasting? Why, even Solomon would have been hard pressed to handle that kind of assignment. It would be impossible for an enrolling clerk to have the expertise to understand that. They are very capable people; they are very precise. But they do not know all there is to know about appropriations bills. No one person knows that.

Let me say that every discipline in every subject field has its own glossary. You have to know those words. You have to know the meaning of those words; that words used in the context of one discipline may have a totally different meaning in another.

All I give is an example of the word "conservative." Put the term "conservative" in the political. Can you lift it out of the political discipline and put it over into the theological discipline? No. People are trying all the time, and they are failing miserably.

Every discipline, every body of knowledge, every subject field has its own interpretation, its own implication, its own nuance as it relates even to a simple thing called the nomenclature. Is some enrolling clerk going to be able to handle this with the kind of expertise, even though we are able to do it within the context of the appropriations process? No, it would be ridiculous to think of someone having that kind of body of knowledge.

I hope that nobody comes to the floor and tells me: "Oh, but we live in the age of the computer, therefore the computer can do all the things that the human mind and human frailties and human foibles concern you about. The computer will offset all of that. The computer is perfection. The computer can think for us and the computer can do this."

God help us when we get to that point in our thinking.

(Mr. DENTON assumed the chair.)

Mr. HATFIELD. There is still that basic understanding of words and phrases and definitions of those words and phrases that have a significant bearing upon every appropriations measure. Do not forget, we have an army of lawyers out there waiting to make another buck to challenge some kind of misapplication of a word or a meaning or to some other appropriation or, for that matter, to any statute that we act upon. And I will get to that subject, too, because those who always want to talk about this, I want to get to the subject of the new army of lawyers, new entitlements that have been created even in the Governor's line item veto. But that is another day.

I would like to cite one example that I think would have a heyday. I am not claiming to be an expert in the law. I was not in more than 1 year of law school, but I do not think you have to be a lawyer to understand or to ask questions.

Let me give you an example of what is going to create, I am sure, a heyday for lawyers; a lot more revenue for them, too.

On page 3 of the bill, line 14—listen to this: "Item means any numbered section and any unnumbered paragraph."

Give me your interpretation of that one. "Item means any numbered section and any unnumbered paragraph." Before you try to interpolate or interpret it or define it, read an appropriations bill and see how the structure of that bill is set forth on paper and then try to apply that.

No, Mr. President, I do not think it would be fair to impose that kind of responsibility upon a House enrolling clerk. I do not think it would be to our benefit to establish that kind of power base, influence base in one person, an unelected official. I do not think it would be practical.

I think you would probably find that you would not keep them very long. You would have a revolving door of nervous breakdowns and exhaustion and fatigue, or you would have to devise an army bigger than the House itself and the Senate. And I want to tell you that I think we are about at the end of building monuments of offices on the Hill. It would not be a hill much longer if we put more weight on the hump of Washington, DC, and find it level.

Another point we will go into in depth on a future presentation, Mr. President, is that Senate bill 43 is an affront to the time-honored concept of separate but equal branches, which is the backbone of our constitutional Government.

History points with clarity to the instances where one branch has furtively trespassed on the turf of another branch of Government.

All we have to do is go back to the Constitutional Convention and recall that there were many hours and days spent on the basic question of where power should be located—power that would be responsive as well as responsible; power that could be called into check and balance so that truly the sovereignty would remain with the people.

"We the people," that is the first statement made in that great document—"We the people." And that is the source that is the base, that is the foundation stone, of the whole democratic system in this great republic's history.

"We the people," not, "We the Government," not, "We the President," not, "We the Congress"—"We the people."

We do not elect kings. We do not elect monarchs. Sometimes we treat them like that, but we really do not. I do not think one has to go back to the great dissertations of Thomas Jefferson to understand the egalitarian flavor and egalitarian character of this system of government. Some of the greatest of all of our writings on political theory and philosophy in this country were written by three men—Hamilton, Jay, and Madison—in the Federalist Papers.

Mr. President, I do not know of anything yet that has been produced that so profoundly expresses and defines the American political system as the Federalist Papers. Oh, I know my generation grew up at a time when change was the word of the day—change for the sake of change, or because of depreciation we had to change and because of world wars, cold wars and Korean wars—change, change, change.

Well, there are some things, Mr. President, that really change very little and should change very little.

There used to be a very clear delineation between what a liberal and a conservative really was in our political life. A liberal was thought of as someone who wanted to take the Constitution and stretch it one way, and stretch it another way in order to determine a set of predetermined set of circumstances or basic philosophy. A conservative was one who wanted to maintain the true course of action, wanting to be not only of allegiance to the Constitution, but maintain its spirit as well as its law, and its letters. Of course, my generation again thought the New Deal period was a very easy way to define it.

I remember one time probably one of the great constitutional authorities in this Senate was a Senator from the State of Oregon by the name of Wayne Morse—Wayne Morse, who graduated from the University of Wisconsin's School of Law, came to Oregon, became dean of the University of Oregon Law School, was chosen by President Roosevelt to head up his Labor Relations Board activity on the west coast, was recognized as a brilliant lawyer, a brilliant administrator in legal academics, and he was a Republican. He was elected to the U.S. Senate as a Republican. He later changed to be an independent. He later changed to be a Democrat and was elected from the State of Oregon to the U.S. Senate as a Democrat. He had proven he could be elected in both parties. I keep telling my friend, ED ZORINSKY, that he could be elected from Nebraska as a Republican, or he could be elected as a Democrat. He belongs to this side of the aisle anyway. But that is a kind of loving invitation I have extended to him privately. I will do so publicly.

But liberal and conservative was often then confused again because I remember one time Senator Morse was being introduced by a newspaper editor in Oregon to a Republican meeting. This is when Senator Morse was still a Republican. But he had made some pronouncements about the war powers and about other powers of the Presidency, and wanted to extend them to really challenge basically some constitutional tradition and some constitutional precedent. On this occasion the editor of the Corvallis Gazette-Times introduced him as one who calls himself a constitutional liberal. He said "All I can say is he is getting awfully liberal with our Constitution recently," referring back to some of the stretching that Senator Morse wanted to do to the Constitution to cover a set of circumstances.

But then, Mr. President, there was also not only an attitude toward the Constitution that divided the liberal from the conservative, but, particularly, in the time of the Roosevelt years there was this expression that came through the court-packing proposal that was made by Mr. Roosevelt. He did not like the fact that the conservative court of strict constructionists had knocked down a lot of his New Deal legislation. He did not see any possibility of circumventing that role of the court being played out in the check-and-balance spirit of the Constitution. So he proposed that he be permitted to add members to the court after the sitting court members reached a certain age, that they did not see fit to retire, and expand the size of the court to offset the votes against him that were then members of the court.

Well, that was a very interesting time delineating between a liberal and a conservative. Most of the people on this side of the aisle were, even the liberal Republicans, saying "Hey, on that issue we just do not see that happening, and we are going to seek to block it." We had some people on the Democratic side of the aisle, Senator Tydings, of Maryland, father of Senator Joe Tydings, Senator Richard Russell of Georgia, Senator George of Georgia who again were saying, in effect, look, the conservative perspective is we hold the line to the precedents, to the traditions, and to the spirit of the Consitution. Why, this would throw the whole Government of the United States into imbalance or out of balance. They rose and they fought the battle. It was one of the most dramatic constitutional battles I believe in this century over the question of the balance of power between the Court of the United States as a judiciary branch of Government and the executive branch of Government, and as it affected ultimately the legislative branch of Government. Liberals, by and large, say no. But we are just sort of stretching a little bit.

Where is that great conservative perspective now on this issue? Where is that traditional conservative position? We have a new definition of labels today. People who want to throw the balance of power of this Constitution into the cocked hat are the radicals. They are not liberals. It is a radical viewpoint—raw radicalism. But as Gilbert and Sullivan said in Iolanthe, "Every little boy and every little girl born into this world is born a little bit liberal and a little bit conservative. None of us is purely liberal or purely conservative." So I suppose we have to give our brethren as we want for ourselves the privilege of straying from the straight and narrow on political position. But I have never seen so many conservative brethren join in such a liberal, radical proposal as we have pending in the Senate bill 43. Here are Senator MATHIAS, Senator WEICKER, Senator ANDREWS, Senator PACKWOOD, Senator GORTON on my side who are looked upon sometimes as sort of Republican liberals because we are a little bit on the liberal side—moderate side, whatever you want to call it. Here we are fighting this radical proposal to maintain the conservative perspective that this Constitution should be stretched around as some statute, some Presidential proposal, or some other thing.

I think it was also very apparent during the Court-stripping legislative initiatives we had recently on school prayer and busing. Here again this moderate liberal clique fought the battle to preserve the power of the Court, to preserve the traditional conservative understanding of the power of the Court. We have also gone through that exercise on the war powers of the President.

Mr. President, I would take a back seat to no one in this Chamber on a voting record on the causes of peace. And I have led battles against Republican as well as Democratic Presidents on the questions of war and peace as well as support for them on other issues. But even as of yesterday, I had a staff proposal made to me that I should join in offering an amendment that would direct the President of the United States to do something in foreign affairs, direct him, mandate him to do something in foreign policy, a foreign policy that I would love to see come about. I said no. I would not support a proposal that directed the President of the United States, as the man who is constitutionally charged with the conduct of foreign relations of this country. I am devoted to the Constitution.

I do not care what the traditional label is, liberal, conservative, Republican, Democrat; it is all irrelevant. This is part of the killing of time to even engage in this kind of discussion. Yet, it is pertinent in the sense that it

points up again not a label, but the real soul political philosophy of an individual, the real soul position, not some public relations or political pollster's analysis, identification or how he feels it is the best way to promote a candidate in a political constituency that may be called conservative or liberal or anything like that but as really the sole measurement of one's political philosophy.

Do you know what is at the base of that? The Constitution of the United States—the Constitution. I do not mean to defy the Constitution. It was created by mortal human beings and I think there was a divine high hand in it. But that is just my theological perspective irrelevant to the political realities of the day.

But the point is simply that the Constitution of the United States was not only the guide, and not only the framework of Government. It was the soul of self-government created uniquely by a people who had very little precedent to draw upon and which has been supported and sustained over 200 years. You cannot just take that fact lightly. The Constitution of the United States has that kind of role in our life, not only in our life, but has been looked upon by other countries of the world with great envy, hope, wish, and dream that they could emulate some way.

Let us not look at this as just a little statute we are putting into place for a 2-year period because you can do just as much mischief and damage to the basic constitutional system or tradition, history or precedent by a statutory act—it can be struck down, yes, that is the only salvation of it; it can be struck down—as you can with an amendment, or as the President of the United States offers, or has been tried to be enacted into law in court stripping activity by the this Congress and previous Congresses.

Mr. President, referring to the constitutional provision for a balance of powers, which was so carefully orchestrated by our Founding Fathers, I suppose that if one wants to try to highlight a constitutional history of the United States, one could, of course, approach it from either the legislative branch and the history of the legislative branch, or it could be approached as the evolution of the executive branch of Government and the Office of the President particularly, or it could be written and recorded as a history of the judicial branch of Government, the courts, particularly the Supreme Court.

But in any one of these three separate emphases and histories, it could not be written without the interrelationship to the other two branches. You cannot write a history of the Office of the President of the United States without writing in part the history of the legislative branch of Government because of the intimate relationship, the carefully honed balance between the Chief Executive and the legislative branch. Nor could you write a court history of this country without writing, in effect, a partial history of the executive and the legislative. Nor could you write a history of the Congress without its relationship between the other two branches of Government.

Again, it emphasizes the point that the political history of this country is so intertwined and is so interrelated, not by chance, not by evolution, but by design, by the design of the Constitution.

I think some of the most exciting early history of our country related to the relationship between President Jefferson and Chief Justice Marshall of the Supreme Court.

Anybody who recalls that history recalls that Chief Justice Marshall and Thomas Jefferson were at different points in their political philosophy, at different positions on the political spectrum. They had very distinct and very definite ideas about the role of Government as it related to power, the location of power, the exercise of power, and many others. President Jefferson made no effort to hide his feeling about the Court. He publicly expressed himself in very strong terms. Privately, he expressed himself in letters and other such communications in even stronger terms. He made no effort to hide the fact that he wanted to influence the course of the Court and the personnel of the Court. He knew he could only influence the direction of the Court by appointments. Having been elected for a second term, having 8 years, he knew he would have a chance if he did.

But interestingly, as Thomas Jefferson made appointments to the Court, and he made those appointments with care, he knew what their philosophy was, he knew the individuals.

Let me digress a moment. It was such an interesting contrast. I recall as a Member of this body when we were called upon to confirm two appointments to the Supreme Court, one Mr. Haynesworth and one Mr. Carswell. By the deliberative action of the Senate, we turned down both of those nominations.

But one of the interesting things that came out of that was, as I remember, the fact that the sitting President, Mr. Nixon, had had little or no knowledge or personal contact with either one of these two men he sent up as his nominees to the Supreme Court. It was always one of those things that puzzled me because I remember so clearly the campaign of 1960 and the campaign in 1968 when the Republican Party made a great issue out of the need to get a more balanced Supreme Court. It was thought by many in my party that the Warren Court was too active. It was known as an activist Court. But their view was it was superactive, it was overactive. Therefore, they needed to put people on the Supreme Court, and they ought to elect a Republican President in order to bring about a more moderate balance in the Supreme Court.

Then to have that opportunity presented to the victorious Republican candidate in 1968 and to have, at least as reported in the public press, two names of men who had never really had any acquaintance with the appointing authority, Mr. Nixon, and whose records were obviously not fully developed before they came up to the Hill, was an interesting contrast with President Jefferson.

Thomas Jefferson appointed safe people, safe in the sense that he knew they would look upon the Court's role as he did. But, Mr. President, one by one—I do not remember the total number, but it was a multiple number. One by one of those appointees of Thomas Jefferson, as they sat on that Court and as they exercised their responsibilities on that Court, gradually came under the influence of John Marshall, so that they then represented the Marshall view and the Marshall perspective even as against the appointing authority.

My point is simply to illustrate again the independence and the separateness of these three branches of Government and yet, the relationship that maintains it as a workable, viable organization. Because, as we know, we do not have pure, total separation. If we did, we would have a three-headed monster. But within that separation, we have the beautiful mixing of powers.

The mixing, of course, is in every direction. We exercise certain what would be, under analysis, executive roles. We have to advise and consent to the President's executive appointments. That is an executive function. The President has a veto power. That is a legislative function. So we have this interesting mixing of powers.

All of this, again, has been proven viable, has been proven workable. But it has also suffered from time to time under crises. And we really did not know until we got through those crises whether we would really survive. I am sure that that Jeffersonian period was a time when one would say constitutional Supreme Court history was questionable. But, fortunately, it did even out, it did moderate, did balance out so we saw that continuation, just as it went through the crisis in 1937 with President Roosevelt's Court-packing plan, just as we have seen from time to time what we call the ascendancy of the legislative branch and the diminution of the legislative branch.

How many people can recite the Presidents of the United States in the

golden era of the Senate, with Clay, Calhoun, and Webster, Jefferson Davis, Stephen Douglas? Who can remember the names of the Presidents? There is no question that, at that time, the Congress of the United States was in the ascendancy. That leveled off again in the Lincoln period, during war and other such crises. So we have had problems.

We have had times when Congress was but a rubber stamp. For some of us, not only because we are Republicans, but when we look at the fact that Senator McNary of Oregon was the leader of the Senate at the time when it was constituted by 96 Members, he led a stalwart group of Republicans, totaling 17. In fact, they had the Cherokee Strip around here. The Democrats sat not only on that side; they surrounded the Republicans. They sat clear around the back of this side of the Chamber as well and the Republicans huddled around here in a circle-the-wagon mentality because we numbered only 17.

But we survived as a nation, because of other things that happened at that time.

And the Congress was merely a rubber stamp at another time, because whatever Roosevelt said, it was yes, yes. In fact, when a few of them said no, Mr. Roosevelt went out and purged them in 1936 because he could not stand any "no" Democrats; he had to have "yes" Democrats. Congress was pretty much at that time in the trough of the balance of power or suffered the lack of coequal status. That righted itself.

I am not saying if this S. 43 should pass, it is somehow going to destroy the constitutional system of this country. I am not saying that at all. I am just saying, Mr. President, that we are facing more serious threats to the foundation of this Republic in the form of the deficit. We have not really solved and not really made much headway on solving it to this date and time, but I still have hope and expectation that we will. That is the greatest threat to the Republic, in my view, that we face. Then to sort of convey the impression that S. 43 is going to meet that challenge of the deficit, it is going to really help in solving that deficit, is a kind of blend of comedy and tragedy.

It is tragic that people would even make such comment or such claim; tragic because it is totally futile to rely on this bill and this power being given the President as a way to correct or to deal with this tremendous challenge of the deficit. On the other hand, it has a little comedy because it is silly to even say it—it makes you want to laugh or cry, maybe a little bit of both. No, the Constitution has properly stated this.

Again, Mr. President, I want to make very clear when I talk about the Constitution, I am not talking about something molded in concrete. Sure, our Constitution has evolved. We had 26 amendments the last time I took count. Twenty-six amendments in 200-some years—almost 210 now. In 209 years, we have had 26 amendments. Oh, we have had hundreds of other proposals that have never secured a place in the Constitution for themselves. But it proves again that the American public has been very perceptive, that they are not willing to buy every little idea that comes down, even though it may have passed both the House and the Senate of the Congress of the United States, every idea that has been brought to them to act upon favorably as a constitutional amendment.

They have rejected many. Many have been stillborn here, in the Judiciary Committee. Others have been choked in the crib in their infancy by the actions on the floor of the House or the Senate.

That has served our country well. But I feel that, even though we are not locked into concrete in the Constitution and I do feel that even though we have evolved changes within the Constitution, the amendment route is the way to change that balance if we want to change that balance.

Do not forget, Thomas Jefferson said it was the right of the people to have a revolution if they wanted one, even after we had established the Constitution. I am not denying that right. We still have a constitutional right to change that government. I will defend that, too; but let us proceed on that basis, if that be our goal, in an orderly fashion as provided by the Constitution. I do not support the idea of violent overthrow, although I suppose you could argue the Jeffersonian view, even with the use of violence.

I suppose innately, I have that in the back of my mind as a last resort because I do not support gun legislation. If we had gun registration, as the old saying goes, and all the other things, we would not have had the means to carry out that first revolution.

But I still say what we want to do in this country can be done peacefully, not violently, and I suppose the Constitution represents that. So it is not a question of either/or, in terms of no change or throw it out the window.

Sure, we can adopt change and I am always for that. But it should be carefully scrutinized, analyzed, evaluated, assessed, and it should move slowly, as is the way with the Constitution. I am far less patient with other changes I would like to see happen than with constitutional changes. There, I am very reticent to see change.

I have cosponsored amendments—the 25th amendment on succession. I have supported an antiabortion amendment to the Constitution. I have not supported a prayer amendment to the Constitution, because I do not believe in that. But I shall support, probably in the future, amendments to the Constitution. But again, the point is, here, in this S. 43, we are having a profound impact on the Constitution and its balance of power through a statutory action.

I might say I have talked to some lawyers who are experts—and I am not—who say this would never last 1 day in judicial review as to its constitutionality. Whether it would or it would not is not the point. I do not think we ought to go through this exercise and create this question of constitutionality, let alone the power of the President to be so enhanced, as we are doing in this legislation.

Mr. President, Justice Brandeis had a very interesting perspective on the Constitution. He was, as you know, one of the great liberal members of the Court. He was what we would call a strict constructionist. I think he was the first Jew appointed to the Court, which was a precedent-setting thing, having to prove himself even more than the traditional WASP's who had been appointed to the Court over the years. But he was, in my view, truly one of the most remarkable men who sat on the Court.

In fact, if Senators want, they should read the official biography "A Free Man's Life" by Al Pheus Thomas Mason, of Princeton University. In that book, Dr. Mason used a very interesting quote relating to this question of separation of powers:

> For what purpose separation of powers? Is it to bring efficiency to the government?

Mr. President, I hear a little talk about, "Well, this will make it more efficient for the President; he will be able to cut down expenditures, excise those waste areas of the budget," and so forth, and so on. This is what Louis Brandeis said:

> Separation of power was adopted by the Convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction but, by means of inevitable friction incident to the distribution of governmental powers among three departments, to save the people from autocracy.

To save the people from autocracy.

So for those who think we are going to get more efficient handling of finances or we are going to get less friction, and so forth and so on. I think such thoughts miss the real heart and soul of the Constitution. I know we live in an age when everything has to be summarized or briefed because we do not have time to go to the original material. We do not have time to read the original essay; therefore, we have to read it in the Reader's Digest. We do not have time to read the original document. I have to ask a staff person to brief it for me in one paragraph. And I tell my staff, "If you can't say it

in one paragraph, don't say it at all." So I am a practitioner of this very thing that I abhor.

All I can say, Mr. President, is that when we look at the shortcuts we try to make to get to a solution or resolution of a problem, we oftentimes buy more misery than we are able to eliminate. Sometimes, we buy more labor than we are able to reduce. Sometimes we find ourselves in greater anguish than what we may have been in at the moment.

I emphasize that there is no simple solution to the deficit problem. For those who are looking for a panacea, for those who are looking for a quick fix, they ought to take stock, analyze what they are proposing, and hopefully back up.

Mr. President, again I emphasize the point that the constitutional balance of power, separation of power is a very, very serious and very, very monumental action to take and should not be looked upon as doing one for the Gipper, or doing one for good old Mack, or whatever other personalized basis we might choose. We are dealing with a constitutional question.

I had a very interesting remark made to me yesterday, and that was: "Look, you are going to have to put it in words that appeal to and are understood by the average American. The average American does not respond to an esoteric argument about separation of powers or the balance of powers."

Well, I challenge that viewpoint. President Eisenhower, fortunately, is emerging with the credit and respect that he deserved even at the time of his administration by many who were so critical and so "liberal" in their understanding of things that they could not understand the President.

President Eisenhower once said, "There are times in which people get ahead of the politicians."

I feel this is one of those times where we underrate the public. We are dealing with figures and budgets and all the ingredients that go into mechanics of finance in the Federal Government enterprise. And yet, Mr. President, let me tell you something. I have sensed a great anxiety and a great call for action when I get out in the small villages, whether they are lumber villages of Oregon or the farm and rural communities, or whether they are the erudite centers of culture and population in urban life. The people have said to me, "Look, you people back there in Washington better get about the business of dealing with this deficit. Whatever the prescription, no matter how tough it may be or how bitter the medicine is, I am willing to make my contribution. I am willing to take my part of that, provided everybody else is given an opportunity to be a part of that solution as well."

I remember when it was running around my State last year, people were saying—well, the year before last, preceding the election of last year—"You can't do these major things in an election year. It just isn't done. You don't talk about revenue changes. You don't talk about reducing programs the people have become accustomed to."

I went to retirement centers, I went to rest homes. I went to places where the elderly live in my State. I was a candidate last year, and I stood in those same places and elsewhere and said the same thing, that we are going to deal with this deficit, we are going to have to freeze everything across the board, including Social Security and COLA's relating to the other entitlements, the military, social security, education, all of those things including water programs.

Mr. President, people listened and responded in the affirmative. And I might say that I won by the highest percentage of my 35 years in political office. My opponent happened to be going around saying, "Reelect Hatfield. He will get these programs reduced. He is going to freeze them." In spite of that kind of confrontation on the issue, I had the highest percentage of votes—not because of what I was saying, but because of the fact that people were making the demand. The Congress of the United States and the President of the United States should face up to this deficit problem and do whatever is necessary to correct it, because they felt threatened in their individual future and they felt that the Republic's future was threatened. If people think we are going to pass S. 43 and placate the people out there who are demanding some action, they had better take another look at it. They are demeaning the intelligence of the American people when they think the American people are going to buy in on some action of this kind as a solution to the problem of the deficit.

Let us not get lost in our institutional mentality and our balance of powers and mixing of powers and all these other things which could be called academic exercises, and let us recognize that the sovereignty of the United States is in the people, and the people have an understanding of what is and what is not going on here. That is the constitutional foundation—the people.

I hope we do not have to talk too many days, but I want you to know that I have had a physical and I feel great. I am ready to go however many days we have to go in order to defeat this matter.

Fourth, the line item veto is a standing invitation for political mischief. It is a mile-wide gate open for illicit trafficking in votes.

A few years ago, a story was told—so far as I know, it is true—about our late and beloved colleague Frank Church. Frank and I were fellow alumni from Stanford, and we came from next-door States. Frank was a Democrat; I was a Republican. I am still a Republican. Notwithstanding the division of the aisle, we were close friends, and I had great respect and admiration for Frank Church, as I know most everyone in the Senate had.

The story is told that when Frank Church, a Democrat, had decided to change his position on the Vietnam war issue, under a Democratic President by the name of Lyndon Johnson, he made his statement on the floor. It was a very eloquent statement.

In that statement, he quoted Walter Lippmann rather liberally as to the reasons why he was changing his support position to an opposition position on the war in Vietnam.

The story goes that sometime after that, he had been invited to the White House for some social function. While going through the receiving line, he reminded President Johnson about some project he had out in Idaho on which he wanted the President's support; and President Johnson is reported to have looked him straight in the eye and, in a humorless voice, said, "Why don't you go ask Walter Lippmann for it?"

Mr. President, I can visualize, with a line item veto in the hands of the President, reminding the President that there was a Bonneville lock project in the energy water appropriation bill that was very important to those of us in the Northwest—the Bonneville lock on the Columbia River. I can imagine a President, whoever he might be, saying: "Well, I need your vote on nerve gas" or, "I want your vote on the MX missile" or, "I want your vote on Contra aid to overthrow the Government of Nicaragua"—all issues on which I have fought the President.

It is natural and normal, I suppose—I am not saying it is immoral—but I question whether you get the best results in legislative action and in executive action in that kind of trafficking in votes.

Or, I can turn that around. There are two sides to that coin. You can turn that around and say that we have a Republican President and a Democratic Congress, or we have a Democratic President and a Republican Congress. That is less likely, but it could happen as well. I can see the opposite party in Congress say:

> Load this bill up with all kinds of goodies and popular issues and make the President line item veto them. We're the good guys. We're the Santa Claus. We're going to give the people a new program, knowing that the President of the United States will have to take the executive's responsible role and say that we cannot have that program. So load it up, dump it on the White House, and sit back and wait and clap our hands and cheer, and that is going to help us in the next elec-

tion. Let the President veto those, because the President has to take that position.

There are two sides to that coin—both of them political mischief.

Mr. President, if S. 43 is passed, I suggest that we make an immediate appropriation for a shuttle service from the White House to the Senate Chamber and appropriate money for 534 rubber stamps, because I think that is what we would find ourselves involved in.

This would make the President of the United States perhaps an all-purpose banker. Just imagine: With this kind of power, this kind of ability to influence votes and to bargain in votes, both ways, we would find the President of the United States could borrow and spend freely. He could hold mortgages on the votes of every Senator in this Chamber and he could have a mortgage date due, or he could call it in at any time because the President would really have two swords, not just one, he would have two swords to wield with this kind of power.

He could say, in effect, "Well, I will veto X, Y, or Z if you don't vote correctly." Or there is a mightier sword that he could exercise in this which has been overlooked by many people, and that is he could say, "I did not vote X, Y, or Z because you have been voting correctly lately." Both of those are swords.

Now, let me illustrate. Back in 1965 there was a national Governors' conference and I happened to be a member of the Governors' conference at that time, and there was a resolution authored by some Democratic Governors to support President Johnson's war policy in Vietnam and it passed the conference 49 to 1. I happened to be the only negative vote, not because I had any great gift of prophecy but having been out there in Asia during World War II as an ally of Ho Chi Minh against the Japanese, I recalled the cheering when that flag went up over City Hall in Hanoi because Ho Chi Minh was our ally. That was not the issue. It was not the political issue. It was just the fact I could see the distinction between the colonial system of the French and the poverty and total misery of oppressed people under imperialism and knew it could never happen again.

Anyway, the same happened in 1966, still under President Johnson.

Later on, I came to the Senate in the election of 1966, and in the election of 1968 I happened to be a seconder to the nomination of Richard Nixon for our party's candidate. I had the privilege of nominating him, making the nominating speech, in the convention of 1960.

So I had known Vice President Nixon, I had known Senator Nixon, and I knew President Nixon, and notwithstanding the terrible experience of Watergate and not in any way condoning Watergate, I still have great admiration for the man's geopolitical ability, his understanding of world power, world politics.

But the interesting thing was in that election of 1968, the Presidential candidate of my party had proposed that he had a plan to extricate ourselves from Vietnam and that plan was not publicly spelled out.

And when he became President, people were waiting expectantly for that plan to evolve and to be publicized.

I remember Secretary of State William Rogers on a personal basis as well had called me and said to me, "You people up there who are opposing this war, who have been opposing this war in Vietnam, just give us a little time to get our plan in place before you publicly criticize us."

And it seemed very fair and reasonable.

Then, Mr. President, came the announced policy of bombing of Cambodia. Viewed from my perspective, that was not extricating the United States out of that war in Vietnam. It was plummeting us further into the quicksand of Southeast Asia.

And at this point in time I had withheld my statements about the administration's position on that war, believing deeply that they had a plan to extricate us.

I then stated my opposition to that expansion of that war publicly, critically.

Interestingly, shortly thereafter, came the information that the White House had an enemy list. I happened to be on it. There came the information that the White House had more than one enemy list. I do not know how many I was on. I knew I was on the first one, which later became sort of a badge of honor.

But I have recollections of the kind of attitudes of being ostracized from that relationship with the White House under a Republican in a Republican White House. I was not the only one. I did not get any complex from it. But on an issue, of course, that was a single issue. There developed in the attitude of the White House, "Those who were not with us who are not for us are against us." There is enough of that kind of attitude that comes out of the White House staff, I think, in most any administration, the sort of "We and they," the sort of "You are for us or you are against us," and, "If you are against us today, that means you are going to be against us forever."

I do not think that often reflects the Presidents themselves, but it does get into the staff frequently, not realizing that you may not be together today on this issue, but tomorrow you may be together on an issue.

I know as far as the Senator in the chair, my good colleague from Alabama, if we probably look at voting records, we will probably see that our voting records are almost in contradiction on most controversial issues; but, boy, when it came to abortion, sanctity of life, the Senator from Alabama and I are shoulder to shoulder.

So whatever issue you are on today where there may be disagreement does not mean you are forever involved in a total adversarial relationship. That is what developed out of the White House staff often.

Why advocate that kind of adversarial mentality, which in the long term enhances neither the White House nor the legislative branch of Government, does not expedite legislative action, does not help in personal relationships?

I frequently have said my wife loves to read billboards driving down the highway. I led the battle to abolish billboards in the State of Oregon. She thinks anybody convicted of murder should be put down the chute, execute them. I led the battle to abolish capital punishment in my State. She is prochoice; I am prolife.

Somehow it has not in any way ruptured our marriage. Thank God it is stronger today then when we first married. It is out of diversity rather than conformity. And we have that ability as mature people, I hope, to be able to work together with diversity, but we have to face the reality of the political culture and the political environment and it is one that tends to polarize viewpoints, people, and relationships.

And S. 43 would absolutely create a rupture in relationship that we could never imagine. I visualize it as being the sword that would destroy the umbilical cords of those being that close and destroy the cords of cooperation of those who are not quite so close. It certainly would not enhance the mixing of powers and the need for the legislative and the executive to cooperate.

You know, I just cannot emphasize too often, too strongly, the fact that we are not in that either/or situation on legislative matters. We are not in that polarized role. We have those issues where we do have confrontation and that is healthy.

But the negotiations going on continually behind the scenes and even out in front of the world on appropriation matters, appropriation activities, are now in practice and now in place.

I think that, frankly, these negotiations that are going on with most everybody's understanding and knowledge would take on a back room character. We would be pushing our politics from the light of openness into the dark, smoke-filled rooms of the old political system. And it could employ all kinds of things from barter to blackmail. That is the kind of behind-

the-scenes, smoke-filled room politics that we hoped we have matured from and evolved out of; we have moved ahead, progressed.

Go back and reread the history of the Republican Convention of 1920. You do not have to go that far back in political history. But there was one of the great examples of back room, smoke-filled room politics. And the tragedy that emerged out of that, personal tragedy of basically an honest, kindly, average intelligent American who was thrust into a role totally ill-equipped and who had a tragic death as a result of it, and who today suffers from the fact that he is listed as one of the worst Presidents we ever had. At the time of his death, he was probably considered as one of the most popular Presidents we ever had, had been elected by one of the highest margins of votes we have ever had and, from that pinnacle of public popularity to be thrust down into the pit of ill-fame and suffer such degradation of reputation, it is tragic.

Let me say that was a product of that kind of political world that this S. 43 could help re-create—back room, smoke-filled politics, bartering votes. So this has not only constitutional implications, it has political implications.

Now I know there are those who think we ought to have some way of forcing party discipline. I mean just imagine what we are facing here. As I say, my best head count—I am open about this—I think we can pull six Republican votes out of 53. And we are not going to get all the Democrats. I do not know how many Democrats we are going to get. We have got to get enough to win. I hope we will and I think we will.

But the point is, simply, I am still going to be in this seat after this battle. I am still going to be chairman of the Appropriations Committee, I think, after this battle. I am still going to be invited to the White House for leadership meetings once a week, I think.

There are people who think: Well, we ought to have some way to discipline ED ZORINSKY when he votes with the Republicans on that important budget resolution and somehow take him out of that center and put him out there in some kind of leper's role; or take the six Republicans who are leading this battle or supporting this cause against the President and the White House leadership of my party, put them out somewhere in an ostracized position.

We are not going to have party discipline of that kind unless we adopt a parliamentary system. Let us not kid ourselves. But there is another way we would probably move close to it and that is with S. 43. Only there, instead of 53 Republicans saying, "This is the Republican position by a majority vote," we would have one man saying. "This is the Republican position," the man in the White House.

I fully trust the current incumbent. I have never known a man in politics who was more gentle, gracious, nonconspiratorial, or less confrontational than President Reagan. He is all of those things that we think of as a gentleman, as a gracious person.

But we are adopting something that, even though it may have only a 2-year life, we are adopting a precedent. Who knows who we are going to have in the White House at some future time?

Let me tell you, with all due respect—and there is a different style of leadership, and I think history is going to be far kinder to this gentleman I am going to name now, Lyndon Johnson, than perhaps history is now. I can say as a Republican, there was a man in my view who carried out the New Frontier, who got legislation where most Presidents would have not been able to succeed because he knew this Senate, had been a part of this Senate, but more important than any other thing, he understood power and he knew how to exercise power.

(Mr. MATTINGLY assumed the chair.)

Mr. HATFIELD. You take a Ronald Reagan and Lyndon Johnson. Ronald Reagan knows how to exercise power. His is the power of persuasion of the public and so forth. President Johnson's was a power of knowing how to apply power. Think of Lyndon Johnson with the line item veto. I mean, I came to the Senate at a time when he was no longer in the Senate, when there were still people walking around here with broken arms that he had broken—figuratively speaking, of course—to get their vote. They tell me—I was not here at the time when he was majority leader—if any Senator on the Democratic side or on the Republican side stood up and said, "Mr. President, I want a rollcall," before the Chair would say there was a sufficient second, the Democrats all looked at the leader. If he raised his hand, they got a sufficient second. If he did not raise his hand, they did not get a sufficient second.

We know what it is today. Our arms just automatically go up, no matter what voice makes it. A page could shout out somewhere in the back room for a rollcall and we would automatically put our arms up. But that was not the day when President Johnson was majority leader, as I am told.

Well, just think about it. And whether or not you are doing it for the present incumbent or not, whatever we do here is going to have its implications, not only for the 3 years left of this administration but could very well be ensconced in the political fabric of this Nation that would carry on.

Let me paint a horrible possibility. Say, the Democrats won the Senate in 1986 and, say, the Democrats won the White House in 1988. What would be the Republican vote then about extending this for another 2 years or another 4 years or another 1 year?

There is not a Democratic alive that would get that kind of trust by some of my colleagues on this side of the aisle who would probably be amongst the cheerleaders for this louder than some of the others, even.

We have to look beyond the incumbent. We have to look beyond the personality. We would not have the votes to not enforce it or to extend it. We would probably find, if the Democratic Party had a majority, that they would say, "If it was good under the Republicans, it is good under the Democrats. Why not? We will extend it another 5 years, 4 years, or 2 years."

Then all of these people who are shouting now about the line item veto would say, "Oh, you cannot trust the man down in the White House. We better not. We better fight it."

The principle is on the institution of the Presidency, not the President's party. The principle is on the institution, and not any man or potentially a woman in the future, and that is the only basis upon which we should make a judgment on this proposal.

We get very parochial when we are making a decision of this magnitude on the basis of present company in the White House.

Well, there is another part of this that we will go into in detail later on, but just to highlight the point today, and that is I am opposed to S. 43 because it will create a brandnew entitlement program.

Who will be the class of intended beneficiaries? Lawyers—that is who. For the last 15 years there have been scores of complicated lawsuits involving the line item veto that have tied up State court systems and have yielded inconsistent results. Go back and read any one of them—let alone three or four of them. If these lawsuits have proliferated under a State court or under a State program of line item veto, think of the marvelous opportunity in what we are handing to the lawyers on a silver platter with all the complications of Federal programs and Federal appropriations. It absolutely staggers the mind. I mean you can build fantasies, let your imagination run ripe, and you still can never come close probably to the kind of litigation that would emanate from this kind of proposal, or this kind of law.

You know, as a nonlawyer I do not understand it. But you know, you would think after 92 years—we are not dealing with something that has just been around recently—we have had a line item veto authority at the State level in some States or another, and you would think that by this time they would have ironed out the legal questions. If they have not ironed out

the legal questions in 92 years of litigation, what in the world do you think they are going to do in the next 92 years if this bill should pass with Federal Government law giving line item veto to the President?

Chief Justice Burger has been quoted frequently as saying that many weeks he averages 80 hours of work, and that the Court has been absolutely deluged. I believe the statistics are correct when I report them that in the last year of the Warren Court, which was considered probably the most activist Court in modern times, they tried or handled about 52 cases. In the last 2 years, Mr. President, with the current Supreme Court, the Burger Court, that figure has exceeded 150 cases in a session. Some people have said we have so much due process today we are going to be inundated, and we are going to be suffocated. Well, just imagine what this would do in the whole case if we have this kind of authority, and if it becomes a target for litigation. How do you think this is going to impact upon our current overloaded Federal courts?

You know, this very Congress cleared how many new Federal judges? Dozens of Federal judges have been cleared at least during my stay in the Senate—dozens of Federal judges because we cannot handle the litigation that is now crowding in on our court dockets. In the District of Columbia, a judge yesterday, along with judges in other States, ordered the release of prisoners in prisons because of the inhuman conditions because of overcrowding. We have overcrowded dockets. We have overcrowded prisons. And we do not have enough law enforcement officers out there on the beat. At the same time, S. 43 is being offered as another windfall for the lawyers to inundate further our Federal courts.

Again, I suggest that we take a look at what has been the experience in the States. Up to this time, the implication has been it has all been positive, it has all been rosy, Governors have been using the line item veto for years, they have done it successfully, they have done it prudently, and they have done it effectively.

Well, I say that the Governors having spoken—and I can speak from 8 years of experience—if we had a constitutional amendment to balance the budget, we would find ourselves in a difficult situation around here that this will not correct, and the line item veto is almost what you would say dependent. It would be dependent on a balanced budget amendment. Even if we had one, it would still not do the job it is intended to do.

Why have we had such long-time litigation with experience at the State level for 92 years? First of all, the question has been raised in the litigation: Can a Governor change the appropriation without vetoing the appropriation for an item? It is remarkable that this has just created all kinds of legal excitement. Can a Governor change the appropriation without vetoing the appropriation for an item? You would think that a line item veto authority would be a very simple, straightforward thing. Well, I have demonstrated that S. 43 is anything but that, mostly because of the deficiency of the bill, but still that deficiency is part of the character of trying to grant a line item veto that has been established by the experience of the courts in the States and the litigation through those courts.

Another question that has befuddled the lawyers out of the Governors line item veto that we have had 92 years of litigation on: Can a Governor leave the appropriation alone but strike conditions and provisos on the spending of the appropriation which were attached to the item? We "fence." We speak of "fencing" appropriations. I think everybody is very familiar with the fact that appropriations committees of the Senate and appropriations committees of the House for years fenced language around a specific appropriation item. We did it with Central American aid. We did it with the neutron warhead. We have done it with other items. We did it with the MX missile. This is a practice that has happened at the State level as well. So part of the litigation of 92 years on just a simple line item veto to authority for the Governors has been can a Governor—in this case could a President—leave the appropriation alone but strike the fence—the fence language, the fencing language which is a proviso, which is a condition on the spending of that appropriation amount? I say that probably out of all of the litigation for the last 92 years on the Governors line item veto this is probably the most difficult. This is probably the one that has raised itself in the courts more than any other one. This is the most stubborn issue to date.

In 1 year, the State of Missouri said no in this court action. The next year, Florida and Iowa said yes. So here is the same line item veto authority in one State court that said no, and another court—two States' courts—said yes. You say oh, well, that is your diversity within the States. That would not be true in the Federal system. Oh, would it not? Mr. President, last year the Ninth Circuit Court of the Federal court system—that is the court out West where I live—had 26 of its 27 cases reversed that went on appeal; 26 out of 27. One might say, well, that shows that is one of the best courts we have. Others would say, wait a minute, why is that court so out of step with the rest of the judicial system of this country?

Today the bulk of the cases that go to the Supreme Court on appeal are to resolve the differences between the circuits on statutory interpretation, not constitutional questions that the Supreme Court alone is the ultimate one, but here the Supreme Court is playing referee amongst the circuit courts because the circuit courts have such diversity of interpreting a single statute.

So talk about diversity on the Governors line item veto, say between the State of Missouri, the State of Florida, and the State of Iowa. You would have even perhaps an easier way to proliferate diversity of opinion on the line item veto statute amongst the several circuits of the Federal system.

So we just might ask—and I would hope maybe the author of the bill when he is relieved of the duties of the Chair, can explain to the body of the Senate—is the definition on page 3 of S. 43 of "item" applicable to fencing language? That unnumbered paragraph reads "Providing that no funds shall be spent" to do X, Y, and Z. I do not know. I have asked some lawyers to interpret it. They say it is ill-defined. It is an invitation to litigation.

Another question in the courts that has befuddled lawyers is, on spending that accrues from nonappropriated bills, your State entitlements, your programs funded by statutory earmark and so forth, can a Governor veto the spending that accrues from such bills?

Of course, we do not know. There is no uniform conclusion on that.

We have had a number of courts also that had complicated cases that arose between branches of government over the veto and the line item veto the Governors used. It is very interesting that some Governors use the line item veto to slash the operational budgets of the other branches of State government to effect a wholesale of house cleaning operations.

What an interesting picture that is. We have had what is called comity asked between the two Houses of the legislative branch of Government. Just the other day we were talking about the Legislative Appropriations Subcommittee bill. That bill comprises the expenditures of the legislative branch of Government, the spending of the Library of Congress, the Capitol Architect, and many other agencies. Every one of those agencies had been cut by the House legislative appropriations bill more than the appropriations within that bill for the House of Representatives.

I asked the question, If the House Appropriations Committee cut every program in the legislative appropriations bill more than their own expenditure program to run the House of Representatives, how can they justify that? Maybe we ought to apply the reduction to the plan or the program or the spending part of that bill for the

House of Representatives' expenditures. My very wise and sage assistant said, "No; we always exercise comity on that. Whatever the House wants to appropriate for their own expenses we respect, and whatever we want to appropriate for our expenses the House respects."

But what about a President? We have a Democratic House and we have a Republican Senate and a Republican President. It is conceivable that under the line item, if we send this bill down to the White House to be signed, the legislative appropriations bill, the President of the United States, vested with his awesome club embodied in S. 43, can say, "Well, Mr. Speaker, you have not been very helpful on the budget resolution. Yes, Mr. WRIGHT, you have been leading the battle against the Contra aid. Well, now, gentlemen of the opposition party, you have all that energy to fight me on all these important issues. Probably the problem is you have too much staff." So what he will do is just line item veto that House of Representatives portion of this bill on a line and bring them into halter, bring them into conforming with what the White House wants.

Would that not be a marvelous display of two Irishmen fighting each other like that? It would be a marvelous display of how we work out these difficulties.

I say as a Republican that when you look over the last 5 years and you have that Boston Irishman heading up that House of Representatives over there, as stalwart a man as he is, and an Irishman down there in the White House, yet on all of these issues it has eventually been that good old Tip and the President get together, shoot a little Irish with each other, and they come out with some kind of a deal. We have busted our tails over weeks and months and so forth between the two Houses and we have not been able to do it. It has been a marvelous demonstration of how you resolve differences without a club.

There are some little clubs around that we all use, at the White House and here. But this would be the club with the big nail in it, the big spike in it. I can see one swipe to the head of the Speaker of the House of Representatives, with all of this great relationship. It would all come quickly to an end and we would have confrontation. Confrontation would lead to immobilization, paralysis.

Michigan, West Virginia, Nebraska, Washington, and Wisconsin have all seen complex litigation on the procedural aspects of lineitem veto. Mr. President, we are not talking about one, two, or three States. We are talking about many States that have had a part in 92 years of litigation. Who has won? It is not clear. But we know who has lost. That is the public.

I suppose if we want to come down to the dollars and cents of it, the winners have been the lawyers.

But do not be misled that somehow we are just dealing with a little, simple matter of line-item vetoes. Even if S. 43 were amended to try to create a better definition, do not forget the litigation, what has happened in the last 92 years under well-defined line-item veto authority at the State level. There is what we should learn from our Federal system.

As I indicated a while ago, the flexibility of the Federal system gives the States opportunity to experiment, demonstrate, and to prove or disprove. This is a case where the States have had the experience, the States have engaged in this kind of activity, the States have tested it, and it has not been a good record.

Rather than in a case like when Oregon tested the personal income tax and found it to be good and the Federal Government adopted it, let us take the case of the States which have tested the line-item veto, found it to be bad, and not adopt it. We should learn from both mistakes and successes.

What is very clear is the chief executives of the States find it irresistible to test the breadth and scope of the line-item power.

At the Federal level, line-item veto authority would initiate a flurry of actions. You think this is just a matter I have talked about so far as between the President and Congress so far as potential litigation. Let us broaden this to recognize that you would have interest groups out there in the public who would feel offended, who would feel that somehow the President had excised a program which they felt very strongly about. Maybe they were the recipients. Maybe they were the beneficiaries of the program. They were related to the program.

The President then said, "I will line item that out of the budget." You immediately set into place another cause of litigation.

Maybe it is not a question on definition of line items or item; it is on a question of being denied a program.

Mr. President, for example, I have a letter sent out by the American Library Association. A number of citizen and other interest groups would be immediately involved in challenging the exercise of the line-item veto which could possibly lead to litigation, as it has in the 92 years of history at the State level concerning the Governors' line-item veto. I am sure the letter was received by all Members of the Senate.

Mr. President, I ask unanimous consent that the letter, which I have before me, with its attachment, be printed in the RECORD.

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

AMERICAN LIBRARY ASSOCIATION,
Washington, DC, July 16, 1985.

DEAR SENATOR: The American Library Association urges you to oppose the line-item veto measure, S. 43, which is under consideration on the Senate floor this week. The ALA Council passed a resolution to this effect on July 10 during its Annual Conference in Chicago last week. A copy is attached to this letter.

The American Library Association, founded in 1876, is a nonprofit educational organization of over 41,000 librarians, library trustees and friends of libraries dedicated to the development and improvement of library services for all the American people.

In S. 43, Congress would give the President the power to sign or veto each paragraph or section in every funding measure passed by Congress. The Senate Rules and Administration Committee reported S. 43 unfavorably by an 11-0 vote.

ALA believes that the decision on the appropriate funding level for individual federal programs should remain where it is right now—with elected officials in Congress who are both representative and accountable. *You* are in touch with the constituents in your state about individual programs; the President by and large is not.

Consider, for example, library grant programs such as the Library Services and Construction Act. For the past four years, the President has attempted to eliminate all library programs totaling $125 million in FY 1985. However, with strong bipartisan support through the congressional budget, authorization, and appropriations processes, Congress has continued to fund federal library programs.

S. 43 would give the President yet another chance to eliminate library programs, forcing Congress to act yet again in support of them. The Administration illegally impounded a portion of LSCA funds for six months in FY 1982, releasing them only after a lawsuit by 10 states. LSCA is not yet an advance funded program, and the FY '82 delay caused considerable hardship for LSCA-supported library activities in the states, as would the delay caused by a line-item veto even if later overridden by Congress.

For these reasons and those detailed in the attached resolution, ALA strongly urges you to oppose S. 43, the line-item veto.

Sincerely,

EILEEN D. COOKE,
Director, ALA Washington office.

Attachment.

RESOLUTION ON THE LINE-ITEM VETO

Whereas, The proposed line-item veto, endorsed by the Administration, would allow the President to accept or reject individual parts of appropriations measures already passed by Congress; and

Whereas, The non-defense domestic discretionary appropriation items may prove particularly vulnerable to the exercise of this presidential authority; and

Whereas, The concept of the line-item veto appears to denigrate the long-standing federal tradition of a government founded on a system of checks and balances; and

Whereas, There appears no guarantee that the line-item veto will reduce governmental expenditures; now, therefore, be it

Resolved, That the American Library Association urge the members of the U.S. Congress to oppose the line-item veto on the budgetary appropriation process.

Mr. HATFIELD. Mr. President, I think the vote referral in the letter is in error, but that is what it says.

Mr. President, this letter illustrates that there are multitudes, literally probably hundreds, even thousands of organizations and groups that have a relationship to appropriated accounts, programs funded by the Federal Government, that would have a very different interest in and an opportunity to challenge through litigation the exercise of the line item veto, if it were so granted to the President. As I said, we oftentimes get into the argument and the view that this is only a problem between the executive and legislative branches of Government.

The American Library Association, which has already participated in bringing a suit on the delay of such funds, could easily become another one of those litigants inundating the Federal court system, challenging the exercise of such a veto.

I know some of my friends would say, "That would be wonderful, to get rid of some of these programs we do not like, that are costing us too much."

My friends would not get rid of the program. They would have it in court for the next 20 years.

Get rid of the program by having the courtesy to stand up here and exercise a program as a legislative responsibility. Do not dump it on the President. Because we do not have the courage to line item or excise or abolish, do not dump it on the President and say, "You do it"; then have the President make the effort and have it end up in court where nobody wins and nothing is settled.

As I say, look at 92 years of litigation in the States on the line-item veto the Governors have been exercising—92 years of litigation—then tell me that you want to see the U.S. Government set up a program for litigation at the Federal level on the question of line-item veto.

That is one thing that has not been brought out. They do not want to talk about that. All they want to talk about is, "Oh, Governors have had the power; Governors have used the power." Yes, I used it for 8 years, sparingly. It did not prove anything. Do you know why, Mr. President? Because the Oregon constitution has a balanced budget requirement.

That is the key, not the line-item veto.

I emphasize again, we can line item that part of the budget we do not want, abolish, excise, and you still have a $100 billion deficit.

So, Mr. President, what we have is not the question just between the executive and the legislative branch of Government, but just do not forget: Since the New Deal days of putting the Federal Government into every kind of activity imaginable and some activities unimaginable, we have set up client relationships, we have set up interest groups, we have created dependencies, recipients, that are not going to let go that easily.

I shall stand here any day and vote up or down on abolishing the EDA, abolishing Amtrak, or other programs. Let us put them through on that basis as a legislative responsibility if we want to excise these programs.

Or let me suggest one other thing: Every one of those appropriations bills that goes down to the White House has come, first of all, from our committee to the Senate. On the Senate floor, we have worked the will of the Senate by adding or deleting, whatever the case may be. We have gone to conference with the House and worked out differences between the House and the Senate. All that time, the President has had a role. He has had a part in that with the Office of Management and Budget, Mr. Stockman at his elbow. Then it goes down to the White House for his signature. Let me say to my colleagues that if there are things in that budget you think should be out, it ought to be worked out by the Congress, the Senate or the House. We have that opportunity. And we should make that our responsibility.

I find that, many times, people will want an amendment to one of our appropriations bills about a project in their home State and fight like mad to get it adopted. And when we adopt it, they turn around and vote against passage of the bill. So, now they say, let us let the President take everything but my project out of that bill.

I do not get that. At one point, we are trying to hide our project in a big mass; at another time, we are saying expose that big mass with my project so the President can take it out.

I think there have been cases when there is no question that the Senate and the House, together or individually, have been less than responsible—you could probably say irresponsible—loading up the budget with items that have been purely parochial reelection projects, political projects, and worse. But I say to my colleagues that is our responsibility, to correct our deficiencies. It is our responsibility to improve our standard of performance. It is our responsibility to make this system work efficiently. And no amount of buck passing to some other branch of Government is going to correct that deficiency in the character of this institution.

I think it is misplaced effort to say, in effect, "You do it; we cannot." And then listen to all of the screams go up through the dome of this building if some President should suggest that he exercise certain authority or power in the War Power Act. We feel very strongly about that. I have been here long enough to go through Republican and Democratic administrations on the questions of war powers. I have heard a lot of speeches on this floor that the Congress has the responsibility, the Congress has the capacity to exercise that constitutional responsibility in areas of peace and war; but on our say in financial matters, fiscal matters, where the Constitution says the Congress shall control the purse strings, we do not have that kind of capability; we have to tell the President to do it for us.

We cannot have our cake and eat it, too. We cannot claim great ability and capacity and responsibility as to war powers and turn around and abdicate those same responsibilities and capability as relates to financial matters. There has been too much of that buck passing over the years.

Oh, I know; I have even heard them on this issue. I have heard some of my dear friends across the aisle say to me, "Well, the President has been making all kinds of claims about what he can do: He can balance the budget, reduce the deficit, all of these things if we give him the line item veto. Let us give it to him and expose it for what it is, that it is impossible to do all the things he claims for it."

Well, that is not a good basis on which to transfer this power. I say to my colleagues, "Look, let us face the bottom line. You are not going to get any political mileage out of that. This President is to you what President Roosevelt was to us Republicans. He can make the public believe black is white. He has the persuasion and the ability of persuasion. He can go on the tube and, in one speech, he could totally demolish the whole argument that, somehow, the line item veto is going to do all these great things."

I want to remind my colleagues of the mere facts of the case. In 1980, we campaigned on the theme that the Democrats have not been able to balance the budget; by golly, you elect us and we will balance the budget. And we got reelected despite the fact that we had more than tripled the deficit. We had a bigger deficit, we were deeper in debt than we were when we got elected in 1980, and we got elected by a bigger margin in 1984.

So I am not so sure the idea is somehow going to expose the Preident's exaggerated claims about what the line item veto is going to do for the deficit problem, that we are going to expose him by exposing the fallacy of his arguments. That is just not in the constitution of things at this moment.

We have to recognize that we will have citizens groups—we listened to the arguments about legal aid around here being given to this group and that group to sue the Government, that it should be cut off, why should this or that group be given funds to sue the Government? We got into all kind of discussions and debates on the

whole issue of legal aid. Boy, what would legal aid be with this kind of proposal in S. 43, with every group out there litigating against any reduction or against any excission of present programs or former programs?

We would have a stampede to the Federal courts by the lawyers. We would probably have a great increase in the enrollment in law schools. People would see a whole new industry blossoming; they would want to get in on the ground floor.

I might decide to go back to law school myself. It is just one of those things that invites this kind of industry. I am not here to berate lawyers, but there is enough of this incentive for remuneration in the practice of law today that we ought to do a little bit more to stimulate the idea of reconciling—reconciliation rather than remuneration. We ought to teach that.

At Williamette University, my alma mater, they have established a program, new in the law curriculum, called conflict resolution, because it is the same basis on which some of us have been fighting for the Peace Institute, to develop the skills of mediation, arbitration, conciliation, resolution of conflict in the general community, whether it is labor-management, child-parent, student-teacher, citizen-government, or between nations of the world. There is enough of an adversarial character to our society without stimulating it by creating this kind of incentive.

It is so evident not only in the political but in the economic as well. We have many examples of why productivity has been so high in Japan in their general economic system because they have created the cooperative attitude in culture between management and labor in business. Here we have sharpened, we have honed so finely the adversarial relationship between capital labor and public that it has affected our productivity, our competitiveness in the world marketplace.

What we are proposing here is to increase that adversarial relationship again in the political to the point where it would be, I believe, very negative; it would produce no positive results.

In closing, let me confront the cheap rhetoric you will hear about deficits and why S. 43 is needed to reduce those deficits. This morning I was reminded of the passage in the Gospel of Matthew when Jesus was addressing the hypocricy of the scribes and Pharisees. For those who are interested in the 23rd chapter, it says:

Woe unto you, scribes and Pharisees, you strain out the gnat, and swallow the camel.

"You strain out the gnat and swallow the camel." Without demeaning this passage of the holy writ, I would respectfully like to translate that concept to the debate on deficits and paraphrase it:

Woe unto you, Senators and Congressmen, you who strain out the gnat and swallow the camel.

Hundreds of billions of deficit dollars are being swallowed whole by this body. Proponents of this bill focus on a microscopic part of the budget and ignore the root causes of the deficit—inefficiency, an unenforceable tax system, entitlement growth, budget busters at the Pentagon, and all the others. Even if S. 43 would work, which it cannot and will not, over 85 percent of the budget would be exempt from the line item veto. My dear colleagues, you do not have to be a higher mathematician to understand that when you bring this baseline down to 12 to 15 percent, again, the line item veto is meaningless, infinitesimal when dealing with the magnitude of this problem. You would still have a $100 billion deficit.

No, we have to begin to look at the real basic problem and analyze it. This deficit is not going to be corrected by the current administration's attitude of dealing only with the spending side. It is a two-sided coin, spending and revenue. We have seen the revenue side eroded by that ill-conceived tax-reduction package of 1981, ill-conceived particularly in the excesses above and beyond Roth-Kemp section of that bill. Two-thirds of our deficit today can almost directly be attributed to that part of the bill.

Be that as it may, we just went through a Presidential campaign in which the Democratic candidate, Mr. Mondale, said that we were going to have to deal with the revenue side of the problem before we dealt with the deficit effectively.

Mr. President, Mr. Mondale was right. The only thing was he let himself get painted in a corner because the assumption had to be that in order to deal with the revenue side, you are going to have to increase taxes. The idea of increasing taxes within the current tax structure is unthinkable to most of us. But the point is that if you restructure the tax system, not what is being floated here as tax reform, but if you truly restructure the tax system of this country, at least a portion of the $90 billion we are not collecting this year because of the complexity of that tax system could be collected, at least a part of the $100 billion underground economy that has contributed to the complexity of our tax structure could be collected, and we would be dealing with the revenue side of this problem. We are going to have to deal with the entitlement side of this problem.

Oh, I know we went though all that exercise and we had one vote from the democratic side on the question of entitlement freeze. If we would have had a secret ballot, I wonder what it would have been. I would imagine 99 percent of those people who sit on that side of the aisle and on this side of the aisle would say, "We are not going to deal with the deficit without dealing with those entitlements."

Sure, we walked the plank on it, and then the President and the House of Representatives made a deal, so we walked the plank for nothing. We are not going to deal with the deficit effectively until we deal with entitlements, until we deal with revenue, until we deal with that bloated Pentagon expenditure.

Somehow the concept floats around here that money equates security; the more dollars you spend at the Pentagon, the more security you buy. That is as fallacious today as it was under the New Deal when the Democrats used to say to the American people, "The more money you throw at a social problem, the more apt you are to correct it."

It was not true then and it is not true today when we are saying on my side of the aisle, "The more money you throw at the Pentagon, the more security you buy." Money is but the means to an end.

Just imagine, Mr. President, the management aspect of the billions of Pentagon dollars. I cannot. I am told there are 53,000 people in the Pentagon's procurement division literally drafting thousands of contracts per day, 3,000 to 4,000 per day. With 53,000 personnel in that procurement division, you tell me it is a manageable program.

But you see, Mr. President, what eludes us is that when the administration offers a Pentagon budget for fiscal year 1986, they want to add 25,000 new civilian employees—25,000 new civilian employees. Does that mean we are buying, with 25,000 plus their salaries, that much more security? Some used to say the city of New York was ungovernable. That makes the Pentagon twice as ungovernable with the magnitude of just the management of money.

Part of that is evidenced, too, by the fact that we have appropriated $250 billion in past years that have not been expended yet—some committed but not expended, in the pipeline.

My point is simply that if we are going to deal with the camel, we cannot continue to strain out the gnat. The camel is simply the soon-to-be $2 trillion national debt and the $200 billion annual deficit. I hope no one stands on this floor and tries to make us believe that passing S. 43 is going to in any way affect that problem.

I will tell you how it is going to affect it. It is going to mislead and delude some people into thinking that we have done something when we have not done anything. I think this is the time to be forthright and up front about both the problem and the proposal that is pending here today and

not use it as a diversionary tactic or as an effort to let people think we have somehow exercised courage.

Mr. President, I close by saying it is far from courage. It is callous. It is shifting in point of responsibility to the President of the United States, who cannot do anything with it once he has it, in terms of affecting the basic issue of the deficit.

Mr. President, I ask unanimous consent that my resumption of my remarks on this matter not constitute a second speech, and I yield the floor at this time, by unanimous consent, to my colleague from Mississippi.

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

Mr. STENNIS. Mr. President, let me assure the membership and anyone else who is interested that this appearance here this afternoon, for the relatively short speech I am going to make, is not anything originally planned. I wanted to be here in time to hear the Senator from Oregon because I know that he does not speak without thinking through to the bottom of a problem. I know of his very fine learning in the problems of Government and the great sincerity of the proposals he makes for remedies.

I point out that I am not boasting of anything I have done, but I am among those who years ago—I think it was 15 years ago—introduced a resolution with reference to a balanced budget. I was concerned about the financial affairs of the Nation, the debt we were piling up, and I proposed that the Constitution provide that it be mandatory that we balance the budget. Later, I introduced another similar resolution.

My voting record for money is not on the stingy side, but it is certainly on the conservative side. I have been on the Appropriations Committee for a long time, and it has been my privilege to handle appropriations bills on the floor of the Senate.

I mean by that that I was a manager of the bill, had to carry that responsibility, holding hearings, getting the bill in line, getting the judgment of the membership of the committee, bringing the bill to the floor and presenting it, and getting the bill passed.

I recall—I think it was 1964—when Senator Russell was chairman of the Appropriations Committee. He was ill. I was chairman of the Armed Services Committee. He asked me to handle the appropriations bill for the Department of Defense, which was the largest one, and I handled some of the others, also.

I recall that in that year, the total amount of the bills we finished was just under $100 billion—$100 billion. That included the military bill, the defense appropriations bill, and the others.

I was back on this floor again 20 years later, in 1984, and was connected with the presentation of the appropriations bill for the Department of Defense; and we moved in those 20 years—a brief span, by comparison—to where the interest on the national debt was $117 billion.

Within the brief span of 20 years, we had moved into this problem field, as I call it, of having to pay out more in interest on the national debt than it cost to operate the entire Federal Government—military all over the world, vast programs at home, worthy programs, interest on the national debt, everything.

You do not have that experience here of those clear-cut compelling comparisons without being influenced and affected.

One of the effects that experience had on me, within about a year, the comparison of those bills, the difference in the amount required, was that it convinced me beyond all doubt, an overwhelming conviction, that we were headed for the very gravest kind of trouble in the field of our finances; that if something was not done to break that trend and build the income back up to a reasonable level and bring outgo down by a reasonable amount, we were going to have serious trouble in the budget field.

I do not mean anything I say to imply that the President of the United States, Mr. Reagan, the membership of this body, and the membership of the other body are not putting forth their best effort. It is the problem we all have to deal with and the ability to bring about a constructive program here that will be effective and will go to the very heart of this problem we have, which exceeds anything we have ever had before—fighting wars and everything else included. It involves the matter of whether we are now going to be able to get together and really do something effective about this.

Everyone votes as he or she pleases, so far as I am concerned, and everyone is responsible for that vote. I voted for the Hollings budget amendment, which I thought was the best plan, as a whole, that had been brought forward to get us out of this serious situation. It received a very respectable vote. I voted later for the Chiles-Hollings amendment, which was even a little better. I am just reciting these things to show that I am within a pattern here that is consistent with what I think is effective.

I have summed up what I stand for in this problem in this way: everyone give a little, everyone yield a little, everyone take a little less, and divert that saving into channels that will lead to reducing the deficit we have, which eventually is going to destroy us unless it is corrected, and then we must have some additional sources of revenue—whether you want to call it taxes, or whatever—to build this in from the other end, and that that be dedicated to the same problem, the deficit.

(Mr. SYMMS assumed the Chair.)

Mr. STENNIS. I feel that then in 4 or 5 years, and this is a short time in this field with problems of this kind, we would be back on our feet. We would be standing on a sound base and instead of getting worse, a little worse every year, we would be getting along a little better every year.

I have consulted with competent people along the way, and I am not quoting him by any consent or anything else, but I would just call up Mr. Volcker and tell him I want to come see him a little and I would go, because he could and did clearly state what I thought was the situation, and his proposals were always very acceptable to me. I have listened to others, too. But in this subject matter beyond all doubt in my mind, the things that Mr. Volcker predicted have come true and I think he is correct about the things that he said now that must be done.

So I feel that I am not just jumping in the dark but have some valid substantial reasoning behind these steps that I have taken through the call of necessity.

Now, here comes, though, this proposal—I am sure it is made in good faith—to help the situation now by giving the President, whomever he may be, authority under the Constitution as written to veto any item that he may find in the appropriation bill.

That means just strike it out, and the primary reason for his action is to be that that will go toward the budget problem and go toward getting on our feet financially, reaching the point where we will no longer be a have-not Nation in the field of high finance and the other problems that are going with it, that we will be in far better shape to regain our posture of advantage in world trade where we are rapidly losing it now and that these things are done through necessity.

Now, this proposal, within the terms of our present Constitution, is not permitted. To me that is clear from what I know of the history of this Constitution, how it was put together originally, and how it reads now, that is the controlling part, how it reads now, and what is the meaning of these words interpreted by the meaning of other words used. Now this actually proposes that we pass elaborate bills and that the President, whomever he is at the given time, can have that measure dissected and divided up into many parts; that is, it will be stated in the bill about its division into many parts, and then the President would have a choice as to what parts of the bill he would sign or what parts he would leave unsigned.

Let me refer to the Constitution itself. After great deliberation and

study amidst men who were amazing scholars in their time in this field and when we were an infant nation, they finally put down in words that part of the things they had been arguing about and article 1 of section 1 has the following preamble:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

That is the tone of this instrument. That is a quick summary of the purposes.

Article 1, section 1, the first problem they tackle, legislative power, reads as follows:

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

That word "all," the first word in the section, is all legislative powers shall be vested in a Congress.

The President, though, in other places is enabled under the words to veto a bill that is not representing his sentiments or something he is agreeing to. He vetoes a bill but still it is subject to becoming the law by two-thirds of the membership, saying "the veto notwithstanding we take this stand on this bill," and it becomes a law. No one else has to sign it; even the President of the United States is overruled.

That is the power punch, just a few lines here—that is the power punch as to all of the legislative power in this instrument.

Now, I say flatly without any limitation at all the only way to change that meaning here of these words and the power that they carry is to write another constitutional amendment, language that will supersede what is written here and has lived almost 200 years now, almost 200 years from an infant baby nation whose future was in doubt to what is now the most powerful nation in the world in many ways.

So I think right on the threshold the only way to do this legally and logically and in keeping with present constitutional law is to write another amendment, write an amendment that will override and turn the meaning of this language around and make room for this dividing a bill up after it has left the hands of the legislative branch. Write an amendment that says Congress has the sole power of all the legislative power under these terms: After it has left their hands it can be butchered up or scissored up or changed around and the President can lay the papers down in a certain formula of some kind of mystical thing, send some of it back disapproved and the other approved, and that will become law.

If you can find anything in this entire document to justify a plan or a scheme or course of action like I have just described within these words, I will retire and will not have another word to say and we can just rewrite some of the other sections maybe the same way. But it will be a collapse of the most powerful sentence in this bill, say what you want to.

Who is giving this power out? The people. "We the people of the United States" are vesting all the legislative powers in a Congress composed of a Senate and House of Representatives.

Now I think that is good language. But maybe it is not. Maybe we have outgrown it or outlived it. Maybe we do not need it; we need something else.

But we still have to change it bodily, legibly and not leave things to hope and imagination.

With all deference to anyone that is in favor of this proposal that we have before us or had anything to do with writing it, with all deference to them, I think they make the gravest kind of an error, they are far off the playing-field, and certainly if this should prevail, it would gradually destroy—I do not believe it would cure our present problems, not at all—but it would gradually destroy the legislative branch of this Government. That is what it would hit, because that is what it is changing. That is what it is taking the power away from.

Like it or not, we are the ones that have this power and like it or not we have got to meet it and perform in that field in a satisfactory way; either that or we are put out, we have failed. And no one can change what is written here in the Constitution except by the process as provided with language in the Constitution itself.

So I am here because of my deepest concern. This is not comparable to a State of the United States. It is not comparable to any other kind of Government. It is similar in a way in problems maybe, but this is a different Government, it is a different plan, it is different wording, it is a difference of 200 years of experience. This is not just a Johnnie-come-lately provision of the law. This is the bedrock, backbone of this new power that was set up.

I read, not knowing this debate was coming up, but I read not long ago many times over Beveridge's Life of John Marshall, the amazing debates they had down at the capitol in Richmond over whether or not the convention from Virginia would adopt, representative people elected for that purpose, would adopt this Constitution or reject it. And another book that I read about Patrick Henry showed me the clearest picture I had ever been able to find, what the real issues were and what the arguments were. I read with pleasure Patrick Henry's speeches, but I did not give him the depth of learning that he had until after reading speeches that he made at that convention, and then when he lost by 10 votes the constitutional resolution adopted in this Constitution, which passed by that 10 votes, only by about 150 to 140.

And I understand that Patrick Henry was approached then by some of those that he had been leading and said, "Well, you almost won in spite of all of this power raised against you, George Washington and others. You go out among the people now and we will pay the way. You explain this to the people face to face and we will overturn what has been done." He said, "I will not go one step." He said, "This instrument here for the first time has had an actual exposure and full argument," and he thought by men that were competent on both sides. He said, "They won this vote and it becomes the law of Virginia. So far as I am concerned, I propose to obey it."

Well, that was about as big a thing as a man can do as a statesman. And he passed away not too long after that.

Well here, if we are going to change this now with reference to this key provision of this Constitution, and just set up a new system, a different system, we are repudiating, it seems to me, in a very serious field, to me the most serious—if Government is not successful in the financial field in financing its own affairs, it will not be successful very long in any other field—we are wiping out and making a new start and repealing our present Constitution, which, when luck was in and luck was out, has saved us and made us the most powerful nation in the world.

So, I have a doubt sometimes about which is the best vote to cast here and which is the soundest and which will hold up, but, with all deference to everyone, I do not have any doubt about this one. Because if we authorize such a procedure, however a President might try, he would find himself under pressure for a veto of these measures that go to make up the necessary cost of the Government.

But perhaps that is not the gravest thing, as I see it. Every new Member that comes in here and in the House of Representatives, under this plan here, a veto of this kind, would be under pressure, under powerful pressure from the word go, before he gets here, even. And it lasts year after year after year. He will be taken down and put under political pressure without a chance to develop ideas, the strength of his own, and posture of his own in a place of influence, not even controlling his own vote, one vote. I would not know of a better way to destroy them as they get here than to have a thing like this sword hanging over their heads.

I do not know of any way to get at the destruction, the gradual destruction, of the legislative branch of the Government than to cut off that source there of judgment and some independence and some position based on logic, common sense, and reasoning that the person has a chance to establish here as a newcomer.

I am sorry to say it, but I think they will be kicked around and headed up and maligned one way or another, threatened one way or another, and will not emerge, will not have a chance as a stalwart influence here, for the benefit of whom? For the benefit of those trusting people back home that sent them here. Let us not destroy this matter in this way. If it has got to go, let us find a better way than that.

Now, I have some prepared remarks here that I have worked on. I wanted to say what I have said so far as more or less a preliminary statement. And I did not mean to take so much time. I want to go ahead and read the next paragraph, though, from the present Constitution, this same section on the legislative branch and this relates to those bills raising revenues.

Article I, section 7:

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated,

What is this talking about there? Is this talking about a bill, talking about passing of a bill, and then if the President approves a bill what shall happen and what shall he do with it? How are you going to read language in there that a bill can be cut up into 10 pieces and 50 pieces, and the President can veto some, send back some and approve with this language? If we want to change the Government that much, let us do it in plain, simple language.

I do not see how we would ever be able to put curbs or protections for the people by way of this legislative branch of the Government of which we are temporarily holders of the power—I do not see how we could ever function if we are going to have a plan as suggested by this Presidential veto power. So I think that is the ultimate question here. If just adds up to the fact that if we must stand up here, and protect this power that has been loaned to us—not given to us, we do not control it except temporarily, and we all have to go back before the people, thank the Lord. We do not have the power to change the Constitution. We cannot argue that we do have the power to make change. You have to argue that these words carry these possible meanings, a new pattern here, these words, and this section carry a different power from what it says on its face. I do not think we want to do that. I do not think those who have thought it through believe that. It is bound to be challenged in a more serious way.

I think this is something we have to meet. We have to know what we are doing. We are accountable for what we do and say. I do not want to predict that our Government is going to collapse. I do not want to use extravagant language. But I know we will have to do something to right our affairs, and I think we can. I want everyone to use their judgment. But I think we have to stand up and meet these situations with our present language rather than borrow some more, and try to find another way. Instead, the trust is with us. The trust that we have been given is to protect the Constitution as it is now.

Mr. President, I am not going to take a great deal of time. I came over here for the chance to speak my beliefs, my concerns, and my warnings. I thought I was in a position to, not that I will accomplish anything much, but because of my efforts, my record, and what I have stood for within this field of finance, and the field of constitutional government.

Mr. President, on the surface this line item veto legislation may seem like a good idea—a new way of trying to get a handle on these huge deficits. But I am convinced that a closer analysis shows it to be unsound. It will not have the result its supporters say it will. It is a diversion from meaningful efforts to deal with deficit. More importantly, it is contrary to our Constitution.

Now let me say at the outset, Mr. President, that this is not a question of whether you are for or against controling Government spending. Over the years I think I have done my part in trying to get these deficits down. A number of years ago I was one of the first to join in sponsoring a constitutional amendment to require a balanced budget. And I am certainly willing, as I have been all along, to work with our colleagues on the Budget Committee, to put together a budget that gets us back on a sound fiscal basis.

But in our desire to deal with the deficits, we must not be tempted by a plan that runs contrary to the very nature of our system of government, that transfers major power to the executive branch at the expense of the legislative branch.

Our system of government is founded upon a balance of powers between the branches of Government. The Constitution expressly places the lawmaking powers in the hands of the legislative branch. It does so with good reason. The power to write laws is a very broad and great one.

The drafters of the Constitution made the legislative branch closer to the people. The members of the legislative branch are the direct representatives of the people. They are held accountable to the citizens in the local communities in their districts. They have a better sense of the needs and problems of those local communities. They have to answer to those local citizens. Shortly after the American Revolution a number of citizens were seeking to have a king for the new country. But Ben Franklin answered them with five powerful words: "In America the people govern."

Article I of the Constitution gives the lawmaking power to the branch that represents the people. It gives Congress the power to write and pass laws, to decide what should be in a bill. As a part of the overall balance of power, it gives the President the power to veto a bill—to say yes or no to the bill. It does not give the President the power to modify a bill or veto a part of the bill. Under our Constitution, all the President can do is simply accept or reject a whole bill. Once he starts picking and choosing which parts he will accept and which parts he will not accept, he in effect becomes a lawmaker. And that is a power the Constitution expressly reserves for the Congress.

Thus even if Congress wanted to give up a part of its legislative power, even if it wanted to let the President start making laws, it is prevented from doing so under the Constitution. Let me point out that the Supreme Court in 1983 struck down the legislative veto because the Congress had tried to give up some of its power as an accommodation with the executive. The Court said the Constitution simply will not allow it.

But even if we could give the President this power—and I do not believe we can—I think it would be unwise to do so. A President could put a single Senator or two or three Senators—or two or three House Members for that matter—under terrific pressure. He could really prevent them from trying to serve the needs of their districts.

Giving this power to the President puts Members of Congress virtually at the mercy of a President with bad advice or bad motives. And it leaves those Members of Congress with very little defense. It leaves them unable to defend the interests of the people in their districts, in effect leaving the people in the local communities without effective representation.

So Mr. President, I think there is a sound reason why our Nation's founders gave the President only the power to veto an entire bill.

Let me point out that the current veto power is no minor thing itself. Throughout the years Presidents, including President Reagan, have suc-

51-059 O-86-25 (Pt. 14)

cessfully used the veto—or even the threat of a veto—to get bills changed in a manner more to their liking. So it is not as though the President has no influence now in shaping legislation. He has great influence. Just ask any member of the Appropriations Committee. We listen very carefully when a President says he will veto a bill if it had such-and-such provision in it. And we frequently have modified legislation in order to avoid a Presidential veto.

That's the way the system is supposed to work. The President is certainly able to make his views known and have his influence felt. Bills are frequently modified to reflect his wishes. But the ultimate drafting and shaping of the legislation is left to Congress, the people's representatives. Once Congress has shaped the final product, then the President can either reject it or accept it.

Now, Mr. President, I want to talk briefly about the practical effect that this legislation would have on spending. This bill simply is no substitute for the Congress taking decisive action on its own to deal with the deficit.

First of all, the total amount of current Federal spending which is relatively controllable is 26.2 percent. Of that amount, 15.2 percent is defense spending, and 11.0 percent is nondefense. As we all know, this administration wants more, not less, defense spending. Therefore, the line item veto would affect only 11 percent of the current Federal budget—roughly $128 billion. This is only a little more than half of the projected deficit for next year. So even if the President vetoed almost every item in these bills—such as spending for farm programs, for economic development, for education, for highways—we would still have a huge deficit.

More importantly, Mr. President, we already have a process for the President to seek rescissions of appropriated funds. This lets him target those programs that he thinks we should not be spending as much money on. Yet in his January 1985 budget submission to the Congress, the President requested only three rescissions, for a total of less than $1 billion.

Finally Mr. President, I must point out that the Appropriations Committee has been acting responsibly on spending. The appropriations bills we have enacted over the past 6 years have actually been under the President's request for spending for that period.

While I understand the desire of the supporters of this legislation to deal with the deficit, this is simply the wrong way to go. It is unsound policy, and it is unconstitutional. I urge the Senate to reject this measure.

Mr. President, that concludes my description of the problem, my remarks about what I think we ought to do. It is clear as a bell. We do have doubts about some things sometimes, but not here, and not on this one. I will be ready to yield the floor.

Let me say to the Senator from Oregon that I hope he is going to speak some more on this subject—if not this afternoon, sometime. I want to hear the Senator word for word. I commend the Senator highly. I know him well. I commend him highly for his work on this problem. I know how concerned the Senator is. The Senator has worked on other problems, too.

I see the Senator from Maryland is here. I have not had a chance to talk to the Senator about this. I think I know the Senator's record and I commend him. I am glad to see the Senator here.

Mr. President, I yield the floor.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, before I yield the floor to my colleague, the distinguished Senator from Maryland, I would like to thank the Senator from Mississippi who had informed me that he was going to make comment on this bill. The Senator made a broadcast in his home State of Mississippi concerning this issue in a most eloquent way, as he has demonstrated again today.

Mr. President, I know of no man in the Senate who has greater stature and reputation for his knowledge of, and his love for the Constitution. He was a judge before he came here to the Senate. He is the No. 1 ranking Senator in terms of service of this body. So he has seen a lot of history. He has helped make a lot of history.

I remember the only other time that I engaged in a filibuster on the floor of this Senate was on the issue of restitution of the compulsory military service, the draft. I felt very strongly in opposition to that. At that time, the Senator from Mississippi was on the opponents' side. I want to say to my good friend that it is much more pleasant, I feel much more comfortable, and I feel much more a sense of victory being on the same side with the Senator from Mississippi than being on the opposite side. I know that his words here today in support of the position that I have hewn out here being in opposition to this Senate bill will have great weight, will carry with it great influence on our colleagues. I am most grateful for his remarks. They are profound. They demonstrate not only knowledge of the law and the Constitution, but obviously it is infused with his spirit, his affection, and his love for our Constitution and for the institution of the Senate, which no man has greater involvement and capacity to understand and help make it work as he has.

Mr. President, I ask unanimous consent to yield momentarily to the Senator from Maryland without my losing the right to the floor.

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

Mr. MATHIAS. Mr. President, I want to thank the distinguished Senator from Mississippi for his comments. As I have been listening to him, I have been watching him and know that he has been speaking with a copy of the Constitution of the United States of America in his hand. He is speaking from the text, from what is in this case "The Book." It is important that Members of the Senate understand that is where he is coming from, not some personal prejudice or some personal view, or not even some opinion. That is drawn out of his many years of experience here in the Senate.

He is speaking from the text of the Constitution. That is the basis on which I think the Senate must make its decision. What does the Constitution mandate? I think the Constitution mandates exactly what the Rules Committee recommended—that the bill do not pass. That is what the Senator from Mississippi has concluded—that this bill do not pass, it should not pass and will not pass. I think the Senator from Mississippi has made an extraordinarily valuable contribution. It is all the more valuable because of the years that he has served as a member of the Appropriations Committee where we served together. The Senator understands the appropriating process thoroughly. That is necessary to understand what the real meaning of this attack on the Constitution is. I think this can be nothing less than an attack on the Constitution because it would rearrange the whole furniture of Government. It is a rather extraordinary proposition, I think the Senator from Mississippi would agree. This idea that you can take a bill and apply scissors to it and cut it up so that a large appropriations bill will start out as one bill and would end up as 100 bills.

The Senator from Mississippi will observe over the chair of the Presiding Officer those words in Latin that are familiar to most Americans, "E Pluribus Unum," from many—one.

It is a symbolic thing that this bill turns that motto right around and instead of one it would make many of one. It would turn one into many. It turns around one of the basic symbols and mottoes of the American political system. It turns around the system of the Constitution. I think the Senator from Mississippi has pointed that out.

It would not be "E Pluribus Unum" any more. It would be many out of one. I think the Senate does not want to make that mistake. I have confidence the Senate will not make that mistake, if enough Senators take the

view the Senator from Mississippi has taken.

Mr. President, I return the floor to Senator HATFIELD.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. I yield to the Senator from Kentucky.

Mr. FORD. Mr. President, I compliment the distinguished Senator from Oregon [Mr. HATFIELD] for his diligence and his eloquent remarks with respect to this very important and significant debate. I wish that more Senators could be here to listen and discuss those items which have been so well articulated by the distinguished chairman of the Appropriations Committee. Again I say that he is to be commended for what he is doing. I support him in that effort and express my strong opposition to S. 43, the so-called line item veto.

You will hear a great deal about how Governors have the authority for a line item veto, and that is true. Having been a Governor, I understand about a Governor's line item veto. But there is a significant difference here.

Each of those States is required basically, by its constitution, to have a balanced budget. What the Governor has the opportunity to do is to shift some of the expenditures from one area to another. In some States, within 10 days of their session, with respect to anything passed beyond that, the Governor has total veto power, and the legislature does not have the ability, after the ninth day, to come back and override the veto.

Some States now have a constitutional provision—in recent years—that gives the legislature an opportunity for a veto session. That usually follows 2 weeks after the regular session. Normally, they are in for 5 days for veto. But they do not have 100 separate bills, to override the veto, and the Governor does not have hundreds of bills to veto, to look at, out of one piece of legislation. He has a large document, draws a line through it, and initials it, and say, "I veto"; and the legislature comes back in 9 days and can override it. We do not have that opportunity here.

I have listened to some of our legal scholars, and they have referred to the Constitution. This basically is a constitutional question. It is not a question that we are having an opportunity to develop statutory authority. We are talking about a constitutional question.

I do not believe anyone can doubt the sincerity of those who want to defend the Constitution. If you want to amend it, the people must have an opportunity to amend the Constitution. We alone do not amend the Constitution.

Mr. President, I find that there is a deeper, underlying reason. Some people will say it is all political. You get this bill passed, and that assures you of your reelection. Or, if you vote against this, it assures you of having trouble when you go home because it appears you do not want to reduce the deficit.

I understand all the political ploys that go on. But there is a deep-seated question here with respect to the basic operation of this Nation, and that is its Constitution. As a result of having this Constitution, we are the strong Nation we are today—also because we have people like the distinguished Senator from Mississippi [Mr. STENNIS], who understands the long history of this institution and who defends the Constitution and who takes the position that the Constitution must be preserved until it is properly changed.

What we are looking at here today is not the ability of the people to change the Constitution. We are going to have a statutory experiment. We are going to see if it works.

If this measure passes, it will take the Clerk of the House from now until the 2 years are over to try to develop pieces of legislation in order to send it to the President so that he can sign a veto. I understand that the supplemental appropriations bill will probably have 540 pieces of legislation that would be sent to the President of the United States for the so-called line-item veto.

We are getting beyond any question of reasonableness here. We would be going into the ridiculous if that should happen to us and to the President of the United States, as we tamper with the Constitution.

Let us review what has happened to S. 43. The Rules Committee held 2 days of hearings on this bill in May.

In the 10 years I have been in this Chamber, I have always been taught to respect the committee system. Every once in a while we hold something at the desk or we put legislation on an appropriations bill, but the Senate does it by majority vote.

My first lesson in this body was when I wanted to extend the membership on a certain board. One of our distinguished colleagues, who is very eloquent, said: "There is one reason why I am opposed to the proposal of the Senator from Kentucky. Basically, I am for it. But it has never been to the committee. We have never had an opportunity to study it. We have never had an opportunity to hold hearings. Therefore, I am not sure of the ultimate consequences of his legislation, so I am opposed to it as an amendment. It must go to the committee."

I lost, and I lost substantially, because all the chairmen agreed with him. That is approximately 20 votes right there. So you go in with two strikes against you. I understood, and the lesson was clear, and I learned it early on, and I have respected it since.

In the hearings of the Rules Committee, people with the background that was necessary to understand this piece of legislation, the recognized experts in the budget and appropriations process, testified. After carefully considering all the arguments presented, the Rules Committee voted, by 11 to 0, to report this measure unfavorably, What does that tell you? After thoughtful consideration, the majority leader of the Senate, the chairman of the Agriculture Committee, the chairman of the Energy and Natural Resources Committee, the chairman of the Appropriations Committee, the ranking minority members of several of those committees, and all of them on the Rules Committee voted to report the bill unfavorably.

These are not Members of the Senate who decided lightly. They considered it long and thoughtfully and then voted, by 11 to 0, to report the bill unfavorably. The only advantage to that is that it got to the Senate floor. It is here for us to consider.

The bill was given consideration and was reported unfavorably. Yet, the proponents are saying that regardless of all the studies, regardless of the hearings, regardless of the unfavorable report, we still want to pass it.

It does not make a lot of sense to this Senator that we are found in this position.

But I have seen a lot of things in this Chamber. During one of our filibusters, the distinguished Senator from Alabama, Mr. Allen, had some of us here voting against the Lord's Prayer. You know that was very distasteful. But we are put on those kinds of spots and sometimes people who do not understand the institution, do not follow it closely, are somewhat concerned about some of the votes and the procedure we follow.

The report to the Senate of S. 43 reflected the majority view of the committee that granting the President item veto authority would not reduce the deficit. Why, then, is the question, are we considering this piece of legislation today?

There is something there that we say down home, "Something ain't right. Something ain't right." Why is there just a push for this one individual piece of legislation? "Something ain't right."

The committee, after thoughtful consideration, believed that S. 43 would upset the constitutional balance of power. Men in leadership positions with long experience, with love and consideration and devotion not only to this institution but to this country and to its Constitution, said in their vote that this would upset the balance of power between the executive and legislative branches, and the Constitution said there shall be three. And they also said this piece of legislation would

greatly expand the authority of the Clerk of the House of Representatives.

Can you imagine—I believe my information is right—can you imagine after the two bodies pass the supplemental appropriations bill, the Clerk of the House will develop 540 pieces of legislation to be sent to the President of the United States for his consideration after we passed one piece of legislation?

Who has the power; who has the authority? We never voted on 540 individual pieces of legislation.

The Constitution says, referring to the legislation, it shall be sent to the President and he shall sign or veto it. We did not vote on 540 "its."

English is the mother tongue and you can write it, as Sam Ervin said, for people to understand, and the Constitution is an understandable document.

There are serious issues which I urge my colleagues to consider very carefully before they cast their vote on this particular measure.

Mr. President, proponents of S. 43 argue that granting the President item veto authority is a necessary first step toward reducing the Federal deficit. This, in my opinion, is simply not true. Congress, acting responsibly, can reduce the deficit. Item veto power in the hands of the President will not. It creates mischief.

That is maybe not the intent, that is the result. If the President vetoes or threatens to veto any one of the 540 items in the supplemental appropriations bill alone practically every Member of this Chamber and every Member of the House of Representatives will be concerned about what the President would do to a program or a project that was in the best interest of his area, State or district.

Mr. BYRD. Mr. President, will the distinguished Senator yield?

Mr. FORD. I am pleased to yield to the distinguished Senator from West Virginia.

Mr. BYRD. I ask unanimous consent, Mr. President, that the Senator's yielding to me for something other than a question will not constitute a second speech when he resumes his statement.

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

Mr. BYRD. I thank the Chair.

Mr. President, I understood the distinguished Senator from Kentucky a moment ago to say that in a particular bill there were 540, I believe——

Mr. FORD. That is correct.

Mr. BYRD. 540 separate numbered sections and unnumbered paragraphs which would have to be broken out into 540 separate bills by the enrolling clerk of the House of Representatives in the event this legislation that is before the Senate should eventually become law.

I call to the attention of the distinguished Senator from Kentucky—who is the ranking member of the Committee on Rules and Administration, and who does an exemplary job as a member of that committee and as a Member of the Senate—the continuing resolution of last year, Public Law 98-473. I asked the Parliamentarian of the Senate recently to take that resolution and break it into the various parts that would be required in the event S. 43 should unfortunately become law for a couple of years, how many areas in that continuing resolution would, under the requirements of S. 43 have to be broken out by the enrolling clerk. And would it surprise the distinguished Senator to learn that there would be 2,043—not 540—but 2,043 sections or paragraphs that would have to be broken out as separate bills—2,043? Of course, there are some bills that are more voluminous than that continuing resolution.

Mr. FORD. I say in answer to the question of the distinguished Senator from West Virginia that originally it would have surprised me. But the more I study what the far-reaching ramifications of this bill really are then I am not. So we are talking about only two pieces of legislation that would become 2,583 separate pieces of legislation that the Clerk of the House would have to put together and then send to the President of the United States.

Let me expand just a little on our questions. What kind of a position are we in, then, once we vote on a bill that contains all of these items and then we have 540 or 2,043 items? Have we voted on that individual bill yet?

Mr. BYRD. Is the able Senator asking me that question?

Mr. FORD. Yes, I am.

Mr. BYRD. Mr. President, I am glad the Senator has asked that question. In this one instance of the continuing resolution passed last year, there would be 2,043 separate bills, not one of which had been seen, much less voted on, in this Chamber. Now, that is an almost incomprehensive number of bills. And not only would we be turning all of that enormous power over to the enrolling clerk in the House of Representatives, who would be instructed to break down that bill into 2,043 pieces, but when it went downtown to the President for his signature, is there anybody in here, in this Senate, who really would believe that the President would see, would understand, the content of each of those 2,043 bills? Why, no. Who would advise him? Who would advise him?

It would be like litle gnomes working in the subterranean and darkened recesses of the Office of Management and Budget who would be walking around with their oil lamps at midnight or 3 o'clock in the morning reading the separate bills so that they could advise the President which of those 2,043 bills to veto. It would not be the President. It would be those little faceless, nameless, anonymous, unidentified gnomes with their oil lamps going around in their caverns.

Now we have to have bureaucrats. They do important services for the Government, for the people of the United States. The word "bureaucrat" does not necessarily carry with it a bad connotation. But those unidentified bureaucrats would be the ones who would decide how to advise the President on the 2,043 bills that were created by the House enrolling clerk, not passed by the Senate of the United States.

I thank the distinguished Senator.

Mr. FORD. I thank the distinguished Senator for his comments.

Let me just enter into another area. The line-item veto would only apply, as I understand it, to appropriations bills. But it applies to all of them going to get 2,583 separate bills to be sent to the President from only two bills that we have passed here, the number of bills that the enrolling clerk of the House of Representatives would enroll and send to the President out of all appropriation bills would be astounding. We would never have an opportunity to see them and we would have no vote in the selection of that enrolling clerk in the House. We would not be voting. We would not have an opportunity to say who that enrolling clerk ought to be.

So we not only give up the constitutional authority for the U.S. Senate, we are also giving up the authority to make any kind of a choice as it relates to the enrolling clerk that will develop 2,043 pieces of legislation out of the continuing resolution of 1984.

We are beginning to see, I think, many of the problems that this little 2-year experiment—this little 2-year experiment—would create. And it still bothers me—and I cannot get it out of my system, as we would say back home—why, why are we trying to do this? Something is there, something is being pushed for some reason. I have been trying to find that reason.

Oh, we hear up here a lot of times, "That is his reelection bill"; or, "He needs that for back home." I wonder and I wonder out loud.

Now, get this, as I understand it, items not funded in appropriations bills would not be subject to the veto. These items are entitlement programs, interest on the national debt and other mandatory spending—which are not subject to the veto. And these account for half of the Federal budget. Fifty percent of the Federal budget is already gone. So what are we talking about?

Most of the other half goes for defense. And everyone knows the current President is not likely to wield the veto pen as it relates to the funding for defense. And I agree with him.

I think we ought to have a strong defense. Therefore, that eliminates about 75 or 80 percent or more of the total budget that the President is not going to get to by item veto.

The distinguished chairman of the Appropriations Committee, Senator HATFIELD, calculates, then, that this leaves only about 11 percent of the budget that could be subjected to the line-item veto, and you cannot make significant reductions in the deficit by chipping away at only 11 percent. So 89 percent of the budget is something that cannot be touched or will not be touched. So we are talking about hundreds and hundreds and hundreds of pieces of legislation that will go to the President to be studied by OMB.

Now that Mr. Stockman is gone, I guess they are having a hard time trying to find someone to replace him. So we do not know who we are going to get down there or who those people will be that will be scrutinizing the interpretation of the enrolling clerk of the House on the legislation we passed, broken down into hundreds and hundreds of pieces of legislation we will never see unless the President vetoes and sends it back up here.

He can sign a lot of things that we have never seen and never directly voted on. And then I am accountable to my constituency on how I voted and whether I missed votes or not and how I voted on 540 pieces of legislation. I only cast one vote to pass that bill, yet the President has to sign 540.

Line item veto. I would not wish this on the President if he was well.

In practice, this would mean that the enrolling clerk of the House of Representatives would be given the broad authority to interpret—the broad authority to interpret—the intent of Congress as he or she sees it.

Now, how about that? Give the Clerk of the House the broad authority to interpret my intent, how I voted, and then interpreting my intent, send that to the President of the United States. Somebody ought to back up and regroup on this one and say we have made a mistake and say we need to reconsider this.

If the people sound their voice and say, yes, change the Constitution, fine, but we are trying to circumvent the people's ability to make their choice by an experiment in dickering and tinkering with the Constitution of this great country. And the arrangement under this bill allowing the enrolling clerk of the House of Representatives this authority presents a very real possibility that congressional intent could be deliberately, and if constitutionally legal, circumvented by an enrolling clerk and the President. We would have nothing to say about it. And I have to be accountable, and want to be accountable to my people, and will be accountable. But I do not want my accountability taken away from me. I want to have the opportunity to say, yes, or no. I do not want somebody to arrange legislation that interprets my intent.

Then I have to explain what the enrolling clerk of the House meant when he developed this legislation, sent it to the President, and as the Constitution says, referring to that legislation, I have not seen it. And under those circumstances, I oppose it.

Suppose, for example, that both Houses of Congress passed a State Department appropriations bill which provided economic assistance to Jordan and stipulated that the funds could not be used by the country to pay the Soviet Union for past arms purchases. Think about that just a minute now. I had to work this one out. Suppose both Houses of Congress passed a State Department appropriations bill that provided for economic assistance to the State of Jordan but stipulated that the funds could not be used by Jordan to pay the Soviet Union for past arms sales or purchases. Should the House clerk enroll those two provisions as separate measures? As separate measures, the President could veto the latter, and send the aid along without restrictions. Think about that. We are aiding Jordan and saying you cannot use any of this money to pay the Soviet Union for purchase of arms.

Now that is divided into two bills, and the President says: "All right, we are going to send the aid to Jordan. But I am going to eliminate that part where they cannot use that cash to pay the Soviet Union." It could happen. It is up to the enrolling clerk of the House. Thus, the intent of Congress—my intent, what I said when I voted, representing my people and was willing to stand and be counted on, is changed by the enrolling clerk of the House. I resent that a little bit. I do not mind standing on my own and getting shot at politically. But I sure do not want to be accused of something that somebody else did in my name interpreting my intent. I certainly hope that we take a long, hard look at what we are about to do here if S. 43 should, by some stretch of the imagination, pass. The intent of the Congress in a matter of extreme importance to the security of this Nation would be defined by the enrolling clerk of the House of Representatives, and the intent of Congress could be defied—a very, very real possibility. A mistake could be made. A human error could be committed. And so much of the defense and security of this country could be changed.

These major flaws in S. 43, its inability to perform its intended function, deficit reduction, and the fact that it weakens Congress in the appropriations process are in themselves sufficient reason to reject this proposal.

Let me say this to my colleagues. There is another, and I believe far more serious, flaw in this piece of legislation. It has to do with the balance of power between the executive and legislative branches of our Government. Our system works. Our system has worked for a long time. Our system has three equal branches—executive, legislative, and judicial. The balance of power is there to keep this country strong; we must not let the balance shift too far one way or the other. But this piece of legislation begins to erode that balance that was so delicately framed in our Constitution.

In my opinion the enactment of the line-item veto would constitute a significant transfer of power from the legislative branch to the Chief Executive. There are provisions and there are ways that the President of the United States can, in effect, line-item veto now. He can rescind expenditures. They are referred to as rescissions. He can send those rescissions here, and we have the opportunity to vote on them. But that is basically a line-item veto. I remember when I was Governor of Kentucky the President at that time had pocket vetoed whatever moneys due the State relating to sewer, water, and highways. Several Senators filed suit. Others, State Governors, entered into a lawsuit, and it took us years to determine it. But the Supreme Court said the Constitution said they could not do that. That money then was released because this body and the other one had overridden a veto. And that was as strong an item as the Supreme Court needed. It did not need anything else. We passed it. The President vetoed it. We overrode his veto. It should have been over. But he still had the power of the office to rescind.

The Senator from Mississippi knows what I am talking about. And when it finally came, those people that were delayed the funding finally got it. The system worked. And we did not need to experiment. Experimentation with the Constitution is something that we should not do—a 2-year experiment to circumvent the Constitution of the United States.

So, in my opinion, and I think in the opinion of others, the enactment of the line-item veto would constitute a significant transfer of power. Until the people exercise their judgment in the alteration of the Constitution of these United States, we should not even attempt to circumvent that document.

There are still amendments laying out there with no time limit on them that the State legislatures have not ratified. If the people want this, we ought to give them the opportunity, but we ought not to say to our constituency: "We are going to experiment with the Constitution of the United States. If that experiment

works, we do not need to send it to you. If it does not, we will just withdraw it, when it 'sunsets' 2 years from now." What if it makes things worse and we ought to get rid of it a year from now?

The line-item veto would constitute a significant transfer of power that the Constitution of these United States vests in Congress, the power to pass legislation and send it to the President. He has the authority to either sign or veto. Then we have the procedure to override or not to.

I do not know whether my colleagues have said anything about this or not, but let us look at what happens if we give him the line-item veto, regardless of who is sitting in the oval office. Right now, all you need is one-third plus one and a wet pen and the President can stop anything. One-third plus one and a wet pen to veto. The President has control.

When you break down 1 bill into 540 bills and the President begins to veto or sign, then it takes one-third plus one. Why not just accept the President's budget and not worry about having a vote on it?

Last year, the budget which the President submitted to Congress was dead before arrival. It only got one vote, as I recall, and that was in the House of Representatives. That was 1 vote out of 535.

On the budget sent up this year, the Budget Committee only gave it four votes of approval. Even his own party did not support the President.

The Constitution gives the power to determine spending priorities to the people's representatives. I hope we are still that, because as Hamilton said, I believe, referring to the Halls of Congress: "In these Halls the people's voice shall be heard by their immediate representatives."

If this legislation were to become law, unelected Office of Management and Budget bureaucrats, in the bowels of the old Executive Office Building, would wield power that the Constitution specifically reserves for the 535 elected Representatives of the American public.

Do not think that the public cannot get rid of us in a hurry, 2 years in the House and 6 years over here. If they do not like the way you vote, they can handle that pretty quickly, and that is the way it ought to be. Yet to get the Government further and further away from those people who pay the bills—they want to have line-item veto now so only one-third plus one sustains a veto—then we limit the people's ability to have a voice in what we do.

How long would that last? With luck, only 8 years maybe. We have a President now who has succeeded himself for another term. I am not saying that we should feel good if the Republicans are in the White House or we ought to feel good when the Democrats are in the White House. I think we ought to feel good as long as we are doing what we think our people want us to do, listening to them and making their voices heard through our ability to vote here.

If we vote for S. 43 we are voting to allow the authority of the people to be taken away and that, in my opinion, is giving the people less Government, less ability to control their Government, less ability to have a say-so in expenditures, less say-so in the use of taxes, less say-so in the future.

We have so many working families today that need help. I find very little help as it relates to the working family, the middle-income group. I see a lot of help for those who have an awful lot of money. I see an awful lot of help for the big corporations who bring in billions of dollars and pay no taxes. Would that be continued under line item veto, veto those things that would help working men and women, working families?

How much is budgeted for education in appropriations bills? What is our future? If we have a President who does not care about research and development, if we have a President who does not care about new research in biomedicine, if we have a President who does not have the feeling and the caring for the underprivileged, the handicapped, or the elderly, one stroke of the pen and one-third plus one and those items are gone. They are gone.

We in Congress lose the right to speak out for those who are not here to speak for themselves.

We get a lot of problems. People accuse us of favoring big interests being up here, lined up. They said there were so many people lined up over in the Finance Committee trying to get the tax bill changed so that they would not get hurt, to get a little more relief, that you could not get close to the room because the hall was full.

Let me tell you, Mr. President, if the enrolling clerk begins to enroll all these bills, you will find a larger crowd in front of his office trying to get him to designate certain paragraphs, unnumbered areas of bills, such that they would have an opportunity to go to the White House and get something vetoed or get something signed. Why, there would be multitudes standing in front of the enrolling clerk's office on the House side. Do you think they will worry too much about the Finance Committee? No. They can go to the enrolling clerk to get him to satisfy their problem by the way he develops the legislation as it relates to unnumbered sections.

Oh, there will be people lined up. Lord, if we just had a good preacher there, he might save some souls, because they sure will not go away. They will be standing there in front of that enrolling clerk's door, trying to get to him to alter a piece of legislation.

Just remember that the line-item veto would constitute a significant transfer of power and that others who could not be reached would be making decisions based on their interpretation of the intent of the Congress, the interpretation of that intent by the enrolling clerk of the House of Representatives.

The Founding Fathers warned against, and went to great lengths to avoid, consolidating too much power in the hands of the Chief Executive. The architects of the Constitution bestowed upon the President of these United States the command of the Armed Forces; the power to appoint Justices of the Supreme Court, Federal judges, Cabinet Secretaries, agency directors; as well as a major role in the enactment of our laws. But the framers of our Constitution made a conscious decision to withhold from him the power of the purse.

It surprises me that some are so tenacious in their approach to give away pieces of our Constitution without the people having any imput on that decision. Maybe the people want it that way. Then I accept it. But until the people have a chance to say, "We want you to do it this way," I am not in favor of it.

So the Founding Fathers, I repeat, warned against and went to great lengths to avoid consolidating too much power in the hands of the executive. The system and the principles of government embodied in the Constitution have served this Nation and its people well for two centuries. We, as Senators, have sworn to support and defend that Constitution. We took an oath. We took an oath, Mr. President, right down there, and we signed the book and said we would defend this Constitution. But now we have S. 43, that says we are going to give it away, we are going to circumvent by experimentation the Constitution of the United States.

Oh, you can cover it up with anything you want to cover it with. You can make it red, white, and blue, with stars and firecrackers and all that sort of stuff. But what are you going to do with 11 percent of the budget? What are you going to do with 500-something appropriations bills? How are you going to sleep at night when you have sworn to uphold the Constitution of the United States?

Oh, it is going to save us money. Oh, it is just an experiment. Any excuse to get around it. They will come back at us, they will come back hard, say we are all wrong, we do not understand it, we are not for saving money.

Look at my votes. That tells greater than anything whether you want to reduce the deficit of this country or not. It is not whether you give the

President the line-item veto and let the enrolling clerk break up the bills and determine your intent. Something "ain't" right.

Mr. President, it is my sincere belief that item veto authority in the hands of the Executive would seriously alter the balance of power as set by the Constitution and, therefore, the oath I have taken requires me to vote against this measure before us. We as Americans are proud of one thing: Our word is good. And you had better make your word good as relates to the people who sent us up here when you hold up your hand and lay your hand on the Bible and you repeat that oath to uphold the Constitution of these United States.

I have always heard there is the intent and also there is strict interpretation of the law. I want to go beyond the strict interpretation; I want to embrace the intent also.

I do not believe I was sent here to circumvent the Constitution of the United States, and I do not intend to do it. I hope I have some slight persuasive power so that I can help others to see it the same way I see it. I hope I have the ability to persuade my colleagues.

I have heard them say, "Why, he only has the silver tongue of truth. He is not much of a speaker, but he has the silver tongue of the truth." I have a belief that this country is greater than all of us, and particularly one individual.

I believe that the Constitution is more important than winning the next election. Defending the Constitution and upholding the Constitution of the United States are more important than winning the next election.

I am seriously concerned, as we all are, over recent and projected future budget deficits, as well as over the magnitude of the national debt. My overriding concern over the past years, when considering the size and composition of annual Federal budgets, has been and remains spending restraint and deficit reduction.

I had a distinguished colleague the other day bring out some points about the way we are collecting money from those who earn a weekly check. I have great concern about where we have arrived today. Some have said publicly that the deficit is deliberately created so that the Government might eliminate all—all—domestic programs. How in the world did this country arrive as a leader? We had the research and development and the technology and the people to put it together. And as we look at other countries that are gaining on us, we find that they are providing more government help to expand research, to assist individuals, to give a better education.

I never was so disappointed here 2 or 3 years ago. The working man, and woman now, believed that, if nothing else, under Social Security they had left their children the ability to get an education. I watched those who want to cut the deficit, who say the line-item veto is the only way to do it, or the major way to do it, vote to take away from that dead man's children the ability to go to school because they denied them their college funding. They denied college funding to the children of the father who thought he left at least the opportunity to get an education. They voted, according to their idea of budget reduction, to take that educational ability away. The Federal Government reneged, reneged on a contract it had with the handicapped and deceased breadwinners. I am not for line-item vetoes of that kind. I think our children are too important for us to begin to cut back on that 11 percent in our Federal budget which helps to educate our children, to give the kind of help that is necessary or we are going to lose our leadership to other countries that are dedicating themselves, like we used to, to have a technological edge and to have the major advancements.

Mr. President, when you say that it is not economically feasible to educate a child in the poor area, you ought to consider as you line-item veto that in that class in the poor area you may find the answer to cancer. I thought every child in this country was entitled to an education and yet we find those things we are able to do in Government leadership being denied because of budget deficits.

I am from western Kentucky, on the Ohio River, and proud of it. We have a saying in my part of the country that when we deny our children the ability for success in their future, we are eating our seed corn. That means we are not going to have a new crop. That means we are not going to have the same kind of opportunities for our young people.

I want to have the opportunity to relate my intent, what I believe is in the best interests of the constituents I represent and what I think and feel they are asking me to do. I do not want to eat our seed corn. I want to be able to say to those young people, "You are going to have all the opportunity in the world. We are going to provide the leadership because your parents want it and this Government is going to be a part of helping you make it." I do not want to turn over to the enrolling clerk in the House of Representatives the determination of my intent on any piece of legislation. I think it is my responsibility.

I believe that acting together in the interest of the Nation we in Congress can make the tough decisions necessary to reduce the deficit and improve our economic conditions. We cannot succeed in that endeavor if we choose to abdicate our constitutionally mandated responsibilities and ask the President of the United States to make those decisions for us. Why not include in the proposal the abolishment of Congress and let us have a dictator? Under those circumstances I would hope it would be a benevolent dictator.

I do not believe the President of the United States wants this kind of authority. I believe the President of the United States today does not advocate diluting the power of Congress. We cannot succeed if we abdicate our authority, if we unbalance the balance of power that was so delicately orchestrated by our Founding Fathers. Let us not opt for what appears to be a simple, harmless solution without considering the ramifications. The Congress of the United States must retain power to determine spending priorities because the Constitution requires it.

Why should we have experimentation with the Constitution? We need to work hard at other things rather than experiment with the Constitution.

Mr. President, to say the least, S. 43 the so-called line-item veto bill is an unusual measure.

It is unusual because it is an artful attempt to avoid the necessary and appropriate course of a constitutional amendment.

It is unusual because of the large number of cosponsors. I hope they begin to drop off as we begin to articulate the problems. I am pleased that those who oppose this measure feel that I might make some contribution as it relates to persuasion.

However, until we have a constitutional amendment that says that the budget must be balanced, we are asking for real trouble in granting the line-item veto power when it relates to a budget that has a deficit.

The public may believe the President acted with best intentions. The only decision that was made was in the best interests of the country. But somebody got hurt. You lost your project. You lost your program. The handicapped lost their funding. Social Security was cut. You begin to look at all these things. But pure of heart—only a decision made.

I hear a lot around here about the fact that Governors have this authority. I have never seen a budget go down under a Governor that has a line-item veto. Show me one that has gone down with a line-item veto. I was there. The reason I had a balanced budget was that the Constitution of Kentucky required a balanced budget. I had the best minds I could find. We put a package together and sent it to the legislature. I was a little conservative, because if they spent a little more money than I thought they ought to, I could still threaten them with a line-item veto. But you always had a little pressure valve in there.

If you get a little more money, you spend a little more. You make the judgment. If the President gets a little more money and then balances the budget, give him all the authority he wants. But if you do not give him a balanced budget, do not let him pick and choose. Let us take that responsibility.

Some of my colleagues are going to be hard pressed to vote for this, because I have heard them talk about the Constitution too much in the 10 years I have been here. The argument is the Constitution, and now we are going to circumvent the Constitution. We are going to have an experimentation. If it works, we might send it to the people. If it does not work, we are going to keep it here.

I will say one thing: It will probably do the paper people a lot of good, because if you have to rewrite every piece of legislation and you have to put it in document form for those little fellows down in the bowels of the Executive Office Building and you start squinting at 2,043 items in one bill and 540 in another, you will use a lot of paper and it will create some jobs.

I say to the minority leader what I said earlier, that if they thought special interests were worried about the tax program of the Finance Committee, they shoud see them outside the door of the enrolling clerk when he begins to develop 2,043 pieces of legislation out of one legislative measure. I told them that there would be such a congregation that they ought to have a preacher and maybe save some souls, because they surely are not going to get in. That same fellow is going to say to the President of the United States, "This is WENDELL FORD's intent." I do not want him or her doing that for me.

This is an unusual piece of legislation. It is unusual because it has generated considerable controversy. I do not think there is anything wrong with that. That is what this floor is for—debate. You can tell that there is a lot of controversy here by the mass of Senators who are in their chairs listening to my pearls of wisdom.

It is an unusual piece of legislation because it has generated debate. We have turned to the Constitution. We have turned to our responsibility. Maybe the debate has been good.

It is an unusual piece of legislation because it proposes a 2-year experiment on a major and complex change in constitutional and public policy.

It is an unusual piece of legislation because it affords no credible assurance of being able to achieve the prime purpose claimed for it by its proponents, the reduction of the Federal deficit.

Mr. President, S. 43 is truly an unusual bill, and therefore it clearly requires unusual examination and analysis. In my remarks, I have listed five of its more evident, unique characteristics. Let us take a fuller look at each of these elements.

Why have 47 Senators consponsored such a complex, controversial piece of legislation? In my opinion, there is one outstanding reason for this. The bill is heralded as a long-needed shift in legislative appropriations power in order to reduce Federal spending. If the bill could truly achieve its goal, it would surely merit the support of all of us.

There is no cosponsor of this bill who desires more than I an early and significant reduction in the Federal deficit.

But you know in the last 5 years the national debt has equaled all the debt accumulated in over 200 years, 203, I think, to be exact. In the last 5 years we have gone from $900 billion plus to about $1.8 trillion.

This is an unusual piece of legislation, very unusual.

I submit, however, that S. 43 is not only not a good means to achieve the goal of deficit reduction, it is in fact incapable of achieving that goal. All that S. 43 will do is unwisely and I believe unconstitutionally transfer legislative appropriations power from Congress to the White House. From 535 elected Representatives of the people to one. If you please, from 535 politicians to one politician.

I repeat Governors have veto power, line-item veto power. It has been great for them. Why, it is the greatest thing to keep the legislature in line that you ever saw.

The constitutions of those States require balanced budgets. The constitution will tell each of those Governors "If you are not going to have a balanced budget, it is your responsibility under the State constitution to balance it."

In my State it is the No. 1 magistrate who must reduce the expenditures of government to bring the budget into balance. I know who the No. 1 magistrate was. It was my authority and responsibility. It says a balanced budget and, moreover we have a 2-year budget.

We were able to make it work pretty well. There is not anything wrong with biannual budgets. If you get a chance to look at my little piece of 2-year budget legislation you may want to say old FORD may not have a bad idea. I do not think it is a bad idea. We have many cosponsors and we have bipartisan support.

So I am hoping that we will soon look at something that will give us an opportunity to do a better job as Members of the Senate and the House as it relates to budget and appropriations actions.

Make no mistake about it. In its best form, line-item veto power consists of no more than permitting one politican, rather than a consensus of 535 politicians, plus one—the President—to make spending priority decisions.

To pretend that the President is somehow immune from the political pressures spread throughout the public landscape, is to indulge in deceptive fantasy.

To pretend that the President is less likely to spend in excess of Federal revenues than is the Congress, is to ignore the plain facts of history. No President has proclaimed more often or more emphatically his belief in a balanced budget than our current President. No President has more often promised us a balanced budget.

Yet, not once in his more than 4 years in office has President Reagan submited to Congress a balanced budget. Indeed, not once has he failed to request more in his annual budgets than Congress has appropriated.

Think about that now. Not once has he failed to request more in his annual budgets than Congress has ultimately adopted. Is not that significant? Here is a significant item I think that the President of the United States today has asked for more money than Congress has given him.

I do not understand the line-item veto then. If he asks for more money than he gets, why should we give him line-item veto?

Something tells me Congress might be doing a better job than the President, if we approve less expenditures than he requests. I think we need to look at that a little bit. It might be significant as it relates to whether we need line-item veto or not. That means the Members of this body are doing a little reduction than that being presented to us by the executive.

During his first term in office, the President has directed a government which has achieved new heights in the amount of the public debt and in the annual budget deficit.

Moreover, I doubt that the percentage growth rate in these vital economic indicators has ever been matched in the term of any previous President, except perhaps in war time.

In terms of reducing Federal spending, the adoption of S. 43 would be like putting the protection of the henhouse in charge of the fox. In these days of political sophistication it seems incredible for anyone to argue that a single powerful and masterful politician would be any less subject to political pressure than a group of 535 lesser politicians.

S. 43 transfers political power and pressure. It would reduce neither, and it will most certainly not reduce Federal spending—only change its location. And if the facts of history can be believed, the adoption of S. 43 would very likely increase rather than reduce total Federal spending.

You would not believe that reading the paper that Congress has given him

less than he asked for. It is just shifting the priorities.

I do not believe in eating the seed corn. I think we need next year's crop and the next year's crop is a generation to come.

Armed with the power of S. 43, a President determined to increase spending on weapons procurement, for example, could only apply formidable pressure on the Members of a Congress disinclined to support such increased expenditures.

In the final analysis, Mr. President, if we want to reduce Federal spending and the budget deficit, Congress must do it under our present system of constitutional and statutory law. It is our responsibility. We must not shirk our duty and, Lord willing, we will not.

Proponents of S. 43, when confronted with the charge that it is an unconstitutional attempt to avoid the necessity of a constitutional amendment, do not deny the attempt to avoid the charge but seek shelter in the claim that it is constitutional and, besides, if it is not, the Court will take care of it.

If you know it is not right, why do it in the first place? Even if you think it is not right, why impose or attempt to impose this judgment on your colleagues?

Moreover, those proponents argue it is only a 2-year experiment. It is only 2 years. To continue beyond 2 years will require new affirmative action by Congress and the President. If it is not constitutional, the courts will take care of it. Can you get a restraining order? I am not a lawyer. My dad told me, "A little knowledge of the law is dangerous. Get a good lawyer and stay with him." I have attempted to do that. The legal advice I have is this was likely unconstitutional and that it thwarts what we believed for lo these many years.

The question of constitutionality of S. 43 rests primarily on two issues. Does it attempt to shift constitutional power balance in an amount and manner requiring constitutional amendment?

Apart from its impact on the Constitution's carefully determined balance of power between the legislative and executive branches, does the bill create a process for enrollment and presentment of legislation which violates the principles set down by the Court in the *Chadha* decision?

On constitutionality, the proponents depend primarily on an opinion by the Library of Congress Supreme Court expert, and a recognized constitutional law scholar, John H. Killian. Mr. Killian's excellent opinion can be read two ways, and I fear it is so read.

It is my opinion that when Mr. Killian responds to the question, "Does S. 43 result in an unconstitutional shift of power between Congress and the President?" That "while this shift might occur, the degree to which it would and the power to reverse the shift would continue to remain with Congress." And concludes that "in that fact would probably lie the basis to reject the argument as too formalistic" he is, in fact, acknowledging that S. 43 if enacted and implemented as intended, it would indeed be unconstitutional.

I think the distinguished Senator from Oregon read in the RECORD earlier a substantiation of that position.

If Mr. Killian means that Congress can control the shift of power by its rulemaking powers, he is, in effect, suggesting that Congress can make the operation of S. 43 constitutional by ensuring that the enrollment and presentment of separate items does not take place as the statute intends.

If, on the other hand, Mr. Killian means the shift of power can be controlled by Congress through passage of new legislation, it is clear that such control is not exclusively within Congress.

But in neither case can one realistically conclude that S. 43 is constitutional. In Chadha the court reminded us that even when Congress and the executive branch collaborate on shifts of power from balances established by the Constitution, such effects fall unless the constitutional amendment process is followed.

As the able chairman of the Rules Committee reminded us during hearings on S. 43, while, of course, the Supreme Court is the final arbiter on the constitutionality of a statute, Congress has an independent and unshiftable duty initially to determine that a measure it passes is, in its collective judgment, constitutional.

For me that decision is clear. S. 43 is not constitutional, and under my oath to support the Constitution I cannot vote for it.

I do not believe the people will support circumventing the Constitution. I just do not believe they will. I may be wrong. It will not be the first time; probably will not be the last. But I am going to try to keep it from being. I just do not believe the people approve of circumventing the Constitution, because there was a determined effort to balance the power and that balance of power has been good to this country. "Oh," you will say, "let's try it. See if it works. If it doesn't—it's only for 2 years—why, we can quit."

Even if S. 43 were constitutional I could not support it. It is bad legislation and proposes bad public policy.

All of its defects result in widespread opposition and controversy. S. 43 is not a minor bill. It would make important changes in the appropriations process, and could easily establish bad precedents for extending this shift of power from Congress to the President in other areas of legislative responsibility.

I will discuss a few of what I believe are serious defects in S. 43.

From the beginning I have been troubled by the superficially attractive and initially seductive proposition that S. 43 be approved only for a 2-year experimental period. To experiment, legislatively, on a bill of the importance of S. 43 simply makes no sense.

Either the critical and complex changes it proposes in our appropriation process and in the shifts of power established by the Constitution have sufficient merit to be adopted as permanent public policy, or they don't. Our Founding Fathers did not create this Congress as a laboratory for easy experimentation. They knew and we know, that Congress would and will make mistakes. And when we do, we correct them to the best of our ability by enacting new laws.

We all have our own ideas. That is the reason we have two Senators from every State. Each State is a little bit different. Each State has a few different problems. We all try to accommodate those problems. But we have all got a thread that keeps us together: Love of country, willing to defend it, and support the Constitution.

What is our binding glue? What holds us together? The three branches of Government: the executive, the legislative, and, of course, the judicial. That is it. It is all in the Constitution. It is spelled out very well.

The 2-year life limit on S. 43 is either conceived as a lure to entice the support of the skeptical and undecided, or it was chosen in the full knowledge that the power it would invest in this President, to be used as he might choose, is not a power that the principal proponents of S. 43 would want to be given to any and all successor Presidents.

I mark this 2-year provision as a defect and unworthy for any of its possible purposes. It is bait we should reject—along with the entire bill.

As I have indicated, if I thought this bill could in fact make a real contribution to reducing our budget deficits, I would quite probably support some constitutional version of it. But, to my mind, there is no evidence that the bill can have such a result.

The President does not want to reduce spending—he wants to shift it to areas he deems more important. Based on the experience of those States which have empowered Governors to veto on an item basis, there is no indication that its use has resulted in reduced spending.

Even if there was a determination by the President to use S. 43 powers to cut spending, only 11 percent of the budget is realistically subject to this scalpel veto weapon. And that 11 percent consists of nondefense domestic spending which Congress and the

President have already trimmed substantially.

Perhaps what troubles me most about S. 43 is its deceptively cosmetic package as a means to allow an omniscient President to protect the public from spendthrift and foolish Members of Congress.

The duty to reduce spending and out deficits lies first and foremost with Congress. In recent years we have met that duty responsibly with some, if inadequate, success. But it is our job, and we are continuing to work at means to achieve these goals. We can and will do it without S. 43.

Passage of S. 43 will not help us or the President accomplish the vital goals of spending and deficit reduction.

Adoption of the bill will result in an unconstitutional transfer of power from Congress to the President.

Adoption of the bill will result in an unwise shift of power from the Senate to the House of Representatives.

Adoption of the bill will result in an unwise and, I believe, unconstitutional transfer of legislative power from each House of Congress to the respective enrolling clerks.

Adoption of the bill will result in a massive logjam of appropriation bills being prepared for "item" bill presentment to the President. We all know how difficult it has been to complete our appropriation work on an annual cycle under present law. With S. 43, it would become totally impossible.

Only one person can read a man's mind. Only one person can see into a man's heart. We do not have the training nor the ability to do that. We are not educated in mindreading. Yet, we are getting ready to give the enrolling clerk of the House of Representatives the ability to read my mind, to read your mind on our intent, and say to the President of the United States, "This is what Senator FORD from Kentucky thought. This is his intent." Who picks the enrolling clerk in the House? Does the Speaker pick him or her? Do they meet in caucus? How is an enrolling clerk elected? I do not know. Maybe I ought to look into that because if that passes, I want to have something to say about the new enrolling clerk in the House. I want to be able to find out if I can get in that door and talk to him about how he enrolls my bill that affects Kentucky, if I can get in past the special interests.

Do you know? I might just want to go over there and check that out. Shoot, I do not know whether I can do anything or not. But I believe I would talk to my Congressman, Democrat and Republican, and say, "Hey, do you know what is happening here?" The enrolling clerk is going to enroll 2,043 pieces of legislation on this one bill, 540 pieces of legislation on another supplemental appropriations bill.

In my mind, there is no evidence that this bill can have the result of reducing our budget deficits.

The President could want to reduce spending in some areas, but he would want to shift it to others that he deems more important. Yet we would not reduce the deficit; just shift where the money is going. So it does not mean that the President in his line item veto would reduce the deficit. He could very easily shift where the taxpayer dollars would be spent. There is no indication that its use would result in the reduction of expenditures.

I go back to the fact that the Congress has sent less money to the President in the budget than he has requested and that, in my opinion, is something that is not well known.

I go back to the point that the duty to reduce spending and our deficits lies first and foremost with Congress. In recent years we have met that duty responsibly, with some success. But it is our job and we are working to achieve those goals and we can and will do it without S. 43.

As I said earlier, I am going to find out how they select the enrolling clerk in the House and see if I can have some input into how that selection is made if S. 43 is passed into law. I do not want that person to say what my intent was.

I think, Mr. President, adoption of this bill will result in a massive logjam of appropriations bills being prepared for item veto or to make item bills.

What are we going to call this new legislation that is sent to the President? We call them supplemental appropriations bills now. Will each of those 540 pieces of legislation developed from the supplemental appropriations be called "item bills?" I do not know. I have not heard the proponents tell us what they are going to be.

I like supplemental appropriations bill better than I do item bills.

I just do not understand how we are going to have the time, where we are going to get the time. But, as I said earlier, we may help the paper companies. We now have one bill but we will have 540. We now have one bill and you will have 2,043. Two little bills give you almost 2,600 item bills.

Mr. President, for me there is no uncertainty or indecision. S. 43 is not good legislation, and I sincerely hope that a substantial majority of my collegues will join me in voting against it. Mr. President, I am going to save further comments until tomorrow. I sugget the absence of a quorum.

The PRESIDING OFFICER (Mr. HECHT). The clerk will 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.

ORDER OF PROCEDURE

(The following proceedings occurred earlier:)

Mr. MATSUNAGA. Mr. President, will the Senator from Oregon yield for a unanimous-consent request, so that I may proceed as in morning business, and without in any way altering his having the floor?

The PRESIDING OFFICER. Is there objection? Hearing none, the Senator from Hawaii is recognized.

(At this point Mr. MATSUNAGA introduced a joint resolution (S.J. Res. 164) relating to International Space Year, which is printed under Introduced Bills and Joint Resolutions, and which appears later in the RECORD.)

VISIT TO SENATE BY ASTRONAUTS AND COSMONAUTS

Mr. MATSUNAGA. Mr. President, may I suggest to all Members who wish to meet with the cosmonauts and astronauts who are now visiting in Washington, they may meet with them in the reception room adjoining the Senate Chamber. I am sure they will be very pleased to meet with my colleagues and to be greeted by them.

(Conclusion of earlier proceedings.)

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 Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, and a treaty, 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 12:11 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following joint resolution, without amendment:

S.J. Res. 144. Joint resolution to authorize the printing and binding of a revised edition of Senate Procedure and providing the same shall be subject to copyright by the author.

ENROLLED JOINT RESOLUTION SIGNED

The message also announced that the Speaker has signed the following enrolled joint resolution:

S.J. Res. 40. Joint resolution to designate the month of October 1985 as "National Down Syndrome Month".

The enrolled joint resolution was subsequently signed by the President pro tempore (Mr. THURMOND).

At 5:13 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 bill (S. 960) to amend the Foreign Assistance Act of 1961, the Arms Export Control Act, and other acts to authorize appropriations for the fiscal year 1986 for international security and development assistance, the Peace Corps, the Inter-American Foundation, and the African Development Foundation, and for other purposes, with amendments; it insists upon its amendments to the bill, asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference on the part of the House:

Mr. FASCELL, Mr. HAMILTON, Mr. YATRON, Mr. SOLARZ, Mr. BONKER, Mr. MICA, Mr. BARNES, Mr. WOLPE, Mr. BROOMFIELD, Mr. GILMAN, Mr. LAGOMARSINO, Mr. HYDE, and Mr. SOLOMON.

Solely for consideration of subtitle II of title IV of the House amendment and modifications thereof committed to conference: Mr. HOWARD, Mr. MINETA, Mr. SNYDER, and Mr. HAMMERSCHMIDT.

Solely for consideration of sections 908 and 911 of the House amendments and section 913 of the Senate bill: Mr. DE LA GARZA, Mr. BEDELL, and Mr. ROBERTS.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 1460) to express the opposition of the United States to the system of apartheid in South Africa, and for other purposes, asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference on the part of the House:

From the Committee on Foreign Affairs, for consideration of all provisions except section 17 of the Senate amendment, and modifications thereof committed to conference: Mr FASCELL, Mr. SOLARZ, Mr. BONKER, Mr. WOLPE, Mr. CROCKETT, Mr. DYMALLY, Mr. BERMAN, Mr. WEISS, Mr. GARCIA, Mr. BROOMFIELD, Mr. SILJANDER, Mr. DORNAN of California, Mr. DEWINE, and Mr. BURTON of Indiana.

From the Commitee on Banking, Finance and Urban Affairs, for consideration solely of sections 3, 4, 5, 14(6), and 14(7) of the House bill, and sections 8, 15, and 17 of the Senate amendment and modifications thereof committed to conference: Mr. ST GERMAIN, Mr. GONZALEZ, Mr. ANNUNZIO, Mr. MITCHELL, Mr. NEAL, Mr. BARNARD, Mr. MORRISON of Connecticut, Mr. WYLIE, Mr. MCKINNEY, Mr. LEACH of Iowa, and Mr. HILER.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2959. An act making appropriations for energy and water development for the fiscal year ending September 30, 1986, and for other purposes.

The message also announced that pursuant to the provisions of section 276a-1 of title 22 of the United States Code, the Speaker appoints as members of the delegation to attend the conference of the Interparliamentary Union, to be held in Ottawa, Canada, on September 2 through September 7, 1985, the following Members on the part of the House: Mr. PEPPER, Chairman, Mr. HAMILTON, Vice Chairman, Mr. HAWKINS, Mrs. BOGGS, Mr. BONIOR, Ms. OAKAR, Mr. DYMALLY, Mr. HAMMERSCHMIDT, Mr. HYDE, and Mr. ROTH.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 2959. An act making appropriations for energy and water development for the fiscal year ending September 30, 1986, and for other purposes; to the Committee on Appropriations.

ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, July 17, 1985, she had presented to the President of the United States the following enrolled joint resolution:

S.J. Res. 40. Joint resolution to designate the month of October 1985 as "National Down Syndrome Month."

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-1481. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a comulative report on budget rescissions and deferrals dated July 1, 1985; pursuant to the order of January 30, 1975, referred jointly to the Committee on Appropriations and the Committee on the Budget.

EC-1482. A communication from the Assistant Secretary of Defense (International Security Policy), transmitting, pursuant to law, a report on the program of the Department of Defense to halt the flow of sensitive technology to our adversaries and the resources necessary to support that program; to the Committee on Armed Services.

EC-1483. A communication from the Chairman of the Board and the Acting Executive Director of the Pension Benefit Guaranty Corporation, transmitting a draft of proposed legislation to amend the Employee Retirement Income Security Act of 1974 for the purpose of improving the single-employer pension plan termination insurance program established under title IV therein and for other purposes; to the Committee on Finance.

EC-1484. A communication from the Acting Secretary of State transmitting, pursuant to law, a report on the situation in El Salvador; to the Committee on Foreign Relations.

EC-1485. A communication from the Chairman of the Foreign Claims Settlement Commission transmitting, pursuant to law, the annual report of the Commission for calendar year 1984 that also includes the final report on the Czechoslovakian Claims Settlement Act of 1981; to the Committee on Foreign Relations.

EC-1486. A communication from the District of Columbia Auditor transmitting, pursuant to law, a report entitled "Revenue Report for April 1985"; to the Committee on Governmental Affairs.

EC-1487. A communication from the Acting Director of the Office of Personnel Management, transmitting a draft of proposed legislation to amend the Intergovernmental Personnel Act of 1970, as amended; to the Committee on Governmental Affairs.

EC-1488. A communication from the Benefits Manager of the Farm Credit Banks of Texas, transmitting, pursuant to law, an annual report for the Farm Credit Banks of Texas Pension Plan for the plan year ended December 31, 1984; to the Committee on Governmental Affairs.

EC-1489. A communication from the Attorney General of the United States, transmitting, pursuant to law, the interim report of the National Drug Enforcement Policy Board; to the Committee on the Judiciary.

EC-1490. A communication from the Assistant Attorney General (Legislative and Intergovernmental Affairs), transmitting a draft of proposed legislation to amend the Controlled Substances Act to create new penalties for the manufacturing with intent to distribute, the possession with intent to distribute, or the distribution of "designer drugs" and for other purposes; to the Committee on the Judiciary.

EC-1491. A communication from the Secretary of Education, transmitting, pursuant to law, final funding priority for Rehabilitation Long-Term Training-Rehabilitation Counselors; to the Committee on Labor and Human Resources.

EC-1492. A communication from the Chairman and the Vice Chairman of the Senate Select Committee on Intelligence, transmitting, notice that a classified report on authorizations for intelligence activities for fiscal year 1986 is available for examination by Senators in the Committee's offices; ordered to lie on the table.

EC-1493. A communication from the Secretary of Agriculture, transmitting a draft of proposed legislation to amend the National Trails System Act by designatng the Nez Perce (Nee-Me-Poo) Trail as a component of the National Trails System; to the Committee on Agriculture, Nutrition, and Forestry.

EC-1494. A communication from the Secretary of Agriculture, transmitting a draft of proposed legislation to repeal that paragraph of the Act of March 4, 1913, as amended, that designates 10 percent of all National Forest receipts for the construction of roads and trails on the National Forests; to the Committee on Agriculture, Nutrition, and Forestry.

EC-1495. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Examination of the Federal Savings

and Loan Insurance Corporation's Financial Statements for the Years ended December 31, 1984 and 1983"; to the Committee on Banking, Housing, and Urban Affairs.

EC-1496. A communication from the Chairman of the Federal Communications Commission, transmitting, pursuant to law, the annual report of the Commission for fiscal year 1984; to the Committee on Commerce, Science, and Transportation.

EC-1497. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Greater Use of Value Engineering Has the Potential to Save Millions on Wastewater Treatment Projects"; to the Committee on Environment and Public Works.

EC-1498. A communication from the United States Trade Representative, transmitting, pursuant to law, the second portion of an analysis of the effects of foreign industrial targeting on the automobile, computer, and semiconductor industries; to the Committee on Finance.

EC-1499. A communication from the Secretary of Labor, transmitting, pursuant to law, the Department of Labor's report on foreign industrial targeting; to the Committee on Finance.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LUGAR, from the Committee on Foreign Relations, without amendment:

S.J. Res. 161. Joint resolution to appeal for the release of Soviet Jewry.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HATCH, from the Committee on Labor and Human Resources:

Chester Evans Finn, Jr., of Tennessee, to be Assistant Secretary for Educational Research and Improvement, Department of Education.

(The above nomination was reported from the Committee on Labor and Human Resources with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. LUGAR, from the Committee on Foreign Relations:

Mae Neal Peden, of Virginia, to be an Assistant Administrator of the Agency for International Development;

Allie C. Felder, Jr., of the District of Columbia, to be a member of the board of directors of the Overseas Private Investment Corporation for a term expiring December 17, 1987;

Richard F. Hohlt, of Indiana, to be a member of the board of directors of the Overseas Private Investment Corporation for a term expiring December 17, 1987;

Joe M. Rogers, of Tennessee, to be Ambassador Extraordinary and Plenipotentiary of the United States to France:

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calender year of the nomination and ending on the date of the nomination.

Nominee: Joe M. Rodgers.

Post: Ambassador to France.

Contributions, amount, date, donee:

1. Self:

$100—1981: Hogan for Congress Committee; $100—1981: Stiltz for Legislature; $1,000—1981: Cissy Baker Campaign Committee; $100—1981: Adams for Congress; $100—1982: Kilcrease for Judge; $100—1982: Committee to Elect Torrence; $500—1982: Citizens to Elect Sundquist; $1,000—1982: Emory Folmar; $600—1982: Tennessee Republican Statesmen; $500—1982: Carol McCoy for Judge; $125—1982: Rose Cantrell; $1,000—1982: Citizens for Jack Kemp; $100—1982: Rick Fore for U.S. Senate; $50—1982: Thornton for Legislature; $1,000—1982: Robin Beard; $1,000—1982: Burleson for Senate; $500—1982: Friends of Lehman; $1,000—1982: Alexander for Governor; $500—1982: Bob Bell for Governor; $300—1983: Tennessee Republican Statesmen; $1,200—1983: Republicans Abroad; $100—1983: Committee to Elect JoAnn North; $500—1983: Kyle Testerman for Mayor; $100—1983: Tennesseans for Good Government; $100—1983: Mosley for Metro; $150—1984: Campaign for Republican Women; $900—1984: Tennessee Republican Statesmen; $1,000—1984: Republican Majority Fund; $2,750—1984: Tennessee Republican Party Victory 1984 Auction; $100—1984: House Republican Caucus; $50—1984: Voters for Chiles; $500—1934: Ned Ray McWherter; $3,000—1984: The President's Dinner (2 tickets); $250—1984: Bush for Delegate; $1,000—1984: Ashe for Senate; $1,000—1984: Humphrey Team; $1,000—1984: Lousman for Senate; $1,000—1984: Jepsen for Senate; $1,000—1984: Bethune for Senate; $100—1984: Tim Garrett; $1,000—1984: Conner 1986 Exploratory Committee; $50—1984: Committee to Elect Nesby Lee; $1,000—1984: Joe Simpkins for Congress; $1,000—1984: Gerald Ford New Leadership; $100—1984: Quillen for Congress; $3,000—1985: GOPAC.

2. Spouse:

$1,000—1982: Robin Beard;
$1,000—1983: Victor Ashe;
$1,000—1983: Re-Elect;
$1,000—1984: Joe Simpkins (primary);
$1,000—1984: Joe Simpkins (General);
$1,000—1984: Conner 1986 Exploratory Committee.

3. Childern and spouses names:

Daughter: Jan Martin Rodgers, single. $741.45—1985: Joe Simpkins for Congress; son: Joseph Mason Rodgers, single, none: N/A, N/A.

4. Parents names:

Father (deceased): Edwin Nathaniel, Rodgers—None, N/A, N/A; mother: Charlotte Belle Cook Rodgers—None, N/A, N/A.

5. Grandparents names:

Paternal: Joseph Lee Rodgers (deceased): Mary Matilda Garrison Rodgers (deceased)—None, N/A, N/A; Maternal: Henry G. Cook (deceased)—None—N/A, N/A.

6. Brothers and spouses names:

James Lee Rodgers (deceased)—None; N/A; N/A; Nell Hudson Rodgers—None; N/A; N/A.

Henry Gerald Rodgers: $75—1981: GOP Victory Fund; $100—1982: National Republican Campaign Committee; 200—1983: Reagan-Bush 1984; 200—1984: Reagan-Bush 1984; Peggy Rodgers—None—N/A; N/A; Edwin C. Rodgers—None—N/A; N/A; Betty Jane Rodgers—None—N/A; N/A.

7. Sisters and spouses names: Mary Louise Rodgers Kain—None—N/A; N/A; Edmund C. Kain, Jr.—None—N/A; N/A.

(The above nominations were reported from the Committee on Foreign Relations with the recommendation that they be confirmed subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. LUGAR. Mr. President, for the Committee on Foreign Relations, I also report favorably a nomination list in the Foreign Service which appeared in its entirety in the CONGRESSIONAL RECORD of July 8, 1985, and, to save the expense of reprinting the full list on the Executive Calendar, I ask unanimous consent that it be placed on the Secretary's desk for the information of Senators.

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

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. ANDREWS:

S. 1446. A bill to amend title 38, United States Code, to improve veterans' benefits for former prisoners of wars; to the Committee on Veterans' Affairs.

By Mr. BOSCHWITZ:

S. 1447. A bill for the relief of Bayani Bauetista Magsino; to the Committee on the Judiciary.

S. 1448. A bill for the relief of Elenita Reyes Magsino; to the Committee on the Judiciary.

By Mr. BENTSEN (for himself, Mr. CHILES, Mr. FORD, Mr. ZORINSKY, Mr. HOLLINGS, Mr. RIEGLE, Mr. EXON, Mr. DECONCINI, Mr. LEVIN, Mr. SIMON, Mr. EAGLETON, and Mr. MELCHER):

S. 1449. A bill to restore balance in international trade, to improve the operation of the trade agreements program, and for other purposes; to the Committee on Finance.

By Mr. HEINZ (for himself, Mr. GLENN, Mr. BRADLEY, Mr. BURDICK, Mr. SASSER, Mrs. HAWKINS, Mr. MATHIAS, and Mr. CHILES):

S. 1450. A bill to prohibit the Secretary of Health and Human Services from changing reimbursement levels or methodologies for home health services under the Medicare Program prior to October 1, 1986, or during a freeze period; to the Committee on Finance.

By Mr. CHAFEE (for himself and Mr. RUDMAN):

S. 1451. A bill to allocate funds appropriated to carry out section 103 of the Foreign Assistance Act of 1961 for nutrition programs which reduce vitamin A deficiency; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. KENNEDY (for himself and Mr. KERRY):

S. 1452. A bill to settle Indian land claims in the town of Gay Head, MA, and for other purposes; to the Select Committee on Indian Affairs.

By Mr. BRADLEY:

S. 1453. A bill to reaffirm the boundaries of the Great Sioux Reservation to convey federally held lands in the Black Hills to the Sioux Nation; to provide for the eco-

nomic development, resource protection and self-determination of the Sioux Nation; to remove barriers to the free exercise of traditional Indian religion in the Black Hills; to preserve the sacred Black Hills from desecration, to establish a wildlife sanctuary; and for other purposes; to the Select Committee on Indian Affairs.

By Mr. TRIBLE:

S. 1454. A bill to amend title 5, United States Code, to expand the class of individuals eligible to receive a rebate or other return of contributions when amounts held in contingency reserve under the Federal employees health benefits program exceed certain levels; to the Committee on Governmental Affairs.

By Mr. DOLE (for Mr. STEVENS):

S. 1455. A bill to extend the authority to establish and administer flexible and compressed work schedules for Federal Government employees; considered and passed.

By Mr. LAUTENBERG:

S. 1456. A bill to recognize the Army and Navy Union of the United States of America; to the Committee on the Judiciary.

By Mr. HARKIN:

S. 1457. A bill to amend the Internal Revenue Code of 1954 to establish certain rules regarding the regulatory treatment of certain Federal tax credits and deductions allowable to regulate electric utilities; to the Committee on Finance.

By Mr. MATSUNAGA:

S.J. Res. 164. Joint resolution relating to an international Space Year in 1992; to the Committee on Foreign Relations.

By Mr. SIMON:

S.J. Res. 165. Joint resolution designating the month of October 1985 as "National High-Tech Month"; to the Committee on the Judiciary.

By Mr. DURENBERGER (for himself and Mr. MOYNIHAN):

S.J. Res. 166. Joint resolution to appeal for the release of Dr. Yury Orlov and other Helsinki Final Act monitors; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTION

By Mr. ANDREWS:

S. 1446. A bill to amend title 38, United States Code, to improve veterans' benefits for former prisoners of war; to the Committee on Veterans' Affairs.

IMPROVED VETFRANS BENEFITS FOR FORMER PRISONERS OF WAR

Mr. ANDREWS. Mr. President, today I am introducing a bill to improve veterans benefits for former prisoners of war.

The bill will establish a presumption of service connection for disability purposes for former prisoners of war suffering from the following conditions: First, chronic liver disease; second, organic residuals of hypothermia; third, gastrointestinal disorders; forth, arthritis; fifth, cardiovascular conditions; sixth, peripheral neuropathy; seventh, immunological dysfunctions; eighth, chronic pulmonary disease.

It will also decrease from 6 months to 30 days the amount of time a former prisoner of war must have been incarcerated to be eligible for outpatient dental services.

Mr. President, the people of North Dakota honored our POW's at a 1984 POW-MIA ceremony at Grand Forks Air Force Base in North Dakota.

Six of these servicemen listed as POW-MIA were honored with a special congressional medal authorized by Congress in 1983.

However, flags, drums, military bands, and medals do not compensate for the physical deterioration and ongoing medical care needed by our former POW's. These individuals sacrificed so much in war that so many could live in peace. We must provide the best medical care possible to the bravest among us. The hardship our POW's endured demand nothing less. It is for that reason I am today introducing this legislation and urge my colleagues to remember the words of Thodore Roosevelt that "a man who is good enough to shed his blood for his country is good enough to be given a square deal afterwards."

By Mr. BENTSEN (for himself, Mr. CHILES, Mr. FORD, Mr. ZORINSKY, Mr. HOLLINGS, Mr. RIEGLE, Mr. EXON, Mr. DECONCINI, Mr. LEVIN, Mr. SIMON, Mr. EAGLETON, and Mr. MELCHER):

S. 1449. A bill to restore balance in international trade, to improve the operation of the trade agreements program, and for other purposes; to the Committee on Finance.

TRADE EMERGENCY AND EXPORT PROMOTION ACT

Mr. BENTSEN. Mr. President, I am pleased today to introduce the Trade Emergency and Export Promotion Act. Joining me today in sponsoring this legislation are Senators CHILES, FORD, ZORINSKY, HOLLINGS, RIEGLE, EXON, DECONCINI, LEVIN, SIMON, EAGLETON, and MELCHER. The identical bill is being introduced in the House of Representatives as well by Congressmen ROSTENKOWSKI and GEPHARDT.

Mr. President, we are faced with a national trade emergency.

Our trade deficit in the first four months of 1985 was a staggering $45 billion, an annual rate of $134 billion.

These figures understate the problem, Mr. President. The trade deficit is actually getting worse month by month, and a 1985 trade deficit of $150 billion is well within the realm of possibility.

However, it is not really the trade deficits that present this national emergency. It is the lack of any trade policy that presents the danger.

The Economic Summit at Bonn was perfect opportunity to develop a coordinated package of actions by each of the major countries to reverse the beggar-thy-neighbor policies that are sweeping the free world. Had the President taken along a trade advisor to Bonn, he might have known this emergency was developing. But there was no senior trade advisor with the American President in Bonn.

Congress is not a good place to implement trade programs. It should, and it has for 50 years, made trade policy. But only the President has the flexibility to take trade actions shaped to the individual needs of each case. I do not want Congress to take trade action.

However, today we face an emergency, Mr. President. The President of the United States refuses to take any substantial action regarding trade. He is evidently oblivious to this emergency. Congress must fill the current trade policy vacuum with rational trade programs, or else we will find the vacuum filled with protectionism. We must be temperate and reasonable, but we must be firm.

We want to keep the benefits of imports for our people. But we also want the benefits of exports.

We are willing to do America's share by cutting the Federal budget deficit.

We expect other countries to take similarly difficult actions.

My bill does the following:

First, the bill declares a national trade emergency and authorizes the President to negotiate agreements restraining exports to the United States and authority to enforce these agreements. While I believe this authority largely duplicates authority the President already has, I agree with my House counterparts, who are today introducing this bill in the House of Representatives, Congressmen ROSTENKOWSKI and GEPHARDT, that it is necessary to make it absolutely clear that Congress wants the President to resolve the problem and wants him to have the necessary authority to accomplish that result.

Second, the bill requires the U.S. Trade Representative [USTR] to immediately begin broad actions in the General Agreement on Tariffs and Trade [GATT] seeking authority for the United States to take both interim and long-term measures in compensation for the fact that Japan's economic and trade policies undermine U.S. expectations from the GATT, and therefore, nullify and impair Japan's obligations under the GATT; and because Europe's agricultural policies adversely affect vital U.S. interests, are inconsistent with the EC's obligations under the general agreement, and also nullify and impair Europe's obligations under the GATT.

Japan is the second leading economic power in the free world, a nation dependent upon trade. Yet since the Tokyo round that ended in 1979, Mr. President, Japan has entered upon a one-way trade policy: Their credo is import only raw materials and export as much as possible. Japan's exports are growing three times as fast as the imports. Japan's surplus in manufactured goods is as large as the United States total trade deficit.

I am convinced Japan sees this one-way trade policy as a virtue, not a vice. They think it shows that they are the best traders of all, because they import nothing that is produced in Japan.

In fact, it is the most destructive kind of trade policy, Mr. President.

There is no hope Japan or Europe will lead us out of this emergency, Mr. President. Japan regards trade surpluses as a virtue. European governments are able to agree on common protectionism, and little else. Things are so bad in Europe, Mr. President, that you have the West German Government, the most advanced industrial economy in Europe, blocking agreement to cut agricultural export subsidies.

The United States must lead. And so far this administration has failed to even try to do this.

These actions and the agricultural export subsidies of the European Communities [EC] nullify our trade agreements with them, justifying stern countermeasures.

Third, the bill requires the Department of the Treasury to come up with a global plan to prevent fluctuations in our currency values. This is a plan to prevent harmful speculation in dollars that causes currency values to fluctuate in the huge unregulated world currency market. The value of the dollar is the single most important influence on our competitiveness, and we must therefore, seek to control erratic fluctuation in the value of the dollar.

Fourth, the bill requires Japan and certain other large trading countries with excessive trade surpluses to reduce their trade surpluses and the EC to reduce its trade-distorting agricultural export subsidies.

The bill does not require Japan or the other countries to export less. They can opt to increase trade, by importing more.

The bill does not allow Japan or the other countries to import more from only the United States; it requires them to import more from all countries. American exporters only want a fair opportunity to compete in the Japanese market against producers from anywhere else.

If Japan and other countries with excessive trade surpluses refuse to open their markets, then the bill requires a 25-percent special duty—in addition to all other duties—on their exports to us.

Fifth, the bill requires our Government to compete with Europe's agricultural export subsidies with dollar-for-dollar export subsidies. If Europe eliminates the harmful effects of these subsidies, then subsidies under the bill will not be available.

All our farmers want is the opportunity to compete in the world market free of subsidies.

Finally, Mr. President, the bill requires all trade action authority now delegated to the President to be redelegated to the USTR. This was a key recommendation of the Senate Democratic working group on trade policy, of which I am the chairman, for the reason that under present circumstances, when trade matters go to the President's desk, political considerations interfere and trade considerations are put second. While the USTR will still have to toe the President's line, at least as trade considerations will be given a higher priority than they are at present if USTR is the decisionmaker.

Mr. President, when you read the economic history of the last 50 years, the most striking feature of the period is that one simple idea underlies everything that has happened. Regardless of whether we are talking about the Bretton Woods currency agreement, or the International Monetary Fund, or the GATT, the common idea is to expand trade.

Expanding trade means a global economy of enormous efficiency, a great tool of peaceful, stable, steady growth.

In the last few years, there has been less and less agreement on this idea. One-way trade is spreading.

As the leader of the free world, the United States must now use its persuasive power to bring about expanding trade, to open up trade.

If the administration will not accept the responsibility, then we must.

Mr. President, I ask unanimous consent that a section-by-section analysis of this bill and the full text of the bill be printed in the RECORD.

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

S. 1449

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Trade Emergency and Export Promotion Act".

SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Purpose.
Sec. 4. Reviewability.

TITLE I—INTERNATIONAL TRADE ACTIONS AND AGREEMENTS

Sec. 101. Emergency trade deficit reduction negotiating authority.
Sec. 102. Enforcement of international agreements and prevention of actions that undermine such agreements.
Sec. 103. Plan to control harmful exchange rate fluctuations.

TITLE II—INTERIM DOMESTIC TRADE ACTIONS TO RESPOND TO THE TRADE EMERGENCY

Subtitle A—Stand-by Duties

Sec. 201. Annual reports on worldwide and bilateral trade.
Sec. 202. Imposition of stand-by duties.
Sec. 203. Definitions.
Sec. 204. Allocation of revenue from stand-by duties.
Sec. 205. Termination.

Subtitle B—Agricultural Export Subsidies

Sec. 211. Countervailing subsidies for United States agricultural commodities.

Subtitle C—Reports

Sec. 221. Annual Presidential reports.

TITLE III—TRADE LAW REFORM

Sec. 301. Transfer of authority to the United States Trade Representative.

SEC. 3. PURPOSE.

The purpose of this Act is to—

(1) improve standards of living in the United States and to preserve the industrial base of the United States, jobs in the United States, and the health of communities in the United States through the growth of international trade;

(2) demonstrate to all countries the commitment of the United States to fair and equitable commercial arrangements, including fair and equitable access for all countries to the markets of all other countries,

(3) provide access for United States goods to foreign markets comparable to the access foreign goods have to United States markets, and

(4) assure the people of the United States that Congress will take appropriate trade actions to protect the vital interests of the United States when the President fails or refuses to do so.

SEC. 4. REVIEWABILITY.

Actions by the President, the Commission, the Secretary of the Treasury, the Secretary of Agriculture, and the United States Trade Representative pursuant to this Act shall not be reviewable by any court, except for abuse of discretion.

TITLE I—INTERNATIONAL TRADE ACTIONS AND AGREEMENTS

SEC. 101. EMERGENCY TRADE DEFICIT REDUCTION NEGOTIATING AUTHORITY.

(a) Congress finds that—

(1) the deficit of the United States in the merchandise balance of trade between the United States and all other foreign countries, which totaled $123,000,000,000 for calendar year 1984, has tripled since 1981 and is expected to increase even further, to $140,000,000,000 in 1985;

(2) the balance in the current account of the United States (the broader measure of international performance that includes services and investment earnings) has gone from a surplus in 1981 to a deficit of $104,000,000,000 in 1984;

(3) the United States is now a net external debtor for the first time since 1914;

(4) the United States dollar has appreciated over 45 percent against the major currencies of our trading partners since 1981;

(5) the shortfall of United States production below United States purchases in commerce with other foreign countries has eliminated millions of jobs in the United States and substantially harmed communities in which affected industries are located;

(6) the persistence of such balance of trade and current account deficits of the United States at the present magnitude will eventually—

(A) destroy the Nation's industrial and agricultural base,

(B) cause severe dislocations within the domestic and world economy, and

(C) undermine the multilateral trading system;

(7) such balance of trade and current account deficits of the United States compound the net external debt of the United States which, if present trends continue, would reach $1,000,000,000,000 by 1990 and would necessitate a severe reduction in the standard of living of all Americans in order to even service, let alone repay, such debt;

(8) the major causes of such balance of trade and current account deficits of the United States are—

(A) the overvalued dollar,

(B) unfair foreign trade barriers or other unfair distortions of commerce, and

(C) the lack of a coherent United States trade policy;

(9) persistent and unfair trade policies of our major trading partners are seriously aggravating the trade imbalance of the United States;

(10) a growing number of newly industrialized countries—

(A) are practicing unfair trade policies which—

(i) emulate the policies and practices of Japan, and

(ii) emphasize export-led growth coupled with tight government restrictions throughout the entire economy in order to limit imports or foreign direct investment, and

(B) through such policies, are establishing large balance of trade and current accounts surpluses with the United States and the entire world,

thereby nullifying and impairing any benefits granted to the United States through trade agreements;

(11) without a comprehensive set of policies on the part of the United States to—

(A) dramatically reduce such trade deficit,

(B) bring down the value of the United States dollar, and

(C) establish a systematic response to the unfair policies of our trading partners,

the international competitiveness of the United States will continue to decline; and

(12) the President already has sufficient authority under the trade laws of the United States to resolve these problems, such as the authority provided under—

(A) section 201 of the Trade Act of 1974,

(B) section 301 of the Trade Act of 1974,

(C) section 406 of the Trade Act of 1974,

(D) section 22 of the Agricultural Adjustment Act of 1933, and

(E) section 204 of the Agricultural Act of 1956.

(b) On the basis of the findings described in subsection (a), the current distortions and imbalances in United States trade, and the current instability in international exchange rates, the Congress hereby declares that there exists a state of national emergency which requires extraordinary measures. Such measures must include action to—

(1) restore the value of the United States dollar to a level which reflects the competitiveness of United States products, and

(2) either—

(A) eliminate foreign unfair trade barriers, or

(B) prohibit countries which employ such barriers from enjoying large and inequitable trade surpluses with the United States or increasing shares of world export markets.

(c)(1) The President may, whenever the President determines such action appropriate to carry out the purpose of this Act, negotiate and enter into with any foreign country or instrumentality any agreements limiting the export from such foreign country or instrumentality, and the importation into the United States, of any article.

(2) The President is authorized to issue any proclamations or regulations regarding the entry, or withdrawal from warehouse, for consumption of any article that is necessary to implement any agreement entered into under the authority of paragraph (1).

SEC. 102. ENFORCEMENT OF INTERNATIONAL AGREEMENTS AND PREVENTION OF ACTIONS THAT UNDERMINE SUCH AGREEMENTS.

(a) The Congress finds that—

(1) an open world trading system is in the interest of the United States;

(2) such a system is neither economically nor politically sustainable unless it—

(A) is reciprocal,

(B) results in trade that is roughly in balance (taking into account differences in factor endowments and economic behavior between major trading countries), and

(C) is free of significant government efforts at distortion of trade;

(3) Japan has not significantly reduced its pervasive protectionism and, as a result, Japan has not, in comparison to other major industrialized countries, significantly increased its imports of manufactured products while it has significantly increased its exports of manufactured products;

(4) the European Communities continue—

(A) to significantly distort global trade in agriculture through subsidies that directly injure the United States and many producers in the developing world, and

(B) to maintain voluntary restraint agreements on a wider variety of industrial products than other major industrialized countries;

(5) the economic acts, policies, and practices of Japan nullify and impair the benefits accruing to the United States and other countries under current international trade agreements and tend to impede the objectives of such agreements;

(6) the agricultural export subsidies of the European Communities are being granted in a manner that is inconsistent with the provisions of existing international trade agreements and are being granted and maintained in such a manner as to cause injury, nullification, impairment, and serious prejudice to the United States;

(7) the trade practices of Japan and the European Communities encourage imitation among developing countries, which—

(A) undermines multilateral trade agreement commitments,

(B) worsens the international trading position of the United States, and

(C) diverts an unfair share of developing country exports to the United States; and

(8) a number of newly industrialized countries have begun to implement such policies and practices and have, to a more limited degree than Japan or the European Communities, caused nullification and impairment of their obligations under trade agreements.

(b) Upon enactment of this Act, the United States Trade Representative shall initiate proceedings against Japan before appropriate international bodies for the purpose of obtaining authorization to take trade actions against Japan on the grounds that—

(1) Japan has failed to carry out obligations which Japan has incurred under trade agreements entered into with the United States, and

(2) Japan has adopted numerous domestic economic acts, practices, and policies that, taken together, nullify, impair, and violate such trade agreements and impede achievement of the objectives of such trade agreements.

(c) Upon enactment of this Act, the United States Trade Representative, with the cooperation of the Secretary of Agriculture, shall initiate actions under all international trade agreements to which the United States is a party (including, but not limited to, the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures)) in order to take appropriate countermeasures against agricultural export subsidies provided by the European Communities, and by such other countries as the United States Trade Representative considers appropriate, which will be used to prevent—

(1) injury to United States agricultural producers;

(2) nullification or impairment of such trade agreements; and

(3) serious prejudice to the United States.

(d)(1) Upon enactment of this Act, the United States Trade Representative may initiate actions against each foreign country or instrumentality that was an excess worldwide trade surplus country or an excess bilateral trade surplus country (within the meaning of section 203) for calendar year 1984 under all applicable laws of the United States, and under all applicable international agreements to which the United States and such foreign country or instrumentality are parties, in order to—

(A) enforce the rights of the United States under such international agreements, and

(B) obtain the elimination of acts, policies, and practices of such foreign country or instrumentality which—

(i) are inconsistent with such international agreements,

(ii) otherwise deny benefits to the United States under such international agreements, or

(iii) are unjustifiable, unreasonable, or discriminatory and burden or restrict United States commerce.

(2) No action shall be taken under paragraph (1) against Japan or the European Communities.

(e) In proceedings initiated under this section, the United States Trade Representative shall explain that the United States finds it necessary to take the actions provided in title II of this Act as interim measures pending the outcome of such proceedings in order to protect vital interests of the United States.

(f) The head of each Federal department and agency shall cooperate with the United States Trade Representative in carrying out the requirements of this section.

SEC. 103. PLAN TO CONTROL HARMFUL EXCHANGE RATE FLUCTUATIONS.

(a) The Secretary of the Treasury shall develop a plan to reduce fluctuations between currencies on foreign currency exchange markets.

(b) The plan required under subsection (a) shall—

(1) be designed to reduce unwarranted and speculative fluctuations between currencies on foreign exchange markets that reduce United States competitiveness in trade in goods or create unnecessary uncertainty in such trade;

(2) provide for a coordinated multinational effort to stabilize rates of exchange for currencies used in international trade in goods, including moderation in the rate of exchange for the United States dollar and

the participation of developed and developing nations;

(3) specify the mechanisms, agreements, and acts of governments necessary to make the plan effective; and

(4) set forth a schedule for negotiations leading to such a multinational effort and identify legislation, if any, necessary to undertake such negotiations.

TITLE II—INTERIM DOMESTIC TRADE ACTIONS TO RESPOND TO THE TRADE EMERGENCY

Subtitle A—Stand-by Duties

SEC. 201. ANNUAL REPORTS ON WORLDWIDE AND BILATERAL TRADE.

(a) The Commission shall, based on the best available trade data, determine—

(1) the worldwide nonpetroleum export percentage,

(2) the bilateral nonpetroleum export percentage,

(3) the worldwide nonpetroleum trade surplus,

(4) the bilateral nonpetroleum trade surplus,

(5) the worldwide trade surplus limitation, and

(6) the bilateral trade surplus limitation,

of each major exporting country for the 1-year period that ends on June 30, 1986, for calendar year 1984, and for each succeeding calendar year.

(b)(1) The Commission shall submit to the President an annual report which—

(A) specifies the determinations made under subsection (a) for—

(i) in the case of the first report, the 1-year period that ends on June 30, 1986, and

(ii) in the case of all subsequent reports, the calendar year preceding the calendar year within which such report is submitted,

(B) identifies each foreign country which was an excess worldwide trade surplus country, or excess bilateral trade surplus country, for such year, and

(C) states whether the provisions of section 202(a)(2) preclude the issuance of a proclamation under section 202(a)(1) with respect to such report.

(2) The first report which is required to be submitted under paragraph (1) shall be submitted to the President on September 15, 1986. All subsequent reports which are required to be submitted under paragraph (1) shall be submitted to the President on April 1 of 1987 and of each succeeding calendar year.

(3) Each report submitted to the President under paragraph (1) shall be published in the Federal Register.

(c) For purposes of this subtitle, any trade statistic or limitation shall—

(1) be rounded off to the nearest billion dollars, and

(2) shall be adjusted to reflect the fact that certain products of the United States may not, under law, be exported.

SEC. 202. IMPOSITION OF STAND-BY DUTIES.

(a)(1) Except as otherwise provided in this subsection, the President shall, by no later than the date that is 15 days after the date on which a report is submitted to the President under section 201(b)—

(A) make a determination with respect to each foreign country identified in such report as an excess worldwide trade surplus country or excess bilateral trade surplus country of—

(i) whether such country unfairly restricts or limits the access of imports to the markets of such country, and

(ii) if the determination under clause (i) is affirmative, whether such restriction or limitation contributes to the worldwide nonpetroleum trade surplus or bilateral nonpetroleum trade surplus of such country, and

(B) issue a proclamation which imposes a stand-by duty on the entry of all products of each foreign country so identified in such report if both of the determinations made with respect to such country under clauses (i) and (ii) of subparagraph (A) are affirmative.

(2) No determinations shall be required, and no proclamation may be issued, under paragraph (1) with respect to a report submitted under section 201(b) if the percentage determined by dividing—

(A) the deficit of the United States, if any, in the merchandise balance of trade between the United States and the rest of the world during the year that is the subject of such report, by

(B) the gross national product of the United States for such year,

is less than 1.5 percent.

(3) By no later than the date that is 15 days after the date on which a report is submitted to the President under section 201(b), the President shall submit to the Congress a report on the determinations made by the President under paragraph (1)(A) with respect to each foreign country and the factual basis on which each of such determinations was made.

(b)(1) The rate of the stand-by duty imposed by any proclamation issued under subsection (a)(1) shall be 25 percent ad valorem.

(2)(A) Any duty imposed by any proclamation issued under subsection (a)(1) shall be in addition to any other duties imposed by law.

(B) Duty-free treatment provided with respect to any article under any provision of law (other than a provision of law implementing the Florence Agreement on the Importation of Educational, Scientific, and Cultural Materials, as amended by the Nairobi Protocol) shall not affect the imposition of any duty imposed with respect to such article by a proclamation issued under subsection (a)(1).

(3) Any duty imposed by any proclamation issued under subsection (a)(1) with respect to any report submitted under section 201(b) shall apply to articles entered—

(A) on or after the date that is 15 days after the date on which such proclamation is issued, and

(B) before the earlier of—

(i) the date that is 15 days after the date on which a proclamation is issued under subsection (a)(1) with respect to the next report submitted under section 201(b), or

(ii) the date that is 30 days after the date on which the next report is submitted under section 201(b).

(c) No proclamation issued under subsection (a)(1) may be revoked or suspended and such a proclamation may be modified only to the extent necessary to correct errors or omissions.

SEC. 203. DEFINITIONS.

For purposes of this subtitle—

(1) The term "excess worldwide trade surplus country" means any major exporting country which has—

(A) a worldwide nonpetroleum export percentage for the year that exceeds 150 percent, and

(B) a worldwide nonpetroleum trade surplus for the year that exceeds the worldwide trade surplus limitation for such country for the year.

(2) The term "excess bilateral trade surplus country" means any major exporting country which has—

(A) a bilateral nonpetroleum export percentage for the year that exceeds 165 percent, and

(B) a bilateral nonpetroleum trade surplus for the year that exceeds the bilateral trade surplus limitation for such country for the year.

(3) A foreign country is a major exporting country for a year if the aggregate value of the products of such foreign country that are exported to the United States during such year is more than the sum of—

(A) $7,000,000,000, plus

(B) an amount equal to—

(i) $7,000,000,000, multiplied by

(ii) the percentage determined by dividing—

(I) the excess, if any, of the gross national product of the United States (as determined by the Secretary of Commerce) for such year over the gross national product of the United States for 1984, by

(II) the gross national product for 1984.

(4) The term "foreign country" includes any instrumentality of a foreign country.

(5) The term "worldwide nonpetroleum export percentage" means, with respect to any foreign country for any year, the percentage determined by dividing—

(A) the aggregate value of nonpetroleum products of such country exported to the rest of the world during such year, by

(B) the aggregate value of nonpetroleum products imported into such country from the rest of the world during such year.

(6) The term "bilateral nonpetroleum export percentage" means, with respect to any foreign country for any year, the percentage determined by dividing—

(A) the aggregate value of nonpetroleum products of such country exported to the United States during such year, by

(B) the aggregate value of nonpetroleum products of the United States imported into such country during such year.

(7) The term "worldwide nonpetroleum trade surplus" means, with respect to any foreign country for any year, the excess (if any) of—

(A) the aggregate value of nonpetroleum products of such country exported to the rest of the world during such year, over

(B) the aggregate value of nonpetroleum products imported into such country from the rest of the world during such year.

(8) The term "bilateral nonpetroleum trade surplus" means, with respect to any foreign country for any year, the excess (if any) of—

(A) the aggregate value of nonpetroleum products of such country exported to the United States during such year, over

(B) the aggregate value of nonpetroleum products of the United States imported into such country during such year.

(9) The term "worldwide trade surplus limitation" means, with respect to any foreign country—

(A) for the 1-year period ending on June 30, 1986, the amount determined by multiplying—

(i) the worldwide nonpetroleum trade surplus of such country for calendar year 1984, by

(ii) 95 percent,

(B) for calendar year 1986—

(i) if such country was not an excess worldwide trade surplus country for the 1-year period ending on June 30, 1986, the amount determined by multiplying—

(I) the worldwide nonpetroleum trade surplus of such country for calendar year 1985, by

(II) 95 percent, or

(ii) if such country was an excess worldwide trade surplus country for the 1-year period ending on June 30, 1986, the amount determined by multiplying—

(I) the worldwide trade surplus limitation for such country for such 1-year period, by

(II) 90 percent, and

(C) for calendar year 1987 and for each calendar year succeeding calendar year 1987—

(i) if such country was not an excess worldwide trade surplus country for the calendar year preceding such calendar year, the amount determined by multiplying—

(I) the worldwide nonpetroleum trade surplus of such country for such preceding calendar year, by

(II) 95 percent, or

(ii) if such country was an excess worldwide trade surplus country for such preceding calendar year, the amount determined by multiplying—

(I) the worldwide trade surplus limitation for such country for the preceding calendar year, by

(II) 90 percent.

(10) The term "bilateral trade surplus limitation" means, with respect to any foreign country—

(A) for the 1-year period ending on June 30, 1986, the amount determined by multiplying—

(i) the bilateral nonpetroleum trade surplus of such country for calendar year 1984, by

(ii) 95 percent,

(B) for calendar year 1986—

(i) if such country was not an excess bilateral trade surplus country for the 1-year period ending on June 30, 1986, the amount determined by multiplying—

(I) the bilateral nonpetroleum trade surplus of such country for calendar year 1985, by

(II) 95 percent, or

(ii) if such country was an excess bilateral trade surplus country for the 1-year period ending on June 30, 1986, the amount determined by multiplying—

(I) the bilateral trade surplus limitation for such country for such 1-year period, by

(II) 90 percent, and

(C) for calendar year 1987 and for each calendar year succeeding calendar year 1987—

(i) if such country was not an excess bilateral trade surplus country for the calendar year preceding such calendar year, the amount determined by multiplying—

(I) the bilateral nonpetroleum trade surplus of such country for such preceding calendar year, by

(II) 95 percent, or

(ii) if such country was an excess bilateral trade surplus country for such preceding calendar year, the amount determined by multiplying—

(I) the bilateral trade surplus limitation for such country for such preceding calendar year, by

(II) 90 percent.

(11) The term "nonpetroleum product" means any merchandise other than merchandise classified to division 33 of the Standard International Trade Classification (revision II) published by the United Nations.

(12) The term "value" means—

(A) with respect to merchandise imported into the United States, the customs valuation under the Tariff Act of 1930 of those imports, plus all freight, insurance, and other charges incurred regarding the importation (excluding United States tariffs and import excise taxes), and

(B) with respect to merchandise imported into a foreign country, the transaction prices of such imports plus the freight, insurance, and other charges determined by the Secretary of the Treasury that are incurred in placing the exports alongside the carriers at the United States ports of export.

(13) The term "Commission" means the United States International Trade Commission.

(14) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(15) The term "entry" includes any withdrawal from warehouse.

(16)(A) The term "best trade data available" means—

(i) with regard to data on the international trade of the United States, official trade information of the Government of the United States, and

(ii) with regard to data on the international trade of any other country, data that the Commission determines is the most reliable data available for the period under consideration.

(B) The term "best trade data available" may include estimates if the actual data required by this Act, or the forms of the data required by this Act, are not directly available.

(17) Any article that is grown, produced, or manufactured in a country is a product of such country.

SEC. 204. ALLOCATION OF REVENUE FROM STAND-BY DUTIES.

(a) The Congress finds that—

(1) a principal cause of the overvalued United States dollar is the large and growing public debt of the Federal Government resulting from persistent budget deficits, and

(2) it is necessary for the United States to direct greater efforts toward reduction of such public debt.

(b) All revenues from stand-by duties imposed by proclamations issued under section 202(a)(1) shall be allocated, for accounting purposes, to a separate account within the Treasury of the United States to be known as the "Public Debt Reduction Account".

(c) It is the sense of the Congress that all funds in the Public Debt Reduction Account be used only to reduce the public debt of the Federal Government.

(d) The Secretary of the Treasury shall submit to the Congress by no later than January 1 of 1987, and of each succeeding calendar year, a report on the revenue derived from the stand-by duties imposed by proclamations issued under section 202(a)(1) for the fiscal year ending on September 30 of the preceding calendar year.

SEC. 205. TERMINATION.

Notwithstanding any other provisions of this subtitle—

(1) no duty imposed by a proclamation issued under section 202(a)(1) shall apply to articles entered after April 30, 1992, and

(2) no determinations under section 201(a), and no reports under section 201(b), shall be required to be made after April 1991.

Subtitle B—Agricultural Export Subsidies

SEC. 211. COUNTERVAILING SUBSIDIES FOR UNITED STATES AGRICULTURAL COMMODITIES.

(a) Notwithstanding any other provision of law, no later than 30 days after the first report is submitted to the Congress under subsection (b)(2), the Secretary of Agriculture, under the policy direction of the United States Trade Representative, shall formulate and carry out a program under which agricultural commodities, including but not limited to wheat, feed grains, upland cotton, rice, and soybeans acquired by the Commodity Credit Corporation, are provided to United States exporters and users and foreign purchasers at no cost to encourage the development, maintenance, and expansion of export markets for United States agricultural commodities and the products thereof.

(b)(1) The United States Trade Representative shall—

(A) investigate the existence and status of export subsidies or other export enhancing techniques (within the meaning of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade);

(B) identify and give priority to markets in which United States export subsidies provided under this section can be used most efficiently and will have the greatest impact in offsetting the benefits of foreign export subsidies that—

(i) harm United States exports,

(ii) are inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade,

(iii) nullify or impair benefits accruing to the United States under international agreements, or

(iv) cause serious prejudice to the interests of the United States, and

(C) press for action by the General Agreement on Tariffs and Trade Committee on Trade and Agriculture to institute an effective set of rules to equalize the conditions of world trade for United States and foreign agricultural producers by eliminating all export subsidies.

(2) The United States Trade Representative shall submit to the Congress and to the Secretary of Agriculture a quarterly report on—

(A) the existence and status of export subsidies and other export enhancing techniques that are the subject of the investigation conducted under paragraph (1)(A), and

(B) the identification and assignment of priority to markets under paragraph (1)(B).

(c) In carrying out the program authorized by this section, the Secretary of Agriculture shall—

(1) after consultation with the United States Trade Representative, take such action as may be necessary to ensure that the program provides equal treatment to domestic and foreign purchasers and users of United States agricultural commodities and products thereof in any case in which the importation of a manufactured product made, in whole or in part, from a commodity or product thereof made available for export under this section would place domestic users of the commodity or product thereof at a competitive disadvantage; and

(2) take reasonable precautions to prevent the resale or transshipment to other countries, or use for other than domestic use in the importing country, of agricultural commodities or products thereof made available under this section.

(d) The Secretary of Agriculture shall carry out the program authorized by this section through the Commodity Credit Corporation.

(e) The Secretary of Agriculture shall prescribe such regulations as are necessary to carry out the provisions of this section.

(f) The authority provided in this section shall be in addition to, and not in place of,

any authority granted to the Secretary of Agriculture or the Commodity Credit Corporation under any other provision of law.

(g)(1) The authority provided in this section shall be suspended during any period in which—

(A) the United States Trade Representative determines that export subsidies and techniques referred to in subsection (b)(1) do not exist; or

(B) stocks of agricultural commodities and the products thereof acquired by the Commodity Credit Corporation, which are not committed under other provisions of law, are not available to carry out this section.

(2) If such authority is suspended as a result of paragraph (1)(B), no later than thirty days after the date of such suspension, the United States Trade Representative and the Secretary of Agriculture shall report to the Congress on alternative means of achieving the purposes of this section.

Subtitle C—Reports

SEC. 221. ANNUAL PRESIDENTIAL REPORTS.

The President shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate an annual written report on the operation of this Act during the preceding year. Such report shall set forth the opinion of the President regarding whether or not the Act—

(1) is achieving its purpose, and

(2) should be continued.

TITLE III—TRADE LAW REFORM

SEC. 301. TRANSFER OF AUTHORITY TO THE UNITED STATES TRADE REPRESENTATIVE.

(a)(1) Chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251, et seq.) is amended—

(A) by striking out "President" each place it appears in the text and inserting in lieu thereof "United States Trade Representative", and

(B) by striking out "**PRESIDENTIAL ACTION**" in the heading of section 202 and inserting in lieu thereof "**ACTION BY THE UNITED STATES TRADE REPRESENTATIVE**".

(2) Section 203 of the Trade Act of 1974 (19 U.S.C. 2253) is amended—

(A) by striking out "proclaim" each place it appears and inserting in lieu thereof "order",

(B) by striking out "proclaims" each place it appears and inserting in lieu thereof "orders",

(C) by striking out "proclaimed" each place it appears and inserting in lieu thereof "ordered",

(D) by striking out "proclamation pursuant" in subsection (d)(1) and inserting in lieu thereof "administrative order issued pursuant", and

(E) by striking out "proclamation" each place it appears and inserting in lieu thereof "administrative order".

(3) The table of contents for the Trade Act of 1974 is amended by striking out "Presidential action" in the item relating to section 202 and inserting in lieu thereof "Action by the United States Trade Representative".

(b) Subsections (b), (c), and (d) and paragraphs (3) and (4) of subsection (a) of section 406 of the Trade Act of 1974 (19 U.S.C. 2436) are each amended by striking out "President" each place it appears and inserting in lieu thereof "United States Trade Representative".

(c)(1) Title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.) is amended by striking out "President" each place it appears and inserting in lieu thereof "United States Trade Representative".

(2) Subsection (a) of section 502 of the Trade Act of 1974 (19 U.S.C. 2462) is amended by—

(A) by striking out "with respect to which there is in effect an Executive order" in paragraph (1) and inserting in lieu thereof "which is designated",

(B) by striking out "of the United States designating such country" in paragraph (1),

(C) by striking out the parenthetical clause in paragraph (2), and

(D) by striking out "by Executive order" in paragraph (3).

(3) Section 503 of the Trade Act of 1974 (19 U.S.C. 2463) is amended—

(A) by striking out the second sentence in subsection (a) and inserting in lieu thereof the following new sentence: "Before any such list is furnished to the Commission, there shall be in effect a designation of beneficiary developing countries under section 502.",

(B) by striking out "entered into under section 101" in the third sentence of subsection (a) and inserting in lieu thereof "entered into under section 101, except that all advice shall be presented to the United States Trade Representative.", and

(C) by striking out "by Executive order" in the last sentence of subsection (a).

(4) Subsection (b) of section 504 of the Trade Act of 1974 (19 U.S.C. 2464(b)) is amended by striking out "issues an Executive order revoking" in the last sentence and inserting in lieu thereof "revokes".

(d) Subsection (g) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(g)) is amended by striking out "President" each place it appears and inserting in lieu thereof "United States Trade Representative".

SECTION-BY-SECTION DESCRIPTION OF THE TRADE EMERGENCY ACT

Section 1. Short Title.—The bill carries the short title of the Trade Emergency Act of 1985.

Section 2. Table of Contents.—There are three Titles and 15 sections to the bill. This section sets out the headings of the Titles and sections.

Section 3. Purpose.—The general purposes of the bill are to improve standards of living in the United States through the growth of international trade, to assure that international trade occurs in a balanced, open, and fair manner, and to assure the people of the United States that their Government will take trade actions to protect the vital interest of the United States.

Section 4. Reviewability.—This section provides that actions of various officials named in the bill are not reviewable except for abuse of discretion.

TITLE I. INTERNATIONAL TRADE ACTIONS AND AGREEMENTS

Section 101. Emergency Trade Deficit Reduction Negotiating Authority.—This section makes findings to support the general proposition of the bill, that there is a national trade emergency but that action by Congress is necessary—in light of the lack of Executive Branch response—to avoid erosion of the domestic industrial base, further unemployment, and lower standards of living.

Second, the section officially declares a national trade emergency. This declaration is intended to awaken the Administration to the critical circumstances before the country, as well as to lay the legal predicate for actions the President and Congress will take under the bill.

Finally, to assure the President has comprehensive authority to cope with the emergency, the bill provides the President plenary authority—above and beyond his already-extensive authority to control, regulate and improve the foreign trade of the United States—to negotiate agreements limiting the export from other countries and the importation into the United States of any and all products, as well as the authority to enforce such agreements through import controls.

Section 102. Enforcement of International Agreements and Prevention of Actions that Undermine Such Agreements.—This section makes detailed findings sufficient to support the determinations that economic acts, policies, and practices of Japan and the European Communities (EC) tend to nullify and impair benefits accruing to the United States and other countries under current international trade agreements; that these agreements are insufficient to guarantee a balanced open and fair international trading system; and that these practices have and are increasingly spreading to the developing world, which is adopting such practices thereby undermining such agreements, harming vital interests of the United States, and in some cases directly violating such agreements. The General Agreement on Tariffs and Trade (GATT) explicitly authorizes the withdrawal of earlier trade concessions and countermeasures for actions that undermine the GATT.

With regard to Japan, the findings are that in addition to acts, practices, and policies of Japan specifically inconsistent with Japan's obligations under international trade agreements, Japan's worldwide and bilateral trade surpluses are of such an order as to undermine the benefits the United States could reasonably have expected to derive from such agreements. These findings reflect the position, which underlies the entire bill as well as this Title, that unusual, sustained trade surpluses, derived at least in part from actions inconsistent with international trade agreements, seriously undermine the international trading system and are contrary to vital national interests of the United States; and that, therefore, actions that create incentives for the Executive Branch of the U.S. Government—as well as foreign governments—to avoid such surpluses are both consistent with the international obligations of the United States and in the interest of the United States.

This section requires that the U.S. Trade Representative (USTR) institute immediately proceedings before appropriate international bodies against Japan seeking international authorization for retaliation against Japan on ground that its acts, practices, and policies nullify, impair, and (in some cases) violate trade agreements between the United States and those countries, and impede obtaining the objective of such agreements (subsection (a)). The section also requires the USTR to begin immediately the proceedings against the EC under existing trade agreements to obtain authority to institute appropriate countermeasures against the agricultural export subsidies of the EC. The section also authorizes similar actions against other countries whose practices or policies violate or nullify trade agreements with the United States (subsection (c)). The section requires that the USTR tell U.S. trading partners that pending the outcome of these cases, the United States finds it necessary to take interim measures under this bill to protect its vital interests (subsection (d)), and requires all

Executive Branch agencies to cooperate in these actions (subsection (e)).

Section 103. Plan to Control Harmful Exchange Rate Fluctuations.—This section requires the Secretary of the Treasury (the Secretary) to develop a plan for closer consultation on monetary and fiscal policies between developed nations to reduce unwarranted exchange rate movements and to moderate the exchange value of the dollar. It further calls on the Secretary to design a plan, to be implemented once such consultation occurs, for a coordinated multinational effort to minimize exchange rate fluctuations; and that the plan set forth a timetable for negotiation of the consultative process.

TITLE II. INTERIM DOMESTIC TRADE ACTIONS TO RESPOND TO THE TRADE EMERGENCY

Subtitle A—Standby duties

Section 201. Annual Reports on Worldwide and Bilateral Trade.—The U.S. International Commission (ITC) is required within 90 days after the end of each calendar year to report to the President the bilateral U.S. trade deficit or surplus of the United States with countries engaging in total trade with the United States of more than $7 billion per year, as well as the multilateral trade balance of all such countries, based on the best information available. At the same time, the ITC is, in effect, to identify the countries that will be subject to special standby duties pursuant to section 202 of the bill.

Subject only to the proviso in section 202 that no country is subject to special standby duties under the bill if the President determines that country has no unfair barriers to imports, determination of whether a country is subject to the special standby duties is a statistical determination. It is not a matter of discretion or legal judgment.

Section 202. Imposition of Standby Duties.—This section requires the imposition of special standby import duties of 25 percent under certain conditions. The first duties, if any, would be imposed on October 15, 1986; and, subsequently, duties would be imposed, if applicable, on April 15 of each calendar year.

There are five different criteria, all of which must be satisfied, before duties are imposed:

(1) Excessive U.S. trade deficits.—The program provided for in this subtitle does not operate with respect to any year in which the U.S. trade deficit is less that 1.5 percent of the Gross National Product (GNP) (section 202(a)(2)). For example, GNP was $3.661 trillion in 1984. Therefore, this program would not have applied if the trade deficit had been less than $54.9 billion. (In fact, the 1984 trade deficit was $123.3 billion or 3.4 percent of GNP; but in 1980, when GNP was $2.632 trillion, the trade deficit of $36.4 billion was 1.4 percent of GNP.)

(2) Small traders exclusion.—Countries with which the United States had less than $7 billion of trade in 1984 (the figure increases each year to reflect the change of GNP) are not subject to the program. Because the trade of small traders with the United States arises from a relatively small base, it would be unreasonable to subject these countries to standby duties under the bill. This exclusion prevents that result.

(3) Excessive trade surpluses.—The third criterion that must be satisfied before duties are imposed on a country is that that country must have excessive trade surpluses. A country's trade surplus is excessive if either (a) its non-petroleum exports to the world as a whole are more than 50 percent above its non-petroleum imports from the world as a whole; or (b) its non-petroleum exports to the United States are more than 65 percent above its non-petroleum imports from the United States (section 202(a)(1) and see also section 203(1)). There are several aspects to these standards:

(a) Non-petroleum trade.—Standards are set forth in terms of non-petroleum trade for several reasons. First, as the International Monetary Fund staff pointed out in its April 1985 World Economic Outlook, during 1983-1984, the evolution of current account positions in most industrial countries was associated mainly with development in non-oil trade. In fact, 1983 was the first recent year in which the United States ran a non-petroleum trade deficit. The sponsors want to concentrate on the trade patterns that make real differences to Americans.

Second, since oil is priced internationally in dollars, changes in the real prices of oil in local currencies may not be reflected in dollar trade figures. Therefore, taking petroleum trade out of the excessive surplus calculation reduces a statistical distortion.

Finally, while the OPEC cartel is now weakening, petroleum trade is still subject to special conditions that are, to a large extent, beyond the control of importers of oil; whereas trade in other goods can be increased by decisions of governments to reduce trade distortions or by other changes in policy. Therefore, performance under the excessive trade surplus criteria of the bill is judged on the basis of sectors all governments can control.

Note that non-petroleum trade is used exclusively for calculating when a trade surplus is excessive. For all other purposes under the bill, total trade is the measure, i.e., the total U.S. trade deficit criterion; the small trader exclusion; and the trade surplus reduction standard (below) all include petroleum trade. This assures that the bill does not insist upon a country importing non-oil products when that would be unrealistic.

(b) Worldwide trade as well as trade with the United States.—Of course, the main purpose of section 202 is to reduce the U.S. trade deficits with countries that are running excessive surpluses. However, the sponsors want to avoid harm to the great number of trading countries that do not have excessive trade surpluses, which might arise if section 202 focused only on the bilateral deficits of the United States with a few countries that have excessive trade surpluses. For example, recently the Prime Minister of Malaysia and the Financial Secretary of Hong Kong were reported to have a concern common in Asia that the United States and Japan would settle their trade problems by Japan reducing its already limited imports from the developing world as a way of compensating for importing more from the United States.

Under the bill, therefore, the United States takes into account a country's trade with the world as well as its trade with the United States, in order to avoid United States actions that indirectly prejudice the interest of countries without excessive trade surpluses.

(c) What is "excessive".—As indicated above, in the case of the bilateral trade between the United States and any individual foreign country, the trigger is 165 percent. That is, if non-petroleum exports from that country to the United States are more than 165 percent of U.S. non-petroleum exports to that country, that country's trade surplus will be considered excessive.

In the case of multilateral trade, the trigger is 150 percent. That is, if non-petroleum exports from a foreign country to the world are more than 150 percent of its non-petroleum imports from the world, then an excessive surplus exists.

Choice of the 165 percent and 150 percent levels for measuring excessiveness was necessarily somewhat arbitrary. The basic standard is 150 percent. This is the multilateral standard. The bilateral standard is 15 points higher to correct for a discrepancy between worldwide trade data collected by other countries and data on the trade of the United States collected by the United States.

There are relatively few major trading nations importing only two-thirds of what they export (excluding oil), and only six significant trading countries that have such a bilateral relationship with the United States. Moreover, no major trading nations have recently produced trading margins near—let alone in excess of—the 150-percent or the 165-percent standards notwithstanding historic U.S. trade deficits in the last two years: All countries in excess of the bilateral standard were above 200 percent, whereas no country below the standard exceeded 140 percent.

The United States, even though it is the world's largest oil importer (as well as the world's largest trading nation in absolute terms) among industrialized countries (the United States imports 17 percent more oil than Japan), has run slightly over the 150 percent standard only once in the last 22 years (the period for which non-oil trade figures are available), when it hit 155 percent in 1964. Despite the enormous jump in the price of oil in the 1970's, which might be thought to leave the United States with enormous non-oil trade surpluses, the United States never again has had a 150 percent surplus (it fell into a non-oil deficit in 1983).

In 1984, five foreign countries with total bilateral trade with the United States of more than $7 billion dollars were above the bilateral excessive surplus criterion of 165 percent: Japan; Brazil; Taiwan; Korea; and Hong Kong. Two of these countries, Japan and Brazil, were also above the worldwide excessive surplus criterion of 150 percent. There was no country—nor is it considered likely there will be a country—which breaches the worldwide criterion but not the bilateral criterion, since the United States, as the largest open market in the world, tends to be the first destination for non-petroleum exports.

(4) Unfair imports barriers.—Even if a country has a bilateral or a multilateral surplus that is "excessive" under the bill, no special standby duty will be imposed if the President makes a finding the country has no unfair import barriers that contribute to its worldwide or bilateral surpluses. The sponsors here have in mind Hong Kong, which has a large bilateral surplus with the United States (a 297 percent surplus under the formula in section 202), but is reported to have no trade barriers whatever (except for contraband). If this is true, then despite the extraordinary surplus of Hong Kong, there would be no special standby duties under the bill.

In the cases of the other excessive surplus countries in 1984, however, the sponsors are informed and believe that they maintain numerous unfair import barriers, so that the USTR could not make a finding that would exempt them from special standby duties at this time.

(5) Exclusion for reductions in excessive trade surpluses.—Even if a country has an excessive trade surplus within the meaning of the bill, it will not be subject to special standby duties if it reduces its trade surplus each year. The reduction required to meet this criterion is five percent the first year of the bill and 10 percent thereafter; these are percentages of the country's 1984 excessive trade surplus or, if there was not an excessive trade surplus in 1984, the previous year's excessive trade surplus. This criterion does not apply to a country that did not have an excessive trade surplus in 1984 or, for matter, in the previous year.

Most of the countries with excessive trade surpluses in 1984 have steeply climbing ratios of exports to imports, so five percent is an initial turnaround target that recognizes just turning around such increases is an accomplishment. The five and ten percent targets were chosen primarily because every indication is that they are well within the capabilities of the countries concerned. With respect to Japan, for example, the Administration has announced that if Japan removed unfair trade barriers in only four sectors—telecommunications, electronics, forest products, and medical products—the bilateral deficit with Japan would decline $14 billion. Assuming the generally-accepted U.S. trade deficit with Japan in 1985 ($45 to $50 billion) could be reduced by $14 billion, the resulting deficit would be about 5 percent lower than the 1984 bilateral trade deficit of $37 billion.

Imposition of standby duties

(1) Amount.—The amount of the standby duty is 25 percent ad valorem.

The level of the duty is necessarily somewhat arbitrary. The sponsors have noted that in several relatively minor items of trade duties in the 20-30 percent category have been imposed with varying results: In the case of small trucks, for example, a reinterpretation of American law resulted in a de facto increase of U.S. duties by 25 percent ad valorem, and yet at least some trucks are still imported. On the other hand, 25 percent ad valorem across-the-board is a substantial change of practice. The sponsors are certainly prepared to consider changes in the level of the standby duty to exert substantial pressure for the reduction of foreign trade distortions.

The standby duty would be assessed ad valorem, in addition to all existing duties, including such special additional duties as antidumping duties and countervailing duties. In addition, preexisting duty reductions under the Generalized System of Preferences (GSP), the Caribbean Basin Economic Recovery Act and the bilateral free trade area with Israel would be the base to which the standby duty would be added. For example, if Brazil now receives a preferential zero rate of duty on a product under GSP that otherwise is subject to 10 percent ad valorem duties, and Brazil becomes subject to standby duties under section 202, then the new rate of duty on that article imported from Brazil would be 25 percent ad valorem, not 35 percent ad valorem. In other words, GSP countries with excessive surpluses maintain their margins of preference under the bill.

(2) Timing.—Under the bill, standby duties, if any, would be imposed by Presidential Proclamation on April 15 of each year for one-year periods, beginning April 15, 1987; in 1986, and only in 1986, any standby duties applicable would be imposed on October 15, 1986, for a period of six months.

(a) First year duties.—The first duties imposed under the law, if any, will be on October 15, 1986. Under the bill, four countries—and only those four—are vulnerable to duties at that time: Japan, Brazil, Taiwan, and the Republic of Korea. This is because only these four countries have total trade with the United States in excess of $7 billion in 1984 and have either (or both) excessive bilateral or multilateral trade surpluses. Each of these countries that fails to reduce its 1984 total bilateral trade surplus with the United States by five percent during the period July 1, 1985 to June 30, 1986, will be subject to standby duties; they may reduce the surplus by importing more from the United States or by exporting less to the United States.

Moreover, in the cases of Japan and Brazil, which have 1984 non-petroleum multilateral surpluses in excess of 150 percent, the standby duty would be imposed if they fail to reduce their worldwide 1984 trade surpluses by five percent during the July 1, 1985-to-June 30, 1986 period, even if they succeeded in reducing their bilateral trade surpluses with the United States.

Standby duties based on the July 1, 1985-to-June 30, 1986 period would be imposed for six months beginning October 15, 1986.

(b) Standby duties after the first year.—Beginning in 1987 and continuing for five years thereafter, any standby duties required under the bill would be imposed on April 15 based upon an excessive surplus country's reduction by 10 percent, during the previous calendar year, of its trade surplus or surpluses in the first year in which it had an excessive surplus. For example, assuming Japan avoids standby duties on October 15, 1986 because it reduces its 1984 bilateral trade surplus with the United States by five percent and its worldwide trade surplus by five percent during the period July 1, 1985-to-June 30, 1986: It may then again avoid standby duties on April 15, 1987 if it reduces the 1984 surpluses by a further 10 percent in calendar year 1986. Japan would continue to reduce the 1984 surplus until it no longer had either an excessive non-petroleum bilateral surplus or an excessive non-petroleum multilateral surplus.

(c) Reasons for this timing.—The timing of the duties is driven by two factors: Generally, to allow the ITC time to collect the necessary data and make the findings necessary to making determinations on standby duties, as well as time to allow the U.S. Customs Service and the commercial public to adjust to the changes, which is estimated to be 105 days from the close of the last period upon which the duties are based; and, in the special case of the first year, the need to allow foreign governments time to adjust to the new policy and to allow the Administration to respond to the current trade emergency through its own, existing and new powers.

(3) Choice of remedy.—The sponsors have chosen duties rather than quotas as the remedy under the bill for several reasons.

First, a quota is a complete ban on imports from a foreign country above a certain level; this tends to reduce competitive pressure on U.S. and other, non-restricted foreign competitors, thereby denying the benefits of competition to American consumers. While a duty puts a handicap on the excessive surplus countries, it still permits them to compete in this market.

Second, a quota is extremely difficult to administer; duties are less so.

Third, the U.S. Government gets the benefit of duties in the form of customs payments if products imported from excessive surplus countries are so competitive they can profitably be imported notwithstanding the duties, whereas under quotas, foreign manufacturers often receive a windfall from quotas in the form of higher per unit prices for each quota unit exported to the United States.

Section 203. Definitions.—Section 203 provides necessary definitions of terms used in sections 201 and 202.

Section 204. Allocation of Revenue from Standby Duties.—Under section 204, a separate account is created to track revenues collected as a result of the imposition of any standby duties under section 202. The section also contains a statement of the sense of the Congress that these additional revenues should be used to reduce the Federal budget deficit, and requires an annual report from the Department of the Treasury on the amount and application of such revenues.

Section 205. Termination.—The program of standby duties provided for in sections 201-202 will end under the bill in 1992, five years after the first full year the program begins.

Subtitle B. Agricultural export subsidies

Section 211. Countervailing Subsidies for United States Agricultural Commodities.—This section requires the USTR to apply a countersubsidy in cases he chooses on the basis that they will have the greatest impact in offsetting the benefit of foreign export subsidies; are inconsistent with the Tokyo Round Subsidies Code; and cause serious prejudice to the United States. The section would require the USTR to use existing stocks owned by the Commodity Credit Corporation to buy down the price of agriculture commodities exported in markets where EC subsidies are having these effects. The provision also contains various reporting requirements with regard to this program.

Subtitle C. Reports

Section 221. Annual Presidential Reports.—This section requires annual reports on the operation of Title II of the bill to be prepared by the President for the cognizant trade committees of Congress, the House Committee on Ways and Means and Senate Committee on Finance.

TITLE III—TRADE LAW REFORM

Section 301. Transfer of Authority to the United States Trade Representative.—This provision, adapted from legislation introduced in the House by Representative Guarini and by Senators Baucus and Heinz in the Senate, would redelegate authority now in the hands of the President to the USTR. The sponsors agree with these Senators and Representatives that delegations to the President of trade authority are not necessary—since the USTR is under the direct control of the President—nor appropriate—since delegation to the President tends to subject trade decisions to interagency blocking that would be less likely under redelegation. Redelegation was also a recommendation of the Senate Democratic Working Group on Trade Policy, chaired by Senator Bentsen. The sponsors note that limited redelegation was approved by President Reagan in the Omnibus Trade and Tariff Act of 1984. This provision completes that action by redelegating authority in escape clause cases, Communist country "market disruption" cases, GSP, and section 337 "unfair trade practice" cases.

By Mr. HEINZ (for himself, Mr. GLENN, Mr. BRADLEY, Mr. BURDICK, Mr. SASSER, Mrs. HAWKINS, Mr. MATHIAS, and Mr. CHILES):

S. 1450. A bill to prohibit the Secretary of Health and Human Services from changing reimbursement levels or methodologies for home health services under the Medicare Program prior to October 1, 1986, or during a freeze period; to the Committee on Finance.

REIMBURSEMENT LEVELS UNDER MEDICARE

Mr. HEINZ. Mr. President, today, I am introducing legislation to prevent the Secretary of Health and Human Services from precipitously and unwisely cutting home health care reimbursement levels. Let me take a moment to explain why this approach is urgently needed.

Earlier this year, the General Accounting Office conclusively found that, as a result of the prospective pricing system and diagnostic-related groups, seniors were being discharged from hospitals more in need of some form of posthospital care than ever before. Indeed, seniors are being discharged sicker and quicker.

Since the Congress mandated implementation of the prospective payment system, it is incumbent upon us to move quickly and carefully to ensure that good quality care alternatives are available to seniors in need of care. Home care is one of the most cost effective, beneficial care alternatives available. In fact, recent research shows that home care is about 40 percent less expensive than hospital care.

Yet, rather than assuring our Nation's seniors access to a continuum of care, this administration seems determined to place a continuum of obstacles between older Americans the home health care they need.

Recent Health Care Financing Administration "obstacle course" activities include proposals for: A copayment on home health visits; a freeze on home health costs; removing the Medicare waiver of liability presumption; and reducing the number of intermediaries serving home health agencies. HCFA's latest assault on home health as a viable option for older Americans is a new and complex payment reduction in home health care benefits.

I firmly believe that through these proposals HCFA is widening the no care zone and compromising the quality of care even further. I strongly oppose these actions and plan to address each as the opportunities arise. The legislation I am introducing today addresses the most recent of these proposals.

The Health Care Financing Administration, after allowing only a 30-day comment period, decided to overreach its authority and single out home health care for an unprecedented and drastic cost reduction. Beyond the fact that HCFA stepped out of policy implementing and into policy making by taking this action, is the fact that HCFA did this with only one goal in mind: limiting the availability of home health care to older Americans—not because older Americans don't need the home health care they seek, but because HCFA doesn't want to pay for it.

HCFA has estimated that implementation of the new cost limits would cause some home health agencies to drop out of the Medicare Program and would cause 70 percent of the remaining home health agencies to be over the limit. But it isn't worried that the more costly, but important services—like physical therapy—would be cut or that seniors would find fewer home care services available to them.

This has been a recurrent theme with HCFA—that indiscriminate endless cuts can be made in Medicare payments for health care without any accompanying decrease in the quality of care the patients receive. I wholeheartedly agree that there may be a good deal of waste in the Federal health care system, but I must insist that we tread lightly and understand first what the effects on quality of care and DRG's are before we allow HCFA to continue with such drastic moves with only costs, not quality, in mind.

Therefore, I am proposing legislation to prohibit the Secretary of Health and Human Services from changing home health care reimbursement limits from their June 30, 1985, levels for 1 year, or during the period of a freeze on home health care reimbursement, whichever is longer.

Clearly, simply reducing reimbursement levels in areas where need is great will not make these needs go away. We need to look closely at this country's needs and find the best, most cost effective ways of meeting them.

It is my hope, and the hope of a number of other Senators who have joined me in this effort, that this legislation can be attached to budget reconciliation, giving seniors the strong health care protections they need under the law.

I urge my colleagues to consider the legislation favorably as we move toward the goal of ensuring budget savings while also improving the quality of heath care for this Nation's seniors.

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

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

S. 1450

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of Health and Human Services may not implement any change in reimbursement amounts or methodologies which were in effect on June 30, 1985, under title XVIII of the Social Security Act with respect to home health services, prior to the later of—

(1) October 1, 1986; or

(2) the end of any period for which a freeze on home health service payments is in effect, which freeze period began after June 30, 1985, and before October 1, 1986.

(b) Subsection (a) shall apply to home health services furnished after June 30, 1985.

● Mr. SASSER. Mr. President, I rise today to cosponsor S. 1450, introduced by my distinguished colleague, Senator HEINZ. This bill would prohibit the Secretary of Health and Human Services from changing reimbursement levels or methodologies for home health services under the Medicare Program. The prohibition would apply to all changes made prior to October 1, 1986, or during a period in which there is a freeze in effect on Medicare reimbursement for home health services.

Currently, home health care agencies are under a freeze in the level of reimbursement paid to them for services provided to Medicare beneficiaries. Despite this fact, the Health Care Financing Administration has seen fit to impose a new cost limit and a new reimbursement formula on Medicare reimbursement. Both measures result in severe reductions in payments to home health agencies. Coupled with the reimbursement freeze already in place, HCFA's administrative actions portend significant harm to the delivery of home health care services, thereby seriously jeopardizing the health of our Nation's elderly. In the May 14, 1985, Federal Register, HCFA admits that its regulations will "clearly have a significant impact on a substantial number of home health agencies," including reductions in "access to, and quality of, care."

The new HCFA cost limit cuts the reimbursement rate back from the 75th percentile, the per visit cost cap in place since 1979, to 120 percent of the mean of a home visit cost. What this means for the State of Tennessee, for example, is that a skilled nursing visit, which was previously reimbursed under the old method at $51, would be reimbursed at $41.84. Similarly, payment for a medical social worker's visit, a service in high demand, was paid at $103. The new limit is $84.64. It is readily apparent that these new HCFA cost limits will impair home health care delivery.

Moreover, in Tennessee there are 390 licensed home health agencies serving 130,575 Medicare beneficiaries. These agencies employ 5,800 health care professionals in numerous disciplines, but many would experience either a salary reduction or layoff. The new cost limits will impact Tennessee home health care by reducing

the number of health care providers and their staffs. The major services provided by these agencies, rehabilitation services, would be the first to be reduced as a result of the regulations.

Just as important to home health agencies is HCFA's elimination of the aggregation method of calculating reimbursement rates. Under this method, more expensive types or services could be aggregated with cheaper types in order to balance out agency reimbursement. Eliminating the aggregation method means that more expensive services, even though prescribed by physicians and needed by patients, will not be provided because the agencies are not adequately reimbursed.

The bottom line, Mr. President, is that HCFA's regulations are too much for the home care industry to bear. But my greatest concern is that home health services will become less available or unaffordable for the 2.75 million Medicare and Medicaid beneficiaries utilizing home health services. This is a travesty in view of the fact that hospitals are sending their patients home sooner than ever before. HCFA's new reimbursement measures mean reduced salaries for home health employees, a reduction in available home health services, a major reduction in the provision of services to Medicare patients, and the elimination of the 10- to 15-percent free care that most home health agencies provide. We cannot allow this to happen.

Mr. President, I believe that the Secretary of the Department of Health and Human Services should curtail these disincentives to the delivery of home health care. S. 1450 will stop this regulatory attack on our health care system. I urge my colleagues to join me in supporting this very important measure, and ask unanimous consent that the letter from Gayla M. Sasser, executive director of the Tennessee Home Health Association, and the letter from Tom Gardner, executive director of A-Med Home Health Services, Morristown, TN, soliciting my support for the provisions of this bill, be included in the RECORD.

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

TENNESSEE ASSOCIATION
FOR HOME HEALTH,
Nashville, TN, July 8, 1985.

Hon. JAMES R. SASSER,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR SASSER: The Senate Finance Committee (House Ways and Means Committee) will soon be considering amendments to the Medicare program in carrying out its duties under the Budget Reconciliation act. We need your help to prevent an unintended act by the Congress leading to a drastic reduction in home care benefits to the elderly and the bankruptcy of hundreds of agencies.

Both the House and the Senate have included home health agencies under a general freeze applicable to all Medicare providers. We accept this burden even though there is good evidence that some health agencies should be exempted from the freeze. I am referring to the recent studies by the Senate Aging Committee and General Accounting Office which concluded that the Congressionally mandated prospective payment (DRG) system for hospitals has resulted in moving greater numbers of sicker patients into home care, thus sharply increasing costs for home health agencies.

The freeze will work a real hardship on most of the nation's home health agencies, however, most will be able to survive. This will not be true if Congress imposes a freeze and allows HCFA to implement a sharp reduction in Medicare payments at the same time. Specifics follow.

On May 14, HCFA published proposed regulations in the Federal Register which, by their own admission, will significantly reduce the availability of home health services to medicare beneficiaries. The cuts were presented in a reformulation of the cost limits applicable to home health agencies and new methodology by which the cost limits were to be determined.

From May 14 to the present, literally dozens of Senators and Congressmen have written to HCFA asking them to defer these regulations because the Congress has chosen to go with a freeze applicable to all agencies across the board instead of singling out home health agencies. HCFA has not listened to Congress. Final regulations have been promulgated as of July 5 and we have no choice but to comply. We will, without doubt, face severe hardship and/or go out of business unless you come to our assistance.

If you believe that home health agencies should be considered under a general freeze, then we urgently request your assistance in blocking HCFA from implementing at the same time their administrative cutbacks disguised as changes in the methodology by which the Medicare cost caps are calculated.

We urge you to offer and support an amendment in the reconciliation bill that would prohibit HCFA, so long as the freeze is in effect, from reducing Medicare home health benefits or changing the methodology for the computation of the Medicare cost limits in effect on July 1, 1985.

We will appreciate your help in this regard.

Sincerely,

GAYLA M. SASSER,
Executive Director.

A-MED HOME HEALTH SERVICES,
Morristown, TN, July 3, 1985.

Hon. JAMES R. SASSER,
U.S. Senator, Russell Senate Office Building, Washington, DC.

DEAR SENATOR SASSER: As a member of the House-Senate Conference Committee on the fiscal year 1986 budget, I am requesting your immediate assistance on a matter of great importance to your constituents here in Tennessee and older Americans everywhere.

Both the Senate and the House have agreed to freeze Medicare reimbursement for all medical care providers and as a tax payer, I support this stand. This freeze would apply to me and my fellow workers providing home nursing care.

Please help make sure that a Freeze in payments is Not a Cut in benefits. I urge you to adopt a language that would assure that HCFA would hold Medicare provider payments at 1985 levels.

Further, HCFA is proposing to make drastic changes in the way Medicare pays for home care for older Americans, such as the proposal published May 14th in the Federal Register. The policy making proposal seeks to significantly change reimbursement for needed home care services by separating reimbursement into many categories with cost caps for six types of service. However, in the past, the cost cap has been one on total services provided, and not on each individual service standing alone. This concept allows home care providers to cut costs on one service, say nursing care, so as to cover more expensive services such as physical therapy and rehabilitation. Under this new HCFA proposal, this concept would not work since the cost savings in one service area could not be credited against a service with higher cost. As you know we serve a rural area where therapy and social work services are already hard to come by.

This New "Per Discipline" Methodology Should Be Stopped! This seemingly minor change will cause most home health agencies to eliminate or drastically curtail service areas with higher costs, and, the proposal will not save dollars since it would remove a major incentive for providers to cut costs in areas of service where costs are more controllable.

Moreover, the effect of DRG's giving our agency greater numbers of sicker patients has already increased our overall costs

This issue is critical to home health providers and our elderly population who would be deprived of rehabilitation services we are currently able to provide.

Respectfully,

TOM GARDNER,
Executive Director.●

By Mr. CHAFEE (for himself and Mr. RUDMAN):

S. 1451. A bill to allocate funds appropriated to carry out section 103 of the Foreign Assistance Act of 1961 for nutrition programs which reduce vitamin A deficiency; to the Committee on Agriculture, Nutrition, and Forestry.

VITAMIN A NUTRITION LEGISLATION

● Mr. CHAFEE. Mr. President, today, with Senator RUDMAN, I am introducing legislation that seeks to improve the lives of children worldwide. This legislation will earmark, not appropriate, $30 million in the agriculture, rural development and nutrition account of the fiscal year 1986 budget of the Agency for International Development [AID]. Disbursed over 3 years, this money will fund nutrition programs which reduce vitamin A deficiency.

An estimated 500,000 children in developing countries go blind each year because they do not get enough vitamin A. Ten million children suffer from this nutritional disorder annually. It occurs in Bangladesh, India, Indonesia, the Philippines, Haiti, Latin America, and Africa. The World Health Organization considers vitamin A deficiency a public health problem in 73 countries and territories.

Approximately 35 million of the world's 42.2 million blind live in developing nations. That number is expected to double by the end of the century. Blindness can be easily prevented

but programs to prevent have lacked support.

Blindness resulting from vitamin A deficiency occurs when the lack of vitamin A is quite severe. Before blindness occurs, damage to the intestinal tract and respiratory system causes illness and death from increased susceptibility to such diseases as measles, gastrointestinal problems, and pneumonia. Therefore, vitamin A is crucially important to maintaining overall health for children in less developed countries.

The need to prevent vitamin deficiency has never been greater, in Africa, in particular. Up to 10 percent of the children in the feeding camps of Ethiopia and the Sudan are becoming irreversibly blind through vitamin A deficiencies.

Johns Hopkins University conducted a study in 420 Indonesian villages with funds from AID; 30,000 randomly selected children given vitamin A had death rates one-third lower than those who did not receive the supplement.

Golden bullets is what international relief workers call a large dose vitamin A capsule. This capsule is the size of a pea, does not need refrigeration and need only be administered once every 6 months. One vitamin A capsule costs only 2 to 4 cents each and is heralded by the Helen Keller Institute as the solution that will head off the devastating damage that children suffer from vitamin A deficiency.

Helen Keller International and the International Eye Foundation are the two leading organizations involved in vitamin A programs. Both agencies strongly support this legislation, and believe that $30 million could be efficiently allocated for the implementation of vitamin A activities. Following is a chart summarizing proposals for expanded activities which was developed in consultation with AID, the World Health Organization [WHO], and Helen Keller International.

PROPOSAL TO EXPAND VITAMIN A PROGRAMS WORLDWIDE

[In thousands of dollars]

	Asia	Africa	Latin America	Total
Mortality survey	2,400	1,500	1,200	5,100
Supplementation and delivery programs	4,000	2,500	2,000	8,500
Fortification programs	3,500	2,000	2,000	7,500
Nutrition education, public education, home gardening	1,290	1,200	2,400	4,890
Impact evaluation	1,310	900	900	3,110
Institutional training				900
Total	12,500	8,100	8,500	30,000

As you can see, most of the funds are direct program support. The field surveys listed are important to determining future investments in vitamin A programs in particular geographic areas. It is estimated that this level of funding would directly benefit 50 million children over 3 years.

Seldom do we have such a simple and available opportunity to improve the lives of so many. Our legislation will, in effect, buy more productive lives in areas of the world where enough hardships already confront mankind. I hope my colleagues will join in supporting this measure.●

By Mr. KENNEDY (for himself and Mr. KERRY):

S. 1452. A bill to settle Indian land claims in the town of Gay Head, MA, and for other purposes; to the Committee on Indian Affairs.

GAY HEAD INDIAN LAND CLAIMS SETTLEMENT

● Mr. KENNEDY. Mr. President. Today I am introducing legislation that would implement the proposed settlement concerning the title to disputed lands agreed to by the Wampanoag Tribal Council of Gay Head, Inc., and the town of Gay Head, MA. The Wampanoag Tribal Council of Gay Head, Inc., and the town of Gay Head, MA, are the principal parties in the settlement of litigation which is embodied in this legislation. ●

By Mr. BRADLEY:

S. 1453. A bill to reaffirm the boundaries of the Great Sioux Reservation to convey federally held lands in the Black Hills to the Sioux Nation; to provide for the economic development, resource protection and self-determination of the Sioux Nation; to remove barriers to the free exercise of traditional Indian religion in the Black Hills; to preserve the sacred Black Hills from desecration; to establish a wildlife sanctuary; and for other purposes; to the Select Committee on Indian Affairs.

SIOUX NATION BLACK HILLS ACT

Mr. BRADLEY. Mr. President, I rise today to introduce the Sioux Nation Black Hills Act. This legislation would right a wrong committed by the United States more than 100 years ago. The bill would restore to the Sioux Indian Tribe a portion of the lands awarded to them by a 1868 treaty and subsequently illegally taken from them.

That the U.S. Government was guilty of an illegal taking is not at issue: the Supreme Court affirmed this conclusion in 1980. What is at issue is the responsibility of our Government to live up to its agreements and ideals. History and other nations judge us by our deeds. If we are concerned about that judgment, we should recognize that the history of our Government's dealings with the Sioux is not adorned with honor. It is a history rich with familiar names and places—Grant, Sherman, Custer, Red Cloud, Sitting Bull, Crazy Horse, Little Big Horn, Fort Laramie, Wounded Knee, and the Black Hills of South Dakota. But the story is one of broken commitments and bad faith. The bill I introduce today is an attempt to write a more honorable final chapter to this history.

At least a brief summary of the events to date is important to the understanding of this legislation.

The Sioux Nation signed a treaty in 1851 with the United States that established a large Sioux Reservation. The territory included all of the present State of South Dakota, as well as parts of Nebraska, Wyoming, North Dakota, and Montana. The Senate added certain amendments which were rejected by the Sioux, and the treaty was not ratified.

The result was the Power River War of 1866–67. The war ended in a second treaty, signed at Fort Laramie on April 29, 1868, and later ratified by the Senate. The Fort Laramie Treaty has been described as a complete victory for the Sioux. It established the Great Sioux Reservation, which included approximately half of South Dakota—essentially everything west of the Missouri River. The United States "solemnly agree[d]" that no unauthorized persons "shall ever be permitted to pass over, settle upon or reside in [this] territory." The treaty also established extensive hunting grounds covering large parts of North Dakota, Wyoming, Colorado, Kansas, and Nebraska.

Prior to signing the treaty, both the U.S. Government and the Sioux knew that at least small deposits of gold existed in the Black Hills, the westernmost portion of the Great Sioux Reservation. In 1874, following rumors of large deposits, Lt. Col. George Custer led an expedition into the Black Hills, which confirmed the existence of gold. Despite the terms of the treaty requiring the U.S. Government to keep non-Indians out of the reservation, prospectors swarmed into the region. In 1875 President Grant unilaterally and confidentially decided to abandon the treaty obligation.

The Government then offered to buy the land from the Sioux for $6 million, which it admitted was much less than the value of the land. The Sioux dismissed this offer and negotiations broke down.

This led to further violence, culminating in the Sioux victory over Custer at Little Big Horn. The Sioux were soon defeated, however, and were deprived of horses and weapons. They were returned to their reservation and became dependent on the Government for their survival.

Congress then cut off rations to the Sioux unless they ceded the Black Hills. Another commission was sent to negotiate. The commission presented the Sioux with a prepared text which the tribes had no choice but to accept. The Sioux were forced to give up all rights to the Black Hills, as well as their rights in all lands outside the reservation.

The Fort Laramie Treaty had provided that none of the lands set aside

for the Sioux could be ceded back to the Government without consent by three quarters of all adult males. The 1877 treaty was signed by only 10 percent of the adult males. Ignoring this, Congress enacted the "agreement" into law. It was this law that the Supreme Court found unconstitutional in 1980.

Since 1877 the Sioux have contested this taking in a number of law suits. Finally, in 1974 the Indian Claims Commission awarded the Sioux $17 million—the value of the land in 1877—plus interest. The Court of Claims reversed the award of interest, but Congress passed a bill authorizing the court, in effect, to allow interest payments. In 1980 the Supreme Court affirmed the award, citing in its conclusion that "a more ripe and rank case of dishonorable dealing will never, in all probability, be found in our history."

The High Court further noted the Court of Claims' language regarding the duplicity of President Grant "in breaching the Government's treaty obligations to keep trespassers out of the Black Hills, and the pattern of duress practiced by the Government on the starving Sioux to get them to agree to the sale of the Black Hills."

The $105 million—$17 million plus interest since 1877—was appropriated in 1980 and is still drawing interest in an account at Treasury. With interest since 1980 the fund now amounts to approximately $160 million.

Many Sioux have maintained that the Black Hills should not be sold. They have argued that their claim to their ancestral lands should never be relinquished. The Black Hills have a deep religious significance for the Sioux Nation, a significance this Government should respect.

To the Sioux the Black Hills are sacred. They call this land "the heart of everything that is." They say that their god placed them in and around the Black Hills to respect, to defend and to preserve that land—for this generation and for the generations yet to come. The Earth is their mother, they say, and the Black Hills are the most sacred center of the Earth. The children of the Earth are two-legged, four-legged, winged and all things growing and moving. They all have a right to live. A mother provides both material and spiritual nourishment for her children and so it is that the Black Hills provides for her children. For the Sioux, prayer and ceremony in the Black Hills are central to their religion. We may not share the beliefs of the Sioux, but the richness of their cultural heritage should be respected, just as we affirm the right of any group to practice its religion.

The bill I introduce today is a recognition of the errors of the past. The Supreme Court found that the taking was unconstitutional and suggested compensation. It is within the power of the Congress to mitigate the wrong in another way, by restoring the land. Of the 7.3 million acres taken from the Sioux in 1877, this bill would return 1.3 million. The bill would cede to the Sioux Nation only those portions of the Black Hills region that are federally owned. No private or State-owned land would be transferred. Mount Rushmore, Federal court houses, buildings, rights-of-way and military bases would not be affected. As compensation to the Sioux for having been deprived of the use of these lands since 1877, the bill would award them the amount of money already appropriated and drawing interest in the Treasury. The bill establishes the Sioux National Park to be owned and operated by the Sioux Nation and open to all. The bill provides that nothing shall deprive any person or government of any valid existing rights to access, mineral leases, timber leases, grazing rights, permits or contracts.

Mr. President, I asserted earlier that history and other nations judge us by our deeds. We now have the opportunity to write a new chapter in the history of the deeds dealing with the Sioux people. This chapter could describe a nation of honor, a nation of understanding, and a nation that affirms its great principles with great deeds. Let us write that chapter.

I ask unanimous consent that the text of the bill and the text of the 1980 Supreme Court decision be printed in the RECORD.

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

S. 1453

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 "Sioux Nation Black Hills Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Black Hills are the sacred center of aboriginal territory of the Sioux Nation and as such hold deep religious significance for the Sioux Nation, and

(2) such lands are Sioux treaty territory, as affirmed by the Treaties of September 15, 1851, (11 Stat. 749) and April 29, 1868 (15 Stat. 635);

(3) the Sioux Nation views the Black Hills as inalienable and have never voluntarily surrendered or ceded the Black Hills, and have resolved not to accept money in exchange for extinguishment of title to such lands or of the right to practice traditional religion in the Black Hills area;

(4) the United States Supreme Court affirmed the findings of the Court of Claims, citing its conclusion that "[a] more ripe and rank case of dishonorable dealing will never, in all probability, be found in our history" and further noting the Court of Claims' language regarding the duplicity of President Grant "in breaching the Government's treaty obligations to keep trespassers out of the Black Hills, and the pattern of duress practiced by the Government on the starving Sioux to get them to agree to the sale of the Black Hills";

(5) the Sioux Nation has never been accorded a forum within which to seek the return of the lands and, while the United States Supreme Court upheld the ruling of the Court of Claims that the Act of February 28, 1877 (19 Stat. 254), was unconstitutional for failure to pay "just compensation", the constitutionality of the Black Hills taking has not been fully adjudicated because Congress has not provided a Court with a jurisdiction to provide for the return of land as a remedy for an "unconstitutional taking", nor has the question of whether the Black Hills taking was for a "public purpose" had a forum within which to be addressed;

(6) the lawsuit brought by the Oglala Band of the Sioux Nation against the United States to quiet title to Federal lands in the Black Hills, and for damages, was dismissed for want of jurisdiction, *Oglala Sioux Tribe of the Pine Ridge Indian Reservation* v. *United States,* 650 F.2d 140 (8th Cir. 1981), *cert. denied,* 455 U.S. 907;

(7) other bands of the Sioux Nation sued the United States in the Indian Claims Commission, under the Act of March 13, 1978 (92 Stat. 153), and obtained a judgment of $17.1 million for the value of the land taken by the Act of February 28, 1877 (19 Stat. 254), $3,484 for rights of way, $450,000 for damages resulting from gold removed prior to the Act, plus 5 percent simple interest but not on the value of the gold, totaling $105,994,430.52 which was appropriated on July 18, 1980;

(8) neither the Act of March 13, 1978 (92 Stat. 153) nor such judgment provide for the return of land in the Black Hills;

(9) the Sioux Nation has resolved to reject the monetary award and will not accept money in exchange for extinguishment of title to such lands;

(10) the Black Hills have deep religious significance to the Sioux people and the Sioux people refuse to also accept monetary compensation in exchange for the First Amendment rights to freely practice their religion in the Black Hills;

(11) the different bands of the Sioux Nation have pressed its claim to the Black Hills vigorously and continuously for more than 100 years;

(12) notwithstanding the value of $17.1 million established by the Court of Claims as the value of the the Black Hills at the time of taking, the loss to the Sioux must be measured in terms of the adjusted value of the resources extracted from the the Black Hills which exceeds $18 billion for the 36 million ounces of gold extracted by the Homestake Mine alone through 1980;

(13) the executive branch of the United States has established a record of negotiation with the Sioux Nation to effect a resolution of the Sioux Nation's consistent efforts to recover land in the Black Hills;

(14) the Congress has in the recent past resolved complex American Indian land title and religious issues by conveying title, as well as other forms of compensation, without restricting such resolution to monetary damages; and

(15) it will further the interests of the United States to enter into a just and honorable Sioux Nation Black Hills lands settlement, recognizing and reaffirming its domestic and international commitments to Sioux Nation self-determination, economic security, religious freedom, and acknowledging the traditional and historical belief of the Sioux in the sacred character of the

Earth and in the Black Hills in particular, as well as their rights to freely exercise such beliefs.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) The term "Federal lands" means lands held in fee simple by the United States that are not held in trust or for the benefit of any other. Such term includes National Forest, National Parks, Bureau of Land Management, and other lands administered by the Department of Agriculture and the Department of the Interior.

(2) The term "lands", whether Federal or private, includes water rights appurtenant to land, as well as sub-surface mineral rights, mineral patents, and mining claims.

(3) The term "private lands" means lands held in fee simple by the State of South Dakota, its political subdivisions and municipalities, or by any person other than the United States and its instrumentalities.

(4) The term "Secretary" means the Secretary of the Interior.

(5) The term "Sioux" or "Sioux Nation" means those sovereign and independent bands of the Sioux Nation who separately entered into the multilateral Treaty of April 29, 1868 (15 Stat. 635) with their chiefs and headmen acting as ministers, and shall further mean the Lakota, Dakota, and Nakota bands who were members of the alliance referred to as the Seven Council Fires.

(6) The term "Tribes" means the federally recognized or organized tribes who are successors in interest to the sovereign bands of the Great Sioux Nation, to wit: Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Lower Brule Sioux Tribe, Oglala Sioux Tribe, Rosebud Sioux Tribe, Standing Rock Sioux Tribe, Santee Sioux Tribe of Nebraska, and Sioux Tribe of the Fort Peck Reservation.

(7) The term "Sub-surface mineral estates" means the sub-surface mineral rights retained by the United States on those lands in which surface rights have been conveyed to private parties by United States patent.

(8) The term "re-established area" means the land declared to be a reservation for the Sioux Nation under section 3.

(9) The term "Secretaries" means the Secretary of the Interior and the Secretary of Agriculture.

SEC. 4. RE-ESTABLISHED AREA.

Except to the extent otherwise provided in this Act the land within the following described boundaries which was a portion of the Great Sioux Reservation bounded and confirmed by the Treaty of April 29, 1868 (15 Stat. 635), and which was subsequently excluded from such reservation by the Act of February 28, 1877, is hereby declared to be a reservation for the Sioux Nation:

The western boundary of the land commences at the intersection of the one hundred and fourth degree of longitude west from Greenwich with the northern boundary of the State of Nebraska; thence north on same meridian to a point where the forty-sixth parallel of north latitude intercepts the same; thence due east along said parallel to a point where the one hundred and third degree of longitude west from Greenwich intercepts the same; thence due south on said meridian to its intersection with the North Fork of the Cheyenne River; thence down said stream to its junction with the South Fork of said Cheyenne River; thence up the South Fork of said Cheyenne River to the said one hundred and third meridian; thence south along said meridian to its intersection with the northern boundary of the State of Nebraska; thence west on such northern boundary of the State of Nebraska to the place of beginning.

SEC. 5. RE-CONVEYANCE OF LANDS.

(a)(1) The Secretary of the Interior shall identify and inventory—

(A) all private lands within the re-established area,

(B) any Federal lands within the re-established area that are in current use by the United States for military purposes, courthouses, office buildings, post offices, hospitals, warehouses, or cemetaries,

(C) all other Federal lands within the re-established area,

(D) all Federal sub-surface mineral estates within the re-establishment area,

(E) all Federal reserved water rights, and water rights acquired by the Federal Government under South Dakota State law, that are appurtenant to lands within the re-established area, and

(F) all valid rights, reservations, easements, leases, permits, agreements, contracts (including water supply contracts), and memoranda of understanding affecting the lands and water rights described in subparagraphs (D) and (E). The inventory of federally owned water rights shall indicate the location, amount, and priority date of all such rights.

(2) By no later than the date that is 1 year after the date of enactment of this Act, the Secretary shall publish in the Federal Register the inventory compiled under paragraph (1).

(3) During the 60-day period beginning on the date on which the inventory is published under paragraph (2), the Secretary shall accept comments on such inventory from the Sioux Nation and any other interested party. The Secretary shall investigate any allegation of error or omission in such inventory.

(4) By no later than the date that is 150 days after the date on which the inventory is published under paragraph (2), the Secretary shall publish any changes in the initial inventory which are necessary to correct errors and omissions or a revised inventory which is free of errors or omissions.

(b)(1) Except to the extent otherwise provided in this Act, the head of each Federal agency having jurisdiction over any Federal land within the re-established area, any water rights appurtenant to such Federal land, or any sub-surface mineral estate within the re-established area shall, by no later than the day that is 210 days after the date on which the inventory is published under subsection (a)(2), convey all of such Federal lands, mineral estates, and water rights to the Sioux Nation in fee simple, without warranties of any kind.

(2) Many conveyances made under paragraph (1), the head of the Federal agency may reserve to the United States an easement which allows the United States to use any land which is identified under subsection (a)(1)(B) for any purpose described in subsection (a)(1)(B) for so long as such use is continuous from the date of such conveyance.

(3) No conveyance made under paragraph (1) shall affect any rights, reservations, easements, leases, permits, agreements, and contracts that exist under the public land laws on the day before such conveyance so long as they remain valid in accordance with the terms of such public land laws.

(4)(A) The Mount Rushmore National Memorial shall not be conveyed under paragraph (1).

(B) The Sioux Nation shall be given first preference in bidding for the operation of the concessions at the Mount Rushmore National Memorial.

SEC. 6. WATER RIGHTS.

(a) All waters—

(1) which are—

(A) within,

(B) flowing through, or

(C) arising on, the re-established area,

(2) to which there is no valid, outstanding appropriation under South Dakota State law,

(3) which would be deemed abandoned pursuant to South Dakota law, on the day before the date of enactment of this Act, and

(4) which are not reserved by the United States under section 4(b)(2),

shall, on the date that is 210 days after the date on which the inventory is published under section 4(a)(2), become the property of the Sioux Nation and the Sioux Nation shall determine the use and allocation of such waters.

(b) Any water rights transferred to the Sioux Nation under section 4(b)(1)—

(1) shall retain the same quantity and date of priority that such rights would have if the Federal Government continued to own such rights,

(2) shall not be limited to the uses for which they were reserved by the Federal Government, and

(3) may be used or allocated to any purpose within or without the boundaries of the re-established area as the Sioux Nation may choose.

(c) All water rights (other than water rights acquired from the Federal Government) which may be transferred to or acquired by the Sioux Nation pursuant to this Act—

(1) shall be in the same quantities and with the same dates of priority as such rights would have if such private party continued to own such rights,

(2) shall not be subject to abandonment pursuant to South Dakota State law,

(3) shall be treated as premanent present perfected rights under Federal law, and

(4) shall be subject to such use and allocation as the Sioux Nation may determine.

(d) All waters within, flowing through, or arising on the re-established area shall be subject to the sole and exclusive jurisdiction of the Sioux Nation to regulate the use and allocation of such waters.

SEC. 7. EXEMPTION FROM TAXATION AND CONDEMNATION.

All lands within the re-established area shall be exempt from taxation by the United States or any State or subdivision of a State, and from acquisition for public purposes without the consent of the Sioux Nation.

Sec. 8. STATUS OF PRIVATE LANDS.

(a) Privately held lands within the re-established area shall not be disturbed, and may be held and used or occupied for the same purposes as prior to this Act, subject however, to Sections 10, 11, 12, 13, and 14 of this Act; provided however, that the Sioux Nation may purchase such lands and may also receive title to such lands by devise, gift, exchange, or other transfer. Any private lands purchased or otherwise acquired by the Sioux Nation within the re-established area shall be held and used by the Sioux Nation in the same manner and status as federal lands conveyed under section 5(b).

(b) The Sioux Nation shall have a right of first refusal to purchase privately held

lands within the area described in section 11 (b) and (c).

SEC. 9. EXCHANGE OF LANDS.

(a) For the purpose of consolidating the land holdings of the Sioux Nation within the re-established area, the Secretaries are hereby authorized and directed to acquire, by purchase or exchange, all state school lands held by any State within the re-established area, and all interests therein, including improvements, mineral rights whether or not they have been separated from the surface estate, and water rights.

(b) The Secretaries shall immediately and diligently undertake to acquire, by exchange, those lands held by the State of South Dakota at Bear Butte.

(c) In exercising the authority to acquire the above described lands by exchange, the Secretaries are authorized to utilize unappropriated public domain lands outside of the re-established area, but within the respective affected states. The property so exchanged shall be of approximately equal value, except the Secretaries may pay cash to the affected state to equalize the values of the properties exchanged.

(d) Any lands so acquired by exchange shall be immediately conveyed to the Sioux Nation to be held in the same manner and status of federal lands conveyed under section 5(b) of this Act.

Sec. 10. COMPENSATION.

(a) Funds appropriated on July 18, 1980, in accordance with the Act of March 13, 1978, (92 Stat. 153) and the interested earned from such funds through the date of enactment of this Act shall be paid to the Sioux Nation in compensation for the loss of the use of its lands from 1877 to the effective date of this Act and not for extinguishment of title of such lands. These monies shall be managed by the Sioux Nation such that one hundred percent (100%) of such funds shall be invested in permanent interest bearing account or accounts at financial institutions of the Sioux Nation's choice for the benefit of the Sioux Nation and future generations of its people. The permanent trust account or accounts shall be held and maintained in perpetuity by the Sioux Nation and shall never be liquidated. Interest deriving from the investment of such funds shall be distributed annually with ten percent (10%) of such interest paid to the Sioux National Council to be used for governmental and public purposes and the remainder shall be paid out to the different tribes based on those percentages of ownership established by the Secretary of the Interior in the "Results of Research Report in Docket 74B" (Black Hills Claim).

(b) To further compensate the Sioux Nation for the loss of the use of its lands, and for the conveyance of some lands to private persons, the United States shall convey to the Sioux Nation, by Quit Claim deed in the same manner and status as federal lands conveyed under section 5(d), an additional fifty thousand acres of federal lands plus an additional fifty thousand of federal sub-surface mineral estates lying outside the 1877 taking area of the Great Sioux Reservation but within the area described in Articles 11 and 16 of the Treaty of April 29, 1868, (15 Stat. 635). The Sioux Nation shall select these lands and identify them to the Secretaries within five years of the effective date of this Act.

(c) Subsection (b) may include National Forests, National Parks, and National Monuments, but shall exclude military facilities, court houses, office buildings, post offices, warehouses, cemetaries, and state highways.

(d) To further compensate the Sioux Nation and in order to insure that the Sioux Park and the Black Hills Sioux Forest remain accessible to the general public, the United States shall provide an annually appropriated budget to the Sioux Nation for the operation and maintenance for such lands which shall not be less than five percent (5%) of the amount of funds that were available to the Secretaries for the land that comprise the Sioux Park and the Black Hills Sioux Forest for the fiscal year in which this act is enacted.

SEC. 11. SIOUX PARK.

(a) All lands in the re-established area except as provided in section 6 which were held under the jurisdiction of the United States Park Service prior to the promulgation of this Act and such other lands in the reestablished area as are identified by agreement of the Secretaries and the Sioux Nation within five (5) years of the effective date of this Act, and their legal description published in the Federal Register shall thereafter be known as the Sioux Park, and shall remain equally accessible to all persons, both Sioux and non-Sioux, under such rules and regulations as the Sioux may from time to time establish and publish.

(b) Notwithstanding the foregoing, such lands within the Sioux Park which are traditional religious or ceremonial sites shall be identified by the Sioux and shall be excluded from public access to the extent necessary to preserve their primary religious uses and integrity. Such sites, which have their individual names, shall be designated by the generic name "Tatanka TaCante"/"The Heart of the Buffalo".

(c) Notwithstanding the foregoing, any lands within the Sioux Park that are designated by the Sioux as a wildlife and wilderness sanctuary for living things which have a special sacred relationship to the Sioux may be excluded from public access to the extent necessary to provide such sanctuary. Such sanctuaries shall be designated by their traditional names and shall be designated by the generic name "Wamaka Og'naka Onakizin"/"The Sanctuary of Everything That Is".

(d) Religious sites and ceremonial sites outside of the re-established area acquired under sections 8, 9, 10(b), 11 or 12, including Devil's Tower, and the Inyan Kara Mountain area, shall be included in the Sioux Park.

(e) Notwithstanding the foregoing, such lands that were held under the jurisdiction of the Forest Service Prior to the Promulgation of this Act and were designated as the Norbeck Wildlife Preserve, the Black Elk Wilderness Area, the Pine Creek Natural Area, and other such restricted use lands shall become part of the Sioux Park.

(f) All lands in the Sioux Park shall remain in the State of use or development to which these lands were committed on the effective date of this Act.

(g) For a transition of five (5) years, the National Park Service and the Sioux Nation will jointly manage the Sioux Park subject to such rules and regulations as the Sioux Nation may from time to time establish and subject to a Management Agreement to be negotiated between the National Park Service and the Sioux Nation.

(h) Notwithstanding any other law, the Sioux Nation shall qualify as an Indian tribe for purposes of the provisions of Section 105 of the Act of January 4, 1975, (88 Stat. 2209).

SEC. 12. BLACK HILLS SIOUX FOREST.

(a) Lands acquired by the Sioux Nation under this Act which are not included in the Sioux National Park and were under the jurisdiction of the United States Forest Service prior to the effective date of this Act shall be designated as the Black Hills Sioux Forest. Such lands may be used by the Sioux Nation in accordance with the traditional principle of "respect for the earth" except that for a transition period of five (5) years the Forest Service and the Sioux Nation will jointly manage the Black Hills Sioux Forest subject to such rules and regulations as the Sioux Nation may from time to time establish and subject to a Management Agreement to be negotiated between the Forest Service and the Sioux Nation. Any authorizations or regulations for land use within the area designated as the Black Hills Sioux Forest which are in conflict with the principle of "respect for the earth" shall be identified within one (1) year of the effective date of this Act by the Sioux Nation and notice of withdrawal of such authorizations and regulations shall be published for a period of thirty (30) days, after which any such use shall cease, except for those uses as provided in section 5(b)(3), i.e. "all existing valid rights, reservations, easements, leases, permits, agreements, and contracts under the public law shall continue in full force and effect so long as they remain valid in accordance with the terms thereof".

(b) Notwithstanding any other law, the Sioux Nation shall qualify as an Indian Tribe for purposes of the provisions of section 105 of the Act of January 4, 1975 (88 Stat. 2209).

(c) Rents, royalties, fees, and any income realized from the use of lands in the Black Hills Sioux Forest, including taxes, shall be applied exclusively to the administration, governance, up-keep and improvement of the Forest and Park and the welfare of its residents and users, and shall include the administration of the Sioux Nation Council and its governmental functions. Notwithstanding the above, any income above the funds necessary for the administration and governance of the re-established area shall be equitably distributed among the different tribes of the Sioux Nation through their respective governments and such revenue shall be spent solely for public purposes, such as public administration and the health, education general welfare of their members.

(d) Lands acquired by the Sioux Nation under this Act which were held by the Bureau of Land Management, or were designated as National Grasslands and were managed by the Forest Service, shall be treated in the same manner as described above in sections 12(a), (b), and (c).

SEC. 13. THE SIOUX NATIONAL COUNCIL.

(a) For the purpose of managing and governing the re-established area, there is hereby recognized and acknowledged a Sioux National Council ("National Council"). The National Council shall be composed of such members, selected in such manner and shall exercise such powers of governance and land management as may be delegated to it in a constitution approved by at least three quarters (¾) of the adult members of the respective tribes of the Sioux Nation. The constitution shall be presented to the members for approval within three years of the enactment of this Act. The constitution of the National Council shall absolutely prohibit the sale or disposal of any lands or water rights acquired under

this Act and such lands shall not be sold or disposed of except in accordance with Article 12 of the Treaty of April 29, 1868.

(b) There is hereby recognized and acknowledged such court or courts as the Constitution of the National Council may provide, which shall have original and exclusive jurisdiction to review the lawfulness of actions taken by the National Council.

SEC. 14. INTERIM MANAGEMENT BOARD.

For the purpose of managing and governing the re-established area until such time as the National Council is selected in accordance with the provisions of such Constitution, as set forth in section 13(a), each Tribe shall appoint two representatives to an Interim Management Board, one of which shall be appointed by the respective tribal government, the second of which may be appointed by such Treaty Council as is designated by the respective tribal government.

SEC. 15. JOINT POWERS AGREEMENTS.

(a) Nothing in this Act shall prevent the Sioux Nation from entering into contracts and agreements with any state, political sub-division of any state, or private person, corporation or foundation to fulfill any purpose of this Act or obligation of the Sioux Nation arising under this Act.

SEC. 16. EXISTING ACCESS; MINERAL LEASES; GRAZING PERMITS; TIMBER LEASES, PERMITS, CONTRACTS.

(a) Nothing in this Act shall deprive any person or government of any valid existing right of use or possession, or any contract right, which that person or government may have in any of the lands conveyed to the Sioux Nation, or of any existing right of access over and across such lands in accordance with the provisions of such contracts or the terms of such existing right.

(b) All existing mineral leases involving lands reconveyed under this Act, including oil and gas leases, which were issued or approved pursuant to federal law prior to the enactment of this Act, shall remain in full force and effect in accordance with the provisions thereof. Notwithstanding any other provisions of law, applications for mineral leases under federal law involving such lands, including oil and gas leases, pending on the date of enactment of this Act shall be rejected and advanced rental payments returned to the applicants.

(c) Persons holding grazing permits from an agency of the United States as of the date of this Act involving lands reconveyed hereunder shall continue exercising such grazing rights, subject to all otherwise applicable terms, except that no grazing fees shall be payable by the existing permittee for a term not to exceed two years or the balance of such existing permit, whichever is less. Such grazing permits shall be administered by the Sioux National Council in accordance with all otherwise applicable federal rules and regulations. Such grazing rights may be cancelled by the National Council in accordance with such regulations for failure to meet the terms and conditions of the existing permits, or failure to abide by applicable rules and regulations. Such grazing rights shall be non-transferable, except that they may be relinquished by the permittee to the Sioux Nation at any time. Thereinafter all grazing permits shall be issued under the laws of the Sioux Nation.

(d) Persons holding timber leases, permits or contracts from an agency of the United States as of the date of this Act involving lands reconveyed hereunder, shall have the right to continue exercising such rights as may be granted pursuant to such leases, permits or contracts, subject to all otherwise applicable terms, conditions and federal rules and regulations governing such timber rights, until such rights would normally expire; provided that the Sioux National Council may obtain the relinquishment of any such leases, permits or contracts from the lessees or permittees under such terms and conditions as may be mutually agreeable. Such timber rights shall be administered by the Sioux National Council in accordance with all otherwise applicable federal rules and regulations. Such timber rights may be cancelled by the Sioux National Council in accordance with such applicable regulations for failure to meet the terms and conditions of the existing leases, permits or contracts, or failure to abide by applicable rules and regulations. Such existing timber rights shall be non-transferable, except that they may be relinquished by the permittee or acquired by the Sioux Nation at any time.

(e) From the date of enactment of this Act, seventy-five percent (75%) of all fees derived from timber permits, leases, permits, or contracts affected by this section shall be paid as provided by section 12(c) of this Act. Twenty-five percent (25%) of all fees from timber permits, leases or contracts affected by this section shall be paid to the state county governments within which the lands from which the fees are derived are located for a period of five (5) years from the date of enactment of this Act without restriction. Thereafter, twenty-five percent (25%) of such fees shall continue to be paid to such counties for such public expenditures as the Sioux Nation and county may agree pursuant to joint powers agreements entered into for periods not exceeding ten (10) years.

Sec. 17. HUNTING AND FISHING.

The Sioux Nation shall have exclusive jurisdiction to regulate hunting and fishing on all lands, lakes and streams conveyed to it within the re-established area.

Sec. 18. INDIVIDUAL SETTLEMENT IN THE RE-ESTABLISHED AREA.

Members of the tribes constituting the Sioux Nation shall be eligible to receive twenty-five (25) year family use permits to an area not to exceed two and one-half (2.5) acres per head of household and shall be allowed to settle and construct homes and other improvements on Sioux Nation lands within the re-established area in accordance with a comprehensive land use plan developed by the Sioux National Council covering all lands within the re-established area. Such plan shall insure the proper management and use of lands reconveyed pursuant to this Act consistent with the Lakota principle of "respect for the earth", resource conservation and accepted resource management practices.

Sec. 19. EFFECT ON SUBSISTING TREATIES.

All treaties formerly entered into between the United States and the Sioux Nation, to the extent not inconsistent with the Act, are continued in full force and effect, and any other claims which the Sioux Nation or its bands may have against the United States are neither extinguished nor prejudiced. All rights and exemptions, both political or territorial, which are not expressly delegated to the federal or state governments by this Act or any prior treaty or agreement is hereby reserved to the Sioux Nation and any bands thereof.

SEC. 20. INCONSISTENT LAWS.

The provisions of the Sioux Nation Black Hills Act supercede all laws of the United States which are inconsistent with the Act, including laws generally applicable to "Indians".

SEC. 21. JURISDICTION.

(a) Article 1 of the Treaty of April 29, 1868, shall continue in full force and effect, to the extent that the Sioux Nation, upon sufficient proof made by the United States Attorney to a justice of the appropriate Sioux Nation Court at a hearing convened for that purpose, shall deliver to the United States for trial and punishment any non-Indian who commits a crime under 18 U.S.C. 1153.

(b) Notwithstanding the foregoing, the Sioux Nation may reassume unrestricted criminal jurisdiction over non-Indians at such time as the Sioux Nation and Congress may agree.

(c) All persons within the jurisdiction of the Sioux Nation may bring an action in the tribal courts of the Sioux Nation and all persons residing within the re-established area shall have the right to petition and address the National Council.

SEC. 22. EXTINGUISHMENT OF CLAIMS.

(a) All claims of the Sioux Nation and of any successor-in-interest of the parties to the Treaty of April 29, 1868 (15 Stat. 635) which arise from the taking pursuant to the Act of February 28, 1877 (19 Stat. 254), of the lands described in section 4 shall be extinguished on the date on which all the transfers of property required under section (b) are completed.

(b) All transfers of any interest in the lands described in section 4 that would be valid under the laws of South Dakota but for the unconstitutional taking of such lands pursuant to the Act of February 28, 1877 (19 Stat. 254) are hereby declared to be valid and in accordance with the laws of the United States.

In the Supreme Court of the United States

[No. 79-639]

UNITED STATES, PETITIONER, *v.* SIOUX NATION OF INDIANS ET AL. [June 30, 1980]

On Writ of Certiorari to the United States Court of Claims:

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case concerns the Black Hills of South Dakota, the Great Sioux Reservation, and a colorful, and in many respects tragic, chapter in the history of the Nation's West. Although the litigation comes down to a claim of interest since 1877 on an award of over $17 million, it is necessary, in order to understand the controversy, to review at some length the chronology of the case and its factual setting.

I

For over a century now the Sioux Nation has claimed that the United States unlawfully abrogated the Fort Laramie Treaty of April 29, 1868, 15 Stat. 635, in Art. II of which the United States pledged that the Great Sioux Reservation, including the Black Hills, would be "set apart for the absolute and undisturbed use and occupation of the Indians herein named." *Id.*, at 636. The Fort Laramie Treaty was concluded at the culmination of the Powder River War of 1866-1867, a series of military engagements in which the Sioux tribes, led by their great chief, Red Cloud, fought to protect the integrity of earlier-recognized treaty lands from the incursion of white settlers.[1]

Footnotes at the end of article.

The Fort Laramie Treaty included several agreements central to the issues presented in this case. First, it established the Great Sioux Reservation, a tract of land bounded on the east by the Missouri River, on the south by the northern border of the State of Nebraska, on the north by the forty-sixth parallel of north latitude, and on the west by the one hundred and fourth meridian of west longitude,[2] in addition to certain reservations already existing east of the Missouri. The United States "solemnly agree[d]" that no unauthorized persons "shall ever be permitted to pass over, settle upon, or reside in [this] territory." *Ibid.*

Second, the United States permitted members of the Sioux tribes to select lands within the reservation for cultivation. *Id.*, at 637. In order to assist the Sioux in becoming civilized farmers, the Government promised to provide them with the necessary services and materials, and with subsistence rations for four years. *Id.*, at 639.[3]

Third, in exchange for the benefits conferred by the treaty, the Sioux agreed to relinquish their rights under the Treaty of September 17, 1851, to occupy territories outside the reservation, while reserving their "right to hunt on any lands north of North Platte, and on the Republican Fork of the Smoky Hill river, so long as the buffalo may range thereon in such numbers as to justify the chase." *Ibid.* The Indians also expressly agreed to withdraw all opposition to the building of railroads that did not pass over their reservation lands, not to engage in attacks on settlers, and to withdraw their opposition to the military posts and roads that had been established south of the North Platte River. *Ibid.*

Fourth, Art. XII of the treaty provided: "No treaty for the cession of any portion or part of the reservation herein described which may be held in common shall be of any validity or force as against the said Indians, unless executed and signed by at least three fourths of all the adult male Indians, occupying or interested in the same." *Ibid.*[4]

The years following the treaty brought relative peace to the Dakotas, an era of tranquility that was disturbed, however, by renewed speculation that the Black Hills, which were included in the Great Sioux Reservation, contained vast quantities of gold and silver.[5] In 1874 the Army planned and undertook an exploratory expedition into the Hills, both for the purpose of establishing a military outpost from which to control those Sioux who had not accepted the terms of the Fort Laramie Treaty, and for the purpose of investigating "the country about which dreamy stories have been told." D. Jackson, Custer's Gold 14 (1966) (quoting the 1874 annual report of Lieutenant General Philip H. Sheridan, as Commander of the Military Division of the Missouri, to the Secretary of War). Lieutenant Colonel George Armstrong Custer led the expedition of close to 1,000 soldiers and teamsters, and a substantial number of military and civilian aides. Custer's journey began at Fort Abraham Lincoln on the Missouri River on July 2, 1874. By the end of that month they had reached the Black Hills, and by mid-August had confirmed the presence of gold fields in that region. The discovery of gold was widely reported in newspapers across the country.[6] Custer's florid descriptions of the mineral and timber resources of the Black Hills, and the land's suitability for grazing and cultivation, also received wide circulation, and had the effect of creating an intense popular demand for the "opening" of the Hills for settlement.[7] The only obstacle to "progress" was the Fort Laramie Treaty that reserved occupancy of the Hills to the Sioux.

Having promised the Sioux that the Black Hills were reserved to them, the United States Army was placed in the position of having to threaten military force, and occasionally to use it, to prevent prospectors and settlers from trespassing on lands reserved to the Indians. For example, in September 1874, General Sheridan sent instructions to Brigadier General Alfred H. Terry, Commander of the Department of Dakota, at Saint Paul, directing him to use force to prevent companies of prospectors from trespassing on the Sioux reservation. At the same time, Sheridan let it be known that he would "give a cordial support to the settlement of the Black Hills," should Congress decide to "open up the country for settlement, by extinguishing the treaty rights of the Indians." App. 62–63. Sheridan's instructions were published in local newspapers. See *id.*, at 63.[8]

Eventually, however, the Executive Branch of the Government decided to abandon the Nation's treaty obligation to preserve the integrity of the Sioux territory. In a letter dated November 9, 1875, to Terry, Sheridan reported that he had met with President Grant, the Secretary of the Interior, and the Secretary of War, and that the President had decided that the military should make no further resistance to the occupation of the Black Hills by miners, "it being his belief that such resistance only increased their desire and complicated the troubles." *Id.*, at 59. These orders were to be enforced "quietly," *ibid.*, and the President's decision was to remain "confidential." *Id.*, at 59–60 (letter from Sheridan to Sherman).

With the Army's withdrawal from its role as enforcer of the Fort Laramie Treaty, the influx of settlers into the Black Hills increased. The Government concluded that the only practical course was to secure to the citizens of the United States the right to mine the Black Hills for gold. Toward that end, the Secretary of the Interior, in the spring of 1875, appointed a commission to negotiate with the Sioux. The commission was headed by William B. Allison. The tribal leaders of the Sioux were aware of the mineral value of the Black Hills and refused to sell the land for a price less than $70 million. The commission offered the Indians an annual rental of $400,000, or payment of $6 million for absolute relinquishment of the Black Hills. The negotiations broke down.[9]

In the winter of 1875–1876, many of the Sioux were hunting in the unceded territory north of the North Platte River, reserved to them for that purpose in the Fort Laramie Treaty. On December 6, 1875, for reasons that are not entirely clear, the Commissioner of Indian Affairs sent instructions to the Indian agents on the reservation to notify those hunters that if they did not return to the reservation agencies by January 31, 1876, they would be treated as "hostiles." Given the severity of the winter, compliance with these instructions was impossible. On February 1, the Secretary of the Interior nonetheless relinquished jurisdiction over all hostile Sioux, including those Indians exercising their treaty-protected hunting rights, to the War Department. The Army's campaign against the "hostiles" led to Sitting Bull's notable victory over Custer's forces at the battle of the Little Big Horn on June 25. That victory, of course, was short-lived, and those Indians who surrendered to the Army were returned to the reservation, and deprived of their weapons and horses, leaving them completely dependent for survival on rations provided them by the Government.[10]

In the meantime, Congress was becoming increasingly dissatisfied with the failure of the Sioux living on the reservation to become self-sufficient.[11] The Sioux' entitlement to subsistence rations under the terms of the Fort Laramie Treaty had expired in 1872. Nonetheless, in each of the two following years, over $1 million was appropriated for feeding the Sioux. In August 1876, Congress enacted an appropriations bill providing that "hereafter there shall be no appropriation made for the subsistence" of the Sioux, unless they first relinquished their rights to the hunting grounds outside the reservation, ceded the Black Hills to the United States, and reached some accommodation with the Government that would be calculated to enable them to become self-supporting. Act of August 15, 1876, 19 Stat. 176, 192.[12] Toward this end, Congress requested the President to appoint another commission to negotiate with the Sioux for the cession of the Black Hills.

This commission, headed by George Manypenny, arrived in the Sioux country in early September and commenced meetings with the head men of the various tribes. The members of the Commission impressed upon the Indians that the United States no longer had any obligation to provide them with subsistence rations. The commissioners brought with them the text of a treaty that had been prepared in advance. The principal provisions of this treaty were that the Sioux would relinqush their rights to the Black Hills and other lands west of the one hundred and third meridian, and their rights to hunt in the unceded territories to the north, in exchange for subsistence rations for as long as they would be needed to ensure the Sioux' survival. In setting out to obtain the tribes' agreement to this treaty, the commission ignored the stipulation of the Fort Laramie Treaty that any cession of the lands contained within the Great Sioux Reservation would have to be joined in by three-fourths of the adult males. Instead, the treaty was presented just to Sioux chiefs and their leading men. It was signed by only 10% of the adult male Sioux population.[13]

Congress resolved the impasse by enacting the 1876 "agreement" into law as the Act of Feb. 28, 1877 (1877 Act). 19 Stat. 254. The Act had the effect of abrogating the earlier Fort Laramie Treaty, and of implementing the terms of the Manypenny Commission's "agreement" with the Sioux leaders.[14]

The passage of the 1877 Act legitimized the settlers' invasion of the Black Hills, but throughout the years it has been regarded by the Sioux as a breach of this Nation's solemn obligation to reserve the Hills in perpetuity for occupation by the Indians. One historian of the Sioux Nation commented on Indian reaction to the Act in the following words: "The Sioux thus affected have not gotten over talking about that treaty yet, and during the last few years they have maintained an organization called the Black Hills Treaty Association, which holds meetings each year at the various agencies for the purpose of studying the treaty with the intention of presenting a claim against the government for additional reimbursement for the territory ceded under it. Some think that Uncle Sam owes them about $9,000,000 on the deal, but it will probably be a hard matter to prove it." F. Fiske, The Taming of

the Sioux 132 (1917). Fiske's words were to prove prophetic.

II

Prior to 1946, Congress had not enacted any mechanism of general applicability by which Indian tribes could litigate treaty claims against the United States.[15] The Sioux, however, after years of lobbying, succeeded in obtaining from Congress the passage of a special jurisdictional act which provided them a forum for adjudication of all claims against the United States "under any treaties, agreements, or laws of Congress or for the misappropriation of any of the funds or lands of said tribe or band or bands thereof." Act of June 3, 1920, 41 Stat. 738. Pursuant to this statute, the Sioux, in 1923, filed a petition with the Court of Claims alleging that the Government had taken the Black Hills without just compensation, in violation of the Fifth Amendment. This claim was dismissed by that court in 1942. In a lengthy and unanimous opinion, the court concluded that it was not authorized by the Act of June 3, 1920, to question whether the compensation afforded the Sioux by Congress in 1877 was an adequate price for the Black Hills, and that the Sioux' claim in this regard was a moral claim not protected by the Just Compensation Clause. *Sioux Tribe* v. *United States*, 97 Ct. Cl. 613 (1942), cert. denied, 318 U.S. 789 (1943).

In 1946, Congress passed the Indian Claims Commission Act, 60 Stat. 1049, 25 U.S.C. § 70 *et seq.*, creating a new forum to hear and determine all tribal grievances that had arisen previously. In 1950, counsel for the Sioux resubmitted the Black Hills claim to the Indian Claims Commission. The Commission initially ruled that the Sioux had failed to prove their case. *Sioux Tribe* v. *United States*, 2 Ind. Cl. Comm'n 646 (1954), aff'd, 146 F. Supp. 229 (Ct. Cl. 1956). The Sioux filed a motion with the Court of Claims to vacate its judgment of affirmance, alleging that the Commission's decision had been based on a record that was inadequate, due to the failings of the Sioux' former counsel. This motion was granted and the Court of Claims directed the Commission to consider whether the case should be reopened for the presentation of additional evidence. On November 19, 1958, the Commission entered an order reopening the case and annoucing that it would reconsider its prior judgment on the merits of the Sioux claim. App. 265-266; see *Sioux Tribe* v. *United States*, 182 Ct. Cl. 912 (1968) (summary of proceedings).

Following the Sioux' filing of an amended petition, claiming again that the 1877 Act constituted a taking of the Black Hills for which just compensation had not been paid, there ensued a lengthy period of procedural sparring between the Indians and the Government. Finally, in October 1968, the Commission set down three questions for briefing and determination: (1) What land and rights did the United States acquire from the Sioux by the 1877 Act? (2) What, if any, consideration was given for that land and those rights? and (3) If there was no consideration for the Government's acquisition of the land and rights under the 1877 Act, was there any payment for such acquisition? App. 266.

Six years later, by a 4-1 vote, the Commission reached a preliminary decision on these questions. *Sioux Nation* v. *United States*, 33 Ind. Cl. Comm'n 151 (1974). The Commission first held that the 1942 Court of Claims decision did not bar the Sioux' Fifth Amendment taking claim through application of the doctrine of res judicata. The Commission concluded that the Court of Claims had dismissed the earlier suit for lack of jurisdiction, and that it had not determined the merits of the Black Hills claim. The Commission then went on to find that Congress, in 1877, had made no effort to give the Sioux full value for the ceded reservation lands. The only new obligation assumed by the Government in exchange for the Black Hills was its promise to provide the Sioux with subsistence rations, and obligation that was subject to several limiting conditions. See n. 14, *supra*. Under these circumstances, the Commission concluded that the consideration given the Indians in the 1877 Act had no relationship to the value of the property acquired. Moreover, there was no indication in the record that Congress ever attempted to relate the value of the rations to the value of the Black Hills. Applying the principles announced by the Court of Claims in *Three Tribes of Fort Berthold Reservation* v. *United States*, 182 Ct. Cl. 543, 390 F. 2d 686 (1968), the Commission concluded that Congress had acted pursuant to its power of eminent domain when it passed the 1877 Act, rather than as a trustee for the Sioux, and that the Government must pay the Indians just compensation for the taking of the Black Hills.[16]

The Government filed an appeal with the Court of Claims from the Commission's interlocutory order, arguing alternatively that the Sioux' Fifth Amendment claim should have been barred by principles of res judicata and collateral estoppel, or that the 1877 Act did not effect a taking of the Black Hills for which just compensation was due. Without reaching the merits, the Court of Claims held that the Black Hills claim was barred by the res judicata effect of its 1942 decision. *United States* v. *Sioux Nation*, 207 Ct. Cl. 234, 518 F.2d 1298 (1975). The court's majority recognized that the practical impact of the question presented was limited to a determination of whether or not an award of interest would be available to the Indians. This followed from the Government's failure to appeal the Commission's holding that it had acquired the Black Hills through a course of unfair and dishonorable dealing for which the Sioux were entitled to damages, without interest, under § 2 of the Indian Claims Commission Act, 60 Stat. 1050, 25 U.S.C. § 70a (5). Only if the acquisition of the Black Hills amounted to an unconstitutional taking would the Sioux be entitled to interest. 207 Ct. Cls., at 237, 518 F.2d, at 1299.[17]

The court affirmed the Commission's holding that a want of fair and honorable dealings in this case was evidenced, and held that the Sioux thus would be entitled to an award of at least $17.5 million for the lands surrendered and for the gold taken by trespassing prospectors prior to passage of the 1877 Act. See n. 16, *supra*. The court also remarked upon President Grant's duplicity in breaching the Government's treaty obligation to keep trespassers out of the Black Hills, and the pattern of duress practiced by the Government on the starving Sioux to get them to agree to the sale of the Black Hills. The court concluded: "A more ripe and rank case of dishonorable dealings will never, in all probability, be found in our history, which is not, taken as a whole, the disgrace it now pleases some persons to believe." *Id.*, at 241, 518 F.2d, at 1302.

Nonetheless, the court held that the merits of the Sioux' taking claim had been reached in 1942, and whether resolved "rightly or wrongly," *id.*, at 249, 518 F. 2d, at 1306, the claim was now barred by res judicata. The court observed that interest could not be awarded the Sioux on judgments obtained pursuant to the Indian Claims Commission Act, and that while Congress could correct this situation, the court could not. *Ibid.*[18] The Sioux petitioned this Court for a writ of certiorari, but that petition was denied. 423 U.S. 1016 (1975).

The case returned to the Indian Claims Commission, where the value of the rights of way obtained by the Government through the 1877 Act was determined to be $3,484, and where it was decided that the Government had made no payments to the Sioux that could be considered as offsets. App. 316. The Government then moved the Commission to enter a final award in favor of the Sioux in the amount of $17.5 million, see n. 16, *supra*, but the Commission deferred entry of final judgment in view of legislation then pending Congress that dealt with the case.

On March 13, 1978, Congress passed a statute providing for Court of Claims review of the merits of the Indian Claims Commission's judgment that the 1877 Act effected a taking of the Black Hills, without regard to the defenses of res judicata and collateral estoppel. The statute authorized the Court of Claims to take new evidence in the case, and the conduct its review of the merits *de novo*. Pub. L. 95-243, 92 Stat. 153, amending § 20(b) of the Indian Claims Commission Act. See U.S.C. § 70s(b) (1976 ed., Supp., (II).

Acting pursuant to that statute, a majority of the Court of Claims, sitting en banc, in an opinion by Chief Judge Friedman, affirmed the Commission's holding that the 1877 Act effected a taking of the Black Hills and of rights of way across the reservation. *Sioux Nation* v. *United States*, 220 Ct. Cl. ——, 601 F.2d 1157 (1979).[19] In doing so, the court applied the test it had earlier articulated in *Fort Berthold*, 182 Ct. Cl., at 553, 390 F.2d, at 691, asking whether Congress has made "a good faith effort to give the Indians the full value of the land," 220 Ct. Cl., at —, 601 F.2d, at 1162, in order to decide whether the 1877 Act had effected a taking or whether it had been a noncompensable act of congressional guardianship over tribal property. The court characterized the Act as a taking, an exercise of Congress' power of eminent domain over Indian property. It distinguished broad statements seemingly leading to a contrary result in *Lone Wolf* v. *Hitchcock*, 187 U.S. 553 (1903), as inapplicable to a case involving a claim for just compensation. *Id.*, at —, 601 F.2d, at 1170.[20]

The court thus held that the Sioux were entitled to an award of interest, at the annual rate of 5%, on the principal sum of $17.1 million, dating from 1877.[21]

We granted the Government's petition for a writ of certiorari, — U.S. — (1979), in order to review the important constitutional questions presented by this case, questions not only of long-standing concern to the Sioux, but also of significant economic import to the Government.

III

Having twice denied petitions for certiorari in this litigation, see 318 U.S. 789 (1943); 423 U.S. 1016 (1975), we are confronted with it for a third time as a result of the amendment, above noted, to the Indian Claims Commission Act of 1946, 25 U.S.C. § 70s (b) (1976 ed., Supp. II), which directed the Court of Claims to review the merits of the Black Hills takings claim without regard to

the defense of res judicata. The amendment, approved March 13, 1978, provides: "Notwithstanding any other provision of law, upon application by the claimants within thirty days from the date of the enactment of this sentence, the Court of Claims shall review on the merits, without regard to the defense of res judicata or collateral estoppel, that portion of the determination of the Indian Claims Commission entered February 15, 1974, adjudging that the Act of February 28, 1877 (19 Stat. 254), effected a taking of the Black Hills portion of the Great Sioux Reservation in violation of the fifth amendment, and shall enter judgment accordingly. In conducting such review, the Court shall receive and consider any additional evidence, including oral testimony, that either party may wish to provide on the issue of a fifth amendment taking and shall determine that issue de novo." 92 Stat. 153.

Before turning to the merits of the Court of Claims' conclusion that the Act of February 28, 1877, effected a taking of the Black Hills, we must consider the question whether Congress, in enacting this 1978 amendment, "has inadvertently passed the limit which separates the legislative from the judicial power." *United States* v. *Klein*, 13 Wall. 128, 147 (1872).

A

There are two objections that might be raised to the constitutionality of this amendment, each framed in terms of the doctrine of separation of powers. The first would be that Congress impermissibly has disturbed the finality of a judicial decree by rendering the Court of Claims' earlier judgments in this case mere advisory opinions. See *Hayburn's Case*, 2 Dall. 409, 410–414 (1792) (setting forth the views of three Circuit Courts, including among their complements Chief Justice Jay, and Justices Cushing, Wilson, Blair, and Iredell, that the Act of March 23, 1792, 1 Stat. 243, was unconstitutional because it subjected the decisions of the Circuit Courts concerning eligibility for pension benefits to review by the Secretary of War and the Congress). The objection would take the form that Congress, in directing the Court of Claims to reach the merits of the Black Hills claim, effectively reviewed and reversed that court's 1975 judgment that the claim was barred by res judicata, or its 1942 judgment that the claim was not cognizable under the Fifth Amendment. Such legislative review of a judicial decision would interfere with the independent functions of the Judiciary.

The second objection would be that Congress overstepped its bounds by granting the Court of Claims jurisdiction to decide the merits of the Black Hills claim, while prescribing a rule for decision that left the Court no adjudicatory function to perform. See *United States* v. *Klein*, 13 Wall., at 146; *Yakus* v. *United States*, 321 U.S. 414, 467–468 (1944) (Rutledge, J., dissenting). Of course, in the context of this amendment, that objection would have to be framed in terms of Congress' removal of a single issue from the Court of Claims' purview, the question whether res judicata or collateral estoppel barred the Sioux' claim. For in passing the amendment, Congress left no doubt that the Court of Claims was free to decide the merits of the takings claim in accordance with the evidence it found and applicable rules of law. See n. 23, *infra*.

These objections to the constitutionality of the amendment were not raised by the Government before the Court of Claims. At oral argument in this Court, counsel for the United States, upon explicit questioning, advanced the position that the amendment was not beyond the limits of legislative power.[22] The question whether the amendment impermissibly interfered with judicial power was debated, however, in the House of Representatives, and that body concluded that the Government's waiver of a "technical legal defense" in order to permit the Court of Claims to reconsider the merits of the Black Hills claim was within Congress' power to enact.[23]

The question debated on the floor of the House is one the answer to which is not immediately apparent. It requires us to examine the proper role of Congress and the courts in recognizing and determining claims against the United States, in light of more general principles concerning the legislative and judicial roles in our tripartite system of government. Our examination of the amendment's effect, and this Court's precedents, leads us to conclude that neither of the two separation of powers objections described above is presented by this legislation.

B

Our starting point is *Cherokee Nation* v. *United States*, 270 U.S. 476 (1926). That decision concerned the Special Act of Congress, dated March 3, 1919, 40 Stat. 1316, conferring jurisdiction upon the Court of Claims "to hear, consider, and determine the claim of the Cherokee Nation against the United States for interest, in addition to all other interest heretofore allowed and paid, alleged to be owning from the United States to the Cherokee Nation on the funds arising from the judgment of the Court of Claims of May eighteenth, nineteen hundred and five." In the judgment referred to by the Act, the Court of Claims had allowed 5% simple interest on four Cherokee claims, to accrue from the date of liability. *Cherokee Nation* v. *United States*, 40 Ct. Cl. 252 (1905). This Court had affirmed that judgment, including the interest award. *United States* v. *Cherokee Nation*, 202 U.S. 101, 123–126 (1906). Thereafter, and following payment of the judgment, the Cherokee presented to Congress a new claim that they were entitled to compound interest on the lump sum of principal and interest that had accrued up to 1895. It was this claim that prompted Congress, in 1919, to reconfer jurisdiction on the Court of Claims to consider the Cherokee's entitlement to that additional interest.

Ultimately, this Court held that the Cherokee were not entitled to the payment of compound interest on the original judgment awarded by the Court of Claims. 270 U.S., at 487–496. Before turning to the merits of the interest claim, however, the Court considered "the effect of the Act of 1919 in referring the issue in this case to the Court of Claims." 270 U.S., at 485–486. The Court's conclusion concerning that question bears close examination: "The judgment of this Court in the suit by the Cherokee Nation against the United States, in April, 1906 (202 U.S. 101), already referred to, awarded a large amount of interest. The question of interest was considered and decided, and it is quite clear that but for the special Act of 1919, above quoted, the question here mooted would have been foreclosed as *res judicata*. In passing the Act, Congress must have been well advised of this, and the only possible construction therefore to be put upon it is that Congress has therein expressed its desire, so far as the question of interest is concerned, to waive the effect of the judgment as *res judicata*, and to direct the Court of Claims to re-examine it and determine whether the interest therein allowed was all that should have been allowed, or whether it should be found to be as now claimed by the Cherokee Nation. The Solicitor General, representing the Government, properly concedes this to be the correct view. *The power of Congress to waive such an adjudication of course is clear.*" 270 U.S., at 486 (last emphasis supplied).

The holding in *Cherokee Nation* that Congress has the power to waive the res judicata effect of a prior judgment entered in the Government's favor on a claim against the United States is dispositive of the question considered here. Moreover, that holding is consistent with a substantial body of precedent affirming the broad constitutional power of Congress to define and "to pay the Debts . . . of the United States." U.S. Const., Art. I, §8, cl. 1. That precedent speaks directly to the separation of powers objections discussed above.

The scope of Congress' power to pay the Nation's debts seems first to have been construed by this Court in *United States* v. *Realty Company*, 163 U.S. 427 (1896). There, the Court stated: "The term 'debts' includes those debts or claims which rest upon a merely equitable or honorary obligation, and which would not be recoverable in a court of law if existing against an individual. The nation, speaking broadly, owes a 'debt' to an individual when his claim grows out of general principles of right and justice; when, in other words, it is based upon considerations of a moral or merely honorary nature, such as are binding on the conscience or the honor of an individual, although the debt could obtain no recognition in a court of law. The power of Congress extends at least as far as the recognition and payment of claims against the government which are thus founded." *Id.*, at 440.

Other decisions clearly establish that Congress may recognize its obligation to pay a moral debt not only by direct appropriation, but also by waiving an otherwise valid defense to a legal claim against the United States, as Congress did in this case and in *Cherokee Nation*. Although the Court in *Cherokee Nation* did not expressly tie its conclusion that Congress had the power to waive the res judicata effect of a judgment in favor of the United States to Congress' constitutional power to pay the Nation's debts, the *Cherokee Nation* opinion did rely on the decision in *Nock* v. *United States*, 2 Ct. Cl. 451 (1867). See 270 U.S., at 486.

In *Nock*, the Court of Claims was confronted with the precise question whether Congress invaded judicial power when it enacted a joint resolution, 14 Stat. 608, directing that court to decide a damage claim against the United States "in accordance with the principles of equity and justice," even though the merits of the claim previously had been resolved in the Government's favor. The court rejected the Government's argument that the joint resolution was unconstitutional as an exercise of "judicial powers" because it had the effect of setting aside the court's prior judgment. Rather, the court concluded: "It is unquestionable that the Constitution has invested Congress with no judicial powers; it cannot be doubted that a legislative direction to a court to find a judgment in a certain way would be little less than a judgment rendered directly by Congress. But here Congress does not attempt to award judgment, nor to grant a new trial *judically;* neither have they *reversed* a decree of this court;

nor attempted in any way to interfere with the administration of justice. Congress are here to all intents and purposes the defendants, and as such they come into court through this resolution and say that they will not plead the former trial in bar, nor interpose the legal objection which defeated a recovery before." 2 Ct. Cl., at 457-458 (emphases in original).

The *Nock* court thus expressly rejected the applicability of separation of powers objections to a congressional decision to waive the res judicata effect of a judgment in the Government's favor.[24]

The principles set forth in *Cherokee Nation* and *Nock* were substantially reaffirmed by this Court in *Pope* v. *United States*, 323 U.S. 1 (1944). There Congress had enacted special legislation conferring jurisdiction upon the Court of Claims, "notwithstanding any prior determination, any statute of limitations, release, or prior acceptance of partial allowance, to hear, determine, and render judgment upon" certain claims against the United States arising out of a construction contract. Special Act of February 27, 1942, § 1, 56 Stat. 1122. The court was also directed to determine Pope's claims and render judgment upon them according to a particular formula for measuring the value of the work that he had performed. The Court of Claims construed the Special Act as deciding the questions of law presented by the case, and leaving it the role merely of computing the amount of the judgment for the claimant according to a mathematical formula. *Pope* v. *United States*, 100 Ct. Cl. 375, 379-380, 53 F. Supp. 570, 571-572 (1944). Based upon that reading of the Act, and this Court's decision in *United States* v. *Klein*, 13 Wall. 128 (1872) (see discussion *infra*, at 30-33), the Court of Claims held that the Act unconstitutionally interfered with judicial independence. 100 Ct. Cl., at 380-382, 53 F. Supp., at 572-573. It distinguished *Cherokee Nation* as a case in which Congress granted a claimant a new trial, without directing the courts how to decide the case. *Id.*, at 387, and n. 5, 53 F. Supp., at 575, and n. 5.

This Court reversed the Court of Claims' judgment. In doing so, the Court differed with the Court of Claims' interpretation of the effect of the Special Act. First, the Court held that the Act did not disturb the earlier judgment denying Pope's claim for damages. "While inartistically drawn the Act's purpose and effect seem rather to have been to create a new obligation of the Government to pay petitioner's claims where no obligation existed before." 323 U.S., at 9. Second, the Court held that Congress' recognition of Pope's claim was within its power to pay the Nation's debts, and that its use of the Court of Claims as an instrument for exercising that power did not impermissibly invade the judicial function:

"We perceive no constitutional obstacle to Congress' imposing on the Government a new obligation where there had been none before, for work performed by petitioner which was beneficial to the Government and for which Congress thought he had not been adequately compensated. The power of Congress to provide for the payment of debts, conferred by § 8 of Article I of the Constitution, is not restricted to payment of those obligations which are legally binding on the Government. It extends to the creation of such obligations in recognition of claims which are merely moral or honorary. . . . *United States* v. *Realty Co.*, 163 U.S. 427. . . . Congress, by the creation of a legal, in recognition of a moral, obligation to pay petitioner's claims plainly did not encroach upon the judicial function which the Court of Claims had previously exercised in adjudicating that the obligation was not legal. [Footnote citing *Nock* and other cases omitted.] Nor do we think it did so by directing that court to pass upon petitioner's claims in conformity to the particular rule of liability prescribed by the Special Act and to give judgment accordingly. . . . See *Cherokee Nation* v. *United States*, 270 U.S. 476, 486." 323 U.S., at 9-10.

In explaining its holding that the Special Act did not invade the judicial province of the Court of Claims by directing it to reach its judgment with reference to a specified formula, the Court stressed that Pope was required to pursue his claim in the usual manner, that the earlier factual findings made by the Court of Claims were not necessarily rendered conclusive by the Act, and that, even if Congress has stipulated to the facts, it was still a judicial function for the Court of Claims to render judgment on consent. *Id.*, at 10-12.

To be sure, the Court in *Pope* specifically declined to consider "just what application the principles announced in the *Klein* case could rightly be given to a case in which Congress sought, *pendente lite*, to set aside the judgment of the Court of Claims in favor of the Government and to require relitigation of the suit" *Id.*, at 8-9. The case before us might be viewed as presenting that question. We conclude, however, that the separation of powers question presented in this case has already been answered in *Cherokee Nation*, and that that answer is completely consistent with the principles articulated in *Klein*.

The decision in *United States* v. *Klein*, 13 Wall. 128 (1872), arose from the following facts: Klein was the administrator of the estate of V. F. Wilson, the deceased owner of property that had been sold by agents of the Government during the War Between the States. Klein sued the United States in the Court of Claims for the proceeds of that sale. His lawsuit was based on the Abandoned and Captured Property Act of March 12, 1863, 12 Stat. 820, which afforded such a cause of action to noncombatant property owners upon proof that they had "never given any aid or comfort to the present rebellion." Following the enactment of this legislation, President Lincoln has issued a proclamation granting "a full pardon" to certain persons engaged "in the existing rebellion" who desired to resume their allegiance to the Government, upon the condition that they take and maintain a prescribed oath. This pardon was to have the effect of restoring those persons' property rights. See 13 Stat. 737. The Court of Claims held that Wilson's taking of the amnesty oath had cured his participation in "the . . . rebellion," and that his administrator, Klein, was thus entitled to the proceeds of the sale. *Wilson* v. *United States*, 4 Ct. Cl. 559 (1869).

The Court of Claims' decision in Klein's case was consistent with this Court's later decision in a similar case, *United States* v. *Padelford*, 9 Wall. 531 (1870), holding that the presidential pardon purged a participant "of whatever offence against the laws of the United States he had committed . . . and relieved [him] from any penalty which he might have incurred." *Id.*, at 543. Following the Court's announcement of the judgment in *Padelford*, however, Congress enacted a proviso to the appropriations bill for the Court of Claims. The proviso had three effects: First, no presidential pardon or amnesty was to be admissible in evidence on behalf of a claimant in the Court of Claims as the proof of loyalty required by the Abandoned and Captured Property Act. Second, the Supreme Court was to dismiss, for want of jurisdiction, any appeal from a judgment of the Court of Claims in favor of a claimant who had established his loyalty through a pardon. Third, the Court of Claims henceforth was to treat a claimant's receipt of a presidential pardon, without protest, as conclusive evidence that he had given aid and comfort to the rebellion, and to dismiss any lawsuit on his behalf for want of jurisdiction. Act of July 12, 1870, ch. 251, 16 Stat. 230, 235.

The Government's appeal from the judgment in Klein's case was decided by this Court following the enactment of the appropriations proviso. This Court held the proviso unconstitutional notwithstanding Congress' recognized power "to make 'such exceptions from the appellate jurisdiction' [of the Supreme Court] as should seem to it expedient." 13 Wall., at 145. See U.S. Const., Art. III, § 2, cl. 2. This holding followed from the Court's interpretation of the proviso's effect: "[T]he language of the proviso shows plainly that it does not intend to withhold appellate jurisdiction except as a means to an end. Its great and controlling purpose is to deny to pardons granted by the President the effect which this court had adjudged them to have." 13 Wall., at 145.

Thus construed, the proviso was unconstitutional in two respects: First, it prescribed a rule of decision in a case pending before the courts, and did so in a manner that required the courts to decide a controversy in the Government's favor.

"The court is required to ascertain the existence of certain facts and thereupon to declare that its jurisdiction on appeal has ceased, by dismissing the bill. What is this but to prescribe a rule for the decision of a cause in a particular way? In the case before us, the Court of Claims has rendered judgment for the claimant and an appeal has been taken to this court. We are directed to dismiss the appeal, if we find that the judgment must be affirmed, because of a pardon granted to the intestate of the claimants. Can we do so without allowing one party to the controversy to decide it in its own favor? Can we do so without allowing that the legislature may prescribe rules of decision to the Judicial Department of the government in cases pending before it?

". . . .

". . . Can [Congress] prescribe a rule in conformity with which the court must deny to itself the jurisdiction thus conferred, because and only because its decision, in accordance with settled law, must be adverse to the government and favorable to the suitor? This question seems to us to answer itself." *Id.*, at 146-147.

Second, the rule prescribed by the proviso "is also liable to just exception as impairing the effect of a pardon, and thus infringing the constitutional power of the Executive." *Id.*, at 147. The Court held that it would not serve as an instrument toward the legislative end of changing the effect of a presidential pardon. *Id.*, at 148.

It was, of course, the former constitutional objection held applicable to the legislative proviso in *Klein* that the Court was concerned about in *Pope*. But that objection is not applicable to the case before us for two reasons. First, of obvious importance to the *Klein* holding was the fact that Congress was attempting to decide the controversy at

issue in the Government's own favor. Thus, Congress' action could not be grounded upon its broad power to recognize and pay the Nation's debts. Second, and even more important, the proviso at issue in *Klein* had attempted "to prescribe a rule for the decision of a cause in a particular way [.]" 13 Wall., at 146. The amendment at issue in the present case, however, like the Special Act at issue in *Cherokee Nation*, waived the defense of res judicata so that a legal claim could be resolved on the merits. Congress made no effort in either instance to control the Court of Claims' ultimate decision of that claim. See n. 23, *supra*.[25]

C

When Congress enacted the amendment directing the Court of Claims to review the merits of the Black Hills claim, it neither brought into question the finality of that court's earlier judgments, nor interfered with that Court's judicial function in deciding the merits of the claim. When the Sioux returned to the Court of Claims following passage of the amendment, they were there in pursuit of judicial enforcement of a new legal right. Congress had not "reversed" the Court of Claims' holding that the claim was barred by res judicata, nor, for that matter, had it reviewed the 1942 decision rejecting the Sioux' claim on the merits. As Congress explicitly recognized, it only was providing a forum so that a new judicial review of the Black Hills claim could take place. This review was to be based on the facts found by the Court of Claims after reviewing all the evidence, and an application of generally controlling legal principles to those facts. For these reasons, Congress was not reviewing the merits of the Court of Claims' decisions, and did not interfere with the finality of its judgments.

Moreover, Congress in no way attempted to prescribe the outcome of the Court of Claims' new review of the merits. That court was left completely free to reaffirm its 1942 judgment that the Black Hills claim was not cognizable under the Fifth Amendment, if upon its review of the facts and law, such a decision was warranted. In this respect, the amendment before us is a far cry from the legislatively enacted "consent judgment" called into question in *Pope*, yet found constitutional as a valid exercise of Congress' broad power to pay the Nation's debts. And, for the same reasons, this amendment clearly is distinguishable from the proviso to this Court's appellate jurisdiction held unconstitutional in *Klein*.

In sum, as this Court implicitly held in *Cherokee Nation*, Congress' mere waiver of the res judicata effect of a prior judicial decision rejecting the validity of a legal claim against the United States does not violate the doctrine of separation of powers.

IV

A

In reaching its conclusion that the 1877 Act effected a taking of the Black Hills for which just compensation was due the Sioux under the Fifth Amendment, the Court of Claims relied upon the "good faith effort" test developed in its earlier decision in *Three Tribes of Fort Berthold Reservation* v. *United States*, 182 Ct. Cl. 543, 390 F. 2d 686 (1968). The *Fort Berthold* test had been designed to reconcile two lines of cases decided by this Court that seemingly were in conflict. The first line, exemplified by *Lone Wolf* v. *Hitchcock*, 187 U.S. 553 (1903), recognizes "that Congress possesse[s] a paramount power over the property of the Indians, by reason of its exercise of guardianship over their interests, and that such authority might be implied, even though opposed to the strict letter of a treaty with the Indians." *Id.*, at 565. The second line, exemplified by the more recent decision in *Shoshone Tribe* v. *United States*, 299 U.S. 476 (1937), concedes Congress' paramount power over Indian property, but holds, nonetheless, that "[t]he power does not extend so far as to enable the Government 'to give the tribal lands to others, or to appropriate them to its own purposes, without rendering, or assuming an obligation to render, just compensation.'" *Id.*, at 497 (quoting *United States* v. *Creek Nation*, 295 U.S. 103, 110 (1935)). In *Shoshone Tribe*, Mr. Justice Cardozo, in speaking for the Court, expressed the distinction between the conflicting principles in a characteristically pithy phrase: "Spoliation is not management." 299 U.S., at 498.

The *Fort Berthold* test distinguishes between cases in which one or the other principle is applicable:

"It is obvious that Congress cannot simultaneously (1) act as trustee for the benefit of the Indians, exercising its plenary powers over the Indians and their property, as it thinks is in their best interests, and (2) exercise its sovereign power of eminent domain, taking the Indians' property within the meaning of the Fifth Amendment to the Constitution. In any given situation in which Congress has acted with regard to Indian people, it must have acted either in one capacity or the other. Congress can own two hats, but it cannot wear them both at the same time. .

"Some guideline must be established so that a court can identify in which capacity Congress is acting. The following guideline would best give recognition to the basic distinction between the two types of congressional action: When Congress makes a good faith effort to give the Indians the full value of the land and thus merely transmutes the property from land to money, there is no taking. This is a mere substitution of assets or change of form and is a traditional function of a trustee." 182 Ct. Cl., at 553, 390 F. 2d, at 691.

Applying the *Fort Berthold* test to the facts of this case, the Court of Claims concluded that, in passing the 1877 Act, Congress had not made a good-faith effort to give the Sioux the full value of the Black Hills. The principal issue presented by this case is whether the legal standard applied by the Court of Claims was erroneous.[26]

B

The Government contends that the Court of Claims erred insofar as its holding that the 1877 Act effected a taking of the Black Hills was based on Congress' failure to indicate affirmatively that the consideration given the Sioux was of equivalent value to the property rights ceded to the Government. It argues that "the true rule is that Congress must be assumed to be acting within its plenary power to manage tribal assets if it reasonably can be concluded that the legislation was intended to promote the welfare of the tribe." Brief for United States 52. The Government derives support for this rule principally from this Court's decision in *Lone Wolf* v. *Hitchcock*.

In *Lone Wolf*, representatives of the Kiowa, Comanche, and Apache tribes brought an equitable action against the Secretary of the Interior and other governmental officials to enjoin them from enforcing the terms of an act of Congress that called for the sale of lands held by the Indians pursuant to the Medicine Lodge Treaty of 1867, 15 Stat. 581. That treaty, like the Fort Laramie Treaty of 1868, included a provision that any future cession of reservation lands would be without validity or force "unless executed and signed by at least three fourths of all the adult male Indians occupying the same." *Id.*, at 585. The legislation at issue, Act of June 6, 1900, 31 Stat. 672, was based on an agreement with the Indians that had not been signed by the requisite number of adult males residing on the reservation.

This Court's principal holding in *Lone Wolf* was that "the legislative power might pass laws in conflict with treaties made with the Indians." 187 U.S., at 566. The Court stated:

"The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the *power* to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith towards the Indians." *Ibid.* (Emphasis in original.)[27]

The Court, therefore, was not required to consider the contentions of the Indians that the agreement ceding their lands had been obtained by fraud, and had not been signed by the requisite number of adult males. "[A]ll these matters, in any event, were solely within the domain of the legislative authority and its action is conclusive upon the courts." *Id.*, at 568.

In the penultimate paragraph of the opinion, however, the Court in *Lone Wolf* went on to make some observations seemingly directed to the question whether the act at issue might constitute a taking of Indian property without just compensation. The Court there stated:

"The act of June 6, 1900, which is complained of in the bill, was enacted at a time when the tribal relations between the confederated tribes of Kiowas, Comanches and Apaches still existed, and that statute and the statutes supplementary thereto dealt with the disposition of tribal property and purported to give an adequate consideration for the surplus lands not allotted among the Indians or reserved for their benefit. Indeed, the controversy which this case presents is concluded by the decision in *Cherokee Nation* v. *Hitchcock*, 187 U.S. 294, decided at this term, where it was held that full administrative power was possessed by Congress over Indian tribal property. In effect, the action of Congress now complained of was but an exercise of such power, a mere change in the form of investment of Indian tribal property, the property of those who, as we have held, were in substantial effect the wards of the government. *We must presume that Congress acted in perfect good faith in the dealings with the Indians of which complaint is made, and that the legislative branch of the government exercised its best judgment in the premises.* In any event, as Congress possessed full power in the matter, the judiciary cannot question or inquire into the motives which prompted the enactment of this legislation. If injury was occasioned, which we do not wish to be understood as implying, by the use made by Congress of its power, relief must be sought

by an appeal to that body for redress and not to the courts. The legislation in question was constitutional." *Ibid.* (Emphasis supplied.)

The Government relies on the italicized sentence in the quotation above to support its view "that Congress must be assumed to be acting within its plenary power to manage tribal assets if it reasonably can be concluded that the legislation was intended to promote the welfare of the tribe." Brief for United States 52. Several adjoining passages in the paragraph, however, lead us to doubt whether the *Lone Wolf* Court meant to state a general rule applicable to cases such as the one before us.

First, *Lone Wolf* presented a situation in which Congress "purported to give an adequate consideration" for the treaty lands taken from the Indians. In fact, the act at issue set aside for the Indians a sum certain of $2 million for surplus reservation lands surrendered to the United States. 31 Stat. 678; see 187 U.S., at 555. In contrast, the background of the 1877 Act "reveals a situation where Congress did not 'purport' to provide 'adequate consideration,' nor was there any meaningful negotation or arm's-length bargaining, nor did Congress consider it was paying a fair price." 220 Ct. Cl., at——, 601 F. 2d, at 1176 (concurring opinion).

Second, given the provisions of the act at issue in *Lone Wolf*, the Court reasonably was able to conclude that "the action of Congress now complained of was but . . . a mere change in the form of investment of Indian tribal property." Under the Act of June 6, 1900, each head of a family was to be allotted a tract of land within the reservation of not less than 320 acres, an additional 480,000 acres of grazing land were set aside for the use of the tribes in common, and $2 million was paid to the Indians for the remaining surplus. 31 Stat. 677-678. In contrast, the historical background to the opening of the Black Hills for settlement, and the terms of the 1877 Act itself, see Part I, *supra*, would not lead one to conclude that the Act effected "a mere change in the form of investment of Indian tribal property."

Third, it seems significant that the views of the Court in *Lone Wolf* were based, in part, on a holding that "Congress possessed full power in the matter." Earlier in the opinion the Court stated: "Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government." 187 U.S., at 565. Thus, it seems that the Court's conclusive presumption of congressional good faith was based in large measure on the idea that relations between this Nation and the Indian tribes are a political matter, not amenable to judicial review. That view, of course, has long since been discredited in takings cases, and was expressly laid to rest in *Delaware Tribal Business Comm.* v. *Weeks*, 430 U.S. 73, 84 (1977).[28]

Fourth, and following up on the political question holding, the *Long Wolf* opinion suggests that where the exercise of congressional power results in injury to Indian rights, "relief must be sought by an appeal to that body for redress and not to the courts." Unlike *Lone Wolf*, this case is one in which the Sioux have sought redress from Congress, and the Legislative Branch has responded by referring the matter to the courts for resolution. See Parts II and III, *supra*. Where Congress waives the Government's sovereign immunity, and expressly directs the courts to resolve a taking claim on the merits, there would appear to be far less reason to apply *Lone Wolf's* principles of deference. See *United States* v. *Tillamooks*, 329 U.S. 40, 46 (1946) (plurality opinion).

The foregoing considerations support our conclusion that the passage from *Lone Wolf* here relied upon by the Government has limited relevance to this case. More significantly, *Lone Wolf's* presumption of congressional good faith has little to commend it as an enduring principle for deciding questions of the kind presented here. In every case where a taking of treaty-protected property is alleged,[29] a reviewing court must recognize that tribal lands are subject to Congress' power to control and manage the tribe's affairs. But the court must also be cognizant that "this power to control and manage [is] not absolute. While extending to all appropriate measures for protecting and advancing the tribe, it [is] subject to limitations inhering in . . . a guardianship and to pertinent constitutional restrictions." *United States* v. *Creek Nation*, 295 U.S. 103, 109-110 (1935). Accord: *Menominee Tribe* v. *United States*, 391 U.S. 404, 413 (1968); *FPC* v. *Tuscarora Indian Nation*, 362 U.S. 99, 122 (1960); *United States* v. *Klamath Indians*, 304 U.S. 119, 123 (1938); *United States* v. *Shoshone Tribe*, 304 U.S. 111, 115-116 (1938); *Shoshone Tribe* v. *United States*, 299 U.S. 476, 497-498 (1937).

As the Court of Claims recognized in its decision below, the question whether a particular measure was appropriate for protecting and advancing the tribe's interests, and therefore not subject to the constitutional command of the Just Compensation Clause, is factual in nature. The answer must be based on a consideration of all the evidence presented. We do not mean to imply that a reviewing court is to second-guess, from the perspective of hindsight, a legislative judgment that a particular measure would serve the best interests of the tribe. We do mean to require courts, in considering whether a particular congressional action was taken in pursuance of Congress' power to manage and control tribal lands for the Indians' welfare, to engage in a thoroughgoing and impartial examination of the historical record. A presumption of congressional good faith cannot serve to advance such an inquiry.

C

We turn to the question whether the Court of Claims's inquiry in this case was guided by an appropriate legal standard. We conclude that it was. In fact, we approve that court's formulation of the inquiry as setting a standard that ought to be emulated by courts faced with resolving future cases presenting the question at issue here:

"In determining whether the Congress has made a good faith effort to give the Indians the full value of their lands when the government acquired [them], we therefore look to the objective facts as revealed by Acts of Congress, congressional committee reports, statements submitted to Congress by government officials, reports of special commissions appointed by Congress to treat with the Indians, and similar evidence relating to the acquisition. . . .

"The 'good faith effort' and 'transmutation of property' concepts referred to in Fort Berthold are opposite sides of the same coin. They reflect the traditional rule that a trustee may change the form of trust assets as long as he fairly (or in good faith) attempts to provide his ward with property of equivalent value. If he does that, he cannot be faulted if hindsight should demonstrate a lack of precise equivalence. On the other hand, if a trustee (or the government in its dealings with the Indians) does not attempt to give the ward the fair equivalent of what he acquires from him, the trustee to that extent has taken rather than transmuted the property of the ward. In other words, an essential element of the inquiry under the Fort Berthold guideline is determining the adequacy of the consideration the government gave for the Indian lands it acquired. That inquiry cannot be avoided by the government's simple assertion that it acted in good faith in its dealings with the Indians." 220 Ct. Cl., at——, 602 F.2d, at 1162.[30]

D

We next examine the factual findings made by the Court of Claims, which led it to the conclusion that the 1877 Act effected a taking. First, the Court found that "[t]he only item of 'consideration' that possibly could be viewed as showing an attempt by Congress to give the Sioux the 'full value' of the land the government took from them was the requirement to furnish them with rations until they became self-sufficient." 220 Ct. Cl., at——, 601 F. 2d, at 1166. This finding is fully supported by the record, and the Government does not seriously contend otherwise.[31]

Second, the court found, after engaging in an exhaustive review of the historical record, that neither the Manypenny Commission, nor the congressional committees that approved the 1877 Act, nor the individual legislators who spoke on its behalf on the floor of Congress, ever indicated a belief that the Government's obligation to provide the Sioux with rations constituted a fair equivalent for the value of the Black Hills and the additional property rights the Indians were forced to surrender. See *id.*, at ——, 601 F. 2d, at 1166-1168. This finding is unchallenged by the Government.

A third finding, lending some weight to the Court's legal conclusion was that the conditions placed by the Government on the Sioux' entitlement to rations, see n. 14, *supra*, "further show that the government's undertaking to furnish rations to the Indians until they could support themselves did not reflect a congressional decision that the value of the rations was the equivalent of the land the Indians were giving up, but instead was an attempt to coerce the Sioux into capitulating to congressional demands." *Id.*, at ——, 601 F. 2d, at 1168. We might add only that this finding is fully consistent with similar observations made by this Court nearly a century ago in an analogous case.

In *Choctaw Nation* v. *United States*, 119 U.S. 1, 35 (1886), the Court held, over objections by the Government, that an earlier award made by the Senate on an Indian tribe's treaty claim "was fair, just, and equitable." The treaty at issue had called for the removal of the Choctaw Nation from treaty-protected lands in exchange for payments for the tribe's subsistence for one year, payments for cattle and improvements on the new reservation, an annuity of $20,000 for 20 years commencing upon removal, and the provision of educational and agricultural services. *Id.*, at 38. Some years thereafter the Senate awarded the Indians a substantial recovery based on the latter treaty's failure to compensate the Choctaw for the lands they had ceded. Congress later enacted a jurisdictional statute which permitted the United States to contest the fair-

ness of the Senate's award as a settlement of the Indian's treaty claim. In rejecting the Government's arguments, and accepting the Senate's award as "furnish[ing] the nearest approximation to the justice and right of the case," *id.*, at 35, this Court observed:

"It is notorious as a historical fact, as it abundantly appears from the record in this case, that great pressure had to be brought to bear upon the Indians to effect their removal, and the whole treaty was evidently and purposely executed, not so much to secure to the Indians the rights for which they had stipulated, as to effectuate the policy of the United States in regard to their removal. The most noticeable thing, upon a careful consideration of the terms of this treaty, is, that no money consideration is promised or paid for a cession of lands, the beneficial ownership of which is assumed to reside in the Choctaw Nation, and computed to amount to over ten millions of acres." *Id.*, at 37–38.

As for the payments that had been made to the Indians in order to induce them to remove themselves from their treaty lands, the Court, in words we find applicable to the 1877 Act, concluded: "It is nowhere expressed in the treaty that these payments are to be made as the price of the lands ceded; and they are all only such expenditures as the government of the United States could well afford to incur for the mere purpose of executing its policy in reference to the removal of the Indians to their new homes. *As a consideration for the value of the lands ceded by the treaty, they must be regarded as a meagre pittance." Id.*, at 38 (emphasis supplied).

These conclusions, in light of the historical background to the opening of the Black Hills for settlement, see Part I, *supra*, seem fully applicable to Congress' decision to remove the Sioux from that valuable tract of land, and to extinguish their off-reservation hunting rights.

Finally, the Court of Claims rejected the Government's contention that the fact that it subsequently had spent at least $43 million on rations for the Sioux (over the course of three quarters of a century) established that the 1877 Act was an act of guardianship taken in the Sioux' best interest. The court concluded: "The critical inquiry is what Congress did—and how it viewed the obligation it was assuming—at the time it acquired the land, and not how much it ultimately cost the United States to fulfill the obligation." 220 Ct. Cl., at ——, 601 F. 2d, at 1168. It found no basis for believing that Congress, in 1877, anticipated that it would take the Sioux such a lengthy period of time to become self-sufficient, or that the fulfillment of the Government's obligation to feed the Sioux would entail the large expenditures ultimately made on their behalf. *Ibid.* We find no basis on which to question the legal standard applied by the Court of Claims, or the findings it reached, concerning Congress' decision to provide the Sioux with rations.

The aforementioned findings fully support the Court of Claims' conclusion that the 1877 Act appropriated the Black Hills "in circumstances which involved an implied undertaking by [the United States] to make just compensation to the tribe."[32] *United States* v. *Creek Nation*, 295 U.S., at 111. We make only two additional observations about this case. First, dating at least from the decision in *Cherokee Nation* v. *Kansas Railway Co.*, 135 U.S. 641, 657 (1890), this Court has recognized that Indian lands, to which a tribe holds recognized title, "are held subject to the authority of the general government to take them for such objects as are germane to the execution of the powers granted to it; provided only, that they are not taken without just compensation being made to the owner." In the same decision the Court emphasized that the owner of such lands "is entitled to reasonable, certain and adequate provision for obtaining compensation before his occupancy is disturbed." *Id.*, at 659. The Court of Claims gave effect to this principle when it held that the Government's uncertain and indefinite obligation to provide the Sioux with rations until they became self-sufficient did not constitute adequate consideration for the Black Hills.

Second, it seems readily apparent to us that the obligation to provide rations to the Sioux was undertaken in order to ensure them a means of surviving their transition from the nomadic life of the hunt to the agrarian lifestyle Congress had chosen for them. Those who have studied the Government's reservation policy during this period of our Nation's history agree. See n. 11, *supra*. It is important to recognize that the 1877 Act, in addition to removing the Black Hills from the Great Sioux Reservation, also ceded the Sioux' hunting rights in a vast track of land extending beyond the boundaries of that reservation. See n. 14, *supra*. Under such circumstances, it is reasonable to conclude that Congress' undertaking of an obligation to provide rations for the Sioux was a *quid pro quo* for depriving them of their chosen way of life, and was not intended to compensate them for the taking of the Black Hills.[33]

V

In sum, we conclude that the legal analysis and factual findings of the Court of Claims fully support its conclusion that the terms of the 1877 Act did not effect "a mere change in the form of investment of Indian tribal property." *Lone Wolf* v. *Hitchcock*, 187 U.S., at 568. Rather, the 1877 Act effected a taking of tribal property, property which had been set aside for the exclusive occupation of the Sioux by the Fort Laramie Treaty of 1868. That taking implied an obligation on the part of the Government to make just compensation to the Sioux Nation, and that obligation, including an award of interest, must now, at last, be paid.

The judgment of the Court of Claims is affirmed.

It is so ordered.

FOOTNOTES

[1] The Sioux territory recognized under the Teaty of September 17, 1851, see 11 Stat. 749, included all of the present State of South Dakota, and parts of what is now Nebraska, Wyoming, North Dakota, and Montana. The Powder River War is decribed in some detail in D. Robinson, A History of the Dakota or Sioux Indians, 356–381 (1904), reprinted in 2 South Dakota Historical Collections (1904). Red Cloud's career as a warrior and statesman of the Sioux is recounted in 2 G. Hebard & E. Brininstool, The Bozeman Trail, 175–204 (1922).

[2] The boundaries of the reservation included approximately half the area of what is now the State of South Dakota, including all of that State west of the Missouri River save for a narrow strip in the far western portion. The reservation also included a narrow strip of land west of the Missouri and north of the border between North and South Dakota.

[3] The treaty called for the construction of schools and the provision of teachers for the education of Indian children, the provision of seeds and agricultural instruments to be used in the first four years of planting, and the provision of blacksmiths, carpenters, millers, and engineers to perform work on the reservation. See 15 Stat. 637–638, 640. In addition, the United States agreed to deliver cetain articles of clothing to each Indian residing on the reservation, "on or before the first day of August of each year, for thirty years." *Id.*, at 638. An annual stipend of $10 per person was to be appropriated for all those members of the Sioux Nation who continued to engage in hunting; those who settled on the reservation to engage in farming would receive $20. *Ibid.* Subsistence rations of meat and flour (one pound of each per day) were to be provided for a period of four years to those Indians upon the reservation who could not provide for their own needs. *Id.*, at 639.

[4] The Fort Laramie Treaty was considered by some commentators to have been a complete victory for Red Cloud and the Sioux. In 1904 it was described as "the only instance in the history of the United States where the government has gone to war and afterwards negotiated a peace conceding everything demanded by the enemy and exacting nothing in return." Robinson, *supra*, n. 1, at 387.

[5] The history of speculation concerning the presence of gold in the Black Hills, which dated from early explorations by prospectors in the 1830's, is capsulized in D. Jackson, Custer's Gold 3–7 (1966).

[6] In 1974, the Center for Western Studies completed a project compiling contemporary newspaper accounts of Custer's expedition. See H. Krause & G. Olson, Prelude to Glory (1974). Several correspondents traveled with Custer on the expedition and their dispatches were published by newspapers both in the Midwest and the East. *id.*, at 6.

[7] See Robinson, *supra* n. 1, at 408–410; A. Tallent, The Black Hills 130 (1975 reprint of 1899 ed.); J. Vaughn, The Reynolds Campaign on Powder River 3–4 (1961).

The Sioux regarded Custer's expedition in itself to be a violation of the Fort Laramie Treaty. In later negotiations for cession of the Black Hills, Custer's trail through the Hills was referred to by a chief known as Fast Bear as "that thieves' road." Jackson, *supra* n. 5, at 24. Chroniclers of the expedition, at least to an extent, have agreed. See *id.*, at 120; G. Manypenny, Our Indian Wards xxix, 296–297 (1972 reprint of 1880 ed.).

[8] General William Tecumseh Sherman, Commanding General of the Army, as quoted in the Saint Louis Globe in 1875, described the military's task in keeping prospectors out of the Black Hills as "the same old story, the story of Adam and Eve and the forbidden fruit." Jackson, *supra* n. 5, at 112. In an interview with a correspondent from the Bismarck Tribune, published September 2, 1874, Custer recognized the military's obligation to keep all trespassers off the reservation lands, but stated that he would recommend to Congress "the extinguishment of the Indian title at the earliest moment practicable for military reasons." Krause & Olson, *supra* n. at 233. Given the ambivalence of feeling among the commanding officers of the Army about the practicality and desirability of its treaty obligations, it is perhaps not surprising that one chronicler of Sioux history would describe the Government's efforts to dislodge invading settlers from the Black Hills as "feeble." F. Hans, The Great Sioux Nation 522 (1964 reprint).

[9] The Report of the Allison Commission to the Secretary of the Interior is contained in the Annual Report of the Commissioner of Indian Affairs (1875), App. 146, 158–195. The unsuccessful negotiations are described in some detail in Jackson, *supra* n. 5, at 116–118, and in Robinson, *supra* n. 1, at 416–421.

[10] These events are decsribed by Manypenny, *supra* n. 7, at 294–321, and Robinson, *supra* n. 1, at 422–438.

[11] In Dakota Twilight (1976), a history of the Standing Rock Sioux, Edward A. Milligan states:

"Nearly seven years had elapased since the signing of the Fort Laramie treaty and still the Sioux were no closer to a condition of self-support than when the treaty was signed. In the meantime the government had expended nearly thirteen million dollars for their support. The future treatment of the Sioux became a matter of serious moment, even if viewed from no higher standard than that of economics." *Id.*, at 52. One historian has described the ration provisions of the Fort Laramie Treaty as part of a broader reservation system designed by Congress to convert nomadic tribesmen into farmers. Hagan, The Reservation Policy: Too Little and Too Late, in Indian-White Relations: A Persistent Paradox 157–169 (J. Smith & R. Kvasnicka, eds., 1976). In words applicable to conditions on the Sioux reservation during the years in question, Professor Hagan stated:

"The idea had been to supplement the food the Indians obtained by hunting until they could subsist completely by farming. Clauses in the treaties

permitted hunting outside the strict boundaries of the reservations, but the inevitable clashes between off-reservation hunting parties and whites led this privilege to be first restricted and then eliminated. The Indians became dependent upon government rations more quickly than had been anticipated, while their conversion to agriculture lagged behind schedule.

"The quantity of food supplied by the government was never sufficient for a full ration, and the quality was frequently poor. But in view of the fact that most treaties carried no provision for rations at all, and for others they were limited to four years, the members of Congress tended to look upon rations as a gratuity that should be terminated as quickly as possible. The Indian Service and military personnel generally agreed that it was better to feed then to fight, but to the typical late nineteenth-century member of Congress, not yet exposed to doctrines of social welfare, there was something obscene about grown men and women drawing free rations. Appropriations for subsistence consequently fell beflow the levels requested by the secretary of the interior.

"That starvation and near-starvation conditions were present on some of the sixty-odd reservations every year for the quarter century after the Civil War is manifest." *Id.*, at 161 (footnotes omitted).

[12] The chronology of the enactment of this bill does not necessarily support the view that it was passed in reaction to Custer's defeat at the Battle of the Little Big Horn on June 25, 1876, although some historians have taken a contrary view. See Jackson, *supra* n. 5, at 119.

[13] The commission's negotiations with the chiefs and head men is described by Robinson, *supra* n. 1, at 439–442. He states: "As will be readily understood, the making of a treaty was a forced put, so far as the Indians were concerned. Defeated, disarmed, dismounted, they were at the mercy of a superior power and there was no alternative but to accept the conditions imposed upon them. This they did with as good grace as possible under all of the conditions existing." *Id.*, at 442.

Another early chronicler of the Black Hills region wrote of the treaty's provisions in the following chauvinistic terms:

"It will be seen by studying the provisions of this treaty, that by its terms the Indians from a material standpoint lost much, and gained but little. By the first article they lose all rights to the unceded territory in Wyoming from which white settlers had then before been altogether excluded; by the second they relinquish all rights to the Black Hills, and the fertile valley of the Belle Fourche in Dakota, without additional material compensation; by the third conceding the right of way over the unceded portions of their reservation; by the fourth they receive such supplies only, as were provided by the treaty of 1868, restricted as to the points for receiving them. The only real gain to the Indians seems to be embodied in the fifth article of the treaty [Government's obligation to provide subsistence rations]. The Indians, doubtless, realized that the Black Hills was destined to slip out of their grasp, regardless of their claims, and therefore thought it best to yield to the inevitable, and accept whatever was offered them.

"They were assured of a continuance of their regular daily rations, and certain annuities in clothing each year, guaranteed by the treaty of 1868, and what more could they ask or desire, than that a living be provided for themselves, their wives, their children, and all their relations, including squaw men, indirectly, thus leaving them free to live their wild, careless, unrestrained life, exempt from all the burdens and responsibilities of civilized existence? In view of the fact that there are thousands who are obliged to earn their bread and butter by the sweat of their brows, and that have hard work to keep the wolf from the door, they should be satisfied." Tallent, *supra* n. 7, at 133–134.

[14] The 1987 Act "ratified and confirmed" the agreement reached by the Manypenny Commission with the Sioux tribes. 19 Stat. 254. It altered the boundaries of the Great Sioux Reservation by adding some 900,000 acres of land to the north, while carving out virtually all that portion of the reservation between the one hundred and third and one hundred and fourth meridians, including the Black Hills, an area of well over 7 million acres. The Indian's also relinquished their rights to hunt in the unceded lands recognized by the Fort Laramie Treaty, and agreed that three wagon roads could be cut through their reservation. *Id.*, at 255.

In exchange, the Government reaffirmed its obligation to provide all annuities called for by the Fort Laramie Treaty, and "to provide all necessary aid to assist the said Indians in the work of civilization; to furnish to them schools and instruction in mechanical and agricultural arts, as provided for by the treaty of 1868." *Id.*, at 256. In addition, every individual was to receive fixed quantities of beef or bacon and flour, and other foodstuffs, in the discretion of the Commissioner of Indian Affairs, which "shall be continued until the Indians are able to support themselves." *Ibid.* The provision of rations was to be conditioned, however, on the attendance at school by Indian children, and on the labor of those who resided on lands suitable for farming. The Government also promised to assist the Sioux in finding markets for their crops and in obtaining employment in the performance of government work on the reservation. *Ibid.*

Later congressional actions having the effect of futher reducing the domain of the Great Sioux Reservation are described in *Rosebud Sioux Tribe* v. *Kneip*, 430 U.S. 584, 589 (1977).

[15] See § 9 of the Act of March 3, 1863, ch. 92, 12 Stat. 767; § 1 of the Tucker Act of March 3, 1887, ch. 359, 24 Stat. 505.

[16] The Commission determined that the fair market value of the Black Hills as of February 28, 1977, was $17.1 million. In addition, the United States was held liable for gold removed by trespassing prospectors prior to that date, with a fair market value in the ground of $450,000. The Commission determined that the Government should receive a credit for all amounts it had paid to the Indians over the years in compliance with its obligations under the 1877 Act. These amounts were to be credited against the fair market value of the lands and gold taken, and interest as it accrued. The Commission decided that further proceedings would be necessary to compute the amounts to be credited and the value of the rights of way across the reservation that the Government also had acquired through the 1877 Act.

Chairman Kuykendall dissented in part from the Commission's judgment, arguing that the Sioux' taking claim was barred by the res judicata effect of the 1942 Court of Claims decision.

[17] See *United States* v. *Tillamooks*, 341 U.S. 48, 49 (1951) (recognizing that the "traditional rule" is that interest is not to be awarded on claims against the United States absent an express statutory provision to the contrary and that the "only exception arises when the taking entitles the claimant to just compensation under the Fifth Amendment"). In *United States* v. *Klamath Indians*, 304 U.S. 119, 121 (1938), the Court stated: "The established rule is that the taking of property by the United States in the exertion of its power of eminent domain implies a promise to pay just compensation, *i.e.*, value at the time of the taking plus an amount sufficient to produce the full equivalent of that value paid contemporaneously with the taking."

The Court of Claims also noted that subsequent to the Indian Claims Commission's judgment, Congress had enacted an amendment to 25 U.S.C. § 70a, providing generally that expenditures made by the Government "for food, rations, or provisions shall not be deemed payments on the claim." Act of October 27, 1974, § 2, 88 Stat. 1499. Thus, the Government would no longer be entitled to an offset from any judgment eventually awarded the Sioux based on its appropriations for subsistence rations in the years following the passage of the 1877 Act. 207 Ct. Cl., at 240, 518 F. 2d, at 1301. See n. 16, *supra*.

[18] Judge Davis dissented with respect to the court's holding on res judicata, arguing that the Sioux had not had the opportunity to present their claim fully in 1942. 207 Ct. Cl., at 249, 518 F. 2d, at 1306.

[19] While affirming the Indian Claims Commission's determination that the acquisition of the Black Hills and the rights-of-way across the reservation constituted takings, the court reversed the Commission's determination that the mining of gold from the Black Hills by prospectors prior to 1877 also constituted a taking. The value of the gold, therefore, could not be considered as part of the principal on which interest would be paid to the Sioux. 220 Ct. Cl., at —, 601 F. 2d, at 1171–1172.

[20] The *Lone Wolf* decision itself involved an action by tribal leaders to enjoin the enforcement of a statute that had the effect of abrogating the provisions of an earlier-enacted treaty with an Indian tribe. See Part IV–B, *infra*.

[21] Judge Nichols concurred in the result, and all of the court's opinion except that portion distinguishing *Lone Wolf*. He would have held *Lone Wolf*'s principles inapplicable to this case because Congress had not created a record showing that it had considered the compensation afforded the Sioux under the 1877 Act to be adequate consideration for the Black Hills. He did not believe that *Lone Wolf* could be distinguished on the ground that it involved an action for injunctive relief rather than a claim for just compensation. 220 Ct. Cl., at —, 601 F. 2d, at 1175–1176.

Judge Bennett, joined by Judge Kunzig, dissented. The dissenters would have read *Lone Wolf* broadly to hold that it was within Congress' constitutional power to dispose of tribal property without regard to good faith or the amount of compensation given. "The law we should apply is that once Congress has, through negotiation or statute, recognized the Indian tribes' rights in the property, has disposed of it, and has given value to the Indians for it, that is the end of the matter." *Id.*, at —, 601 F. 2d, at 1182.

[22] In response to a question from the bench, government counsel stated: "I think Congress is entitled to say, 'You may have another opportunity to litigate your lawsuit.' " Tr. of Oral Arg. 20.

[23] Representative Gudger of North Carolina persistently argued the view that the amendment unconstitutionally interfered with the powers of the Judiciary. He dissented from the Committee Report in support of the amendment's enactment, stating:

"I do not feel that when the Federal Judiciary has adjudicated a matter through appellate review and no error has been found by the Supreme Court of the United States in the application by the lower court (in this instance the Court of Claims) of the doctrine of res judicata or collateral estoppel that the Congress of the United States should enact legislation which has the effect of reversing the decision of the Judiciary." H.R. Rep. No. 95-529, p. 17 (1977).

Representative Gudger stated that he could support a bill to grant a special appropriation to the Sioux Nation, acknowledging that it was for the purpose of extinguishing Congress' moral obligation arising from the Black Hills claim, "but I cannot justify in my own mind this exercise of congressional review of a judicial decision which I consider contravenes our exclusively legislative responsibility under the separation of powers doctrine." *Id.*, at 18.

The Congressman, in the House debates, elaborated upon his views on the constitutionality of the amendment. He stated that the amendment would create "a real and serious departure from the separation-of-powers doctrine, which I think should continue to govern us and has governed us in the past." 124 Cong. Rec. H897 (Feb. 9, 1978). He continued:

"I submit that this bill has the precise and exact effect of reversing a decision of the Court of Claims which has heretofore been sustained by the Supreme Court of the United States. Thus, it places the Congress of the United States in the position of reviewing and reversing a judicial decision in direct violation of the separation-of-powers doctrine so basic to our tripartite form of government.

"I call to your attention that, in this instance, we are not asked to change the law, applicable uniformly to all cases of like nature throughout the land, but that this bill proposes to change the application of the law with respect to one case only. In doing this, we are not legislating, we are adjudicating. Moreover, we are performing the adjudicatory function with respect to a case on which the Supreme Court of the United States has acted. Thus, in this instance, we propose to reverse the decision of the Supreme Court of our land." *Ibid.*

Representative Gudger's views on the effect of the amendment vis-a-vis the independent powers of the Judiciary were not shared by his colleagues. Representative Roncalio stated:

"I want to emphasize that the bill does not make a congressional determination of whether or not the United States violated the fifth amendment. it does not say that the Sioux are entitled to the interest on the $17,500,000 award. It says that the court will review the facts and law in the case and determine that question." *Id.*, at H898.

Representative Roncalio also informed the House that Congress in the past had enacted legislation waiving the defense of res judicata in private claims cases, and had done so twice with respect to Indian claims. *Ibid.* He mentioned the Act of March 3, 1881, ch. 139, 21 Stat. 504 (which actually waived the effect of a prior award made to the Choctaw Nation by the Senate), and the Act of February 7, 1925, ch. 148, 43 Stat. 812 (authorizing the Court of

Claims and the Supreme Court to consider claims of the Delaware Tribe "de novo, upon a legal and equitable basis, and without regard to any decision, finding, or settlement heretofore had in respect of any such claims"). Both those enactments were also brought to the attention of a Senate subcommittee in hearings on this amendment conducted during the previous legislative session. See Hearings on S. 2780 before the Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs, 94th Cong., 2d Sess., 16-17 (1976) (letter from Morris Thompson, Commissioner of Indian Affairs). The enactments referred to by Representative Roncalio were construed, respectively, in *Choctaw Nation* v. *United States*, 119 U.S. 1, 29-32 (1886), and *Delaware Tribe* v. *United States*, 74 Ct. Cl. 368 (1932).

Representative Pressler also responded to Representative Gudger's interpretation of the proposed amendment, arguing that "[w]e are, indeed, here asking for a review and providing the groundwork for a review. I do not believe that we would be reviewing a decision; indeed, the same decision might be reached." 124 Cong. Rec. H899 (Feb. 9, 1978). Earlier, Representative Meeds clearly had articulated the prevaling congressional view on the effect of the proposed amendment. After summarizing the history of the Black Hills litigation, he stated:

"I go through that rather complicated history for the purpose of pointing out to the Members that the purpose of this legislation is not to decide the matter on the merits. That is still for the court to do. The purpose of this legislation is only to waive the defense of res judicata and to waive this technical defense, as we have done in a number of other instances in this body, so this most important claim can get before the courts again and can be decided without a technical defense and on the merits." *Id.*, at H668 (Feb. 6, 1978). See also S. Rep. No. 95-112, p. 6 (1977) ("The enactment of [the amendment] is needed to waive certain legal prohibitions so that the Sioux tribal claim may be considered on its merits before an appropriate judicial forum."); H.R. Rep. No. 95-529, p. 6 (1977) ("The enactment of [the amendment] is needed to waive certain technical legal defenses so that the Sioux tribal claim may be considered on its merits before an appropriate judicial forum.").

[24] The joint resolution at issue in *Nock* also limited the amount of the judgment that the Court of Claims could award Nock to a sum that had been established in a report of the Solicitor of the Treasury to the Senate. See 14 Stat. 608. The court rejected the Government's argument that the Constitution had not vested in Congress "such discretion to fetter or circumscribe the course of justice." See 2 Ct. Cl., at 455. The court reasoned that this limitation on the amount of the claimant's recovery was a valid exercise of Congress' power to condition waivers of the sovereign immunity of the United States. "[I]t would be enough to say that the defendants cannot be sued except with their own consent; and Congress have the same power to give this consent to a second action as they had to give it to a first." *Id.*, at 458.

Just because we have addressed our attention to the ancient Court of Claims' decision in *Nock*, it should not be inferred that legislative action of the type at issue here is a remnant of the far-distant past. Special jurisdictional acts waiving affirmative defenses of the United States to legal claims, and directing the Court of Claims to resolve the merits of those claims, are legion. See *Mizokami* v. *United States*, 188 Ct. Cl. 736, 740-741, and nn. 1 and 2, 414 F.2d 1375, 1377, and nn. 1 and 2 (1969) (collecting cases). A list of cases, in addition to those discussed in the text, that have recognized or acted upon Congress' power to waive the defense of res judicata to claims against the United States follows (the list is not intended to be exhaustive): *United States* v. *Grant*, 110 U.S. 225 (1884); *Lamborn & Co.* v. *United States*, 106 Ct. Cl. 703, 724-728, 65 F. Supp. 569, 576-578 (1946); *Menominee Tribe* v. *United States*, 101 Ct. Cl. 10, 19 (1944); *Richardson* v. *United States*, 81 Ct. Cl. 948, 956-957 (1935); *Delaware Tribe* v. *United States*, 74 Ct. Cl. 368 (1932); *Garrett* v. *United States*, 70 Ct. Cl. 304, 310-312 (1930).

In *Richardson*, the Court of Claims observed: "The power of Congress by special act to waive any defense, either legal or equitable, which the Government may have to a suit in this court, as it did in the *Nock* and *Cherokee Nation* cases, has never been questioned. The reports of the court are replete with cases where Congress, impressed with the equitable justice of claims which have been rejected by the court on legal grounds, had, by special act, waived defenses of the Government which prevented recovery and conferred jurisdiction on the court to again adjudicate the case. In such instances the court proceeded in conformity with the provisions of the act of reference and in cases, too numerous for citation here, awarded judgments to claimants whose claims had previously been rejected." 81 Ct. Cl., at 957.

Two similar decisions by the United States Court of Appeals for the Eighth Circuit are of interest. Both involved the constitutionality of a joint resolution that set aside dismissals of actions brought under the World War Veterans' Act, 1924, 38 U.S.C. § 445 (1952 ed.), and authorized the reinstatement of those war risk insurance disability claims. The Court of Appeals found no constitutional prohibition against a congressional waiver of an adjudication in the Government's favor, or against conferring upon claimants against the United States the right to have their cases heard again on the merits. See *James* v. *United States*, 87 F. 2d 897, 898 (1937); *United States* v. *Hossmann*, 84 F. 2d 808, 810 (1936). The court relied, in part, on the holding in *Cherokee Nation*, and the sovereign immunity rationale applied in *Nock*.

[25] Before completing our analysis of this Court's precedents in this area, we turn to the question whether the holdings in *Cherokee Nation*, *Nock*, and *Pope*, might have been based on views, once held by this Court, that claims against the United States were not within Art. III's extension of "judicial power" "to Controversies to which the United States shall be a Party." U.S. Const., Art. III, § 2, cl. 1. See *Williams* v. *United States*, 289 U.S. 553 (1933).

Pope itself would seem to dispel any such conclusion. See 323 U.S., at 12-14. Moreover, Mr. Justice Harlan's plurality opinion announcing the judgment of the Court in *Glidden Co.* v. *Zdanok*, 370 U.S. 530 (1962), lays that question to rest. In *Glidden*, the plurality observed that "it is probably true that Congress devotes a more lively attention to the work performed by the Court of Claims, and that it has been more prone to modify the jurisdiction assigned to that court." *Id.*, at 566. But they concluded that that circumstance did not render the decisions of the Court of Claims legislative in character, nor, impliedly, did those instances of "lively attention" constitute impermissible interferences with the Court of Claims' judicial functions.

"Throughout its history the Court of Claims has frequently been given jurisdiction by special act to award recovery for breach of what would have been, on the part of an individual, at most a moral obligation. . . . Congress has waived the benefit of *res judicata*, *Cherokee Nation* v. *United States*, 270 U.S. 476, 486, and of defenses based on the passage of time. . . .

"In doing so, as this Court has uniformly held, Congress has enlisted the aid of judicial power whose exercise is amenable to appellate review here. . . . Indeed the Court has held that Congress may for reasons adequate to itself confer bounties upon persons and, by consenting to suit, convert their moral claim into a legal one enforceable by litigation in an undoubted constitutional court. *United States* v. *Realty Co.*, 163 U.S. 427.

"The issue was settled beyond peradventure in *Pope* v. *United States*, 323 U.S. 1. There the Court held that for Congress to direct the Court of Claims to entertain a claim theretofore barred for any legal reason from recovery—as, for instance, by the statute of limitations, or because the contract had been drafted to exclude such claims—was to invoke the use of judicial power, notwithstanding that the task might involve no more than computation of the sum due. . . . After this decision it cannot be doubted that when Congress transmutes a moral obligation into a legal one by specially consenting to suit, it authorizes the tribunal that hears the case to perform a judicial function." 370 U.S., at 566-567 (citations omitted).

The Court in *Glidden* held that, at least since 1953, the Court of Claims has been an Art. III court. See *id.*, at 585-589 (concurring opinion). In his opinion concurring in the result, Mr. Justice Clark did not take issue with the plurality's view that suits against the United States are "Controversies to which the United States shall be a Party," within the meaning of Art. III. Compare 370 U.S., at 562-565 (plurality opinion), with *id.*, at 586-587 (concurring opinion).

[26] It should be recognized at the outset that the inquiry presented by this case is different from that confronted in the more typical of our recent "taking" decisions. *E.g.*, *Kaiser Aetna* v. *United States*, — *U.S.* — (1979); *Penn Central Transp. Co.* v. *New York*, 438 U.S. 104 (1978). In those cases the Court has sought to "determin[e] when 'justice and fairness' require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons." *Penn Central*, 438 U.S., at 124. Here, there is not doubt that the Black Hills were "taken" from the Sioux in a way that wholly deprived them of their property rights to that land. The question presented is whether Congress was acting under circumstances in which that "taking" implied an obligation to pay just compensation, or whether it was acting pursuant to its unique powers to manage and control tribal property as the guardian of Indian welfare, in which event the Just Compensation Clause would not apply.

[27] This aspect of the *Lone Wolf* holding, often reaffirmed, see, *e. g.*, *Rosebud Sioux Tribe* v. *Kneip*, 430 U.S. 584, 594 (1977), is not at issue in this case. The Sioux do not claim that Congress was without power to take the Black Hills from them in contravention of the Fort Laramie Treaty of 1868. They claim only that Congress could not do so inconsistently with the command of the Fifth Amendment: "nor shall private property be taken for public use, without just compensation."

[28] For this reason, the Government does not here press *Lone Wolf* to its logical limits, arguing instead that its "strict rule" that the management and disposal of tribal lands is a political question, "has been relaxed in recent years to allow review under the Fifth Amendment rational-basis test." Brief for United States 55, n. 46. The Government relies on *Delaware Tribal Business Comm.* v. *Weeks*, 430 U.S. 73, 84-85 (1977), and *Morton* v. *Mancari*, 417 U.S. 535, 555 (1974), as establishing a rational-basis test for determining whether Congress, in a given instance, confiscated Indian property or engaged merely in its power to manage and dispose of tribal lands in the Indians' best interests. But those cases, which establish a standard of review for judging the constitutionality of Indian legislation under the Due Process Clause of the Fifth Amendment, do not provide an apt analogy for resolution of the issue presented here—whether Congress' disposition of tribal property was an exercise of its power of eminent domain or its power of guardianship. As noted earlier, *supra*, at n. 27, the Sioux concede the constitutionality of Congress' unilateral abrogation of the Fort Laramie Treaty. They seek only a holding that the Black Hills "were appropriated by the United States in circumstances which involved an implied undertaking by it to make just compensation to the tribe." *United States* v. *Creek Nation*, 295 U.S. 103, 111 (1935). The rational-basis test proffered by the Government would be ill-suited for use in determining whether such circumstances were presented by the events culminating in the passage of the 1877 Act.

[29] Of course, it has long been held that the taking by the United States of "unrecognized" or "aboriginal" Indian title is not compensable under the Fifth Amendment. *Tee-Hit-Ton Indians* v. *United States*, 348 U.S. 272, 285 (1955). The principles we set forth today are applicable only to instances in which "Congress by treaty or other agreement has declared that thereafter Indians were to hold the lands permanently." *Id.*, at 277. In such instances, "compensation must be paid for subsequent taking." *Id.*, at 277-278.

[30] An examination of this standard reveals that, contrary to the Government's assertion, the Court of Claims in this case did not base its finding of a taking solely on Congress' failure in 1877 to state affirmatively that the "assets" given the Sioux in exchange for the Black Hills were equivalent in value to the land surrendered. Rather, the court left open the possibility that, in an appropriate case, a mere assertion of congressional good faith in setting the terms of a forced surrender of treaty-protected lands could be overcome by objective indicia to the contrary. And, in like fashion, there may be instances in which the consideration provided the Indians for surrendered treaty lands was so patently adequate and fair that Congress' failure to state the obvious would not result in the finding of a compensable taking.

To the extent that the Court of Claims' standard, in this respect, departed from the original formulation of the *Fort Berthold* test, see 220 Ct. Cl., at —, 601 F. 2d, at 1182-1183 (dissenting opinion), such a departure was warranted. The Court of Claims' present formulation of the test, which takes into account the adequacy of the consideration given,

does little more than reaffirm the ancient principle that the determination of the measure of just compensation for a taking of private property "is a judicial and not a legislative question." *Monongahela Navigation Co.* v. *United States*, 148 U.S. 312, 327 (1893).

[31] The 1877 Act, see *supra*, at 9-10, and n. 14, purported to provide the Sioux with "all necessary aid to assist the said Indians in the work of civilization," and "to furnish to them schools and instruction in mechanical and agricultural arts, as provided for by the treaty of 1868." 19 Stat. 256. The Court of Claims correctly concluded that the first item "was so vague that it cannot be considered as constituting a meaningful or significant element of payment by the United States." 220 Ct. Cl., at —, 601 F. 2d, at 1166. As for the second, it "gives the Sioux nothing to which they were not already entitled [under the 1868 treaty]." *Id.*, at —, 601 F. 2d, at 1166.

The Government has placed some reliance in this Court on the fact that the 1877 Act extended the northern boundaries of the reservation by adding some 900,000 acres of grazing lands. See n. 14, *supra*. In the Court of Claims, however, the Government did "not contend . . . that the transfer of the additional land was a significant element of the consideration the United States gave for the Black Hills." 220 Ct. Cl., at —, n. 3, 601 F. 2d, at 1163, n. 3. And Congress obviously did not intend the extension of the reservation's northern border to constitute consideration for the property rights surrendered by the Sioux. The extension was effected in that article of the Act redefining the reservation's borders; it was not mentioned in the article which stated the consideration given for the Sioux' "cession of territory and rights." See 19 Stat. 255-256. Moreover, our characterizing the 900,000 acres as assets given the Sioux in consideration for the property rights they ceded would not lead us to conclude that the terms of the exchange were "so patently adequate and fair" that a compensable taking should not have been found. See. n. 30, *supra*.

Finally, we note that the Government does not claim that the Indian Claims Commission and the Court of Claims incorrectly valued the property rights taken by the 1877 Act by failing to consider the extension of the northern border. Rather, the Government argues only that the 900,000 acres should be considered, along with the obligation to provide rations, in determining whether the Act, viewed in its entirety, constituted a good-faith effort on the part of Congress to promote the Sioux' welfare. See Brief for United States 73, and n. 58.

[32] The dissenting opinion suggests, *post*, at 11-14, that the factual findings of the Indian Claims Commission, the Court of Claims, and now this Court, are based upon a "revisionist" view of history. The dissent fails to identify which materials quoted herein or relied upon by the Commission and the Court of Claims fit that description. The dissent's allusion to historians "writing for the purpose of having their conclusions or observations inserted in the reports of congressional committees," *id.*, at 12, is also puzzling because, with respect to this case, we are unaware that any such historian exists.

The primary sources for the story told in this opinion are the factual findings of the Indian Claims Commission and the Court of Claims. A reviewing court generally will not discard such findings because they raise the specter of creeping revisionism, as the dissent would have it, but will do so only when they are clearly erroneous and unsupported by the record. No one, including the Government, has ever suggested that the factual findings of the Indian Claims Commission and the Court of Claims fail to meet that standard of review.

A further word seems to be in order. The dissenting opinion does not identify a single author, nonrevisionist, neo-revisionist, or otherwise, who takes the view of the history of the cession of the Black Hills that the dissent prefers to adopt, largely, one assumes, as an article of faith. Rather, the dissent relies on the historical findings contained in the decision rendered by the Court of Claims in 1942. That decision, and those findings, are not before this Court today. Moreover, the holding of the Court of Claims in 1942, to the extent the decision can be read as reaching the merits of the Sioux' taking claim, was based largely on the conclusive presumption of good faith toward the Indians which that court afforded to Congress' actions of 1877. See 97 Ct. Cl., at 669-673, 685. The divergence of results between that decision and the judgment of the Court of Claims affirmed today, which the dissent would attribute to historical revisionism, see *post*, at 11-12, is more logically explained by the fact that the former decision was based on an erroneous *legal* interpretation of this Court's opinion in *Lone Wolf*. See Part IV-B, *supra*.

[33] We find further support for this conclusion in Congress' 1974 amendment to § 2 of the Indian Claims Commission Act, 25 U.S.C. § 70a. See n. 17, *supra*. That amendment provided that in determining offsets, "expenditures for food, rations, or provisions shall not be deemed payments on the claim." The report of the Senate Committee on Interior and Insular Affairs, which accompanied this amendment, made two points that are pertinent here. First, it noted that "[a]lthough couched in general terms, this amendment is directed to one basic objective—expediting the Indian Claims Commission's disposition of the famous Black Hills case." S. Rep. No. 98-862, p. 2 (1974) (incorporating memorandum prepared by the Sioux Tribes). Second, the Committee observed:

"The facts are, as the Commission found, that the United States disarmed the Sioux and denied them their traditional hunting areas in an effort to force the sale of the Black Hills. Having violated the 1868 Treaty and having reduced the Indians to starvation, the United States should not now be in the position of saying that the rations it furnished constituted payment for the land which it took. In short, the Government committed two wrongs: first, it deprived the Sioux of their livelihood; secondly, it deprived the Sioux of their land. What the United States gave back in rations should not be stretched to cover both wrongs." *id.*, at 4-5. See also Billington, Introduction, in National Park Service, Soldier and Brave xiv (1963) ("The Indians suffered the humiliating defeats that forced them to walk the white man's road toward civilization. Few conquered people in the history of mankind have paid so dearly for their defense of a way of life that the march of progress had outmoded.").

[No. 79-639]

UNITED STATES, PETITIONER, *v.* SIOUX NATION OF INDIANS ET AL. [June 30, 1980]

On Writ of *Certiorari* to the United States Court of Claims:

MR. JUSTICE WHITE, concurring in part and concurring in the judgment.

I agree that there is no constitutional infirmity in the direction by Congress that the Court of Claims consider this case without regard to the defense of res judicata. I also agree that the Court of Claims correctly decided this case. Accordingly, I concur in Part III and V of the Court's opinion and in the judgment.

[No. 79-639]

UNITED STATES, PETITIONER, *v.* SIOUX NATION OF INDIANS ET AL. [June 30, 1980]

On Writ of *Certiorari* to the United States Court of Claims:

MR. JUSTICE REHNQUIST, dissenting.

In 1942, the Sioux Tribe filed a petition for certiorari requesting this Court to review the Court of Claims' ruling that Congress had not unconstitutionally taken the Black Hills in 1877, but had merely exchanged the Black Hills for rations and grazing lands—an exchange Congress believed to be in the best interests of the Sioux and the Nation. This Court declined to review that judgment. *Sioux Tribe* v. *United States*, 97 Ct. Cl. 613 (1942), cert. denied, 318 U.S. 789 (1943). Yet today the Court permits Congress to reopen that judgment which this Court rendered final upon denying certiorari in 1943, and proceeds to reject the 1942 Court of Claims' factual interpretation of the events in 1877. I am convinced that Congress may not constitutionally require the Count of Claims to reopen this proceeding, that there is no judicial principle justifying the decision to afford the respondents an additional opportunity to litigate the same claim, and that the Court of Claims' first interpretation of the events in 1877 was by all accounts the more realistic one. I therefore dissent.

I

In 1920, Congress enacted a special jurisdictional act, 41 Stat. 738, authorizing the Sioux Tribe to submit any legal or equitable claim against the United States to the Court of Claims. The Sioux filed suit claiming that the 1877 Act removing the Black Hills from the Sioux territory was an unconstitutional taking. In *Sioux Tribe of Indians* v. *United States*, 97 Ct. Cl. 613 (1942), the Court of Claims considered the question fully and found that the United States had not taken the Black Hills from the Sioux within the meaning of the Fifth Amendment. It is important to highlight what that Court found. It did not decide, as the Court today suggests, that it merely lacked jurisdiction over the claim presented by the Sioux. See *ante*, at 12. It found that under the circumstances presented in 1877, Congress attempted to improve the situation of the Sioux and the Nation by exchanging the Black Hills for 900,000 acres of grazing lands and rations for as long as they should be needed. The Court found that although the government attempted to keep white settlers and gold prospectors out of the Black Hills territory, these efforts were unsuccessful. The Court concluded that this situation was such that the government "believed serious conflicts would develop between settlers and the government and between the settlers and the Indians." *Id.*, at 659. It was also apparent to Congress that the Indians were still "incapable of supporting themselves." *Id.*, at 659.

The Court found that the government therefore embarked upon a course designed to obtain the Indians' agreement to sell the Black Hills and "endeavored in every way possible during 1875 and 1876 to arrive at a mutual agreement with the Indians for the sale. . . ." *Id.*, at 681. Negotiation having failed, Congress then turned to design terms for the acquisition of the Black Hills which it found to be in the best interest of both the United States and the Sioux. The Court found that pursuant to the 1877 agreement, Congress provided the Indians with more than $43 million in rations as well as providing them with 900,000 acres of needed grazing lands. Thus the Court concluded that "the record shows that the action taken was pursuant to a policy which the Congress deemed to be for the interest of the Indians and just to both parties." *Id.*, at 668. The Court emphasized:

"[T]he Congress, in an Act enacted because of the situation encountered and pursuant to a policy which in its wisdom it deemed to be in the interest and for the benefit and welfare of the . . . Sioux Tribe, as well as for the necessities of the government, required the Indians to sell or surrender to the government a portion of their land and hunting rights on other land in return for that which the Congress, in its judgment, deemed to be an adequate consideration for what the Indians were required to give up, which consideration the government was not otherwise under any legal obligation to pay." *Id.*, at 667.

This Court denied certiorari. 318 U.S. 789 (1943).

During the course of further litigation commencing in 1950, the Sioux again resubmitted its claim that the Black Hills were taken unconstitutionally. The Government pleaded res judicata as a defense. The Court of Claims held that res judicata barred relitigation of the question since the original Court of Claims decision had clearly held that the appropriation of the Black Hills

was not a taking because Congress in "exercising its plenary power over Indian tribes, took their land without their consent and substituted for it something conceived by Congress to be an equivalent." *United States* v. *Sioux Nation*, 207 Ct. Cl. 234, 243 (1975). The Court found no basis for relieving the Sioux from the bar of res judicata finding that the disability "is not lifted if a later court disagrees with a prior one." *Id.*, at 244. The Court thus considered the equities entailed by the application of res judicata in this case and held that relitigation was unwarranted. Again, this Court denied certiorari. 423 U.S. 1016 (1976).

Congress then passed another statute authorizing the Sioux to relitigate its taking claim in the Court of Claims. The statute provided that the Court of Claims *"shall* review on the merits" the Sioux claim that there was a taking and that the Court *"shall determine that issue de novo."* (Emphasis added.) Neither party submitted additional evidence and the Court of Claims decided the case on the basis of the record generated in the 1942 case and before the Commission. On the basis of that same record, the Court of Claims has now determined that the facts establish that Congress did not act in the best interest of the Sioux, as the 1942 Court found, but arbitrarily appropriated the Black Hills without affording just compensation. This Court now embraces this second, latter day interpretation of the facts in 1877.

II

Although the Court refrains from so boldly characterizing its action, it is obvious from these facts that Congress has reviewed the decisions of the Court of Claims, set aside the judgment that no taking of the Black Hills occurred, set aside the judgment that there is no cognizable reason for relitigating this claim, and ordered a new trial. I am convinced that this is nothing other than an exercise of judicial power reserved to Art. III courts that may not be performed by the Legislative Branch under its Art. I authority.

Article III vests "the judicial Power of the United States" in federal courts. Congress is vested by Art. I with *legislative* powers, and may not itself exercise an appellate-type review of judicial judgments in order to alter their terms, or to order new trials of cases already decided. The judges in *Hayburn's* case, 2 Dow. 409 (1792) stated that, "no decision of any court of the United States can, under any circumstances, in our opinion, agreeable to the Constitution, be liable to a revision or even suspension, by the Legislature itself, in whom no judicial power of any kind appears to be vested." We have interpreted the decision in *United States* v. *Klein*, 13 Wall. 128 (1872), as having "rested upon the ground that . . . Congress was without constitutional authority to control the exercise of . . . judicial power . . . by requiring this Court to set aside the judgment of the Court of Claims" and as holding that Congress may not "require a new trial of the issues . . . which the court had resolved against [a party]." *Pope* v. *United States*, 323 U.S. 1 (1944).

This principle was again applied in *United States* v. *O'Grady*, 22 Wall. 641 (1874), where the Court refused to legitimize a congressional attempt to revise a final judgment rendered by the Court of Claims finding that such judgments "are beyond all doubt the final determination of the matter in controversy; and it is equally certain that the judgments of the Court of Claims where no appeal is taken to this Court, are, under existing laws, *absolutely conclusive of the rights of parties unless a new trial is granted by that court. . . .*" (Emphasis added.) The Court further found that there is only one Supreme Court and, "[i]t is quite clear that Congress cannot subject the judgments of the Supreme Court to the reexamination and revision of any other tribunal or any other department of the government." *Id.*, at 647-648. See also *Chicago & Southern Airlines* v. *Waterman Corp.*, 333 U.S. 95 (1948). Congress has exceeded the legislative boundaries drawn by the cases and the Constitution and exercised judicial power in the case already decided by effectively ordering a new trial.

The determination of whether this action is an exercise of legislative or judicial power is of course one of characterization. The fact that the judicial process is affected by an act of Congress is not dispositive since many actions which this court has clearly held to be legitimate exercises of legislative authority do have an effect on the judiciary and it processes. Congress may legitimately exercise legislative power in the regulation of judicial jurisdiction; and it may, like other litigants, change the import of a final judgment by establishing new legal rights after the date of judgment, and have an effect on the grounds available for a court's decision by waiving available defenses. But as the Court apparently concedes, Congress may not, in the name of those legitimate actions, review and set aside a final judgment of an Art. III court, and order the courts to rehear an issue previously decided in a particular case.

The Court relies heavily on the fact that Congress was acting pursuant to its power to pay the Nation's debts. No doubt, Congress has broad power to do just that, but it may do so only through the exercise of legislative, not judicial powers. thus the question must be, not whether Congress was attempting to pay its debts through this act, but whether it attempted to do so my means of judicial power. The Court suggests that the congressional action in issue is justified as either a permissible regulation of jurisdiction, the creation of a new obligation, or the mere waiver of a litigant's right. These alternative nonjudicial characterizations of the congressional action, however, are simply unpersuasive.

A

The Court first attempts to categorize this action as a permissible regulation of jurisdiction stating that all Congress has done is to "provid[e] a forum so that a new judicial review of the Black Hills claim could take place." But that is the essence of an appellate or trial court decision ordering a new trial. While Congress may *regulate* judicial functions it may not itself *exercise* them. Admittedly, it is not always readily apparent whether a particular action constitutes the assignment or the exercise of a judicial function since the assignment of some functions is inherently judicial—such as assigning the trial court the task of rehearing a case because of error. The guidelines identified in our opinions, however, indicate that while Congress enjoys broad authority to regulate judicial proceedings in the context of a *class* of cases, *Johannessen* v. *United States*, 225 U.S. 227 (1912), when Congress regulates functions of the judiciary in a *pending* case it walks the line between judicial and legislative authority, and exceeds that line if it sets aside a judgment or orders retrial of a previously adjudicated issue. *United States* v. *Klein*, *supra*, 13 Wall., at 145; *United States* v. *Pope*, *supra*.

By ordering a rehearing in a pending case, Congress does not merely assign a judicial function, it necessarily reviews and sets aside an otherwise final adjudication; actions which this Court concedes Congress cannot permissably take under the decisions of this Court. *Ante*, at 19. The Court concludes that no "review" of the Court of Claims decisions (and our denials of certiorari) has occurred, and that the finality of the judgments has not been disturbed principally because Congress has not dictated a rule of decision what must govern the ultimate outcome of the adjudication. The fact that Congress did not dictate to the Court of Claims that a particular result be reached does not in any way negate the fact it has sought to exercise judicial power. This Court and other appellate courts often reverse a trial for error without indicating what the result should be when the claim is heard again.

It is also apparent that Congress must have "reviewed" the merits of the litigation and concluded that for some reason, the Sioux should have a second opportunity to air their claims. The order of a new trial inevitably reflects some measure of dissatisfaction with at least the manner in which the original claim was heard. It certainly seems doubtful that Congress would grant a litigant a new trial if convinced that the litigant had been fairly heard in the first instance. Unless Congress is assuming that there were deficiencies in the prior judicial proceeding, why would it see fit to appropriate public money to have the claim heard once again? It would seem that Congress did not find the opinions of the Court of Claims' fully persuasive. But it is not the province of Congress to judge the persuasiveness of the opinions of federal courts—that is the judiciary's province alone. It is equally apparent that Congress has set aside the judgments of the Court of Claims. Previously those judgments were dispositive of the issues litigated in them; Congress now says that they are not. The action of Congress cannot be justified as the regulation of the jurisdiction of the federal courts because it seeks to provide a forum for the purposes of reviewing a previously final judgment in a pending case.

B

The action also cannot be characterized and upheld as merely an exercise of a litigant's power to change the effect of a judgment by agreeing to obligations beyond those required by a particular judgment. This Court has clearly never found that the judicial power is encroached upon because Congress seeks to change the law after a question has been adjudicated. See, *e.g.*, *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 18 How. 421 (1855); *Hodges* v. *Snyder*, 261 U.S. 600 (1923). This is a recognition of the right of every litigant to pay his adversary more than the court says is required if he so chooses. Congress, acting under its spending powers is, like an individual, entitled to enlarge its obligations after the Court has adjudicated a question. The decision in *Pope*, *supra*, clearly rests upon this distinction.

But here Congress has made no change in the applicable law. It has not provided, as our opinions make clear it could have, that the Sioux should recover for all interest on the value of the Black Hills. Counsel for respondents in fact stated at oral argument that he could not persuade Congress "to go that far." Congress has not changed the rule of law, it simply directed the judiciary

to try again. Congress may not attempt to shift its legislative responsibilities and satisfy its constitutents by discarding final judgments and ordering new trials.

C

The Court also suggests that the congressional action is but a "mere waiver" of a defense within a litigant's perogative. *Ante*, at 35. Congress certainly is no different from other litigants in this regard, and if the congressional action in this case could convincingly be construed as having an effect no greater than an ordinary litigant's waiver, I certainly would not object that Congress was exercising judicial power. But it is apparent that the congressional action in issue accomplished far more than a litigant's waiver. Congress clearly required the Court of Claims to hear the case in full, and only if a waiver of res judicata by a litigant would always impose an obligation on a federal court to rehear such a claim, could it be said that Congress has exercised the power of a litigant rather than the power of a legislature.

While res judicata is a defense which can be waived, see Fed. Rule Civ. Proc. 8(c), if a court is on notice that it has previously decided the issue presented, the court may dismiss the action *sua sponte*, even though the defense has not been raised. See *Hetcher Transportation Corp.* v. *Ira S. Bushey & Sons*, 186 F. 236 (CA2 1951); *Evarts* v. *Western Metal Finishing Co.*, 253 F. 2d 637, 639, n. 1 (CA9), cert. denied, 359 U.S. 813 (1958); *Scholla* v. *Scholla*, — U.S. App. D.C. —, 201 F.2d 211 (1953); *Hicks* v. *Holland*, 235 F.2d 183 (CA6), cert. denied, 352 U.S. 855 (1956). This result is fully consistent with the policies underlying res judicata: it is not based solely on the defendant's interest in avoiding the burdens of twice defending a suit, but is also based on the avoidance of unnecessary judicial waste. *Commissioner* v. *Sunnen*, 333 U.S. 586, 597 (1948); *Blonder-Tongue Labs, Inc.* v. *University of Illinois Foundation*, 402 U.S. 313 (1971), 328 (1971); *Parklane Hosiery* v. *Shore*, — U.S. — (1979). The Court of Claims itself has indicated that it would not engage in reconsideration of an issue previously decided by the Court of Claims without substantial justification:

"It is well to remember that res judicata and its offspring, collateral estoppel, are not statutory defenses; they are defenses adopted by the courts in furtherance of prompt and efficient administration of the business that comes before them. They are grounded on the theory that one litigant cannot unduly consume the time of the Court at the expense of other litigants, and that, once the Court has finally decided an issue, a litigant cannot demand that it be decided again." *Warthen* v. *United States*, 157 Ct. Cl. 798 (1962).

It matters not that the defendant has consented to the relitigation of the claim since the judiciary retains an independent interest in preventing the misallocation of judicial resources and second guessing prior panels of Art. III judges when the issue has been fully and fairly litigated in a prior proceeding. Since the Court of Claims found in this case that there was no adequate reason for denying res judicata effect after the issue was raised and the respondents were given an opportunity to demonstrate why res judicata should not apply, it is clear that the issue has been heard again only because Congress used its legislative authority to mandate a rehearing. The Court of Claims apparently acknowledged that this in fact was the effect of the legislation, for it did not state that readjudication was the product of a waiver, but rather that through its decision the Court "carried out the *obligation imposed upon us* in the 1978 jurisdictional statute." (Emphasis added.)

Nor do I find this Court's decision in *Cherokee Nations* dispositive. Again, in *Cherokee Nations*, the Court was asked to consider and decide a question not previously adjudicated by that Court. The Court stated that the theory of interest presented in the second adjudication was not "presented either to the Court of Claims or to this Court. It is a new argument not before considered." 270 U.S., at 486. Thus even *Cherokee Nation* did not involve congressional mandated judicial re-examination of a question previously decided by an Art. III Court.

Here, in contrast, the issue decide is identical to that decided in 1942. It is quite clear from a comparison of the 1942 decision of the Court of Claims and the opinion of the Court today that the only thing that has changed is an interpretation of the events which occurred in 1877. The Court today concludes that the facts in this case "would not lead one to conclude that the Act effected 'a mere change in the form of investment of Indian tribal property.'" *Ante*, at 41. But that is precisely what the Court of Claims found in 1942. See *supra*, at 2-3. There has not even been a change in the law, for the Court today relies on decisions decided long before the Court of Claims decision in 1942. It is the view of history, and not the law which has evolved. See *infra*. The decision is thus clearly nothing more than a second interpretation of the precise factual question decided in 1942. As the dissenting judges in the Court of Claims aptly stated, "The facts have not changed. We have been offered no new evidence."

It is therefore apparent that Congress has accomplished more than a private litigant's attempted waiver, more than legislative control over the general jurisdiction of the federal courts, and more than the establishment of a new rule of law for a previously decided case. What Congress has done is uniquely judicial. It has reviewed a prior decision of an Art. III Court, eviscerated the finality of that judgment, and ordered a new trial in a pending case.

III

Even if I could countenance the Court's decision to reach the merits of this case, I also think it has erred in rejecting the 1942 Court's interpretation of the facts. That Court rendered a very persuasive account of the congressional enactment. See *supra*, at 2-3. As the dissenting judges in the Court of Claims opinion under review pointedly stated, "The majority's view that the rations were not consideration for the Black Hills is untenable. What else was the money for?"

I think the Court today rejects that conclusion largely on the basis of a view of the settlement of the American West which is not universally shared. There was undoubtedly greed, cupidity, and other less than admirable tactics employed by the government during the Black Hills episode in the settlement of the West, but the Indians did not lack their share of villainy either." It seems to me quite unfair to judge by the light of "revisionist" historians or the mores of another era actions that were taken under pressure of time more than a century ago.

Different historians, not writing for the purpose of having their conclusions or observations inserted in the reports of congressional committees, have taken different positions than those expressed in some of the materials referred to in the Court's opinion. This is not unnatural, since history, no more than law, is an exact (or for that matter an inexact) science.

But the inferences which the Court itself draws from the letter from General Sheridan to General Sherman reporting on a meeting between the former with President Grant, the Secretary of the Interior, and the Secretary of War as well as other passages in the court's opinion, leave a stereotyped and one-sided impression both of the settlement regarding the Black Hills portion of the Great Sioux Reservation and of the gradual expansion of the national government from the Proclamation Line of King George III in 1763 to the Pacific Ocean.

Ray Billington, a senior Research Associate at the Huntington Library in San Marino, Cal. since 1963, and a respected student of the settlement of the American West emphasized in his introduction to the book "Soldier and Brave," (National Park Service, United States Department of the Interior, Harper & Row, Publishers, New York, 1963) that the confrontations in the West were the product of a long history, not a conniving presidential administration:

"Three centuries of bitter Indian warfare reached a tragic climax on the plains and mountains of America's Far West. Since the early 17th century, when Chief Opechancanough rallied his Powhaten tribesmen against the Virginia intruders on their lands, each advance of the frontier had been met with stubborn resistence. At times this conflict flamed into open warfare: In King Phillips' rebellion against the Massachusetts Puritans, during the French & Indian Wars of the 18th century, and Chief Pontiac's assault on his new British overlords in 1763, and Chief Tecumseh's vain efforts to hold back the advancing pioneers of 1812, and in the Black Hawk War. . . .

"In three tragic decades, between 1860 and 1890, the Indians suffered the humiliating defeats that forced them to walk the white man's road toward civilization. Few conquered people in the history of mankind have paid so dearly for their defense of a way of life that the march of progress had outmoded.

"This epic struggle left its landmarks behind, as monuments to the brave men, Indian and white, who fought and died that their manner of living might endure," *Id.*, at xiii-xiv.

Another history highlights the cultural differences which made confict and brutal warfare inevitable:

"The Plains Indians seldom practiced agriculture or other primitive arts, but they were fine physical specimens; and in warfare, once they had learned the use of the rifle, were much more formidable than the Eastern tribes who had slowly yielded to the white man. Tribe warred with tribe, and a highly developed sign language was the only means of inter-tribal communication. The effective unit was the band or village of a few hundred souls, which might be seen in the course of its wanderings encamped by a water course with tepees erected; or pouring over the plain, women and children leading dogs and pack horses with their trailing travos, while gaily dressed braves loped ahead on horseback. They lived only for the day, recognized no right of property, robbed or killed anyone if they thought they could get away with it, inflicted cruelty without a qualm, and endured torture without flinching." Morrison, Samuel Eliot, "The Oxford History of the American People," 539-540 (New York Oxford University Press 1965).

That there was tragedy, deception, barbarity, and virtually every other vice known to man in the 300-year history of the expansion of the original 13 colonies into a Nation which now embraces more than 3 million square miles and 50 States cannot be denied. But in a Court opinion, as a historical and not a legal matter, both settler and Indian are entitled to the benefit of the Biblical adjuration: "Judge not, that ye be not judged."

Mr. PRESSLER. Mr. President, I rise today to address the issue of the ownership of the Black Hills in South Dakota. It is frustrating to see the good faith efforts of so many people over the decades ignored. Many court cases have ensued on this issue culminating with a 1980 Supreme Court decision. With the passage of time, people forget how much effort goes into these settlements, but I vividly recall meeting after meeting with tribal leaders, individual tribal members, and many other constituents concerned about this matter. Indeed, during my first two terms in Congress (1975–78), we all worked very hard to achieve a fair resolution to a controversy which arose over the Fort Laramie Treaty of 1868.

In an attempt to resolve this issue, I spoke on the House floor in favor of legislation waiving res judicata and giving the Sioux Indians the right to bring another suit. That is what the Sioux tribes wanted, and as far as I am concerned, that settled it.

Indeed, Justice Blackmun, writing for the Supreme Court referred to my statement in his written opinion, *United States* v. *Sioux Nation of Indians*, 448 U.S. 371, 394 (1980):

Representative PRESSLER also responded to Representative GUDGER's interpretation of the proposed amendment, arguing that "we are indeed, here asking for a review and providing the groundwork for a review. I do not believe that we would be reviewing a decision: indeed the same decision might be reached. 124 CONGRESSIONAL RECORD H899 (Feb. 9, 1978).

Since that time, I have kept in close touch with the Indian people of my State. It has been my privilege to sponsor much legislation for the benefit of the Indian people.

Hopefully, history will note I am not a newcomer to this issue and have never avoided the issue at any time. Indeed, in October of 1982, I delivered a speech on the Senate floor, and I believe it addresses the present question:

• • • [T]his land has been the subject of a long legal battle which resulted in a determination that the Sioux Indians were entitled to $105 million in compensation.

As a Member of the U.S. House of Representatives in 1978, I supported legislation to reopen the question of the claim to the Black Hills. I worked with the tribal leaders in that matter as I believed that the pursuit of legal avenues was the best means of dealing with the claims to the Black Hills.

A long history of treaties, agreements, and court actions is involved in the Sioux Nation's claim to the Black Hills. The Sioux Indians have claimed for over a century that the United Staters abrogated the Fort Laramie Treaty of 1868 in which the United States pledged that the Great Sioux Reservation—including the Black Hills—would be set apart for the absolute use of the Sioux Indians.

The Fort Laramie Treaty established the Great Sioux Reservation and stated that no unauthorized persons would ever be permitted to reside in that territory. The treaty also stated that no later treaty for the cession of any portion of the reservation described would be valid unless executed by at least three-fourths of all the adult male Indians occupying the reservation.

With the discovery of gold in the Black Hills, the Federal Government began negotiations for mining rights but was unsuccessful in its attempt.

In 1876, a Commission on Indian Affairs traveled to the Black Hills with a prepared treaty which provided that the Sioux would relinquish their rights to the Black Hills and other lands west of the 103 meridian, as well as their rights to hunt in territories off the reservation, in exchange for subsistence rations. This treaty which was presented to the Sioux chiefs was signed by only 10 percent of the adult male Sioux population. This agreement became law in the act of 1877. Since that time the Sioux have viewed the act of 1877 as a breach of the Nation's obligation to reserve the Black Hills for occupation by the Indians and an abrogation of the provisions of the Fort Laramie Treaty. However, Congress had not enacted any means by which Indian tribes could litigate a treaty against the United States.

In 1920, Congress passed special jurisdiction legislation which provided the Sioux Indians the forum they needed, and in 1923, a petition was filed with the Court of Claims alleging that the Government had taken the Black Hills without the just compensation required under the fifth amendment to the Constitution.

In 1942, the Court of Claims dismissed the claim, stating that the act of 1920 did not authorize them to determine the issue of whether adequate compensation had been awarded for the Black Hills. They found this to be a moral issue and thus outside their jurisdiction.

In response to this decision, Congress passed legislation creating an Indian Claims Commission. This Commission would hear and determine all tribal grievances. In 1974, this Commission concluded that Congress had acted pursuant to its power of eminent domain in the 1877 treaty and must therefore pay the Indians just compensation for the Black Hills.

The Government of the United States appealed the decision claiming that the rule of res judicata barred the Sioux' claim. Res judicata is a legal term which refers to the fact that once one was litigated a case and accepted a final judgment, one cannot come back into court and seek the same relief.

The Court of Claims ruled that the 1942 claim had reached a final judgment and thus the legal rule of res judicata prevented review of the Sioux Nation's claim. The court also stated that only Congress could correct this situation.

It was at this time that I worked closely with the tribal leaders and supported legislation in the U.S. House of Representatives which waived the rule of res judicata so that the Sioux Nation's claim could be heard.

This 1978 legislation provided for de novo review by the Court of Claims so that new evidence could be admitted. After the passage of this statute, the Court of Claims reviewed the Indian Claims Commission's award and agreed that the Sioux were entitled interest on the $17.1 million determination they had been granted in 1877.

The Government of the United States appealed this decision to the U.S. Supreme Court. During the October term of 1979 the Supreme Court—the highest court in this land—reviewed the Sioux Nation's claim. The opinion issued by the Supreme Court traced all the treaties and agreements as well as all previous claims and legislative actions, quoting my comments on the floor of the House with regard to the waiver of res judicata. The Supreme Court determined in this 1980 opinion that the Sioux were entitled to the award increase granted by the Court of Claims.

I consider *U.S.* v. *Sioux Nation of Indians*, 448 U.S. 371 (1980) to be the final settlement on this issue. I am proud to have played a part in gaining the Sioux Indians the right to have their claim heard and a final determination made.

By Mr. TRIBLE:

S. 1454. A bill to amend title 5, United States Code, to expand the class of individuals eligible to receive a rebate or other return of contributions when amounts held in contingency reserve under the Federal Employees Health Benefits Program exceed certain levels; to the Committee on Governmental Affairs.

REFUND OF CERTAIN HEALTH CARE FUNDS TO FEDERAL RETIREES

Mr. TRIBLE. Mr. President, the Office of Personnel Management has just approved a plan permitting Blue Cross-Blue Shield to offer premium rebates to policy holders and to return additional moneys to the Federal Health Insurance Program. According to Blue Cross-Blue Shield, this refund, totaling approximately $754 million, is a result of a decreasing rise in health care costs as well as in increasingly responsible use of health care resources by subscribers.

This is good news; $465 million will be refunded to the Federal Employees Health Benefit Program. And, Blue Cross-Blue Shield is prepared to provide its policy holders, approximately 1.5 million people, with refunds ranging from $18 to $374.

Unfortunately, current law permits such refunds for employees of the Federal Government only. Federal retirees are not eligible to receive such rebates.

Mr. President, the omission of Federal retirees in this provision of the law was, I believe, unintended. Federal retirees pay the same premiums for the same benefits as their currently employed counterparts. And, these individuals should be entitled to receive the same rebates.

The legislation I am introducing today corrects this deficiency in current law. My legislation modifies current law to allow Federal retirees, along with current employees of the Federal Government, to receive these

rebates. This bill is straight forward, simple, and supported by the administration and by Blue Cross-Blue Shield.

I urge my colleagues to support this measure.

By Mr. LAUTENBERG:

S. 1456. A bill to recognize the Army and Navy Union of the United States of America; to the Committee on the Judiciary.

FEDERAL CHARTER FOR THE ARMY AND NAVY UNION OF THE UNITED STATES OF AMERICA

● Mr. LAUTENBERG. Mr. President, I am pleased to introduce legislation to grant a Federal charter to the Army and Navy Union.

The Army and Navy Union, founded in 1886, is the oldest veterans' organization of its type in the United States. It is the only veterans' organization in which membership is not limited to any specific form, date branch, place or nature of the military service performed.

The Army and Navy Union is dedicated to the preservation of a free and independent United States, and to the provision of assistance to veterans and their dependents. Since its earliest days, the Army and Navy Union has worked for the enactment of equitable laws to provide pensions, medical care, and other benefits to veterans.

The Army and Navy Union is headed by a national commander and his staff. The national corps is administered by officers elected at an annual convention. Any member in good standing is eligible to hold any office in the Army and Navy Union. Each member State has its own State department, which administers the operations of the local posts, known as garrisons. Each State department has an annual encampment. Garrisons meet once a month, and garrison members elect their own officers and delegates to the national encampment and the departmental encampment.

The Army and Navy Union currently has about 8,400 members with posts in 10 States including New Jersey, Ohio, New York, and the District of Columbia.

Members of the Army and Navy Union work on a volunteer basis performing services for veterans and their families. Members of the union serve as burial escorts and ceremonial honor guards at veterans' funerals, and they perform charitable work at Veterans' Administration hospitals. Members also assist the families of deceased veterans in adjusting to their loss by, for examples, escorting widows to Social Security or VA offices and assisting them in obtaining any benefits to which they may be entitled.

The Army and Navy Union has a long and illustrious record of service to veterans and their dependents. Forty-one recipents of the Congressional Medal of Honor, including Eddie Rickenbacker and Douglas MacArthur, have held membership in the Army and Navy Union. Other members include President Willian McKinley, Supreme Court Justice Harold Burton, Senator Charles Dick of Ohio, and Nobel Peace Prize Laureate Dr. Ralph J. Bunche.

Mr. President, the Army and Navy Union has served our Nation's veterans long and well, and deserves recognition from the Congress. A Federal charter for the Army and Navy Union will provide this worthy organization with that well-deserved recognition, and has already been approved by the House of Representatives. I hope that this body will quickly approve this bill.

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

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

S. 1456

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

CHARTER

SECTION 1. The Army and Navy Union of the United States of America, organized and incorporated under the laws of the State of Ohio, is hereby recognized as such and is granted a charter.

POWERS

SEC. 2. The Army and Navy Union of the United States of America (hereinafter referred to as the "corporation") shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

OBJECTS AND PURPOSES OF CORPORATION

SEC. 3. The objects and purposes of the corporation are those provided in its articles of incorporation and shall also be—

(a) to hold true allegiance to the Government of the United States of America and fidelity to its Constitution, laws, and institutions;

(b) to serve our Nation under God in peace as well as in war by fostering the ideals of faith and patriotism, loyalty, justice, and liberty; by inculcating in the hearts of young and old, through precept and practice, the spirit of true Americanism; by participating in civic activities for the good of our country and our community;

(c) to unite in fraternal fellowship those who have served honorably and those who are now serving honorably in the Armed Forces of the United States of America; to protect and advance their civic, social, and economic welfare; to aid them in sickness and distress; to assist in the burial and commemoration of their dead; and to provide help for their widows and orphans; and

(d) to perpetuate the memory of patriotic deeds performed by the defenders of our country.

SERVICE OF PROCESS

SEC. 4. With respect to service of process, the corporation shall comply with the laws of the States in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

MEMBERSHIP

SEC. 5. Eligibility for membership in the corporation and the rights and privileges of members shall be as provided in the bylaws of the corporation.

BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES

SEC. 6. The board of directors of the corporation and the responsibilities thereof shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

OFFICERS OF CORPORATION

SEC. 7. The officers of the corporation, and the election of such officers shall be as is provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States wherein it is incorporated.

RESTRICTIONS

SEC. 8. (a) No part of the income or assets of the corporation shall insure to any member, officer, or director of the corporation or be distributed to any such person during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual necessary expenses in amounts approved by the board of directors.

(b) The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) The corporation and any officer and director of the corporation, acting as such officer or director, shall not contribute to, support or otherwise participate in any political activity or in any manner attempt to influence legislation.

(d) The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

(f) The corporation shall retain and maintain its status as a corporation organized and incorporated under the laws of the State of Ohio.

LIABILITY

SEC. 9. The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

BOOKS AND RECORDS; INSPECTION

SEC. 10. The corporation shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors. The corporation shall keep at its principal office a record of the names and addresses of all members having the right to vote. All books and records of such corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

AUDIT OF FINANCIAL TRANSACTIONS

SEC. 11. The first section of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (36 U.S.C. 1101) is amended by adding at the end thereof the following:

"(68) Army and Navy Union of the United States of America"

ANNUAL REPORT

SEC. 12. The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as is the report of the audit required by section 11 of this Act. The report shall not be printed as a public document.

RESERVATION OF RIGHT TO AMEND OR REPEAL CHARTER

SEC. 13. The right to alter, amend, or repeal this Act is expressly reserved to the Congress.

DEFINITION OF "STATE"

SEC. 14. For purposes of this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

TAX-EXEMPT STATUS

SEC. 15. The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code of 1954. If the corporation fails to maintain such status, the charter granted hereby shall expire.

TERMINATION

SEC. 16. If the corporation shall fail to comply with any of the restrictions or provisions of this Act, the charter granted hereby shall expire.●

By Mr. HARKIN:

S. 1457. A bill to amend the Internal Revenue Code of 1954 to establish certain rules regarding the regulatory treatment of certain Federal tax credits and deductions allowable to regulated electric utilities; to the Committee on Finance.

ELECTRIC UTILITY TAX REFORM ACT

● Mr. HARKIN. Mr. President, today, I am introducing the Least Cost Electric Utility Tax Act of 1985. A similar bill is being introduced in the House by Congressmen DORGAN, STARK, and others.

The bill concerns phantom taxes. Investor owned electric utilities now have over $40 billion which they have collected from their customers for Federal income taxes, but which has not been paid to the Government. That is equivalent to about $500 per U.S. household. In theory, the funds will be paid to the Government or returned to the ratepayers in the future. In practice, the amounts kept by electric utilities are rapidly increasing. In 1984, I estimate that Iowans alone paid about $50 million in these phantom taxes to electric companies. Nationwide, in 1983, electric utility customers paid over $9 billion to electric companies for Federal taxes, while the companies reported owing only $2.8 billion in taxes. The difference, over $6 billion, was kept by the utilities. For every dollar that was collected for taxes from customers, only 30 cents was actually owed to the Federal Government.

Current law prevents utility commissions from fully protecting the consumer interest. In order to receive certain tax benefits, utilities are required to charge phantom taxes. This bill gives utility commissioners the discretion to return these tax benefits to consumers through lower rates.

The bill allows utility commissioners to remove an incentive which not only raises electric rates in the short term, but which also encourages investor owned utilities to build powerplants costing billions of dollars which may not be needed. During the last dozen years, over 100 powerplants were abandoned before they were completed. Electric utilities have spent over $10 billion in this decade on plants which will never generate any electricity. Consumers will pay a substantial amount of those costs in higher electric bills. The government, both Federal and State, also pays for much of this cost because utilities deduct the loss on their taxes. This means either a larger budget deficit, or more taxes for everyone else.

The following national organizations support this measure:

American Association of Retired Persons,
Citizen/Labor Energy Coalition,
Consumer Federation of America,
Environmental Action,
Environmental Defense Fund,
Environmental Policy Institute,
Friends of the Earth,
National Association of State Consumer Advocates,
National Consumers League,
National Taxpayers Union,
National Resources Defense Council,
Public Citizen,
Service Employees International Union,
Sierra Club,
Solar Lobby,
United Auto Workers,
United Methodist Church, Board of Church and Society, and
Union of Concerned Scientists.

WHAT IS THE LAW NOW?

Under present law, electric utilities recover the cost of their Federal income taxes through consumer electric bills. They charge consumers as if they did not receive the full benefit of investment tax credits or accelerated depreciation allowed by the Tax Code. These provisions, combined with other tax breaks, substantially reduce the taxes which a utility pays. In fact, many don't pay any taxes at all. According to a Joint Tax Committee study on worldwide effective tax rates, utilities had a 7.1-percent rate in 1983. Over the life of a powerplant, perhaps 30 years, utilities are required to slowly return the value of the investment tax credits to their consumers, and are supposed to pay deferred taxes to the Government, although the total amount is never fully returned.

This is how it works. During construction, utilities receive a 10-percent investment tax credit on the cost of building a new plant. At the same time, they include the value of that 10-percent tax credit in determining the cost of a plant. Although the utility did not have to raise the capital for this 10 percent, the utility can charge its customers a rate of return on what is, in fact, a Government grant. In short, the utility is actually earning a profit on funds contributed by the country's taxpayers. Then, over the life of the plant, they slowly remove the investment tax credit from the rate base.

A utility also is allowed to reduce its taxes through the accelerated cost recovery system [ACRS]. This provision was included in the 1981 Economic Recovery Tax Act. A utility may take a deduction for the expenses incurred in depreciating the cost of the powerplant over a 10- or 15-year period, depending upon the type of plant being built. Under this system, a utility may be able to deduct 54 percent of the depreciation expenses of a powerplant in just 5 years. However, the utility charges its customers as it it were depreciating the plant over its full useful life—perhaps 30 years.

As an example, if a utility could reduce its total taxes by $300 million from depreciation expenses, as much as $162 million of that reduction could be recovered in deductions during the first 5 years of its plant's existence. But during that same time, consumers' electric bills would only be reduced by $50 million. Again, consumers pay the utility's taxes as if it depreciated its plant over its full useful life, rather than the Tax Code's accelerated depreciation life. Accordingly, under this example, customers would have effectively loaned $112 million to their utility. These ratemaking practices are called normalization.

The utilities say that eventually, the customer will come out even. In practice, since utilities make new investments in powerplants, with new tax benefits gained, consumers—particularly the elderly—always remain "in the hole" and never gain the full use of their money.

Currently, if a utility commission found this practice unreasonable and required the utility to pass its tax savings on to its consumers, then the law would take away the utilities' eligibility for these tax breaks. The money would revert to the Treasury and neither the customer nor the company would receive and benefit.

WHAT DOES THIS BILL DO?

My bill permits the Iowa Commerce Commission any other State public utility commission to require that these tax savings be flowed through, or immediately returned, to consumers instead of normalizing the benefits as the law now requires.

A commission may hold hearings and then establish a least-cost energy plan for utilities. The commission may then order that the tax benefits be used in the way that will truly be used

to provide for the lowest cost of electric service. In short, the bill returns to States the ability to regulate electric utilities as they see fit.

In a July, 1981 case involving Iowa Power and Light, an Iowa Commerce Commission decision determined that:

Normalization is an efficient, inequitable and unnecessary method of raising capital for a utility. Whereas, flowthrough achieves the regulatory objectives of charging customers for reasonable costs properly matched with the service they receive from investments dedicated to providing that service.

Presently, the Iowa Commerce Commission requires that State tax benefits be flowed through to the consumers. If this bill is enacted, the Iowa Commission could do the same with Federal tax benefits. A State also could choose a middle path, flowing through some of the benefits but not others, as consistent with their least cost energy analysis. The key, again, is that this bill restores discretion to State commissions to regulate utilities as they see fit.

Many utilities are in severe financial shape. Given their financial situation a State utility commission may find that they need the cash-flow. Other utilities are in excellent shape. They may have no plans to build a plant for 5 or more years. They have little need for cash-flow. In fact, many electric utilties are pushing to allow the investment of excess funds in nonenergy areas. I believe that a utility commission should carefully examine the situation on a case-by-case basis.

At the Federal level, the bill gives the Federal Energy Regulatory Commission [FERC], which regulates the wholesale sale or electric power from one utility to another, to do the same thing as the States.

It also requires that the FERC not allow electric utilities to earn a rate of return on the investment tax credit. Present FERC policy does allow this equivalent of profit based on Government grant. Thus, the bill sets a maximum on the normalization benefits rather than a minimum that the law now requires. This maximum amount of normalization is called economic normalization.

MAINTAINING AN ADEQUATE ELECTRICAL SUPPLY AT LEAST COST

Utilities argue that they should receive the phantom tax benefits automatically as a matter of law. I think that is wrong.

Some utilities say that they need the immediate use of the cash from these tax benefits, or phantom taxes, so they can invest in needed powerplants and other equipment. They claim that it is in the customer's benefit to have the utility acquire the funds because of the nature of the financial markets, particularly the fact that some companies are unable to borrow money at reasonable interest rates. In some cases, the utility may be correct. But, in many cases the collection of phantom taxes is not in the public interest. The use of the tax benefits should be made after an analysis by regulators determine what is the best way to provide low cost electric service to the area in the long term.

This bill allows regulators to modify the present regulatory treatment of the tax benefits only after a hearing occurs and after a least-cost energy plan is developed. Once this is done, a public utility commission may take action to do whatever is appropriate with the tax benefits so as to best implement that least-cost plan. In this way, we can have a regulatory policy which truly reflects the public interest.

In 1982, I chaired a hearing in Des Moines at which Wes Birdsell, the general manager of the Osage Iowa Municipal Utility, explained how his town of 3,700 people saved $1 million in powerplant costs by installing $100,000 in conservation equipment. Since 1976, their electric rates had not increased. In 1983, they were able to lower rates by 9 percent. In November 1984, the electric rates lowered an additional 1 percent, making the total reduction 10 percent. This reduced level has not changed since November 1984. Other cities in the area experienced 30 to 60 percent higher rates. Development of programs like Osage takes a lot of work, but means substantially lower electric bills and a more efficient economy. We need to strongly encourage such programs.

A least-cost energy plan would take into consideration all of the factors. The true cost of the alternatives available to consumers would be evaluated. The commissions would look at the value of consumers retaining the use of their money over these years, compared with the interest costs which a utility would incur in building a powerplant. The plan would also consider the energy alternatives to building expensive powerplants which sharply increase electric rates.

The present law requires utilities to keep their deferred or phantom taxes which provide a real incentive for a company to choose building new powerplants instead of less expensive alternatives. I am not saying that they build new plants just because of the phantom taxes. It is, however, a real weight that is added on the build side of the equation and against conservation alternatives. We are now in the middle of a major campaign by the electric utility industry to convince the public that our Nation could face major shortages of electric power in the 1990's that can only be avoided with a huge powerplant construction program started in the near future. I believe that our Nation would be better off if electric utility company management would take a balanced view of the alternatives that are available to meet our electric energy needs.

The tax law skews the decisionmaking process of electric utilities and encourages them to underestimate the potential contribution of conservation, leading to higher estimates of future capacity needs. The reality is that we have built plants which were simply not needed. In many cases, these utilities had other means available to meet their customers power needs. Instead, they decided that the best way to meet this need was to build expensive new powerplants when there were far cheaper alternatives available such as energy conservation and cogeneration.

In some cases, a utility may clearly need to build a new powerplant. However, the type of plant they decide to build will be affected by the tax laws which give far greater incentives to construct a nuclear powerplant rather than a coal plant. And that decision could cost consumers additional millions.

The investor owned utilities point with pride to the large number of conservation programs that they are involved in. However, one must ask them the following important question: How many dollars are being spent on conservation compared to construction in the industry?

Three hundred seventy thousand megawatts of cost-effective conservation, load management and renewables could be developed by the end of this century according to a recent Library of Congress study requested by the House Energy Conservation and Power Subcommittee. That is more than six times the amount that the investor owned utilities projected. When we look at recent industry studies, we see that almost half of the projected savings in conservation are coming from just six utilities. Clearly, much more could be done to reduce electric rates through conservation if more utilities were seriously involved.

Public utility commissions need to carefully examine least-cost energy alternatives before utilities make major plant expenditures. They need to balance the consumers right to have the present use of his or her money. They also need to look at the alternatives available to a utility in meeting its customer's power needs. Finally, they need to look at the financial position of each utility. After examining these factors, a utility commission should then decide if a specific utility needs the tax benefits more than the customers do. We need an electric utility system which has sufficient capacity to meet the Nation's needs and which is both reliable and resilient. This does not come cheaply. But, we must do our best to provide it at least cost. This cannot be predetermined by a Federal law which neither looks at specific cases nor balances any of these issues.

In sum, present law automatically rewards utilities which engage in construction programs with an entitlement regardless of need. This bill will restore the proper regulatory decisionmaking process.

FALSE ARGUMENTS FOR AUTOMATIC "TAX NORMALIZATION"

Argument 1. Investor-owned utilities argue that every company which invests in new plants and equipment is entitled to retain the benefits of accelerated depreciated and their investment tax credits. They should not be treated differently.

Answer. Private utilities are monopolies which have an obligation to serve their customers and are required to make the necessary investments to meet that obligation. In return, regulators are provided with a fair return on investment. They do not need the additional incentives or cash which tax normalization provides to create the investment incentive to meet their public service obligations.

In contrast, unregulated companies which are not assured of earning a profit may need tax incentives to make needed investments. However, they may not be able to retain these savings because marketplace pressure may force the company to pass through in lower prices a portion of those benefits to customers to meet competitive demands.

Argument 2. Private utilities argue that they are in poor financial health because State utility commissions do not provide them with an adequate return on investment. This means they cannot raise sufficient money to make needed investments, and pay operation costs and earn a fair profit. In short, phantom taxes provide an extra financial cushion which utility commissions cannot touch.

Answer. I believe it is unreasonable to bias energy planning by allowing utilities to automatically retain substantial sums of money through phantom taxes. If some utility commissions are not providing companies with an adequate rate of return, then the solution is to give them an adequate one. This is an issue, however, which should be addressed by State officials and, if necessary, by the courts.

When a utility provides for the energy needs of its customers through the most efficient and least-cost means, it should be rewarded with a better return on their investment. Instead, our present tax laws provide an incentive for utilities to build expensive powerplants at a much higher cost to consumer. Regardless of the wisdom of that investment, the law always gives utilities a bonus; a bonus provided by the consumer. This is not sound energy policy. In contrast, my bill will restore a sound, balanced approach to future investments in energy capacity.

Argument 3. Without the money provided to the utility through "normalization" funds would have to be borrowed at higher rates for their construction projects. That will mean higher rates in the future.

Answer. The customers are losing the interest that they could have earned on that same money and the use of that money. Beside, in many cases, the very existence of the automatic availability of the tax benefits increases the likelihood of plant construction which may not be needed. The balance between the customers and the utilities on this point should be decided by a regulatory body looking at the specific facts involved.

Argument 4. Customers should receive the tax benefits when they have to pay for the costs of the plant. This is the most equitable way to share the burden.

Answer. When we look at most electric utilities, we see that power comes from a number of plants. Plants are built one after the other. With normalization, the customer is always going to be in the position of making an interest-free loan to the utility. History shows that the total amount of phantom taxes rise year after year. In 1982, only 8 percent of the largest 150 utilities showed a decline in their phantom taxes held.

Argument 5. If we pass through the tax benefits to the customer, the Treasury will lose money since the utility pays taxes on the customer payments.

Answer. The customer is, after all, making the payments. It is the customer who is paying the tax. Besides, for all of the customers who are businesses, they deduct their utility payment as a business expense. The Government loses with one hand and gains with the other. The difference is not so large as to justify the automatic use of normalization, especially when its negative effects are considered.

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

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

S. 1457

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Electric Utility Tax Reform Act of 1985".

SEC. 2. LEAST SYSTEM COST PLANS ALLOW ALTERNATIVE ACCOUNTING METHODS FOR CERTAIN PUBLIC UTILITIES.

(a) INVESTMENT TAX CREDIT.—Section 46 of the Internal Revenue Code of 1954 (relating to determination of amount of investment credit) is amended by adding at the end thereof the following new subsection:

"(i) SPECIAL RULES FOR UTILITY COMPANIES WHICH ADOPT LEAST SYSTEM COST PLANS.—

"(1) IN GENERAL.—

"(A) STATE REGULATED UTILITIES.—If, in the case of an electric utility—

"(i) to which title I of the Public Utility Regulatory Policies Act of 1978 applies, and

"(ii) which is listed for purposes of such Act under section 102(c) of such Act,

a State regulatory authority holds a hearing and adopts a least system cost plan for such electric utility, the State regulatory authority may approve or establish a rate schedule for such utility which provides for ratemaking treatment of the credit allowable under section 38 in such manner as the State regulatory authority determines will further the purpose of such plan.

"(B) FEDERAL ENERGY REGULATORY COMMISSION.—If, in the case of any public utility which is subject to the jurisdiction of the Federal Energy Regulatory Commission, such Commission adopts a least system cost plan for such public utility, the Commission may, in approving or establishing a rate schedule for such utility under section 205 of the Federal Power Act, provide for such ratemaking treatment of the credit allowable under section 38 as the Commission determines—

"(i) will further the purposes of the plan, and

"(ii) will provide a current return to the ratepayers of the tax benefits attributable to such credit which is larger than the current return which would be provided to the ratepayers under economic normalization.

"(C) ECONOMIC NORMALIZATION EVEN IF NO LEAST SYSTEM COST PLAN.—Except as provided in subparagraph (B), the Federal Energy Regulatory Commission may not after the 90th day following the date of the enactment of this subsection approve or adopt a rate schedule under part II of the Federal Power Act which does not provide for economic normalization of the credit allowable under section 38.

"(2) SUBSECTION (f) NOT TO APPLY.—In any case to which paragraph (1) applies, subsection (f) shall not apply to the extent such application would be inconsistent with the provisions of this subsection.

"(3) "Least system cost plan defined.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'least system cost plan' means a plan which provides for meeting demand for electric energy services under which each measure to be implemented is forecast—

"(i) to be reliable and available within the time it is needed, and

"(ii) to meet or reduce the electric power demand, as determined by the State regulatory authority or the Federal Energy Regulatory Commission, of the retail consumers of such electric power at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative measure or resource, or any combination thereof.

"(B) SYSTEM COST DEFINED.—For purposes of this paragraph, the term 'system cost' means an estimate of all direct costs of a measure or resource over its effective life, including, if applicable, the cost of transmission and distribution to the consumer and, among other factors, waste disposal costs, end-of-cycle costs, fuel costs (including projected increases), and environmental costs and benefits.

"(C) CERTAIN OTHER REQUIREMENTS FOR LEAST SYSTEM COST PLAN.—A least system cost plan adopted under this subsection shall reflect a detailed assessment of the system costs associated with—

"(1) customer consumption efficiency improvements and use of renewable resources,

"(ii) load management techniques,

"(iii) cogeneration,

"(iv) electricity generation using biomass, waste, renewable resources, or geothermal resources,

"(v) production efficiency improvements (including improved powerplant productivity and interutility coordination),

"(vi) central station powerplants,

"(vii) changes in rate design, and

"(viii) any other alternatives established by the State regulatory authority or the Federal Energy Regulatory Commission to meet demand at the least estimated incremental system cost.

"(4) ECONOMIC NORMALIZATION DEFINED.—For purposes of this subsection, the term 'economic normalization' means a method of normalization under which—

"(A) the taxpayer's cost of service for ratemaking purposes or in its regulated books of account is reduced by a ratable portion of the credit allowable by section 38 (determined without regard to this subsection); and

"(B) the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by the amount of the credit allowable by section 38 (determined without regard to this subsection) which has not yet been used to reduce the taxpayer's cost of service for ratemaking purposes or in its regulated books of account under subparagraph (A).

"(5) STATE REGULATORY AUTHORITY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'State regulatory authority' has the meaning given such term by paragraph (17) of section 3 of the Public Utility Regulatory Policies Act of 1978.

"(B) SPECIAL RULE WHERE OTHER STATE AGENCIES GIVEN CERTAIN POWERS.—In the case of any State in which a State agency other than a State regulatory agency (determined without regard to this subparagraph) is designated by State law or the Governor to hold hearings or make determinations with respect to a least system cost plan under paragraph (1), such State agency shall be treated as the State regulatory agency for such purposes.".

(b) ACCELERATED COST RECOVERY DEDUCTION.—Paragraph (3) of section 168(e) (relating to special rule for certain public utility property) is amended by adding at the end thereof the following new subparagraph:

"(E) SPECIAL RULES FOR LEAST SYSTEM COST PLAN.—

"(i) IN GENERAL.—Except as provided in clause (ii), the rules of section 46(i) (relating to alternative normalization in determining the investment tax credit for certain public utilities) shall apply for purposes of this paragraph and for purposes of section 167(l).

"(ii) ECONOMIC NORMALIZATION.—For purposes of applying section 46(i)(4) with respect to the deduction allowable under section 167 or 168, the term 'economic normalization' means a method of normalizaton under which—

"(I) the utility is required, in computing its tax expense for purposes of establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, to use a method of depreciation with respect to such property, and a depreciation period for such property, that is the same as the method and period used to compute its depreciation expenses for such purposes; and

"(II) whenever the amount allowable as a deduction with respect to such property differs from the amount that would be allowable as a deduction under section 167 of the Internal Revenue Code of 1954 (determined without regard to section 167(l)) using the method (including the period, first and last year convention, and salvage value) used to compute regulated tax expense under subparagraph (A), the utility is required to make adjustments to a reserve to reflect the deferral of taxes resulting from such difference and such adjusted reserve is to be used to reduce the base to which the utility's rate of return for ratemaking purposes is applied.

(c) DEPRECIATION.—Subsection (1) of section 167 of such Code (relating to reasonable allowance in case of property of certain utilities) is amended by adding at the end thereof the following new paragraph:

"(6) CROSS REFERENCE.—

"For inapplicability of subsection to utilities having least system cost plans, see section 168(e)(3)(E).".●

By Mr. MATSUNAGA:

S.J. Res. 164. Joint resolution relating to an International Space Year in 1992; to the Committee on Foreign Relations.

INTERNATIONAL SPACE YEAR

Mr. MATSUNAGA. Mr. President, at 2:17 p.m. on July 17, 1975, just 10 years ago today almost to the hour, high in orbit above the Earth, American Astronaut Thomas B. Stafford opened the hatch separating the Apollo spacecraft that he commanded and the Soviet Soyuz spacecraft, commanded by Aleksey Leonov, and stepped inside the Soyuz. The first thing he saw was a hand-lettered sign in English which read "Welcome Aboard Soyuz." Stafford was followed by Astronaut Donald "Deke" Slayton. Joining Leonov in extending greetings was Cosmonaut Valery Kubasov. Waiting his turn in the Apollo command module was Astronaut Vance Brand.

Mr. President, to celebrate the 10th anniversary of that historic linkup in space, the first multinational docking of the space age, the five participants are in our Nation's Capital, under the auspices of the American Institute of Aeronautics and Astronautics, or AIAA, and the Planetary Society. They are joined by Dr. John McLucas, senior vice president of Comsat, immediate past president of the AIAA, and a former Secretary of the Air Force during the administration of President Gerald Ford; James Harford, executive director of the AIAA; and Louis Friedman, executive director of the Planetary Society.

Mr. President, we can argue endlessly about the politics of Apollo-Soyuz, but we cannot argue about the skill and courage of those men and women of all nations who venture into space, nor can we argue about the universal bonds that space exploration awakens among those who have shared in it. During the Apollo-Soyuz linkup, both crews led live television tours of their respective spacecraft—the Americans in Russian for Soviet television, the Russians in English for American television. As the linked spacecraft passed over the Soviet Union, Valery Kubasov told an American TV audience, and here I quote:

It would be wrong to ask which country's more beautiful. It would be right to say there is nothing more beautiful than our blue planet.

Mr. President, the unity of planet Earth so evident from space is undermined daily by human conflict, but it survives in our aspirations. The lingering memory of Apollo-Soyuz demonstrates its persistency and hints at an awaiting fulfillment. It probably won't happen in our lifetime. But what has proved impossible on Earth will, I am convinced, eventually prove necessary and unavoidable if humanity is to realize its destiny in the cosmic immensity of the heavens. Meanwhile, governments have an obligation to respond to the deepest aspirations of their citizens in ways that do not conflict with national interest.

In that spirit, Mr. President, I am today introducing a joint resolution inspired by an unusual three-way convergence that will take place in 1992. The year 1992 will mark the 500th anniversary of the discovery of America by Christopher Columbus, 1992 is also the 75th anniversary of the Russian revolution. Finally, 1992 is the 35th anniversary of the International Geophysical Year, or IGY, in which the space age began with the launching of the first artificial satellites.

My resolution, Senate Joint Resolution 164, calls upon President Reagan to investigate the opportunities for a commemorative sequel to the IGY—an ISY, or International Space Year.

The year 1985 is hardly too soon for discussions of that nature, Mr. President. Planning for the IGY began in 1950, fully 7 years in advance of the event. Indeed, in recognition of our new age of discovery in space, Spain already has announced plans to commemorate the discovery of America by launching an Hispanic communications satellite in 1992. My resolution thus suggests that President Reagan consider broaching this topic with the leaders of other nations, including Secretary Gorbachev of the U.S.S.R. during their first summit meeting.

Even now, Mr. President, an international fleet of spacecraft from the U.S.S.R., Europe, and Japan, supported by the American deep space tracking network, is hurtling toward a rendezvous with Halley's comet next spring. The project involves no technology transfer and all participants are pleased with the enhanced benefits that will accrue from their cooperative approach. Numerous comparable opportunities are open to us if we will take the time to consider them. My resolution also invites the President to direct the Administrator of NASA, in association with the State Depart-

ment, the National Academy of Sciences, the National Science Foundation, and other relevant public and private agencies, to "initiate interagency and international discussions that explore the opportunities for an ISY in the 1992-95 timeframe." Certainly those opportunities are worth exploring in a prudent and responsible manner by appropriate agencies.

Mr. President, during the Apollo-Soyuz mission, participants Brand and Kubasov teamed up to film a series of activities showing the effects of zero gravity on various items and illustrating other basic principles of physics. Originally conceived by NASA, the script was expanded considerably as a result of suggestions offered enthusiastically by the Soviet cosmonauts. That educational film was later shown in thousands of science classrooms in both nations. It didn't change the world. An International Space Year won't change the world. But at the minimum, these activities help remind all peoples of their common humanity and their shared destiny aboard this beautiful spaceship we call Earth. Mr. President, our human species need such reminders, if only in the hope that one day the message they carry will be finally realized.

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

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

S.J. RES. 164

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

Whereas the year 1992 is the 500th anniversary of the discovery of America by Christopher Columbus;

Whereas Spain will commemorate the discovery of America by launching an Hispanic satellite in 1992;

Whereas 1992 is the 75th anniversary of the Russian revolution and space-related commemorative events are reportedly planned by the Soviet Union;

Whereas 1992 is the 35th anniversary of the International Geophysical Year, hereinafter referred to as IGY, when the first artificial satellites were launched, thus marking the beginning of the space age;

Whereas an International Geosphere/Biosphere Program is planned for the early 1990s as a sequel to the IGY, but its space activities will be limited to earth observation;

Whereas space exploration has made enormous strides since the IGY and deserves concerted worldwide commemorative recognition and engagement as well;

Whereas 1992 appears to be ideally suited for such recognition and engagement: Now therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the sense of the Congress that the President should:

(1) endorse the concept of an International Space Year, hereinafter referred to as ISY, for 1992, perhaps extending into 1995;

(2) consider the possibility of discussing an ISY with other foreign leaders, including Secretary Gorbachev at the summit meeting due to be held in Geneva, Switzerland, in November 1985, or, if that date is altered, at whatever date and location are ultimately decided upon;

(3) direct the Administrator of NASA, in association with representatives of the State Department, the National Academy of Sciences, the National Science Foundation, and other relevant public and private agencies, to initiate interagency and international discussions that explore the opportunities for an ISY in the 1992-1995 time frame, including possible missions of international character and related research and educational activities;

(4) submit to the Congress at the earliest practicable date, but no later than March 15, 1986, a report detailing the steps taken in carrying out paragraphs (1), (2) and (3), including descriptions of possible international missions and related research and educational activities.

By Mr. SIMON:

S.J. Res. 165. A joint resolution designating the month of October 1985 as "National High-Tech Month"; to the Committee on the Judiciary.

NATIONAL HIGH TECH MONTH

● Mr. SIMON. I am introducing legislation to declare October 1985 as "National High Tech Month." A similar resolution passed the House on May 17, 1985 by a voice vote. In 1984, a resolution designating the first week in October as "National High Tech Week" received overwhelming support in both Chambers.

Last year, National High Tech Week was extremely successful in focusing public attention on industries and products which developed and used technology for the betterment of our lives, our economy, and our leadership in the world's scientific community. In proposing a National High Tech Month, we can continue and expand the imaginative education and public awareness programs conceived by many States during the observance last year.

A few examples of State and local activities in 1984 should point to the benefits of programs created to observe National High Tech Week. A Washington, DC, production group sponsored four radio programs, three 90-second TV spots, several full length television programs and a number of public service announcements, all widely distributed for use on commercial, public, and cable stations.

The North Dakota State Board for Vocational Education developed a mobile laboratory containing printed information and technological exhibits which can travel to communities statewide.

California groups sponsored the first national computer show for children at the Disneyland Convention Center. This show included a hands-on session for training and demonstration for young people, parents, educators and industry professionals.

Lorain County Community College in Ohio sponsored tours of a new $5.5 million advanced technology center concurrent with a poster competition, showing of films on high technology, a visit by astronaut Neil Armstrong and industrial exhibits from 50 corporations.

In North Carolina, the State's 142 school superintendents organized a series of special events. The State board of science and technology announced a $150,000 research grant program for colleges and universities and organizations as well as developed a series of workshops designed to alert small business persons to opportunities for funding research activities.

In New York, the Governor focused on science initiatives which included scholarships for high school students in math and science, summer computer camps and a variety of other education programs.

We have moved rapidly into an era where science and engineering touch most aspects of our daily lives. Technology is one of the keys to a healthy economy, job opportunities and advances to further the quality of our lives. National High Tech Month will allow us to learn more about technology and what it can, will, and does mean to each and every one of us.

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

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

S.J. RES. 165

Whereas the economy of this Nation is closely tied to technological advances;

Whereas it is of the highest national interest to focus our collective abilities to maintain this leadership;

Whereas the national commitment to high technology development has been called into doubt;

Whereas the youth of the Nation need to have educational opportunities to grow and develop in a high technology environment; and

Whereas our youth should have a national focus on their high technology future: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of October 1985 is designated as "National High-Tech Month". The President is requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities, including programs aimed at educating the Nation's youth about high technology.●

By Mr. DURENBERGER (for himself and Mr. MOYNIHAN):

S.J. Res. 166. Joint resolution to appeal for the release of Dr. Yury Orlov and other Helsinki Final Act monitors; to the Committee on Foreign Relations.

APPEAL FOR THE RELEASE OF DR. YURY ORLOV AND OTHER HELSINKI FINAL ACT MONITORS

Mr. DURENBERGER. Mr. President, I rise today to introduce a joint

resolution with Senator MOYNIHAN urging the release of the noted human rights activist, Dr. Yury Orlov, by the Soviet Union. We are all aware of the Soviet Union's refusal to comply with the provisions of the Helsinki Final Act of 1975. The Soviet Union is clearly the most egregious violator of the human rights provisions of that accord and has failed to make even the most basic improvements in its human rights performance. In order to further the Helsinki process, it is essential that the signatory governments comply with their human rights commitments. Compliance with other aspect of the Helsinki accords, such as the security and economic provisions, can only be advanced if the human rights of citizens are recognized and respected in all the signatory nations.

Helsinki Watch recently issued a report on the status of more than 100 brave individuals in the Soviet Union who organized and joined Helsinki Watch groups to monitor their country's compliance with the Final Act of 1975, and more specifically, to report on their country's human rights abuses. The sacrifices which these courageous people made should not be forgotten as it is clear that they have been targeted by their government for imprisonment, exile, and even death. A paragraph from the Helsinki Watch report illustrates this persecution in stark detail:

Over the years, more than 100 people openly became members of the Helsinki groups and their affiliates. Today, 49 are incarcerated in prisons, labor camps, and psychiatric hospitals, or are serving terms of exile. Three have died after years of mistreatment in Soviet labor camps, and one was killed in a car accident under suspicious circumstances. Twenty-two others have been released after serving sentences, but live under the constant threat of a new arrest. Eighteen have emigrated to the West because of the threat of imprisonment. The remaining members have been forced to cease their work.

Among the most important of these human rights advocates are the physicist Andrei Sakharov and his wife, Dr. Elena Bonner, the mathematician Anatoly Shcharansky, the physicist Yury Orlov, the Ukrainian poet Mykola Horbal, the Estonian zoologist Mart Niklus, the Lithuanian psychiatrist Algirdas Statkevicius, Father Gleb Yakunin of the Russian Orthodox Church, and Bishop Nikolai Goretoi of the Evangelical Christian Pentecostal Church. These men and women are but a few of the strong-willed individuals in the Soviet Union who have suffered in order that their country would abide by its own Constitution and by the international agreements to which its is a signatory. Their collective commitment to freedom and human rights in the Soviet Union serves as an example to us.

Moreover, we in the democratic nations should continue and redouble our efforts to secure the freedom of these human rights monitors. We and our constituents can continually remind the Government of the Soviet Union and its officials of our concern at the mistreatment of these monitors through personal contacts, letters, and the like. Just as important, we should express our solidarity with these victims of persecution through similar actions. This Helsinki Watch report is particularly valuable in that it lists the "crimes" under which these monitors have been convicted as well as their present status and locations. I would strongly urge my colleagues on both sides of the aisle as well as my constituents to speak out on this critical issue of human dignity and individual freedom. I would further hope that my colleagues will join me in cosponsoring this resolution which expresses the Senate's support for the release of Dr. Orlov so that he may be free to emigrate from the Soviet Union.

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

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

S. J. RES. 166

Whereas on August 1, 1975, 35 nations, including the USA and the USSR signed the Final Act of Security and Cooperation in Europe (the Helsinki Final Act), and

Whereas the Helsinki Final Act commits participating states to respect human rights and fundamental freedoms and confirms the right of the individual in each participating state to know and act upon his rights and duties in this field, and

Whereas on May 12, 1976, Dr. Yury Orlov and his colleagues announced the formation of the Helsinki Watch Group and more than 100 people openly became members of the group and its affiliates, and

Whereas today, 51 Helsinki Watch members are incarcerated in prisons, labor camps, psychiatric hospitals, or are serving terms of exile, and

Whereas three Helsinki Watch members have died after years of mistreatment in Soviet labor camps and 20 others have been released after serving sentences but live under the constant threat of resentencing or new arrest, and

Whereas eighteen Helsinki Watch members have emigrated to the West because of any threat of imprisonment in the USSR, and

Whereas Dr. Yury Orlov, a 60-year physicist and founder of the Moscow Helsinki Watch Group was arrested in February 1977 and sentence to 7 years in a strict-regime labor camp and 5 years of internal exit and

Whereas Yury Orlov now lives in complete isolation in a remote part of Siberia in a workers' dormitory where he is abused and persecuted by local officials, where food is scarce, and proper medical care unavailable, and

Whereas Yury Orlov is in poor health, aggravated by years of harsh prison regimen, and suffers from kidney disease, the aftereffects of a skull injury, and other chronic illnesses, and

Whereas Dr. Orlov has been denied employment in his scientific field, prevented from communicating with scientific colleagues abroad, and prohibited from receiving mail and journals; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States Senate expresses its deepest concern about Dr. Yury Orlov and calls upon the Government of the USSR to release him from exile and allow him to emigrate with his wife to the West, and

Urges the President of the United States to instruct the Secretary of State to raise the case of Dr. Yury Orlov publicly and privately with the Soviet Government, including the August 1st meeting in Helsinki, Finland commemorating the tenth anniversary of the Helsinki Final Act, at the 1986 session of the United Nations Commission on Human Rights, and at the November meeting in Geneva between President Reagan and Chairman Gorbachev.

ADDITIONAL COSPONSORS

S. 3

At the request of Mr. CRANSTON, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 3, a bill to amend title II of the Social Security Act to provide that the combined earnings of a husband and wife during the period of their marriage shall be divided equally and shared between them for benefit purposes, so as to recognize the economic contribution of each spouse to the marriage and ensure that each spouse will have Social Security protection in his or her own right.

S. 8

At the request of Mr. CRANSTON, the names of the Senator from Arkansas [Mr. BUMPERS] and the Senator from Minnesota [Mr. BOSCHWITZ] were added as cosponsors of S. 8, a bill to grant a Federal charter to the Vietnam Veterans of America, Inc.

S. 126

At the request of Mr. PRYOR, the name of the Senator from Montana [Mr. BAUCUS] was added as a cosponsor of S. 126, a bill to improve the Department of State.

S. 635

At the request of Mr. KENNEDY, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 635, a bill to express the opposition of the United States to the system of apartheid in South Africa and for other purposes.

S. 657

At the request of Mr. THURMOND, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 657, a bill to establish the Veterans' Administration as an executive department.

S. 703

At the request of Mr. FORD, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 703, a bill to designate certain National Forest System lands in the State of Kentucky for inclusion

in the National Wilderness Preservation System, to release other National Forest System lands for multiple use management, and for other purposes.

S. 837

At the request of Mr. HEINZ, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of S. 837, a bill to amend the Social Security Act to protect beneficiaries under the health care programs of that Act from unfit health care practitioners, and otherwise to improve the antifraud provisions of that Act.

S. 865

At the request of Mr. MATHIAS, the name of the Senator from Arkansas [Mr. BUMPERS] was added a cosponsor of S. 865, a bill to award special congressional gold medals to Jan Scruggs, Robert Doubek, and Jack Wheeler.

S. 1084

At the request of Mr. GOLDWATER, the names of the Senator from New Mexico [Mr. BINGAMAN], the Senator from Michigan [Mr. LEVIN], and the Senator from Massachusetts [Mr. KENNEDY] were added as cosponsors of S. 1084, a bill to authorize appropriations of funds for activities of the Corporation for Public Broadcasting, and for other purposes.

S. 1097

At the request of Mr. DANFORTH, the names of the Senator from West Virginia [Mr. ROCKEFELLER], and Senator from Washington [Mr. EVANS] were added as cosponsors of S. 1097, a bill to amend the Motor Vehicle Information and Cost Savings Act to provide for the appropriate treatment of methanol.

S. 1153

At the request of Mr. D'AMATO, the names of the Senator from Arizona [Mr. DECONCINI], and the Senator from Utah [Mr. HATCH] were added as cosponsors of S. 1153, a bill to provide for the distribution within the United States of the U.S. Information Agency film entitled "Hal David: Expressing a Feeling."

S. 1156

At the request of Mr. DENTON, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 1156, a bill to amend chapter XIV of the Comprehensive Crime Control Act of 1984, relating to victims of crime, to provide funds to encourage States to implement protective reforms regarding the investigation and adjudication of child abuse cases which minimize the additional trauma to the child victim and improve the chances of successful criminal prosecution or legal action.

S. 1224

At the request of Mr. MCCLURE, the name of the Senator from South Dakota [Mr. ABDNOR] was added as a cosponsor of S. 1224, a bill to limit the importation of softwood lumber into the United States, and for other purposes.

S. 1250

At the request of Mr. HEINZ, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 1250, a bill to amend the Internal Revenue Code of 1954 to extend the targeted jobs tax credit for 5 years, and for other purposes.

S. 1323

At the request of Mr. ROTH, the names of the Senator from New Mexico [Mr. DOMENICI], and the Senator from Oklahoma [Mr. NICKLES] were added as cosponsors of S. 1323, a bill to amend the Social Security Act to reorganize and strengthen the provisions intended to deter and sanction fraud and abuse affecting the Medicare and Medicaid programs, and for other purposes.

S. 1325

At the request of Mr. HEINZ, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of S. 1325, a bill to amend titles XVIII and XIX of the Social Security Act to require second opinions with respect to certain surgical procedures as a condition of payment under the Medicare and Medicaid Programs.

S. 1393

At the request of Mr. ABDNOR, the names of the Senator from Nevada [Mr. LAXALT], the Senator from South Dakota [Mr. PRESSLER], and the Senator from Idaho [Mr. SYMMS] were added as cosponsors of S. 1393, a bill to provide for a study of the use of unleaded fuel in agricultural machinery, and for other purposes.

S. 1436

At the request of Mrs. KASSEBAUM, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 1436, a bill to improve safety and security of persons who travel in foreign air transportation, and for other purposes.

SENATE JOINT RESOLUTION 143

At the request of Mr. GORE, the names of the Senator from Maryland [Mr. MATHIAS] and the Senator from Pennsylvania [Mr. HEINZ] were added as cosponsors of Senate Joint Resolution 143, a joint resolution to authorize the Black Revolutionary War Patriots Foundation to establish a memorial in the District of Columbia at an appropriate site in Constitution Gardens.

SENATE JOINT RESOLUTION 146

At the request of Mr. SIMON, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of Senate Joint Resolution 146, a joint resolution designating August 1985 as "Polish American Heritage Month."

SENATE JOINT RESOLUTION 156

At the request of Mr. MURKOWSKI, the names of the Senator from South Carolina [Mr. HOLLINGS] and the Senator from Alabama [Mr. DENTON] were added as cosponsors of Senate Joint Resolution 156, a joint resolution authorizing a memorial to be erected in the District of Columbia or its environs.

SENATE JOINT RESOLUTION 158

At the request of Mr. MURKOWSKI, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of Senate Joint Resolution 158, a joint resolution designating October 1985 as "National Community College Month."

SENATE JOINT RESOLUTION 161

At the request of Mr. DOLE, the names of the Senator from Maryland [Mr. MATHIAS], the Senator from South Dakota [Mr. PRESSLER], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Virginia [Mr. TRIBLE], the Senator from Washington [Mr. EVANS], the Senator from Rhode Island [Mr. PELL], the Senator from Delaware [Mr. BIDEN], the Senator from Maryland [Mr. SARBANES], the Senator from California [Mr. CRANSTON], the Senator from Connecticut [Mr. DODD], and the Senator from Massachusetts [Mr. KERRY] were added as cosponsors of Senate Joint Resolution 161, a joint resolution to appeal for the release of Soviet Jewry.

SENATE CONCURRENT RESOLUTION 11

At the request of Mr. KENNEDY, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of Senate Concurrent Resolution 11, a concurrent resolution calling for the restoration of democracy in Chile.

SENATE CONCURRENT RESOLUTION 24

At the request of Mr. MATTINGLY, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of Senate Concurrent Resolution 24, a concurrent resolution to direct the Commissioner of Social Security and the Secretary of Health and Human Services to develop a plan outlining the steps which might be taken to correct the Social Security benefit disparity known as the notch problem.

SENATE RESOLUTION 37

At the request of Mr. PRYOR, the names of the Senator from Iowa [Mr. HARKIN], the Senator from Kentucky [Mr. FORD], the Senator from South Dakota [Mr. PRESSLER], and the Senator from Michigan [Mr. LEVIN] were added as cosponsors of Senate Resolution 37, a resolution regarding small business and agricultural representatives on the Federal Reserve Board.

SENATE RESOLUTION 174

At the request of Mr. GORE, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of Senate Resolution 174, a resolution expressing the sense of the Senate with respect to the proposed closing and downgrading of certain of-

fices of the Social Security Administration.

SENATE RESOLUTION 186

At the request of Mr. D'AMATO, the name of the Senator from Idaho [Mr. SYMMS] was added as a cosponsor of Senate Resolution 186, a resolution expressing the sense of the Senate that the President should call for negotiations with those Democratic nations plagued by terrorism for a treaty to prevent and respond to terrorist attacks.

AMENDMENTS SUBMITTED

FISHERY CONSERVATION AND MANAGEMENT ACT AMENDMENTS OF 1985

STEVENS AMENDMENT NO. 529

(Ordered referred to the Committee on Commerce, Science, and Transportation.)

Mr. STEVENS submitted an amendment intended to be proposed by him to the bill (S. 1245) entitled the "Fishery Conservation and Management Act Amendments of 1985"; as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 201(d) of the Magnuson Fishery Conservation and Management Act (16 U.S.C.) 1821(d) is amended to read as follows:

"(d) TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—(1) Unless the Secretary of State demonstrates that a deviation in harvest levels will benefit the United States fishing industry, no foreign fishing allocation shall be permitted in any fishery within the geographic region of the North Pacific Fishery Management Council except that—

(A) for calendar year 1986 shall be 60 per centum of the total allowable level of such direct foreign fishing during calendar year 1985;

(B) for calendar year 1987 shall be 80 per centum of the total allowable level of such direct foreign fishing during calendar year 1986;

(C) for calendar year 1988 shall be 60 per centum of the total allowable level of such direct foreign fishing during calendar year 1986;

(D) for calendar year 1989 shall be 40 per centum of the total allowable level of such direct foreign fishing during calendar year 1986;

"(E) for calendar year 1990 shall be 20 per centum of the total allowable level of such direct foreign fishing during calendar year 1986; and

"(F) no direct foreign fishing shall be permitted in the exclusive economic foreign zone after the close of the 1990 harvesting season.

"(2)(A) the amount by which direct foreign fishing is reduced under (1)(A) of this section shall be divided equally and be placed into two separate reserve categories. One reserve shall be made up of 40 percent of reduction mandated under (1)(A), and shall be for the benefit of United States fishing vessels delivering to foreign processors in accordance with this Act. The remaining 60 percent of the reduction mandated under (1)(A) shall be placed in the other reserve for the benefit of United States fish processors, and the quantities of fish in such reserve shall be harvested only by United States fishing vessels delivering their catches to such processors or processing their own catches in accordance with this Act.

"(B) If such reserves are not utilized, they shall accumulate for a three year period and remain in such reserves until they are utilized by the appropriate sectors of the United States fishing industry.

"(C) If the growth of either United States fishing vessels delivering to foreign processors or United States fish processors exceeds the amounts placed in such reserve categories, the other preferences specified in this Act for such processors and harvesters shall take precedence, and the allowable level of foreign fishing shall be reduced accordingly.

"(D) The allowable levels of foreign fishing authorized by this subsection shall be reduced any time the growth of the United States fishing industry exceeds the reductions in foreign fishing established in this subsection.".

SEC. 2. Section 201(E)(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821(e)(1)) is amended in subparagraph (A), by adding the following at the end: "Any such determination must be consistent with the restrictions specified in subsection (d) of this section."; and

● Mr. STEVENS. Mr. President, last month I introduced S. 1245, which proposes several substantive amendments to the Magnuson Fishery Conservation and Management Act. There was no provision which addressed the phaseout of foreign fishing in the U.S. exclusive economic zone. We withheld a phaseout provision in an effort to obtain a consensus on a variety of proposals which have been offered in the last few months.

A nationwide consensus has not yet been reached on the timeframe for the termination of foreign fishing. However, there is strong feeling in the North Pacific to end foreign fishing in the near future. It has been a longstanding dream of mine to one day to see the U.S. fishing industry harvest the fishery resources in the 200-mile zone off our shores. That was my goal when I introduced the first 200-mile bill in the Senate in 1975.

Today I submit an amendment to S. 1245 which establishes a framework for phasing out foreign fishing in the North Pacific. Other regions in the Nation have other development interests; this amendment does not affect their relationship with the foreign fleets. If the industries in other regions wish to be included in this phaseout proposal, we will be happy to accommodate them.

My amendment will reduce foreign allocations by 40 percent for next year, and phase out the remainder in 4 years. The Secretary of State will have some flexibility in moderating the phaseout schedule if it is in the best interests of the fishing industry, but all foreign fishing within the 200-mile limit under the jurisdiction of the North Pacific Fishery Management Council will terminate in 4 years.

The proposal also places the quantities of fish saved by the initial allocation reduction in two reserves. One reserve will be set aside for U.S. harvesters who wish to sell to foreign processers. The other reserve will be set aside for U.S. harvesters who wish to sell to U.S. processers. If this second reserve is not used, the fish will be allowed to remain unharvested. U.S. processers maintain that a special reserve will provide them with the incentive to develop the substantial pollock resource in the North Pacific. We must initiate this approach in order to eliminate the hiatus—U.S. processers have not been able to finance the expansion necessary to bring these vast resources to U.S. markets because there has been no certainty they could obtain a sufficient allocation of the resource.

The reserve set-aside for the harvesters will allow joint ventures to grow at an orderly pace as direct foreign fishing is phased out. Joint ventures are interim arrangements until U.S. processers have adequate capacity to utilize the fishery resource. Harvesters and processers must grow together. Until such time that U.S. processers can provide stable markets for U.S. harvested fish, joint ventures will continue.

We have scheduled a hearing on S. 1245 on July 23. I welcome comments from industry, Members of Congress, and other interested parties on this and other provisions of my bill.●

LINE-ITEM VETO

LEAHY AMENDMENT NOS. 530 AND 531

(Ordered to lie on the table)

Mr. LEAHY submitted two amendments intended to be proposed by him to the bill (S. 43) to provide that each item of any general or special appropriation bill and any bill or joint resolution making supplemental deficiency, or continuing appropriations that is agreed to by both Houses of the Congress in the same form shall be enrolled as a separate bill or joint resolution for presentation to the President; as follows:

AMENDMENT No. 530

On page 3, between lines 18 and 19, insert the following: Each provision of a measure to which this Act applies that does not appropriate or otherwise make funds available shall be included in each bill or joint resolution enrolled pursuant to this Act with respect to such measure.

AMENDMENT No. 531

At the appropriate place in the bill, insert the following new section:

SEC. . (a) Prior to each fiscal year, the President shall transmit to the Congress a

budget for the United States Government for that fiscal year in which estimated expenditures are not greater than estimated receipts.

(b) This section shall apply to the budget submitted by the President for any fiscal year beginning after September 30, 1986.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Wednesday, July 17, 1985, in order to conduct a meeting on the nomination of Rebecca Range to be Assistant Secretary of the Department of Transportation, and the nomination of Jennifer Hillings to be Assistant Secretary of the Department of Transportation.

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

SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION AND GOVERNMENT PROCESSES

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Subcommittee on Energy, Nuclear Proliferation and Government processes, of the Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Wednesday, July 17, at 1:30 p.m., to hold an oversight hearing on the status of the Bureau of the Census planning for the implementation of the 1990 Decennial Census.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on Wednesday, July 17, 1985, in order to hold a hearing to evaluate alternatives for developing land adjacent to Union Station for the use of Administrative Offices of the U.S. Courts.

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

COMMITTEE ON THE JUDICIARY

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, July 17, 1985, in order to receive testimony concerning the following nominations;

U.S. CIRCUIT JUDGE

Alex Kozinski, of California, to be U.S. circuit judge for the ninth circuit.

Roger J. Miner, of New York, to be U.S. circuit judge for the second circuit.

Roger L. Wollman, of South Dakota, to be U.S. circuit judge for the eight circuit.

U.S. DISTRICT JUDGE

Richard H. Mills, of Illinois, to be U.S. district judge for the central district of Illinois.

Roger G. Strand, of Arizona, to be U.S. district judge for the district of Arizona.

John M. Walker, Jr., of New York, to be U.S. district judge for the southern district of New York.

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

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Wednesday, July 17, 1985, in order to mark up S. 616, the farm bill, and related measures.

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

ADDITIONAL STATEMENTS

THE FIRST ATOMIC TEST

● Mr. DOMENICI. Mr. President, it was exactly 40 years ago today that the world's first atomic explosion took place at Los Alamos, NM, thus ushering in the atomic age. The project was, of course, the Manhattan project and that first atomic test was called "Trinity".

Admittedly, our world is not a safer place because of the discovery of atomic energy, but one can hardly overlook the advancements that have been made in many areas of our lives as a result. Further, the fact remains that the discovery of such awesome power was inevitable at the end of World War II or afterward, and I for one am only thankful that it was the United States that made the breakthrough first.

I think that we can look back over these past 40 years with some sense of pride and accomplishment. That we have managed to live under relative peace and stability and avoid another global conflict is no small achievement. We as a nation fully understand the terrible risk of war in the atomic age and have acted responsibly in trying to reduce this risk. The task facing us now is to move on to another age—one in which nuclear weapons are obsolete and no longer pose a threat to our world.

Mr. President, I ask that two articles which appeared in the July 14 issue of the Albuquerque Journal concerning the Manhattan project be inserted in the RECORD.

The articles follow:

[From The Albuquerque Journal, July 14, 1985]

PEOPLE RECALL AWE OF FIRST NUCLEAR BLAST

(By Byron Spice)

Eleven-year-old Holm Bursum III was shaken awake by what he thought was an earthquake. The bunk beds he slept atop rocked violently back and forth and a case of tin cans next to the bed rattled like a freight train.

"It scared me pretty good," Bursum recalled of that morning almost 40 years ago. When he looked out the south window of his parents' ranch house just east of Bingham "it was real bright."

Bursum, now a Socorro banker, then did what a lot of 11-year-olds do at 5:30 in the morning, "I went right back to sleep."

Farther south, however, a group of the country's most prominent physicists were never more alert. Before them, a fireball called Trinity was turning the sand beneath it into green glass and confirming both their scientific theories and personal fears.

"Intellectually, you could figure all this out, but emotionally, you just weren't prepared for this kind of spectacle," said Raemer Schreiber, a Manhattan Project staff member who would retire in 1974 as deputy director at Los Alamos, where he still lives.

In addition to the blinding flash and distinctive mushroom cloud, the explosion of the Trinity gadget sent out a shock wave that shattered windows as far away as Silver City. But despite the suspicions aroused by the explosion, the public remained in the dark: the official explanation was an accidental detonation of a remote ammunition magazine on Alamogordo Army Air Base.

The scientists from Los Alamos would have been just as happy to have skipped the test and the unwanted attention it attracted. But, by the end of 1943, it became obvious that a test would be essential.

Originally, it had been hoped that the atomic bombs could be designed with gun-type assemblies. In such a device, a hemisphere of fissionable material would be attached at one end of a gun barrel and high explosives would be used to fire a second hemisphere into the first; this would result in a supercritical mass, a runaway chain reaction, an explosion.

It would be a straightforward device, but "an inefficient beast," Schreiber said. "Its only virtue was that it was simple."

The researchers learned, however, that gun-type assemblies would work if uranium was used in the bomb, but not if plutonium was used. And, of the two metals, bomb-grade uranium was the hardest to produce.

Work progressed on the uranium gun-type bomb, eventually dubbed Little Man. Untested, it performed as expected, exploding over Hiroshima on Aug. 6, 1945.

But if a second or third bomb was necessary, it would have to be a plutonium bomb. And to get plutonium to explode efficiently would require an implosion device: the fissionable plutonium would be surrounded by high explosives which would compress the plutonium to the point where it became supercritical.

The implosion bomb was more technically elegant, but also riskier. "This had never been done with high explosives," said Norris Bradbury, who worked in George Kistiakowsky's high explosives division at Los Alamos and who would later serve as director of Los Alamos for 25 years. "The requirements were extraordinary."

"For a reaction like this, a microsecond was a long time," Schreiber explained. "To have a gut feeling as to what would go on in that sort of time frame was difficult back then. There were always a whole bunch of unknowns."

Unwilling to risk a fizzle over a target, officials opted to test the implosion device. After considering sites south of Grants, southwest of Cuba and in Colorado's San Luis Valley, they settled in September 1944 on a remote, flat section of the Alamogordo air base.

In the weeks before the test in July 1985, Frank Martin had been working on a water

well near his ranch house about 18 miles southwest of Trinity Site. A group of GIs assigned to the detachment at Trinity base camp came by, apparently starved for human contact.

"I knew they were doing something out of the ordinary" out on the range, said Martin, now 70 and an auto parts dealer in Socorro. "The sergeant told me, 'I think it's going to be something unusual, something that would make history'." Figuring the soldier had already said more than he should have, Martin didn't press for more information. But he remembered.

A test detonation of 100 tons of TNT already had been done in May, a base camp had been built 10 miles south of Trinity site and miles of cables had been strung to control and measure the test. Los Alamos division chiefs agreed that July 16 would be the earliest possible date for firing.

It was Bradbury's job to deliver the bomb—minus its nuclear components—to Trinity Site. "We took it down in an ordinary two-ton truck," he recalled. "We didn't drive very fast."

Schreiber's role was to observe the assembly at the George McDonald ranch house of the nuclear core, or "pit," so he could direct the assembly of the actual Fat Man bomb on Tinian Island. "Basically, the operation was a fairly simple one," he said. "The main concern was to make sure we had a good mechanical fit." There was plenty of time to get it done—and plenty of willing hands. "None of the team wanted to be left out."

By the evening of July 15, Joe McKibben of White Rock, who was in charge of timing the test and the experiments designed to measure it, had been out on the range for two or three weeks, performing innumerable dry runs for each of the experimenters. "I was pretty well bushed," he said. He, Kistiakowsky and test director Kenneth Bainbridge spent the night camped beneath the Trinity tower. A steady rain penetrated McKibben's intermittent sleep: "I dreamed George Kistiakowsky had gotten a garden hose and was sprinkling me with the damn thing."

"I didn't think they were going to shoot it, it was such a dismal night," said Bradbury, who spent the night on a hill 20 miles from the site.

By 4 a.m., however, the rain stopped and the shot was on for 5:30 a.m. "Most of us were glad to go and get it over with," said John Manley of Los Alamos, who was in charge of measuring the explosion's blast and earth shock. "It would either flop completely or it would be in the range of five to 20 kilotons. There was a tremendous amount of fatigue. There had been tremendous pressure."

Schreiber was at the base camp 10 miles south of the Trinity tower when the blast occurred. "We were supposed to lie down with our backs to the tower," but Schreiber chose to lean against a stock tank, turn his head and close his eyes.

Dark glasses had been issued to protect eyes from the explosive flash, but weren't generally used. "I think we believed that two hands were better than any glasses," Bradbury said.

"We had been looking at this tiny, tiny light atop the tower way out there," Schreiber said, "then, all of a sudden, the sun came out."

"I turned around pretty doggone quickly," Bradbury said. "When you saw the light, you knew it had worked."

"It was very startling to see the whole valley and the mountains," said Manley, who had been in a bunker 10,000 yards north of the site. "It was like a big flashbulb going off in front of your face."

Martin had been up earlier that morning, "fooling around," but was asleep in bed at 5:30 a.m. "I've always wished I didn't go back to sleep," he added.

"The concussion from the damn thing woke me up," Martin continued. Looking out the window, he saw one of his horses, a gentle, 20-year-old gelding, running around and around with his head stuck straight in the air.

Who could blame the poor beast? "That smoke was a horrible-looking thing. It was so thick, white mixed with black," Martin said. "I've seen all kinds of fire, but I've never seen nothing like that."

Incredibly, an old farmhand in Martin's bunk house slept through the entire thing.

In Socorro, Holm Bursum III's parents were sleeping when Trinity exploded. "I thought lightning had struck right in the window," Holm Bursum Jr. recalled. His wife got up to check and reported the sun had come up in the wrong place.

That morning, Martin drove into Tularosa where his wife Florence was teaching school. "I didn't tell much of anybody," he said, though when someone told him that the blast supposedly had been an accident on the air base, "I said 'That was no accident, that was up in Socorro County.' "

Among the scientists, there was delight mixed with relief and tempered with fatigue. "Without having too much sleep the night before, you really weren't too coherent," Schreiber said. A mild shock seemed to set in, he noted, as the drive home proved unnaturally quiet. "Everyone was just trying to digest what had just happened."

"We had worked very hard toward this object," Bradbury observed. "It would have been sad and awkward if it hadn't worked . . . There was great jubilation up here that night. A lot of beer flowed."

LOS ALAMOS: MANHATTAN PROJECT TO 'STAR WARS'

At 5:29 a.m. July 16, 1945, Joe McKibben flipped a switch putting in motion a motorized timer that, 45 seconds later, would set off the world's first atomic explosion.

The test was called Trinity.

McKibben, in charge of coordinating the blast with 47 major experiments designed to measure and characterize it, spent the first 10 seconds of the atomic age doing his duty in a bunker 10,000 yards south of Trinity site, waiting at the control panel to flip one final switch.

Isolated though he was, McKibben was immersed in light that flooded through the shelter's back door. "I felt it must have gone off big," he recalls.

McKibben finally threw the switch and ran out of the bunker to catch a fristhand glimpse of Trinity, ducking behind an earthen mound for protection from the approaching shock wave.

"It was a big swirling mess," McKibben said of the explosion, the equivalent of 20,000 tons of TNT. Rising from a dry, barren area Spanish pioneers called Jornada de Muerto (Journey of Death), Trinity's multicolored mushroom plume of light and smoke pushed 40,000 feet into the sky.

McKibben, bone-tired after weeks of preparations, was in no mood for deep reflection. "I had done my part," he remembers thinking. "And I had the feeling this was going to bring the war to a close quickly."

He was right on both counts.

Even as he and his fellow scientists watched the cloud billow, the Little Boy atomic bomb was being loaded aboard the cruiser U.S.S. Indianapolis in San Francisco for shipment to Tinian Island. Three weeks later, on Aug. 6, it would explode over the Japanese city of Hiroshima, killing more than 110,000 people. Fat Man, a bomb similar to the device tested at Trinity, would explode over Nagasaki on Aug. 9, killing more than 35,000. Japan would surrender within five days, ending World War II.

The late Robert Oppenheimer, director of the laboratory established in Los Alamos two years earlier to develop the atomic bomb, would later say the Trinity explosion reminded him of an ancient Hindu quotation: "I am become Death, the destroyer of worlds."

Norris Bradbury, who would succeed Oppenheimer as Los Alamos director by year's end, remembers seeing the celebrated physicist soon after the test. "Oppy was happy," said Bradbury, now 76. "He may have been unhappy later on, but he was happy then."

In an amazingly short span of 27 months, the top physicists of the United States and Great Britain had produced a weapon of unprecedented power—power that was, and remains, hard to comprehend.

The Manhattan Project's legacy includes the Los Alamos lab istelf. It was created because nothing like it existed. The lab is no longer unique in its function, having since been joined by sister labs in Albuquerque and Livermore, Calif., but it remains an icon of the atomic age.

Oppenheimer predicted that if nuclear weapons proliferated, "the time will come when mankind will curse the name of Los Alamos. "Some people have indeed cursed it. The world's five major nuclear powers now have an estimated 50,000 warheads and Los Alamos has designed more than 40 types of nuclear weapons since its inception, including two-thirds of the current U.S. arsenal.

But the lab also concentrated its brainpower on other national needs, such as energy alternatives in the 1970s and most recently, ballistic missile defense. This latter project—which has taken on the trappings of "Manhattan Project II" during the past two years—holds the promise of making Los Alamos' most infamous invention, if not obsolete, then less threatening.

The original developers of the atomic bomb admit concern about the current nuclear arsenal, but remain convinced that it was the right weapon for World War II. "There was a war on, people were getting killed, my friends were getting killed," Bradbury said. "I wanted to see the end of the war."

"I don't feel any guilt," said John Manley, a close associate of Oppenheimer, of his role in the development of the atomic bomb. "We were in a vicious war with Nazi Germany. We were very afraid that the Nazis were ahead of us. What else could you do? If you had some knowledge or experience, you really had to help.

"It was an inevitable discovery . . . That's the trouble. This building of bombs turns out to be too damn easy. Curiously, building reactors has turned out to be more difficult than we thought."

Manley, 77, a physicist who later became research adviser to Bradbury, said he and other scientists hoped their invention might "finally make it completely obvious to sensible people that war isn't the way to solve problems . . . We really tried to convince the public of that in the immediate postwar years. The public is now very worried, but they wouldn't listen to us then."

With the invention of the even more powerful hydrogen bomb, Manley said he became convinced that "weapons are nonsense." Though the atomic bomb was clearly effective in ending World War II, "when two people have it, it's useless"

Bradbury maintains that while nuclear weaponry hasn't made the world safe, it has had a stabilizing effect. "You cannot win a nuclear exchange," the former lab director said. "So the best bet might be not to fight a war." That's not a bad situation, he added, though it doesn't provide protection against madmen.

The nuclear bomb didn't make the world a better place, "but it's a better place because the United States did it instead of somebody else," said Raemer Schreiber, a Manhattan Project veteran who went on to become deputy director of Los Alamos before retiring in 1974.

"It's very disappointing that 40 years later a political solution has not been found," Schreiber added.

Interest in a technical solution, however, has been renewed. On March 23, 1983, President Reagan made a television address, subsequently dubbed his "Star Wars speech," suggesting it might be possible to intercept and destroy strategic ballistic missiles before they reach their targets. "I call upon the scientific community who give us nuclear weapons to turn their great talents to the cause of world peace: to give us the means of rendering these nuclear weapons obsolete."

The call was for yet another technological leap, this time into the realm of beam weapons, interceptor missiles, advanced radars and sensors, space-based power systems and other devices formerly mentioned primarily in pulp science fiction.

But a new generation of scientists regard Reagan's vision as challenging, not outlandish. In fact, many strategic defense efforts at Los Alamos and elsewhere were under way well before the president's speech.

In 1964, for instance, work began on Los Alamos National Laboratory's Meson Physics Facility, a half-mile-long particle accelerator, that Bradbury and others had advocated as a scientifically exciting, if decidedly non-weapons-related project. Like the many "atom smashers" preceding it, the new accelerator would be a workhorse for physicists in their attempt to understand the atom and its components.

Once the "front-end" of the accelerator was in place, someone got the idea to use its powerful beam or protons to help excavate the site for the rest of the accelerator. The idea was rejected, but not before experiments resulted in a pile of rocks with dark, uniform holes in them.

Today, the Meson Physics Facility remains an important tool and a lab landmark. And alongside it, in an unpretentious metal building, a team of researchers work on Project White Horse, an effort to develop a space-based neutral particle beam for shooting down enemy missiles.

Unlike a laser, which affects only the skin of a target, a particle beam "does damage all the way through the target," explained Thomas Starke, one of the White Horse researchers. The only defense is a thick shield that would mean woe to a missile designer, he added.

"In 1964, we were doing this," said Starke, as he held a rock with a hole bored through it. "It's just that no one thought it. "It's just that no one thought you could put (an accelerator) in orbit."

The idea is to design a small, but powerful accelerator that could take negatively charged hydrogen atoms, push them to near the speed of light, then strip them of their electrical charge. This would leave a beam of neutrally charged, high-speed atoms that would be unaffected by the Earth's magnetic field.

The idea of a neutral particle beam for missile defense originated in the mid-1970s, but it's only been since Reagan's Strategic Defense Initiative that significant funding has been flowing to Project White Horse, Starke said.

"We don't really know how good one of these systems can be," he added. "If it does work, it will have a real impact on how people look at defense."

Other work at Los Alamos related to Star Wars also has ties to accelerator technology. The lab's free-electron laser project, for instance, takes an electron beam from an accelerator and uses it to generate laser light.

The electrons are sent past a series of magnets called a wiggler that push and pull the beam from one side to another. This causes the electrons to decelerate and, as they do, to emit bits of light.

The first free-electron laser was made to work only eight years ago, but they entice researchers interested in Star Wars applications. Brian Newnam, a Los Alamos laser researcher, explained that by adjusting the spacing of magnets in the wiggler or changing the energy of the electron beam, the wavelength of the laser light can be adjusted. "You have this capability of reaching almost any wavelength you want," he said, from infrared on up through the spectrum to ultraviolet.

Short wavelengths are attractive for Star Wars applications because they can be focused on a target using smaller optical elements than those necessary for long wavelength lasers. Also, the wavelength of a ground-based, free-electron laser could be adjusted to that which most easily passes through the atmosphere to a space-based optical system, Newnam said.

Another Los Alamos laser, called an excimer laser, is being developed as a means of sparking controlled nuclear fusion, but has attracted the attention of the Pentagon's Star Wars scientists, said Damon Giovanielli, deputy associate director for fusion research and applications. It too emits a desirably short wavelength.

Nuclear power isn't incompatible with Star Wars, though it hasn't received major emphasis. "Boy, if we could (design a missile defense) with ordinary chemical weapons, we'd love to do it," said Giovanielli, who oversees Star Wars applications of nuclear weapons. "But that's tough. . . . Doing it with nuclear weapons is probably something we could do faster. Nuclear weapons have so much force, you can afford to waste a lot."

Some authorities have suggested that nuclear explosions could be used to power lethal, space-based X-ray lasers.

Although many Manhattan Project veterans are uneasy about modern nuclear weaponry, they are skeptical of the Strategic Defense Initiative. "Star Wars perpetuates the myth that through technology you can solve everything," Manley said. "It seems we ought to learn from history; first there was the atomic bomb, then the hydrogen bomb, ballistic missiles, MIRVs (multiple warhead missiles). Each has been duplicated by the other side and each has made us less secure."

"I think we're a long way from finding a technique that's going to be worth the billions and billions required," Schreiber said, though he adds that "It's useful to find out what you can do . . . I would feel uncomfortable if we didn't look at the possibility."

At its core, the Manhattan Project was devoted to exploring possibilities, of providing an option for someone else to exercise or not. And the successors to the likes of Oppenheimer express the same goal. "I don't know if Star Wars is going to work, but we need to find out," free-election laser researcher Newnam said.

Star Wars is also very different from the Manhattan Project. Its existence certainly isn't a secret and Los Alamos isn't alone in developing the technology. And, as yet, the nation's leaders remain lukewarm to the idea; the Pentagon has proposed using 10 percent of its research funds next year for the Strategic Defense Initiative, but both the U.S. House and Senate thus far have approved lower figures.

A singularity of purpose if perhaps lacking as well. Although the Department of Defense is bankrolling Los Alamos' free-electron laser development. Newnam said the laser will be just as eagerly embraced by materials scientists and photochemists. And Giovenielli seems as happy to use an excimer laser to build a fusion power reactor as to zap missiles.

TOURS OF TRINITY SITE AVAILABLE

The 40th anniversary of the Project Trinity test, the world's first atomic explosion, will be commemorated Tuesday by tours and lectures.

Trinity Site and the George McDonald ranch house where the bomb was assembled lie within White Sands Missile Range. The public will be able to visit the site on Tuesday by driving through the range's Stallion Range Center gate 12 miles east of San Antonio on U.S. 380. The gate will be open from 9 a.m. to 2 p.m.

Trinity visitors also can enter the range in a caravan sponsored by the Alamogordo Chamber of Commerce. The caravan will form at the Otero County Fairgrounds in Alamogordo and leave at 9 a.m.

All visitors should make sure their vehicles are in good operating condition and have plenty of fuel.

Also Tuesday, Ferenc Szasz, University of New Mexico history professor and author of the book "The Day the Sun Rose Twice," will give a slide presentation at 10 a.m. in the theater of the National Atomic Museum on Kirtland Air Force Base.

On Aug. 6, the museum will commemorate the dropping of atomic bombs on Japan with a special display and a 10 a.m. panel discussion entitled "The Decision to Drop the Bombs." UNM Provost McAllister Hull and history professor Gerald Nash will be the panel members.●

FOUR FORMER AGRICULTURE SECRETARIES GIVE COUNSEL ON THE FARM BILL

● Mr. HELMS. Mr. President, members of the Senate Committee on Agriculture, Nutrition, and Forestry had the privilege Monday of visiting with four former U.S. Secretaries of Agriculture. Dr. Orville Freeman, who served under Presidents Kennedy and Johnson, Dr. Clifford Hardin, who served President Nixon, Dr. Earl Butz who served Presidents Nixon and Ford, and Bob Bergland who served President Jimmy Carter, took time

from their busy schedules to come to Washington to draft a policy statement for the guidance of Congress as we consider the 1985 farm bill.

Mr. President, the degree of consensus these distinguished Americans reached in their recommendations speaks to the importance and urgency of making significant modifications in farm policy. This bipartisan consensus is gratifying, because their recommendations follow precisely the direction toward which the Agriculture Committee is now moving in its farm bill markup.

While the committee has by no means concluded its work, it has clearly indicated, through a mixture of straw votes and tentative agreements, a substantial agreement with recommendations made by the Agriculture Secretaries. This lends hope that we can produce the kind of farm bill that a large majority of Senators can support.

I commend to Senators the joint statement on agriculture policy by former Secretaries of Agriculture Freeman, Hardin, Butz, and Bergland and ask that it be printed in the RECORD.

The statement follows:

JOINT STATEMENT ON AGRICULTURAL POLICY BY FORMER SECRETARIES OF AGRICULTURE FREEMAN, HARDIN, BUTZ, AND BERGLAND, JULY 15, 1985

Proper recognition of the internationalization of American agriculture during the past 15 years is the highest priority item that must be considered in the development of the 1985 Farm Bill.

In order to serve farmers and the Nation well, the 1985 Farm Bill should expand farm markets, raise farm income, and stimulate growth in farm exports.

To do that, the 1985 Farm Bill must recognize that the economic health of farmers and agriculture depends heavily on strong and growing export markets.

Agriculture has changed tremendously in the last 15 years. Markets for American farmers have become international. Even now, we export half or more of our wheat and cotton, nearly half of our soybeans and rice, and one-fourth of our feed grains.

Farmers produce food and fiber for people. Market potential is where the people are. World population overseas is growing several times faster than U.S. population, and most of that foreign population is anxious to upgrade its diet.

On the other hand, the domestic U.S. market for food and fiber, as well as in other developed countries, is a mature market. The American domestic market is not likely to expand significantly beyond our U.S. population growth rate.

The productivity of American agriculture continues to increase much faster than the U.S. population. Farmers are producing the food and fiber for the American domestic market—which has nearly a one-third larger population than 25 years ago—with fewer acres than were harvested for that purpose in 1960.

By contrast, the number of U.S. crop acres devoted to producing for foreign markets has increased by three-fourths since 1960.

The 1985 Farm Bill, and American farm policies, should concentrate on expanding agricultural exports in a world that is becoming increasingly competitive. There is no viable alternative. Either U.S. exports will grow or U.S. farmers will have to reduce their production substantially in food grains, feed grains. oilseeds, and cotton. It would be suicidal to ask our farmers to pace their output to the slow growth of the U.S. market while trying to maintain today's modern farm structure, land investments and financing, and the agri-industries that serve American farmers.

If we develop a Farm Bill that helps farmers adjust to new growth and new opportunities, and helps farmers to be competitive in today's world markets, U.S. agriculture will prosper in the years ahead. If we do not alter or eliminate farm programs that are harmful and fruitless in today's market realities, and which will become even more out of step in the 5 to 10 years ahead, farmers will suffer, rural America and its institutions will suffer, and the Nation will be weakened.

1. Non-recourse loans as a safety net. Non-recourse loans have been a part of the U.S. agricultural policy for 50 years, and they have worked well if loan levels are set at or below market clearing levels.

Since 1981, unrealistically high loan rates for most major grain and fiber commodities, in combination with a strong dollar, have priced the U.S. out of world markets, stimulated production abroad, and resulted in a combination of very costly acreage reduction programs and burdensome stocks. We recommend that loan levels be set in such a manner that they will be below season average market prices except in unusual circumstances. In that way, the loan program will protect farmers against major short-term price declines, but not interfere with the longer-term, free working of the marketplace.

2. Authorize the continued use of target prices and deficiency payments. Supplementing farm income through deficiency payments on base acreage instead of price support loan programs has one distinct advantage—it permits commodities to move through normal marketing channels at market clearing prices. A year-to-year buildup of surpluses is less likely. Furthermore, competing countries are discouraged from expanding their production.

Some type of income protection is needed for a time to help farmers adjust. A target price program that gradually adjusts target levels will be less harmful to future export opportunities than a program of high non-recourse loans or a program of idled acres.

Since small commercial farmers are the ones in greatest financial stress, a dollar ceiling should be established on total payments per farm operator. Furthermore, we recommend that Congress not establish specific minimum target levels as was done in the 1981 Act, but establish appropriate guidelines—especially for the second, third, and fourth years. There is simply no way to predict well enough what will happen to suppliers and prices in international markets 3 or 4 years in advance.

3. Reduce need for acreage reduction programs through demand expansion. A primary thrust of U.S. agricultural policy should be to expand demand so that the need for acreage reduction programs, except those for fragile islands, is eliminated. While being used, acreage reduction programs should not be operated to keep prices above support levels.

Government programs that idle U.S. cropland for the purpose of reducing production and raising farm commodity price levels are exercises in futility. These programs fail because they are unilateral efforts by the U.S. to reduce world supplies and raise world prices. People in competing countries watch us closely, and they expand production in response to U.S. actions—thus the effort to raise prices fails. Furthermore, when competing countries expand production and set up increased trade outlets, those are not dislodged easily or quickly. The net result is a gradual erosion of the U.S. share of foreign markets.

4. Redesign the farmer-owned reserve. The Agricultural Act of 1977 required the creation of a farmer-owned reserve for wheat. The 1981 Act continued the program for wheat and also included corn.

Reserves of certain commodities in the hands of farmers should be maintained as a matter of Government policy only for security reasons and for the purpose of providing a reasonable degree of supply and price stability. The quantities should be modest and the maximum amounts should be specified. The stocks should not be obtained through attempts to support market prices. Guidelines for the release and use of reserve stocks should be clearly specified and made consistent with market oriented loan programs.

5. Integrate trade and development activities in a new program to expand exports. Since 1981, U.S. farmers have lost 35 percent of their West European market and 10 percent of their Japanese market. These markets will continue to be important, and we should make concerted efforts to establish international trading rules that will permit us to compete freely and fairly for those markets.

The U.S. will need to look increasingly toward the developing countries where three-fourths of the world's people live. In order for those countries to increase their purchases of U.S. farm products markedly, they will need assistance in economic and agricultural development. The evidence is clear that as these countries improve their own productivity, they supplement their diets with larger imports of U.S. farm products. As they enter the economic mainstream, they become paying customers; as this happens, we should ensure that U.S. farmers share equitably in those markets.

Congress should expand and strengthen Public Law 480 (Food for Peace) with actions such as those in the 1984 recommendations of the President's Task Force on International Private Enterprise. We should enlarge GSM-301 funding and encourage greater use of "intermediate" credit for periods of 3 to 10 years. We should reexamine all our export credit programs to see if they are adequate.

The Department of Agriculture and the Agency for International Development should be strengthened to augment their respective capabilities for export development and foreign assistance and to maximize cooperation and coordination between the two agencies.

The Executive Branch should follow aid policies that encourage long-term commitments to countries that pursue specific development strategies. We should also show greater flexibility in shifting U.S. assistance among countries, commodities, and the various export assistance programs.

Foreign market development programs conducted by commodity organizations in cooperation with the U.S. Department of Agriculture have proved successful over

three decades. Those efforts should be expanded and new dimensions added.

We need to understand better the resources and requirements of our export customers. For example, a systematic study of buyer's needs and the way they utilize commodities might reveal product varieties and forms that could provide new markets for U.S. farmers.

6. Expand U.S. research and extension programs that will help farmers reduce costs. Scientific and technological advances have contributed significantly to the efficiency of U.S. agriculture. The U.S. no longer has a virtual monopoly on the development of such new knowledge, however. The ability to generate new scientific knowledge and technology is gaining momentum in countries like Brazil, India, and Taiwan, as well as in more industrialized countries. As farmers in other countries become more efficient, they will become stronger competitors in world markets.

7. Provide for a conservation program for fragile land. It is essential to our future generations that we address the erosion caused by intensive cultivation in certain identifiable fields. Nearly 100 million acres of land now in cultivation is eroding at more than the five-ton rate, a level nature cannot heal.

We strongly recommend a conservation reserve, perhaps on a bid basis, to remove this land from cultivation and put it back in grass and trees. The grass should be made available for livestock production only during periods of severe drought. The program ought to be tied specifically to fields, not to farms or regions.

A strong "sodbuster" concept should be included to prohibit farmers from receiving farm program payments on fragile land converted from grass and trees to cultivation.●

SENATOR DODD: AN ARTICULATE VOICE FOR AMERICAN INTERESTS

● Mr. HART. Mr. President, I recently had the opportunity to read an interview with our colleague Senator DODD in the Hartford Courant, the leading daily newspaper in the State of Connecticut. Senator DODD's statements in this article demonstrate again that he is one of the leading spokesmen, in the Congress and the country, for a progressive foreign policy that promotes American objectives and interests in a dangerous and complex world.

As a three-term Member of the House, and in his first term in the Senate, CHRIS has certainly made his mark with a variety of important domestic initiatives. At a time when the Reagan administration was forcing immense cutbacks in Federal funding for housing assistance, Senator CHRIS DODD—along with Congressman SCHUMER—got a new housing law on the books: the Housing Development Action Grant Program. He has been a leader in the Senate defending the rights of American's young people. Senator DODD is not only the founder of the Senate children's caucus but he has also authored legislation in the areas of adoption and the prevention of child abuse. On the Banking Committee, CHRIS is fighting to preserve competition in the insurance industry by leading the charge against the so-called South Dakota loophole.

The article in the Courant, however, is based on the major contribution which Senator DODD has made on foreign policy issues in the Senate. For example, we are finally seeing progress toward the achievement of democracy and pluralism in El Salvador. Most of our colleagues will agree, Mr. President, this is due largely to the efforts of Senator DODD. As a member of the Senate Foreign Relations Committee, he fought for an economic and military aid program which conditioned foreign assistance to El Salvador to the achievement of significant human rights and agrarian reforms in that country.

Senator DODD has emerged as one of the most respected voices in the Democratic Party on foreign policy. He understands the complexities and challenges we face in a world that has changed drastically since World War II. He recognizes the range of tools we have—diplomacy, aid, trade, and military power—and how they can best be used to defend and promote America's interests and democratic values abroad.

Mr. President, I hope that all of our colleagues will read "Not by Force of Arms—A Conversation with Christopher Dodd." His observations are valuable, and I am pleased to have this opportunity to make them available to the Senate and the public. I ask that the text of the article be printed in the RECORD.

The article follows:

[From the Hartford Courant, July 7, 1985]

NOT BY FORCE OF ARMS—A CONVERSATION WITH CHRISTOPHER DODD

(Jay Winik, a Yale doctoral student and former director of the Coalition for a Democratic Majority, an organization of conservative Democrats, talks with U.S. Sen. Christopher J. Dodd about America's shifting role in the world. The interview took place in Washington on June 27 and has been edited by The Courant.)

WINIK: John F. Kennedy once inspired the imagination and hopes of people throughout the world by going to Berlin and saying, I'm a Berliner. And then he said that we are watchmen on the walls of world freedom. As one of those who was inspired by President Kennedy, would you say that we are still watchmen?

DODD: We can offer some word of inspiration and hope. We can identify with the aspirations of peoples who would like to lift off the yoke of totalitarianism, but there is an implication in those remarks that we were somehow going to be able to achieve this goal through the exercise and extension of our own particular influence. I think we can contribute to it but certainly not as a practical matter effectuate the kind of results that those remarks imply.

WINIK: You've met with Lech Walesa, and you've probably followed the ongoing drama of Poland since the rise of Solidarity and the crushing of Solidarity. Do you feel a sense of powerlessness watching that?

DODD: The implication is that somehow we are going to make it possible for Lech Walesa and the leaders and followers of Solidarity to achieve their very laudable, commendable goals. I think we can contribute in some way by just the exercise of rhetoric, but we seem to suggest far more than the use of rhetoric. And to that extent I think we raise expectations falsely.

WINIK: You're suggesting that America has overstated its ability?

DODD: The quicker we disabuse ourselves that we live in a World War II environment, the better off we'll be. I think, clearly, today the people of China and Hungary, Yugoslavia, even Poland are moving.

There is an evolution. There is a change that is occurring.

WINIK: But if there's an evolution, there's certainly also periodic and sustained revolution—1953 in East Germany; '56 in Hungary and Poland; '68 in Czechoslovakia; 1981, 1982, 1983 in Poland. Who owns the future in Eastern Europe?

DODD: There must be some way that we can wean away governments which have embraced a totalitarianism system of government. If our only response is to support violent insurrection, then I think we're in deep trouble. If we have patience, if we truly believe in the value system and ideals which we claim to embrace, then I think the longer we're willing to hang in with this and begin to work and to see things change and to move.

WINIK: Should we be waging an ideological war in defense of our values?

DODD: I think it's somewhat presumptuous to assume that somehow you're dealing with an ignorant mass of people who don't understand what's happening to them.

People don't need to have the Voice of America remind them of how they're living and some commentator telling them what it's like in the promised land. They're more than capable of being able to determine the differences between living under that system and what it might be like to live in a free and open society.

When you look at the fact that you need barbed wire and police dogs and machine guns to keep people in—that's the only piece of evidence you need to make that case.

You just had a ballot in Hungary. It's not the textbook scenario of a democratic election, but minority candidates were being chosen. Candidates who under previous systems would have been automatically elected were being rejected. Now it's not a great leap forward, but is clear movement.

WINIK: But the process of exploration could be stripped overnight.

DODD: Of course it could be. But you're suggesting somehow by your question that it's 1956 and we ought to get in there and overthrow the government through military force.

Why don't we try and build bridges with these people? Why don't we try and understand what's going on there and encourage further reforms and build that kind of relationship? Isn't that, in the final analysis, what has a greater likelihood of success? Why is that objectionable?

WINIK: I'm as frustrated as you are and I'm trying to think of the best way we can promote the liberties they have and eventually foster a liberation over time.

DODD: You and I are going to see a lot more Nicarguas and El Salvadors in our lifetime, and the question is how are we going to deal with them? If our only response is what [former U.N. Ambassador] Jeane Kirkpatrick has implicitly suggested, that somehow there should be 50,000 U.S. troops in Iran today and 50,000 U.S. troops in the

Philippines, and there should be 50,000 troops in Nicaragua, what are the limits? Is that the only way in which we can respond?

WINIK: But there is a military dimension. In Afghanistan we are seeing a whole civilization that is being crushed. A country, in the words of the Helsinki Watch Committee, is crying, it's dying. What is the lesson to have learned from what's happening there?

DODD: Why are we embarrassed about supporting the mujahedeen? What is the problem with coming before the Congress and saying we ought to be providing those people with all the humanitarian aid and the military hardware that they need to defend themselves? What's the problem with that?

WINIK: Because maybe there are senators who will say that this will increase tensions with the Soviet Union, which in a nuclear age is simply intolerable.

DODD: I think there cause is just. I think you have an outside aggressor peforming in a genocidal manner and I don't think this nation ought to be shy in saying we ought to identify with the hope and aspiration of those people and we're going to support them.

I have no problem with the Afghan situation at all, and I think it's criminal we're not doing more. We're certainly not going to provide them with enough subsistence to throw out the Soviets, but we might provide them with enough help to survive so that maybe they can exercise some influence on what is likely to occur in that country.

You get to a Cambodia situation, that becomes a grayer problem. I don't have an easy answer on that one because I don't like the idea that we're subsidizing the Khmer Rouge. As abhorrent as the Vietnamese are, I'm not sure I want to choose up sides in that crowd.

In the Nicaraguan situation, I see something entirely different where you've got a nation at war with itself where it seems to me our interests can be served better. So that the people who have this neat kind of convenient little package that they apply regardless of the situation, but as long as there's a Marxist element involved that's what you do. I have a problem with that.

WINIK: You've been a strong voice in Central America. In 1983, you made the Democratic response to President Reagan's speech in which you lamented yet still welcomed his incipient recognition of their economic and political problems.

DODD: Which he didn't recognize; he rhetorically recognized.

WINIK: Shortly thereafter there was a bipartisan commission.

DODD: There was nothing bipartisan about that commission. How about if I take Lowell Weicker and Mack Mathias [U.S. Sen. Charles McC. Mathias, R-Md.] and Mark Hatfield [U.S. Sen. Mark O. Hatfield, R-Ore.] and put them together with a group of Democrats—would you call that a bipartisan commission?

WINIK: You're calling them [the Democrats on the commission] stooges of the administration?

DODD: Basically. These are people who agree philosophically with the administration. They happen to wear the label Democrat but they aren't Democrats in terms of expressing the majority opinion of the party.

WINIK: The Kissinger commission called for economic aid, assistance, insurance credits and enough military assistance in the millions, not in the billions, to stabilize the situation enough so that the economic aid could flourish. Why didn't you buy it like a shot?

DODD: I don't disagree with the idea of economics. But they called it a Marshall Plan for Central America. I think that's totally inaccurate. The Marshall Plan was a $4 billion program for bricks and mortar reconstruction. Institutionally, Europe had the 13-year aberration of Nazism, but for decades before that Europe had institutions which were very functional, which were democratic in their origins.

In Latin America, first of all, we're in the middle of a conflict. Secondly, you have no tradition whatsoever of democratic institutions. That is the fundamental problem and that is not something necessarily solved by pushing in a lot of trade legislation and so forth.

I think it can help, but you still have not addressed the fundamental problems which exist in this part of the world and that is the building of the basic institutions over a period of time which can then promote the very kinds of ideals they're talking about.

WINIK: One of your earlier legislative efforts was to ask the Salvadorans to make significant progress in land reform. Is that imposing a way of life on them which should have been done much more slowly, in tune with a growing-up process?

DODD: Rather than give you my answer, let me give you [Salvadoran President] José Napoleón Duarte's answer the other day in front of 15 of my colleagues at a closed door briefing of the Foreign Relations Committee. I said, we know each other well, you know what I did legislatively in terms of economic and military assistance. Did I help you or did I hurt you? He said, Senator, I would not be sitting at this table had you not gotten that legislation through.

WINIK: You have said you do not want a Marxist Leninist regime in Nicaragua.

DODD: I don't want anything that threatens my security interests. I don't think there's any question about the philosophy of the leadership of the Sandinista movement. But I'm not willing to squander my political capital internationally in this region because they don't print [the opposition newspaper] La Prensa in the morning.

I'm worried about that and I don't like that, but if you're asking me whether or not that is something that jeopardizes security interests of Western democracy or of the United States, the answer is no.

Now if they bring in Soviet bases or missiles or jeopardize sea lanes, the Panama Canal, you've got another problem.

I think what the Congress has recently gone through here is the phoniest thing I've ever seen. The only people I have any respect for, other than the people who agree with me, are the people calling for the absolute military overthrow of the Sandinistas and would like to see the U.S. government go down tomorrow and get rid of them.

WINIK: Because they're being honest?

DODD: Damn right. But the rest of these people are talking about humanitarian aid—just Band-Aids, only jeeps, no grenades, we'll do it over here, AID or the Red Cross or somebody else, not the CIA, or maybe the CIA. We are absolutely deluding ourselves.

Either you want to get rid of that crowd or you decide you're going to try and at least put some parameters around it.

The problem is you've had the president talking about the contras as if they were the reincarnation of Jefferson and the democrats, and you have the left in this country talking about the Sandinistas as if they were the reincarnation of the Franciscan Order.

Nobody is talking about our interests. I'll be damned if I'm going to place the interest of the United States in the hands of the contras, because they don't necessarily have my interests at heart. They've got their agenda and I don't necessarily believe their agenda ought to be my agenda.

WINIK: What leverage do we have to restrain the Sandinistas from exporting revolution as they have claimed they will and as they have been doing?

DODD: I'd set out the guidelines—cross it and find out what happens and I'll mean it.

WINIK: And what is the resolution you'll introduce at that time?

DODD: There doesn't have to be a resolution, be very quiet about it. You don't have to make a lot of noise.

WINIK: In the Middle East the PLO was once known as the group which invented plane hijacking. It was known for the butchering of children at Maalot, for the massacre of Israeli athletes at Munich. The same group today is accorded respectability throughout the world. Has that sent out a message that terrorism works?

DODD: Does it have the attention of the world? Turn on the news right now, what's on?

If the Shiites had F15s or F16s they would probably be striking Tel Aviv. They don't have F15s and F16s so they take hostages. I think it's deplorable that they engage the use of non-combatants. Does it work for them to make their point? Yeah, they get a lot of attention. Who knew Mr. Berri's [Shiite Amal leader Nabih Berri's] name 12 days ago?

WINIK: What is the Western response to the perversion of language and political reality that often flows from terrorism?

DODD: You've got to try and deal with it in a pragmatic way in terms of security measures. But you and I both know that tonight, this afternoon, someone could drive in here with a truck and threaten to do all sorts of things and get every media outlet in the world to focus attention on them.

It's not a question of whether you like it or not but whether you capitulate. I think the Israelis were despicable in returning 1100 Shiites for three Israeli soldiers. It was a disastrous mistake of significant proportions because I don't believe you ought to give any quarter on those issues.

But I don't think it's going to go away. I think they're going to continue to get attention as they have over the years, and I don't think you're going to stop that in the short run.

WINIK: Can there be such a thing as diversity run rampant in the world, where every rag-tag group can pick up a gun and create what ultimately could be a legitimate grievance?

DODD: If you're asking whether we ought to be willing to compromise these basic principles that we associate with democratic governments, my answer is absolutely not. I think some people in democratic governments actually envy the Politburo. They would very much like to be able to decide what people ought to be saying, doing and thinking. I'd hate to have someone suggest that you and I shouldn't be able to have this conversation because there may be a terrorist somewhere who is going to jeopardize American, Israeli lives.

WINIK: I guess the larger theme that I'm getting at is the tension between order vs. justice and liberty. At what point do you

draw the line and say there are legitimate grievances?

DODD: You're asking a question that has no answer because you're asking in an abstract way for one person to sit here and decide that we're going to sacrifice justice in order to achieve your notion of order. What's order? To fire guns in the air and do things that you and I would not consider proper Western behavior?

To sit here and decide that I'm either going to totally subjugate them and dominate them militarily so that they conform to my idea of order so that I will be able to achieve my idea of justice must be fascinating discussion for a 90-minute class some place. But in the world I live in, I don't have time to dwell on that. I have to deal in the day-to-day real world.

WINIK: Do you think the recent initiative by Jordan's King Hussein poses a way out of the impasse with the Palestinian problem?

DODD. I've heard him say this in the past, and I'm hopeful that maybe this time things will be a bit different. It certainly has potential.

Jordan is a pivotal player, and I think it's worth trying to proceed. The very essence of Israel as a Jewish state is in jeopardy otherwise when we look at the simple demographics and the population of the Samaria and Judea areas [the West Bank of the Jordan River] and what that means in the long term. Obviously, the question of survivable borders is a hard one because it's an extremely vulnerable area. But history is never achieved by people who don't take risks.

WINIK. Do you think we should be dealing with Syria in the process?

DODD. Ultimately, we're going to have to, whether we like it or not. [Syrian President Hafez] Assad is too influential a player over there.

WINIK. Would you say that Assad is an important player because he has legitimacy according to our values or because he's got a powerful gun?

DODD. He's got a powerful gun.

WINIK. Does that suggest that both force and diplomacy cleverly webbed together is the only way we can continue over the long haul?

DODD. Not necessarily. Tomorrow is another day. Assad may decide there's another way of resolving his own interests and concerns. He's not a fool. If there's some self-interest that he perceives, he'll jump on it.

WINIK. Kennedy once spoke about the long twilight struggle. Will America eventually be building that shining city on the hill or will it be a city built by someone else? Put another way, are you an optimist?

DODD. Absolutely. We don't have a great reservoir of patience in this country. We like things to be decided yesterday. If this country can develop a sense of patience, if we're willing to recognize that in our lifetime Israel will never be without fear of annihilation, if we can live with the notion that we're not going to see any fundamental change in the Soviet Union, if we just hang in there and work with the countries that are trying to embrace democratic values—that's a never-ending struggle. As long as you come to terms with that, then there's every reason to be optimistic.

I think it must be sad, indeed, if you see the only way of resolving these things is through the annihilation of your opponent.●

MOTHER THERESA SPEECH

● Mr. HUMPHREY. Mr. President, I wish to call the attention of my colleagues to the speech given by Mother Theresa of Calcutta at the National Right to Life Convention held here in Washington, DC, on June 21. Mother Theresa has proven to be both a devoted comforter of the poor, and a fervent advocate of improved alternatives to abortion for all women. Mother Theresa is an extraordinary defender of life at every stage, and she serves as a tremendous model for us all. I append her speech as an inspiration to positive, loving solution to the tragedy of abortion.

The speech follows:

[From the National Right to Life, July 11, 1985]

LOVE BEGINS AT HOME, MOTHER TERESA TELLS PRO-LIFERS

(Editor's note.—The following is the complete text of Mother Teresa's speech to the NRL Convention '85. A line or two at the end of her speech was lost because her remarks ended just as the tape technician was changing tapes.)

Let us ask Our Lady to be with us. Let us ask her, Mary, Mother of Jesus, give us your heart so beautiful, so pure, so matchless, so full of love and humility that we may be able to receive Jesus in the Bread of Life, love Him as you loved Him, and serve Him in the distressing disguise of the poor.

Before I begin to say something, let us thank God for giving us our parents who wanted us, who loved us, and who helped us to grow. So, today, when we have gathered here together we are going to make sure that we who are parents or spiritual parents that we, too, like them, are going to show that tenderness and love for the little ones, believing that God spoke, for God speaks so clearly, even if a mother could forget her child, "I will not forget you. I have carved you on the palm of My hand. You are precious to Me. I love you." Just think, God himself declares His love for you, for me, for that little unborn child, precious to Him. For He has created each one of us and all of those little ones in the womb of their mothers for greater things to love and to be loved—not just a number but somebody special.

A few weeks ago I had the very extraordinary experience of this tenderness of God for the little one. A man came to our house with a prescription from a doctor, said that his child was dying—his only child—was dying in the slums of Calcutta. And that medicine could not be gotten in India anywhere. [It] had to be brought from England.

And as we were talking, a man came with a basket of medicines. He had gone round to families and gathered half-used medicines for our poor people. We have these mobile clinics all over the slums of Calcutta and all over the place, and they go 'round to the families and gather the half-used medicine and then give them to us, and we give them to the poor people. And then he came, and right on the top of that basket was that medicine.

I just couldn't believe it because if it had been inside, I would not have seen it. If he had come before or after, I would not have connected. I just stood in front of that basket and kept looking at the bottle. And in my mind I was saying, millions, and millions, and millions of children in the world, how could God be concerned with that little child in the slums of Calcutta? To send that medicine! To send that man, just at that time. To put that medicine right on the top and to send the full amount that the doctor had prescribed. See how precious that little one was to God, Himself. How concerned He was for that little one.

And so today when we have gathered to prove that tenderness of God's love for the little unborn child as something very, very special is again in the Gospel—God loved the world so much that He gave His Son, Jesus, to come. And He came again in the womb of a mother.

Honored Mother, full of grace—the Holy Spirit. She had vowed her life totally to God and so in the Gospel, when the angel said to her, said the Holy Spirit, full of grace; and then Mary said, "I don't understand." She didn't understand how. But then Holy Spirit will fill you and holy will be the unborn of you. And now Our Lady just said very dutifully, "Be done to me according to Thy word."

And the moment Jesus came into her life, immediately, we read that in the Gospel, she went in haste to her cousin, Elizabeth, for she heard that her cousin was with a child for maybe six months. She went there just to do a handmaiden's work, a servant. See the fruit of the coming of Jesus? Immediately to put that love of God into living action as she does.

And something extraordinary happens. She never told anything to anybody. Nobody. All those big people were there, nobody knew. And yet, God used that little unborn child in the womb of His mother to lift with joy at the coming of Christ. Strange, that a little unborn child would be used to proclaim the coming of Christ.

And today, that little unborn child has become a target of destruction—of destroying the beautiful image of God. The beautiful presence of God. For each one, every little unborn child, is created in the image of God. Is created for some better things—to love and be loved.

That's why abortion is such a terrible evil, terrible destroyer of peace, of love, of unity, of joy. Anything that's beautiful, [it] destroys because the little one is not just a number but somebody precious to God. Somebody precious to you and to me.

And so, today, when we are together, let us make one strong resolution. We will do everything on our part to prevail, not to destroy life. Life is created in the image of God. To love and to be loved. And that's why today we are having such terrible evils happening everywhere. So much killing, so much destruction. And I always give the same answer. If a mother can kill her own child, murder her own child, what is left for others to do?

So, with this real great great love—loving action, if you and I and each of us, take the trouble to help the mothers, whoever they may be, wherever they may be, let us help them to want the child. And if they don't want them, tell them, "Mother Teresa and her sisters want them."

We are fighting abortion by adoption. Thousands of children have brought joy, peace, love, unity in the families that can't have a child. (I don't give a child to a family who has done something to destroy life. How can they love, how can they love the child if they have destroyed the power of loving in their hearts.) So, I think this is something so beautiful. As you know, love begins at home. So when we bring the child

into the family, there is so much love. I've seen again and again and again, the greatness of love.

Two or three days ago, on the 15th, one of our Mission of Charity fathers was ordained priest and his sister also made final vows. And something so wonderful: the parents of these children had adopted them. They were their adopted children and you could see the shining joy from this father and mother for their children—one had become a priest and the other had consecrated her life to the service of the poorest of the poor. This year she is going to Poland to work for the poor there.

There is something so living, so real in God's love—it matches God's concern. They could have been killed. They could have been destroyed. But see how the joy of loving has brought from that something so beautiful in the lives of these two. And now these two will bring that joy, that love, that peace wherever they go, whoever they meet, whatever they do, it will be their love for God in living action.

And so far we have today when you are praying, when you are thinking, talking—pray! Pray! That God will give you a clean heart and a clean heart can see God's face, can understand God's love. And if you understand that God's love is in you and for you, you will be able to give that love to others.

Pray first for your own family. Love begins at home. And that family that prays together stays together. And if you stay together, you will know how to love each other as God loves you. Because Jesus came all the way from heaven. He came as a little child to teach us how to love from the beginning. He could have come like a big man. He could have been somebody special. But, no. He came like a little helpless child to give us the good news that God loves us, that God is love and He loves you and He loves me.

I've seen this tender love again and again and again in our people. Again and again. A few weeks ago two young people came to our house. They gave me lots of money to feed our people because we cook for 9,000 people everyday in Calcutta.

Then I said, "Where, where did you get so much money?" And they said, "Two days ago we were married but before marriage, we decided we will not have a big feast. We will not have wedding clothes. We will give you the money."

And I, knowing what that means in a Hindu family, and the big, big expense that takes place, and the special clothes and special food, so again I asked, "But why, why did you do that?" The answer they gave surprised me. "We love each other so tenderly that we wanted to share the joy of loving with the people you serve."

See, the joy of loving! Have you experienced the joy of loving? 'Cause true love hurts. It hurt Jesus to love us. God must have felt also to have to give Jesus to us. Jesus must have felt also to have to die for us. But again and again we see that tender love—to share the joy of loving.

This is that love that begins at home. Make sure that your family prays together and you will find somebody lonely, somebody sick, somebody worried, somebody feeling miserable. You see so much suffering, so much anxiety. Love begins at home. And how does it begin? By praying together. In whatever form you know how to pray. Help your children to pray. Teach them to pray. And that prayer will give them peace.

And make it a point to be a cause of joy to everyone you meet because if the love of Jesus is in your heart, naturally you will want to give that love to others. For Jesus said: "Love one another as I have loved you." And to make it easy for us to love one another, He says, "You did it to me"; whatever you do to the least—you help an unwed mother to get a good home, help her to be loved, to be wanted, to feel that someone wants her. You help her child to feel wanted, to be loved, to be tenderly taken care of. Give, give that love, don't be afraid, share that love, share until it hurts.

Sometime ago I happened to be in England—we have houses there—and our sisters work late, and I work with them, and I found a very young boy sitting there with the people, and I went to him and I said, "You shouldn't be here, you should be with your family. It's not the place for you." And he looked at me and said, "My mother didn't want me." And I said, "Why did your mother not want you?" "Because I have long hair. Each time I went home my mother didn't want me." Then I said to myself, maybe the mother is very busy with the hungry in Ethiopia or India or someplace else and she has no time, no care. She doesn't want her own child. This is where love begins at home.

And after that we went down and when I came back I found that that boy had overdosed himself with drugs and we took him to the hospital. But this is something that happens so often. We have so many young people in the streets everywhere, in all the big cities. We are all over the place and we find the young people—why are they [there], school children still. They are still in the street. Why? They feel unwanted. There is no one in the house to receive them. Love begins at home. Love begins at home. Be at home to love one another, love father, mother, children. If you pray together, you will always be able to give back tender love.

And so, today, when you are talking of life of love, of compassion, ask your own heart "Is your own family all right?" Love begins there. And if it is all right here, naturally, naturally, this pro-life movement—I don't call it the movement, I call it the burning fire of love that just spreads everywhere, every house, every human being so that we realize that God loves us and that He uses you, me, to be that love, that concern.

Do not be afraid to love until it hurts. Because Jesus has made it very clear: "Whatever you do to the least of my brethern, you do it to Me." If, in My name you receive a little child, the little unborn child receive, you receive Me. And if, in My name, you give a glass of water, you give it to Me. And to make it more real, more understanding, simply, "I was hungry, you gave me something to eat; I was naked, you clothed Me; I was homeless, you took Me in."

Believe me, hunger is not only for a piece of bread; hunger is for love—being wanted, being somebody to somebody. That little unborn child, it is most unwanted. That's why I am involved. Because we take a special vow to give wholehearted service to the poorest of the poor. And I tell you, that little unborn child is the poorest of poor, the most unwanted, the most unloved, the most uncared for, the most rejected. Much worse than the lepers. Much worse. We take care of 150,000 lepers, but they are loved. They are somebody. There is life in them. They are terribly disfigured, but there is love in them.

I'll never forget—the government has given us land to rehabilitate them. In every place we have a children's home so as soon as the baby is born, we take the baby before the little mother has kissed the baby. Both father and mother are lepers. The last time I had to take that baby before the mother could kiss the baby because that child is completely clean, born of leper parents, the mother was looking with tears rolling down her face, looking as I was walking and I was holding the baby so that she could see the child right to the end. But I was thinking of the millions of children who are killed, and here is this poor leper woman so badly disfigured—what tenderness in her heart for her little child. What a big sacrifice she makes not to kiss her child so that the child will remain healthly. See, this is something unbelievable. And this is what we have to create, you and I. Let this gathering not be just a gathering like this. Let it be a time of prayer. I will protect life because that life is created by God for greater things—to love and to be loved. For that little one, Jesus has died on the cross. And he died because He loved. He expressed His special love for this little one.

So let us bring the joy of loving to every heart, and then you'll find the best ways to do is help these young mothers, I call them young mothers, unwed mothers, but they have something to share with you—they give you a chance to share the joy of loving. The more you do for them—open your eyes and go in search of them and when you find them, show tender love for them because "whatever you do to the least," Jesus said, "you give it to me." And that you have your five fingers to remind you. You-Did-It-To-Me. The five words of Jesus in your five fingers. So every night before you go to bed, look at your hand and ask, "What did I do to Jesus today?"

Let's say a little prayer that you may understand the poverty of the unborn. And let us understand also the terrible poverty and the fear of the mother of the unborn child. I only realize that this is a terrible fear of the child. They are afraid to have one more child, to have to feed one more, to educate one more child, [so] the child must die. I have not seen this fear among our poor people. I have never seen it. We are teaching them natural family planning but I have not seen the fear as I've seen in people that are better off and can afford to have [children].

So let us pray. Let us pray again and again that tenderness and love of God can penetrate our hearts and we may put that tender love of God into loving action by helping the unborn child to come, to be loved, to be wanted. And we don't know, we don't know. I remember when we opened the children's home in New Delhi and Pandit Nehru came. We had unwed mothers there and children there, and he then went around and looked at everything, and he said, "Take care of the unborn, take care of the little one, cause you don't know, maybe amongst them there's a prime minister."

KANYAKU IMIN CENTENNIAL CELEBRATION

● Mr. INOUYE. Mr. President, this year marks the 100th anniversary of the arrival of the first Japanese contract laborers to Hawaii. The descendants of these pioneers in Hawaii and the continental United States have achieved success and prominence in our society, as scientists and physicians; as academicians and artists; as a

Governor and an astronaut; as U.S. Senators, Congressmen, and mayors; as leaders in business and labor, and in many more fields of endeavor.

Celebrations in Hawaii marking the arrival of these first Japanese immigrants—known as the "kanyaku imin"—were honored by the presence of members of the Japan royal family, Prince and Princess Hitachi.

Among the many speeches that accompanied these events, none was more eloquent and deeply meaningful than that of Princess Abigail Kekaulike Kawananakoa on June 16, 1985, in Honolulu. She is the last descendant of the Kamehameha family line, the royal family of the Hawaiian Islands. If Hawaii had not been annexed by the United States in 1898, and instead remained an independent nation, its monarch today would be Princess Kawananakoa.

Her remarks on this occasion, from one royal family to another, reflected the unique history of Hawaii as a crossroads for the native Hawaiian people and immigrants from Japan—groups diverse in cultural heritage and background but joined in a warm love for the aloha of the Hawaiian Islands.

Mr. President, I ask that the remarks of Princess Kawananakoa be printed in the RECORD.

The remarks follow:

SPEECH: PRINCESS ABIGAIL KEKAULIKE KAWANANAKOA

KANYAKU IMIN CENTENNIAL CELEBRATION, JUNE 16, 1985

It is my honor, in the name of my family, and my pleasure, in the name of the Hawaiian people, to welcome Your Imperial Highnesses to Hawaii and to cast another link in the bonds of friendship that bind together our two homelands and our two houses—bonds that were forged more than a century ago by my great granduncle, King Kalakaua, and your own great grandfather, the Emperor Meiji.

This year, we commemorate the 100th anniversary of the first contingent of Japanese nationals who came to Hawaii under the "Hawaii Labor Convention" entered into between our two ancestors. But the people who arrived on the "City of Tokio" 100 years ago were not the first group of Japanese nationals to come to Hawaii. During the reign of King Kamehameha V, some 30 Japanese Ronin arrived in Hawaii, fleeing from the wrath and persecution of the Tokugawa shogunate. Some of them returned to Japan following the advent of the Meiji era. Others remained here, married Hawaiian women, and founded some of our most prominent families.

The men and women who arrived here a century ago, came to work on our fields and plantations. They worked hard . . . struggled to survive and to prosper . . . and eventually, they, too, founded prominent families among us. One of the descendants of those original Japanese people is now our Governor, George Ariyoshi. So are our two Senators in the Congress of the United States—Senators Inouye and Matsunaga. From them descended many of our legislators, mayors and judges, as well as many of our most able craftsmen and professionals.

The Hawaii that we have created today—the many races, nationalities, and religious faiths who live here in harmony—could not have been possible without the cooperation of those early Japanese people. They labored and persevered even with meager wages and poor living conditions. Yet somehow, they managed to fashion better lives for themselves. They educated their children and became leading citizens.

America was founded by pioneers. Those early Japanese were pioneers. They cultivated the land and met hardships face to face. And when war came to this country, they and their children fought valiantly at our sides . . . risked their fortunes . . . and even gave their lives . . . so that this country and these islands should remain free. Although they came as stangers a century ago, they are no longer strangers. We are one people . . . Americans all.

And now in conclusion, I extend to Your Imperial Highnesses our welcome to Hawaii, and I pray you to extend to your august and imperial father, our Aloha—the greatest gift Hawaii has to offer: Aloha.●

NEW INFORMATION ON THE PRESIDENT'S STEEL PROGRAM

● Mr. HEINZ. Mr. President, as I have stated here before, our country needs an aggressive and comprehensive program for revitalizing our steel industry. The President's current policy of voluntary export restraint agreements [VER's] on steel imports is, unfortunately, only yielding modest results.

A recent Congressional Research Service report by David Cantor compares the patterns of U.S. steel imports from six selected countries, Brazil, Japan, Mexico, South Africa, South Korea, and Spain, from October 1983 to April 1984—immediately prior to the President's import relief decision—with October 1984 to April 1985. Mr. Cantor draws three general conclusions in his study. First, he finds that VER's have limited steel imports to the United States in the countries studied. Steel imports from the countries examined fell from 55 to 45.6 percent of total imports. This drop is indeed an encouraging development.

Mr. Cantor's second conclusion, however, verifies what I have said previously. Other countries most notably Canada and the European Community nations, have enlarged their historic market share, thereby offsetting many of the gains achieved by the VER's. In fact, total U.S. steel imports are 7.3 percent higher now than in the 1983–84 period.

This rise in total imports is due not only to the behavior of the Canadians and Europeans, but also to frontloading, the practice of entering more than one's allotted share early in the restraint period, to be compensated by lower import levels later. Mr. Cantor makes this clear in his third conclusion stating that frontloading early in the President's program has prevented U.S. steel imports from falling to the President's designated level of 18.5 percent of the total domestic market. During the first 6 months of the VER's, the countries studied, of which Japan and Brazil have been the worst offenders, exceeded their prior 1983–84 levels by 2.08 percent.

Mr. Cantor's study is important in that it indicates much of what I have said over the past months. The President's program is a good start with some successes to its credit, but more can and must be done. Japan and Brazil must further lower their steel exports to the United States. Countries without VER's, like Canada, must not simply show restraints but must rollback or be brought under the VER's. Within this context, it is most crucial that we expand and renew our steel agreement with the European Community which has been the worst offender. Mr. Cantor's assessment reveals the importance behind taking such steps, and I ask that it be printed in the RECORD.

The material follows:

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, July 2, 1985.

To: Hon. JOHN HEINZ, Attention: Bill Reinsch.

From: David J. Cantor, Specialist in Industry Economics, Economics Division.

Subject: Patterns of U.S. Steel Imports From Selected Countries—The Effect of the President's Steel Program.

This memorandum responds to your request for information and analysis of the pattern of U.S. steel imports from several of the countries that negotiated voluntary export restraint agreements (VERs) with the United States under the President's steel program. In particular, you asked us to compare steel imports from the selected countries from October 1984 to April 1985 with the same period in 1983–84. This information was requested to aid you in making a determination of the extent of any "frontloading" provisions of the VERs; these provisions permit the steel exporting country to exceed their negotiated market share early in the five year term of the VERs with appropriate reductions later in the term.

In consultation with you, we have selected six of the seven countries with which overall steel market shares were initially negotiated.[1] They are: Brazil, Japan, Mexico South Africa, South Korea, and Spain. Only Australia was omitted, because its steel exports to the United States have typically been a very small amount and share of the U.S. market—less than 200,000 tons and about 0.2 percent of the U.S. steel market.[2] The 6 countries selected for this analysis accounted for about 46 percent of total U.S. steel imports since October 1984, when the VERs took effect.

By focusing on these six countries, we presumably could provide data to demonstrate the effect of "front-loading". All VERs have provisions in them allowing countries to

[1] Office of the United States Trade Representative. Brock Announces Successful Steel Negotiations. Press Release. Washington, December 18, 1984. 2 p.

[2] American Iron and Steel Institute. 1983 Annual Statistical Report. Washington, 1984. Table 25. p. 63.

ship to the United States all steel on order at the time of the execution of the VER. This would minimize any disruptions in steel trade. To the extent that these shipments exceed the negotiated market share, the VER countries would reduce their steel exports to the United States later in the term of the agreement to compensate for the market share effect of "front-loading". Since the six countries signed VERs early in the negotiating period after the President announced his program, one would expect to see signs of reduced exports even with "front-loading" sooner than with countries that signed VERs later in the period. Six countries did, in fact, sign VERs after December 1984—Czechoslovakia, East Germany, Finland, Hungary, Poland, and Romania.[3] Their steel exports, like those of the original VER countries, would count from October 1984 against their negotiated market shares. Thus, there is a high probability that the more recent VER countries would be "front-loading" their steel exports to the United States more significantly than the original VER countries.

Three general conclusions are suggested by the data. First, U.S. steel imports from the six countries appear to have been restrained by the VERs. That is, the President's program appears to be achieving its goals or at least moving in that direction with respect to the VER countries. Second, although the VER countries are exporting relatively smaller amounts of steel to the United States since October 1984, U.S. steel imports have not fallen proportionately. This fact suggests that other countries and regions increased their steel exports to the United States, possibly offsetting the positive results of the VER program. Thus, to the extent that other countries not covered by a VER are securing larger market shares, the goal of achieving steel import share targets of the President and Congress could be thwarted.[4] Third, the data indicate that the practice of "front-loading" may have run its course with many of the original VER countries.

I. THE EFFECT OF THE VER'S ON U.S. STEEL IMPORTS FROM THE SIX COUNTRIES

The data indicate that the President's steel program is moving in the direction of achieving its desired results with respect to the six VER countries. Since the program began, the six countries accounted for a much smaller share of total U.S. steel imports than in the corresponding period a year earlier. In the seven-month period from October 1984 to April 1985, the six VER countries shipped 45.6 percent of total U.S. steel imports, down from 55.0 percent of total U.S. steel imports from October 1983 to April 1984. Thus, their share of total U.S. steel imports fell by about 17.1 percent in the one-year period. Furthermore, their combined actual steel exports in the 1984–85 period was about 11.7 percent less than in the 1983–84 period; in the 1983–84 period, they exported 1.07 million tons of steel products to the United States, or nearly 115,000 more tons than the 945.5 thousand tons they shipped in the 1984–85 period.

TABLE 1.—AVERAGE MONTHLY SHARE OF TOTAL U.S. STEEL IMPORTS FROM SELECTED COUNTRIES WITH VOLUNTARY EXPORT RESTRAINT AGREEMENTS OCTOBER 1983–APRIL 1984 AND OCTOBER 1984–APRIL 1985

[In percent]

Country	1983–84	1984–85	Percent change
Brazil	6.9	7.4	6.7
Japan	26.3	26.0	−1.1
Mexico	4.6	1.2	−73.9
South Africa	2.9	1.2	−58.6
South Korea	9.5	7.5	−21.1
Spain	4.8	2.3	−52.1
Total—six countries	55.0	45.6	−17.1

Compiled by CRS, using as sources: American Iron and Steel Institute. Imports of Steel Mill Products by Country of Origin. Washington, various issues.

The average monthly shares of U.S. steel imports from the six VER countries in the period from October 1984 to April 1985 are compared with their shares in the same period of 1983–84 in table 1. With the exception of Brazil, the shares of total steel imports declined for five of the six countries. Mexico, South Africa, and Spain experienced the most significant drops in share of total U.S. steel imports. Mexico's share fell by nearly 74 percent; South Africa's by nearly 59 percent, and Spain's by about 52 percent. South Korea's share of total U.S. steel imports also declined substantially, by about 21 percent. The 1.1-percent drop in Japan's share is relatively small; for all intents and purposes, Japan's share of total U.S. steel imports in the 1984–85 period was essentially unchanged in relation to its share in the 1983–84 period. Only Brazil's share of total U.S. steel imports rose, by about 6.7 percent.

The fall in the share of total U.S. steel imports of the six VER countries combined indicates at least some progress in achieving the President's and Congress' goals to restrain imports of steel mill products into the United States. The share of steel imports of the six countries, which accounted for more than half of total steel imports in the 1983–84 period, fell by nearly 10 percentages points. The data suggest that they are less important as suppliers of foreign steel to the United States than in the year before when steel imports into the United States were rising rapidly.

Indeed, just as the average share of total U.S. steel imports of these six VER countries fell between the periods from October 1983 to April 1984 and the corresponding months in 1984–85, so did the actual quantity of U.S. steel imports from these six countries. These data are presented in table 2. For the six countries combined, average monthly imports in the two periods fell by about 11.7 percent, from about 1.07 million tons in the 1983–84 period to about 0.95 million tons in the 1984–85 period. U.S. steel imports from Brazil and Japan rose by 7.3 percent and 5.5 percent, respectively. U.S. steel imports from South Korea fell by about 17 percent, or by about 33,000 tons per month from the corresponding period one year earlier. U.S. steel imports from Mexico, South Africa, and Spain fell in the range of about 46 percent to over 74 percent.

TABLE 2.—AVERAGE MONTHLY U.S. STEEL IMPORTS FROM SELECTED COUNTRIES WITH VOLUNTARY EXPORT RESTRAINT AGREEMENTS OCTOBER 1983–OCTOBER 1984 AND OCTOBER 1984–APRIL 1985

[In thousands of tons and percent]

Country	1983–84	1984–85	Percent change
Brazil	137.0	147.0	7.3
Japan	522.8	551.4	5.5
Mexico	88.7	22.8	−74.3
South Africa	50.0	24.3	−51.4
South Korea	184.7	152.9	−17.2
Spain	87.2	47.2	−45.9
Total—six countries	1,070.3	945.5	−11.7
Total U.S. steel imports	2,000.6	2,145.8	7.3

Compiled by CRS, using as sources: American Iron and Steel Institute. Imports of Steel Mill Products by Country of Origin. Washington, various issues.

The fact that U.S. steel imports from Japan rose above its average level one year earlier should not be taken as evidence that the President's steel import restraint program is not achieving its objective. First, Japan's share of total U.S. steel imports was about the same in both the 1983–84 and 1984–85 periods. This indicates that Japan was not attempting to capture a larger share of total imports. Second, while Japan and the United States had agreed on an overall U.S. steel market share for Japan of 5.8 percent, the distribution of this share among products was not agreed to until May 1985. Thus, no formal agreement between the two countries actually existed until May 1985. Nevertheless, it is clear that Japan exercised restraint on its steel exports to the United States until the agreement was executed; moreover, the agreement provides that steel imports from Japan from October 1, 1984 on will be counted in monitoring Japan's compliance with the VER.

Brazil is the only country that not only increased its share of total imports, but also its actual imports in the 1984–85 period in comparison with the 1983–84 period. This pattern appears to be due to "front-loading" rather than to non-compliance with its VER. From November 1984 through January 1985, Brazilian steel imports into the United States increased over the same period in 1983–84, but fell thereafter. This pattern will be discussed below in more detail.

Overall, the data clearly indicate that the VERs have had a noticeable effect on U.S. steel imports from the countries that entered into them. The 6 countries considered herein exported nearly 12 percent less steel to the United States in the first 7 months of the term of the VERs as compared with their steel exports in the same period one year earlier. While still significant as foreign suppliers to the U.S. steel market, their share of total U.S. steel imports decline by over 17 percent. Nevertheless, while these 6 countries were as a group relatively less important as foreign steel suppliers, U.S. imports still rose by about 7.3 percent in the 1984–85 period from the same period one year earlier. Thus, while the VERs clearly led to import restraint from countries entering into them, it is not clear yet that they would be successful in achieving the import targets of the President and Congress.

II. U.S. STEEL IMPORTS FROM OTHER MAJOR FOREIGN SOURCES

While the VERs have had a substantial effect in reducing U.S. steel imports from the VER countries, the fact is that total U.S. steel imports have not fallen to levels targeted by the President and Congress in

[3] Data Resources, Incorporated. Steel Industry Review. Second Quarter 1985. Lexington, 1985. p. 8.

[4] The President's market share target for steel imports is 18.5 percent of the U.S. market for finished steel products; his program does not specify any target for semifinished steel. See, Office of the United States Trade Representative. Brock Announces President's Steel Decision. Press Release. Washington, September 18, 1984. 4 p. The market share target set by Congress is 20.2 percent of the domestic market for all steel products. See, Title VIII of the Trade and Tariff Act of 1984 (P.L. 98-573).

the first seven months of the President's steel import program. As noted, total U.S. steel imports were 7.3 percent higher in this period than in the corresponding period one year earlier. Approximately one million more tons so steel entered the United States in the 1984–85 period than in the 1983–84 period. Of this increase, about 270,000 tons came from Brazil and Japan, although the 6 VER countries considered herein experienced a net decrease in their steel exports to the United States of about 900,000 tons.

Furthermore, recent projections of the import steel market share indicate that steel imports are not likely to fall to the target levels of the President and Congress. Data Resources, Incorporated estimates that the steel import market share in 1985 would be 23.2 percent in 1985, falling to about 21.1 percent to 21.2 percent in the period from 1986 to 1989, when the VERs expire.[5] These estimates are higher than either the administration's or the congressional targets.

At least two reasons can be offered to explain why the targets for steel import market shares might not be met. First, there is the VER provision regarding "front-loading"; this issue will be discussed in the next section of this memorandum. Second, many countries are not covered by VERs, and, therefore, could be increasing their steel exports to the United States while the VER countries are restraining their steel exports. This second explanation will be considered in this section—with particular emphasis on Canada and the European Community (EC). Canada's share of the U.S. steel market rose from 2.0 percent in 1979 to about 3.2 percent in 1984; the EC market share rose from 4.7 percent in 1979 to about 6.4 percent in 1984.[6]

The EC, it should be noted, has a formal agreement with the United States with respect to their steel exports to this country. This agreement took effect on October 1, 1982 and expires on December 31, 1985. It permits the EC a share of about 5.4 percent of the U.S. market for 13 categories of steel mill products. With respect to steel pipe and tube products, the agreement contains an understanding that EC pipe and tube exports to the United States would be 5.9 percent of this particular U.S. market; this understanding was renegotiated as a formal agreement in 1985, and gives the EC a market share of 7.6 percent of the U.S. pipe and tube market. All other categories of steel products are subject to consultation.[7] Effectively, the EC is allowed an overall share of the U.S. steel market of about 5.8 percent. There are no steel trade agreements with Canada.

Canada and the EC are the two largest suppliers of foreign steel either not covered by a formal agreement under the President's steel program or with an agreement that expires in 1985.[8] In the 7 months since the President's program took effect, Canada and the EC together exported nearly 6 million tons of steel mill products to the United States, or about 40 percent of total U.S. steel imports in this period. Their steel exports along with those from the 6 VER countries considered herein amounted to nearly 12.6 million tons in this 7-month period, or about 83.8 percent of total U.S. steel imports. How Canada and the EC conduct their steel trade with the United States could significantly influence the achievement of the steel import targets of the administration and Congress.

Comparing the period October 1984 to April 1985 with the same period in 1983–84, Canada's average monthly share of total U.S. steel imports declined by about 6.1 percent. In the 1983–84 period, Canada supplied about 13.1 percent of total U.S. steel imports each month; in the 1984–85 period, Canada's share was about 12.3 percent of total U.S. steel imports per month. The quantity of Canadian steel exports actually declined by about 3.6 percent in the 1984–85 period from those in the corresponding months of 1983–84. In the 1984–85 period, Canadian steel exports to the United States averaged about 251,000 tons per month; in the 1983–84 period, Canada's exports averaged about 261,000 tons per month. These data and those for the EC are presented in table 3.

The U.S. experience with EC steel imports in these two 7-month periods is significantly different from the Canadian case. The average EC monthly share of total U.S. steel imports rose considerably in the 1984–85 period as compared with the 1983–84 period. The EC share increased by about 21.5 percent, from 23.3 percent of total U.S. steel imports in 1983–84 to 28.3 percent of total U.S. steel imports in the 1984–85 period. The average quantity of U.S. steel imports from the EC rose by 30.5 percent in the 1984–85 period compared with the experience in the 1983–84 period. U.S. steel imports from the EC increased from about 461,000 tons per month in the 1983–84 period to over 600,000 tons per months in the 1984–85 period.

Clearly, the increase in EC steel exports to the United States in the period from October 1984 to April 1985 may be a significant factor in explaining why the import share of U.S. steel markets has not fallen to levels desired by the President and Congress. The evidence suggests that the VER countries and Canada have reduced or at least stabilized their steel exports to the United States in the first seven months of the President's steel program. The EC, however, increased both its quantity and share of total U.S. steel imports.

TABLE 3.—AVERAGE MONTHLY IMPORTS AND SHARES OF TOTAL U.S. STEEL IMPORTS OF CANADIAN AND EUROPEAN COMMUNITY STEEL OCTOBER 1983–APRIL 1984 AND OCTOBER 1984–APRIL 1985

[In thousands of tons and percent]

Country	1983–84	1984–85	Percent change
Canada:			
Quantity	260.7	251.4	−3.6
Share of total imports	13.1	12.3	−6.1
European Community:			
Quantity	461.0	601.6	30.5
Share of total imports	23.3	28.3	21.5

Compiled by CRS, using as sources: American Iron and Steel Institute. Imports of Steel Mill Products by Country of Origin. Washington, various issues.

Although Canada and the EC are the largest U.S. sources of foreign steel by countries not covered by a VER under the President's current steel program, more than 50 other countries, including some that entered into VERs after December 18, 1984, export steel to the United States. The exports from these other countries increased substantially in the 1984–85 period under review over the corresponding period in 1983–84. U.S. steel imports from all other countries rose by more than 1 million tons in the 1984–85 period in comparison with the 1983–84 period. Average monthly steel imports into the United States from all of these other countries rose by about 75 percent, from about 201,000 tons in the 1983–84 period to about 352,000 tons in the 1984–85 period.[9]

As noted previously, seven of these other countries signed VERs. In the year 1984, these VER countries accounted for about 5 percent of total U.S. steel imports, about 1.3 million tons. The rest of the world, approximately 44 countries, shipped about 2.3 million tons of steel to the United States in 1984, or nearly 9 percent of total U.S. steel imports in 1984.[10] While they, as a group, could be significant in determining whether or not the President's and Congress' steel market share targets will be attained, no one of them alone is likely to have a significant effect on reaching the import share targets.

These considerations suggest that the success of the President's program to restrain U.S. steel imports hinges mainly on the two principal foreign sources of steel either not covered by a VER, Canada, or by an agreement that expires in 1985, the EC. The data clearly show that Canada has been unilaterally exercising restraint on its steel exports to the United States since October 1984. U.S. steel imports from the EC, however, have risen, and mainly in those categories of steel products not included in the 1982 agreement.[11]

If the current negotiations to extend the 1982 steel agreement with the EC result in a VER that simply extends the term of the 1982 and pipe and tube agreements to 1989 with no change in market share, then there would be a high probability that the market share targets of the President and Congress could be attained. This assumes that Canada and all other countries not covered

[5] Data Resources, Incorporated. Steel Industry Review. Second Quarter 1985. Lexington, 1985. p. iii.

[6] American Iron and Steel Institute. 1983 Annual Statistical Report. Washington, 1984. p. 63. U.S. Library of Congress, Congressional Research Service. U.S.-Canadian Steel Trade: Its "Special Relationship" to Michigan. Memorandum, by David J. Cantor, May 8, 1985. Washington, 1985. P. 4. American Iron and Steel Institute, by telephone, June 27, 1985.

[7] U.S. Library of Congress, Congressional Research Service. Product Diversion Under the United States-European Community Steel Arrangement. Memorandum, by David J. Cantor, April 18, 1985. Washington, 1985. 10 p. U.S. Library of Congress, Congressional Research Service. Steel Pipe and Tube Imports, 1984. Memorandum, by David J. Cantor, May 20, 1985. Washington, 1985. 6 p.

[8] Negotiations are currently in progress to extend the current U.S.-EC steel agreement through 1989.

[9] Compiled by CRS, using as sources: American Iron and Steel Institute. Imports of Steel Mill Products by Country of Origin. Washington, various issues.

[10] American Iron and Steel Institute. Imports of Steel Mill Products by Country of Origin. December 1984. Washington, 1985.

[11] U.S. Library of Congress, Congressional Research Service. Product Diversion Under the United States-European Community Steel Arrangement. Memorandum, by David J. Cantor, April 18, 1985. Washington, 1985. P. 1.

by VERs do not increase their steel exports to the United States. If, however, the current negotiations result in a significantly higher market share for EC steel than the 1982 arrangement, then the likelihood of attaining the steel import market share targets would be substantially reduced. No effort is made here to speculate on the outcome of the steel negotiations with the EC; any estimate would be pure conjecture and inappropriate.

III. "FRONT-LOADING" OF THE VER'S

"Front-loading" of the VERs also explains why U.S. steel imports have not fallen to levels desired by the President and Congress. As noted previously, VER countries are allowed to export more steel to the United States early in the term of the agreements, presumably to minimize disruptions in the orderly flow of business activity and to permit a transition to lower levels of exports to the United States. Thus, orders booked prior to the execution of the VER's and in transit could be filled, even if their importation into the United States would mean a higher U.S. steel market share than negotiated. These higher levels of imports would be compensated for later in the term of the agreements by smaller shipments.

The data indicate that there was some "front-loading" of steel exports to the United States for all six VER countries considered in this memorandum. But the evidence also suggests that this practice had dissipated within a few months of the acceptance of the market shares by the VER countries. From February 1985 on, there appears to have been a significant drop in the market shares of U.S. steel imports from virtually all of the six VER countries. Moreover, several of the six VER countries were exporting steel to the United States at levels equivalent to or less than their negotiated market shares.

Table 4 presents data on the import shares of the U.S. steel market by month from October 1984 to April 1985 for each of the six countries, their average shares over the entire seven-month period and for the periods from October 1984 to January 1985 and February 1985 to April 1985, and their negotiated market shares. These data permit an assessment of the degree of "front-loading".

TABLE 4.—U.S. STEEL MARKET SHARES OF IMPORTS FROM SELECTED COUNTRIES WITH VOLUNTARY EXPORT RESTRAINT AGREEMENTS OCTOBER 1984–APRIL 1985

[In percent]

Month	Brazil	Japan	Mexico	South Africa	South Korea	Spain
October 1984	1.07	7.23	0.42	0.21	1.79	0.59
November 1984	2.09	6.90	.44	.42	2.20	.62
December 1984	2.52	6.88	.18	.22	1.39	.89
January 1985	3.04	7.38	.26	.52	1.96	.90
February 1985	1.66	6.70	.29	.31	1.79	.38
March 1985	1.71	6.82	.25	.26	2.27	.40
April 1985	0.99	6.96	.18	.20	2.12	.42
Average: 7 months	1.87	6.98	.29	.31	1.92	.60
Average: 4 months 10/84–1/85	2.18	7.10	.33	.34	1.82	.75
Average: 3 months 2/85–4/85	1.45	6.83	.24	.26	2.06	.40
Negotiated shares	0.80	5.80	.30	.42	1.90	.67

Calculated by CRS, using as sources: American Iron and Steel Institute. Imports of Steel Mill Products by Country of Origin. Washington, various issues. American Iron and Steel Institute, by telephone, June 25, 1985. U.S. Library of Congress, Congressional Research Service. Steel Import Penetration Rates for Selected Countries—Historical and Negotiated Voluntary Export Restraint Agreements. Memorandum, by David J. Cantor. December 24, 1984. Washington, 1984. p. 4.

Throughout the seven month period, the 6 countries together exceeded their negotiated U.S. steel market shares by 2.08 percentage points. Their VERs allowed them 9.89 percent of the U.S. steel market; their actual market share was 11.97 percent. Brazil and Japan accounted for most of the difference between negotiated and actual market shares in this period. Brazil exceeded its share by 1.07 percentage points, and Japan, by 1.18 percentage points. But South Africa and Spain had lower actual shares of the U.S. steel market than they had negotiated. South Africa's actual market share was 0.31 percent as compared with its negotiated share of 0.42 percent of the U.S. steel market; Spain's actual share was 0.60 percent as compared with its negotiated market share of 0.67 percent. Mexico and South Korea had actual U.S. steel market shares that were essentially equal to their negotiated shares.

In the first four months of the President's steel program, most of the six countries had higher actual market shares than allowed by their VERs. Only South Africa and South Korea did not reach their negotiated shares. South Korea fell short, capturing 1.82 percent of the U.S. steel market in this period as compared with its negotiated market share of 1.90 percent. All of the other four countries exceeded their negotiated limits. Spain and Mexico exceeded their negotiated shares by about 10 percent. Brazil's actual share was more than 170 percent higher than allowed by its VER; Japan's actual share was about 22 percent higher than its negotiated limit.

In the last three months of the period, February 1985 to April 1985, the actual U.S. steel market shares of virtually all of the countries fell, and substantially in some cases. Only South Korea captured a higher share of the U.S. steel market in the last three months than its negotiated market share. Its actual share was 2.06 percent as compared with a negotiated share of 1.90 percent. Nevertheless, U.S. steel imports from South Korea over the entire seven-month period were essentially equal to its negotiated share of U.S. steel markets.

Significant reductions in U.S. steel market share are noted for four countries—Brazil, Mexico, South Africa, and Spain—in the period from February 1985 to April 1985 in relation to their shares in the period from October 1984 to January 1985. Spain's share fell by nearly 47 percent, from 0.75 percent of the market to 0.40 percent. Brazil's share fell by about 33.5 percent; Mexico's, by about 27.3 percent; and, South Africa's, by about 23.5 percent. Japan's actual market share also fell in these three months, but not so sharply as the others; its actual market share fell by about 3.8 percent.

Even through Brazil and Japan captured a relatively similar share of the U.S. steel market in the three months from February 1985 to April 1985 than in the prior four months, their actual market shares continued to exceed by a significant amount their negotiated market shares. As noted earlier, the Japanese VER was not put into final form and signed until May 1985, and this may explain any significant progress in moving to its negotiated share. While Brazil still has a much higher market share in the last three months of the period then permitted by its VER, there is evidence of rapid convergence to its negotiated share.

In general, there is evidence that the six VER countries considered herein have moved relatively quickly to come into compliance with their VERs. While the data suggest the practice of "front-loading", many of the countries have apparently ended this activity and compensated for their higher market shares in the first four months by reduced market shares in the last three months.

IV. CONCLUSIONS

The experience of the first seven months of the President's steel program gives rise to cautious optimism that the program could be successful in achieving overall import restraint. The evidence is that total steel imports have been capturing decreasing shares of the U.S. steel market at least since February 1985. The import share reached a peak in January 1985 at 30.9 percent of the U.S. steel market; in each succeeding month, the steel import share of the market fell, such that it was 23.0 percent of the market in April 1985.[12] Moreover, as already noted, Data Resources, Incorporated expects the steel import market share for all of 1985 to be about 12.2 percent, and to fall to about 21.1 percent in the period from 1986 to 1989.

Whether or not the steel import targets of the President and Congress will be achieved, however, appears to depend on two conditions. First, Brazil and Japan will indeed have to bring their exports down so that they are in compliance with their VER's, and that all VER countries will have to honor their agreements. Second, countries without VER's will have to exercise voluntary restraint on their steel exports to the United States, and not take advantage of possible opportunities to meet the demands for foreign steel of American importers.

The evidence is that the VER countries—including Brazil and Japan—are attempting to comply with their agreements. Also, the data suggest that Canada, the largest non-VER supplier of foreign steel to U.S. markets, is restraining its steel exports to the United States. Much depends on the outcome of negotiations for the extension of the current steel agreement with the European Community in determining the overall success of the President's steel program. Although there is no doubt that an agreement will be signed, there is the possibility that the market share in the EC agreement could be higher than in the current arrangements; this possibility is suggested by the sharp increase in EC exports of products not covered by its current agreement, and by the much higher market share negotiated for pipe and tube imports than specified in the understanding in the 1982 steel agreement. While the 44 other countries that supply steel to the United States account for a relatively small share of the U.S. steel market, any surge in their steel exports could create difficulties in attaining the desired market share targets.

We would note that the VER's all contain provisions allowing for additional exports beyond negotiated limits in the case of shortages in the United States. These "short supply" provisions, if exercised, could also result in higher steel import market shares than negotiated.

Finally, we would point out that the rise in imports in the first seven months of the President's steel program might be explained by the rise in U.S. demand for steel in the first quarter of 1985 over the fourth quarter of 1984. Even so, we found that the VER countries and Canada had reduced their steel exports to the United States while others, mainly the EC, had increased their shipments.

[12] American Iron and Steel Institute, by telephone, June 25, 1985.

I trust this information and analysis are responsive to your request. If you have other questions, please call me at 287-7740.●

CONGRESSIONAL CALL TO CONSCIENCE

● Mr. SIMON. Mr. President, I commend my fine colleague from the State of Minnesota, Senator BOSCHWITZ, for initiating the Congressional Call to Conscience. Raising public awareness of the plight of Soviet Jewry is the aim of this important program.

Today in the House of Representatives, Congresswoman PATRICIA SCHROEDER is also speaking on behalf of Soviet refusenik, Ida Nudel. Ida has served as a symbol in the struggle for freedom which the Jews in the Soviet Union continue.

Ida was first denied permission to emigrate in May 1971. For 7 years the KGB subjected Ida to apartment ransacks, to harassment, to sudden knocks on the door. Ida reached her limit in June 1978, when, in her frustration, she hung a huge banner out of the window of her apartment which read, "KGB Give Me a Visa To Go to Israel." She was charged with malicious hooliganism and sentenced to 4 years of internal exile.

Ida Nudel lived under horrid conditions in the prison camp. She was the only woman in a group of 60 male criminals. Ida slept with an ax under her pillow for protection. The world's outcry persuaded the Soviet authorities to move Ida to a one room hut and gave her a dog to guard her. All this occurred because of Ida Nudel's desire to move to Israel.

Ida now lives outside of Moscow. Recently, she was diagnosed as having a serious illness. She is 54 years old. Ida wishes only to spend the rest of her life with her family in Israel.

Ida's strength is inspirational. The fight against oppression must not end.●

LETTER FROM HARVARD STUDENTS TO MR. GORBACHEV

● Mr. HUMPHREY. Mr. President, on June 15, 1985, a group of students from Harvard University wrote a letter to Soviet leader Mikhail Gorbachev, in which they expressed their outrage against the brutal, savage, and senseless massacre of Afghan civilians by Soviet forces in Afghanistan.

The letter is an admirable display of concern for the Afghan people by the Democratic and Republican clubs of Harvard University, and as such, it mirrors the bipartisanship achieved here in the Congress on the issue of Afghanistan. Whatever one's political affiliation is, one cannot but welcome the involvement of the university community in this country on what must be regarded as one of the most pressing issues of concern to the world today.

These students at Harvard in registering their concern for the current state of affairs in Afghanistan, have set an example worthy of being followed by others. Their courage, decency and sense of morality are to be commended. In conclusion, Mr. President, I would like to ask that the letter to Mr. Gorbachev be printed in the CONGRESSIONAL RECORD.

The letter follows:

HARVARD UNIVERSITY,
Cambridge, MA, June 15, 1985.

MIKHAIL S. GORBACHEV,
General Secretary, Central Committee of the CPSU, The Kremlin, Moscow, U.S.S.R.

ESTEEMED MR. SECRETARY: We are shocked and disgusted by the increasing number of reported atrocities that the Red Army has recently been committing in Afghanistan. Clearly, as your government is losing its war of "fraternal friendship" against the heroic native Afghan freedom fighters, Soviet soldiers seem to be disregarding all international legal as well as moral standards in launching bloody raids on purely civilian targets. Of course, the Soviet invasion itself is unconscionable to Americans—Republicans and Democrats alike—but fairly recent events have proven particularly odious.

Reports such as that of the mid-March massacre of up to 1,400 civilians—including many defenseless children and mothers—in the villages of Kar Aziz Khan, Charbagh, Bala Bagh, Sabzabad, Mandrawer, Harder Khan, and Pul-i-Togho as well as that of the destruction of a bus jammed with civilian passengers which was crushed by a Soviet tank in Kabul on May 10 reinforce our outrage over the illegal seven-year occupation of a sovereign nation by your government.

Without a doubt, especially since your armed forces have destroyed its industrial base and ravaged its countryside, Afghanistan poses no threat to the Soviet empire. We urge you sincerely, sir, to encourage your colleagues in the Kremlin leadership to begin removing all of the 105,000 Soviet troops from Afghan territory as soon as possible. As must be clear to you, Soviet attempts to prolong this barbarous war result only in continued possibilities for serious deterioration of Soviet-American relations, especially over the long term.

Young people all over America, including many fellow students at Harvard University, have heard you emphasize over and over your wishes for a secure world peace founded on improved understanding between our two great nations. The pointless slaughter of innocent civilians in an unfortunate Soviet war in Afghanistan can only undermine the credibility of your intentions. We remind you that the world community of nations continues to remember and awaits the cessation of this brutality. Please leave the Afghan people to determine their own autonomous political fate. Otherwise, we are sure, in the end, only your country shall suffer.

We thank you for your consideration of our views and look forward to a response from you.

Respectfully,

ADAM J. AUGUSTYNSKI,
President, Harvard-Radcliffe Democratic Club.

MARK P. LAGON,
President, Harvard Republican Club.●

REALIZING PRODUCTIVE POTENTIAL—VII: NEW TRADE LAWS FOR A NEW ERA

● Mr. HEINZ. Mr. President, this year the U.S. trade deficit will be even greater than last year's record high of $123 billion. What we are slowly beginning to realize, however, is that these deficits are not merely the product of macroeconomic factors, like an overvalued dollar. Clearly, unfair foreign trading practices, most notably by Japan, have contributed significantly to our trade problems.

High trade deficits represent a severe and obvious danger to long-term U.S. economic development. So far, outdated policies based on the traditional concept of free trade have prevented us from undertaking a meaningful response to our current difficulties. The time has come to break out of this anachronistic mold. This is why Senators BAUCUS, PRESSLER, SPECTER, RIEGLE, PELL, and I have recently introduced the Trade Law Modernization Act. I believe such legislation is urgently required to improve the discriminatory climate under which American firms are now forced to conduct international business. By adopting a more aggressive and comprehensive trade policy, our technological, capital, and human resources will all be better utilized. This will enable the United States to reverse its rapidly deteriorating trade and current account positions.

A recent article in the New York Times by Leonard Silk entitled "The Pressures on Free Trade," discusses some of the new realities in the international trading system, and I would like to draw it to the Senate's attention. Mr. Silk properly recognizes that comparative advantage means little in today's world of targeted and subsidized industries. Citing the Reagan administration's continuing neglect of trade matters, Mr. Silk currently points out that it has been left to the Congress to do something about the trade deficit.

Mr. President, it is up to the Congress, and we must act now. Legislation has been introduced that points the way, and I hope the Finance Committee will soon begin its work.

Mr. President, I ask that Mr. Silk's article be printed in the RECORD.

The article follows:

[From the New York Times, June 28, 1985]

THE PRESSURES ON FREE TRADE

What can be done about the yawning United States trade deficit, which reached a record high of $123 billion last year and is rising still higher this year?

Under mounting pressure from a host of industries ranging from autos and steel to textiles, electronics and lumber, which have seen their markets and jobs shrink Congress

has been urging the Administration to adopt a more aggressive trade policy. The Administration has been trying to hold the line against protectionist pressures. On the whole, it has given relatively little ground thus far, but the mood in Congress appears to be swinging toward protectionism.

This week a leading Congressional trade expert, Representative Don Bonker, a Washington Democrat, emerged from a meeting of Congressmen and White House officials on legislation to protect the lumber industry and declared, "The President doesn't care about trade."

This is obviously an oversimplification or an overstatement. Nevertheless, Mr. Bonker, like many Congressmen, is critical of the Administration for its failure to develop a more hard-hitting trade policy. They believe that time is running out for Administration action. Some expect Congress to pass an outright protectionist bill that would impose a surtax on all imports.

The trade policy issue is often seen as a battle between free-traders and protectionists. But, in the view of a growing number of economists, this is simplistic. Some are now making the point that the trade issue breaks down into a long list of problems, which vary from industry to industry and affect the economy as a whole and not just individual industries.

Nevertheless, all problems cannot be swept into one. In agriculture, for example, the United States is competing with some of its major allies, in Canada, Europe and Latin America, to sell to a declining number of other countries led by the Soviet Union. Pressures on farm prices have been intense and are putting the survival of many American farms in jeopardy.

New suppliers and new technologies could drastically increase output, raising the danger of an agricultural trade war. Specific negotiations with the Europeans over their common agricultural policy are seen as growing more urgent.

Another major issue is in the areas of high technology and intellectual property. Should a pioneering country like the United States not have a better way of protecting its achievements in technology and its new knowledge? If it cannot, will this not kill off technological progress before it comes into existence? New efforts are likely to be forthcoming to protect nations from losing their technological advantages.

Competition is intensifying among old-line industries around the world. How important is it for the United States to hold on to its basic industries in manufacturing, mining and agriculture? Is that a serious national security issue?

The traditional response of free-trade theory is that a nation should produce only those goods or services in which it has a comparative advantage. If the United States has its advantage in services, it should be prepared, according to this doctrine, to see other industries go.

But what if the process of sorting our industries is facilitated by foreign policies of targeting particular industries and subsidizing those to establish a dominant position in the world market? Does that not call for retaliation—or at least an agreement from foreign competitors to cease such practices?

Even those who believe that a liberal and open trade policy best serves the interests of the nation—and of the world economy as a whole—are starting to consider whether the United States should adopt a more aggressive policy toward nations that do not play by free- or fair-trade rules.

Japan is often singled out as the worst offender by many Americans, and the large United States trade deficit with that country is offered as evidence. This week, in an effort to ward off such attacks, the Japanese Government announced that if was making a sweeping unilateral reduction of duties on 1,790 items to open its market wider to foreign products.

But the United States trade difficulties, in the view of many economists, stem not just from the deeds of others but from the failings of the United States itself and its industries and labor. Low productivity growth and inadequate rates of investment are blamed as the underlying causes of declining American competitiveness in many fields.

Whatever the troubles of individual industries, two major macroeconomic problems are disturbing the trade position of American industries as a whole: the overvalued dollar and the more rapid rate of American expansion compared with that of most other countries. The former puts American products at a serious price disadvantage and the latter sucks imports into this country faster.

Both problems are proving tough nuts. The dollar has held up, partly because the United States budget deficit remains high and this country has become a heavy capital importer from other countries. Further, the United States economy has slowed from the rapid rate of advance in 1983 and the first half of 1984 but the trade problem has not yet eased. In any case, nobody wants to use recession and higher levels of unemployment as the cure for the trade problem. Also, virtually no one wants to solve the trade problem by slashing wages and reducing living standards in the United States.

An ancient proverb holds that the fox knows many things but the hedgehog knows one big thing. The one big thing that has dominated United States trade policy since the war—the concept of free trade—appears to be giving way to the belief that the United States now must do many things if it is to rescue itself from a foreign-trade disaster. A more aggressive and diverse United States trade policy is in the making.●

REAL LIFE IMITATES TV VIOLENCE

● Mr. SIMON. Mr. President, television is a pervasive force in American society with both good and bad impact on people. The amount of violence on television grows yearly, causing aggressive behavior in some children. In a weekly column I write for newspapers in my State, I discuss the negative influence violence on television is having on our young people and legislation I am drafting that hopefully will help parents decide what television programs their children should watch. I ask to have it reprinted in the CONGRESSIONAL RECORD.

The column follows:

REAL LIFE IMITATES TV VIOLENCE

I walked into a motel room recently after a long day of running around Illinois, turned on the television, and suddenly I saw a man being cut in half by a chain saw, in vivid color.

It was not real, of course, but it looked real. I couldn't help but wonder what watching that does to young minds still being formed, particularly young people who may have emotional problems.

A few days ago, I visited with a friend I've known since he was a college student. Now married, he has two small children. His wife mentioned that after their two children watch a violent televison show (and most cartoon programs are loaded with violence) their conduct becomes more aggressive.

Violence on television has risen more than 100 percent since 1980. From January to April, prime-time television averaged 13.8 acts of violence per hour.

The average child between the ages of 2 and 11 views television 27.3 hours each week. By the time a person is 16, he or she has watched over 20,000 hours of television—including 200,000 acts of violence, 50,000 of which are murders.

Children's cartoons show an attempted murder every six minutes, on the average.

Not surprisingly, that mammoth display of violence has an influence on the lives of people, and that influence is not good.

I have been reading through various studies and the evidence is overwhelming: viewing too much violence can cause violence, particularly in those who have emotional problems.

Violence is imitated.

As the National Institute of Mental Health concludes: "Violence on television does lead to aggressive behavior by children and teenagers who watch the programs."

The Surgeon General of the United States came to a similar conclusion.

And studies show that even people who do not act violently after watching TV violence end up with much greater fear of violence than those who watch only a small amount of television.

I will be meeting soon with representatives of the three major television networks to see if something can be done voluntarily. The networks could improve things substantially.

I also will be introducing legislation to require a 10-second warning at the beginning of shows or commercials that contain excessive violence: Warning to Parents. Viewing this program may be dangerous to the mental health of your children.

A group called the National Coalition on Television Violence headed by a respected psychiatrist at the University of Illinois School of Medicine, Dr. Thomas Radecki, is working in a solid way on this problem. Their address is P.O. Box 12038, Washington D.C. 20005. They can provide you with information on those who sponsor programs heavy with violence. Sponsors of such programs should hear from the public.

We do not want censorship in a democracy. But somehow we have to deal with this problem in a meaningful way.●

SMOKING—A FORM OF CHILD ABUSE

● Mr. PELL. Mr. President, I would like to bring to the attention of my colleagues an excellent article that appeared in the Washington Post: Health Section on Wednesday, May 22, 1985.

The article entitled: "Smoking as a form of Child Abuse," was written by Dr. William G. Cahan, a thoracic surgeon at Memorial Sloan-Kettering Cancer Center In New York and an emeritus professor of surgery at the Cornell University Medical College. In

his article, Dr. Cahan explains that regular cigarette smoking causes a higher incidence of stillbirths, premature deliveries, mental retardation, and other infant disorders.

Today, when we are more aware of the many forms of child abuse and the numerous harms caused to children by adults, I believe Dr. Cahan's point is well-taken and we, as legislators, must educate the public, more effectively about the connection between smoking and prenatal and neonatal diseases.

Mr. President, I ask that the text of the article be printed in the RECORD.

The article follows:

SMOKING AS A FORM OF CHILD ABUSE

(By Dr. William G. Cahan)

While child abuse is universally condemned and many people militantly crusade to protect the rights of the unborn, no one cries out about the abuse done to children—both in the womb and after birth—by smoking adults.

Physicians have long cautioned pregnant women to be sparing in their use of alcohol, certain drugs, caffeine and diagnostic X-rays for fear of injuring the fetus. Only recently have they extended these warnings to cigarette smoking.

Increasing numbers of scientific studies show that regular smoking injures the fetus in several ways. For example, within minutes, each cigarette puff introduces carbon monoxide, which reduces the blood's ability to carry oxygen, and nicotine, which constructs the blood vessels carrying blood to the baby. Together, they deprive the child of oxygen. If this is repeated often enough, it could irreparably damage the fetal brain.

Nicotine also crosses from the placenta to the fetus, where it stimulates the heart and depresses the lungs. When pregnant women smoked only two cigarettes, their fetuses' heart rate accelerated; this was accompanied by abnormal breathing-like motions, a sign of fetal distress.

These findings assume more serious overtones if one multiplies the five puffs per cigarette inhaled by the average smoker by 20 (the number of cigarettes in a pack-a-day habit) and then by 270 (the number of days for gestation). This means that the fetus of a smoking mother is subjected to at least 27,000 physiochemical insults, beginning with the initial phase of growth and development when the early stages of rapid cellular division are most vulnerable, and continuing throughout its entire uterine life.

Animal experiments show that the by-products of tobacco smoke can upset fetal metabolism and the endocrine gland system, and even damage the unborn's genes.

All of this smoke-caused damage may explain why smoking mothers have a higher incidence of spontaneous abortions, stillbirths and premature deliveries than nonsmokers. The babies of heavy smokers are apt to be smaller at birth, more susceptible to neonatal diseases and at increased risk of dying in early infancy.

They also have a tendency to be born with cleft palate and hare lip and later on may exhibit developmental difficulties such as shortness in stature, lower scores in social adjustment, behavorial problems, impaired reading abilities, hyperactivity and mental retardation.

Constantly exposing a child to the cigarette smoke of others (so-called "passive smoking") also can cause health problems, including an increase in ear, nose and throat infections, bronchitis, pneumonia, asthmatic attacks, and a decreased lung efficiency. The frequency and severity of these conditions are directly related to the number of smokers in the household and, in particular, the number of cigarettes smoked by the mother.

Nicotine is also known to be passed on to the infant in breast milk and absorbed from the smoke-filled surroundings. The more the mother smokes, the more nicotine the child absorbs and the greater its potential for damage to the lining of the infant's nose, mouth, stomach and lungs.

Sidestream smoke, the fumes emanating from the lighted tip of a cigarette held in the mouth or burning itself out in an ashtray, add to the problems because it contains cancer-causing chemicals.

The Environmental Protection Agency estimated that between 500 and 5,000 cases of lung cancer appear annually in nonsmokers as a result of passive inhalation.

Parents who smoke perpetrate yet another wrong upon their children. As role models, they add their influence to that already exerted by peer pressure, peer acceptance and tobacco advertising in creating an environment conducive to smoking. As a result, the young find it especially difficult to resist starting the habit.

Parents must share the responsibility for the 3,000 to 5,000 American children who light up for the first time each day, most of whom will continue the habit into adulthood.

Inherent in a household of smokers is the heightened danger of accidental fires. Many of these are started by young children who, with their notorious fascination with fire, will be tempted to imitate the match-striking and flame-producing gestures of their elders. The tragic and agonizing consequences of this are reflected in the National Safety Council's estimates for 1983 that one third of the 5,000 home fire fatalities were attributable to smoking.

Although no statistics are available for the huge number of near-fatal burns or permanently disfiguring scars, all hospital burn centers will attest to the dominant role smoking plays in providing them with a constant source of victims.

Realizing all this, what parents can justify persisting in a habit so threatening to their young? Certainly, the variety and magnitude of its hazards should serve as enough incentive for them to quit.

During childbearing, the mother, by this single act of self-discipline, has it within her power to minimize the risk of a complicated pregnancy on of imposing lifelong physical and mental handicaps upon her child.

These warnings are not solely the concern and responsibility of mothers and fathers. Members of the clergy, PTAs, educators and legislators should all recognize the link between smoking and various prenatal, neonatal and juvenile disorders.

Child abuse comes in many forms. Although the hazards of smoking may not appear as dramatic or as obvious as the other forms of abuse they are nevertheless just as capable of maiming and destroying the young. In view of the fact that more than 50 million Americans smoke, this form of abuse may well be the most pervasive and child-damaging of them all.

Willian G. Cahan is a thoracic surgeon at Memorial Sloan-Kettering Cancer Center in New York and an emeritus professor of surgery at the Cornell University Medical College.

Second Opinion is a forum for those who wish to express a point of view on a health-related topic. Send articles to Second Opinion, Health Section, The Washington Post, 1150 15th St. NW, Washington, D.C. 20071.●

OCS MORATORIA

● Mr.McCLURE. Mr. President, on many occasions I have addressed my colleagues on the energy needs of our Nation. Because there is a glut of oil on the world market today, many believe that the energy crisis is over, and that we can relax our efforts in resolving energy-supply problems. This is a serious misconception. Shortages of energy remain a potential threat to the economic survival and to the very security of our Nation.

Despite this fact, I learned yesterday of a proposal, tentatively agreed to by the House Appropriations Committee and the administration, which would further erode our ability as a Nation to meet our growing need for energy. Based on the information received so far, this proposal would place all but approximately 150 of the more than 6,000 California Outer Continental Shelf tracts in moratoria until the year 2000. Of the 150 tracts remaining available for exploration or development, it is my understanding that industry has expressed interest in a mere 22.

Mr. President, given the important, indeed necessary, role California OCS has in meeting this Nation's energy security and energy independence goals, I would say this proposal, if implemented, will severely cripple any hope this Nation has of even staying level with our current rate of imports, let alone reduce them. After all, how can we virtually shut off a potential of 610 million barrels of northern and central California OCS petroleum without doing great damage to an already critical situation.

The Energy Information Agency has estimated that our petroleum imports will double in the next 10 years and our domestic production will be reduced by half.

This trend has begun to manifest itself as the United States increased its dependence on foreign sources for the second straight year, after a 6-year decline in imports as measured by percentage of consumption. An average of nearly 5 million barrels of oil per day were imported into the United States—29.7 percent of our consumption.

While the United States decreased its dependence on OPEC nations, it has significantly increased its reliance on other foreign sources. These are alarming numbers, and I'm sure that I need not remind my colleagues of the difficulties which we faced in the early 1970's. Yet, allowing the establishment of OCS moratoria means that the potential for finding and developing new domestic energy resources would be further inhibited.

U.S.-proved reserves of oil and gas have shrunk by nearly one-third since the early 1970's, and offshore production has dropped about 35 percent over the same period. The Western Oil and Gas Association estimates that more than three-fourths of the oil this country will need by the year 2000 still must be found, and it's believed up to 60 percent of these discoveries will be on the Outer Continental Shelf. Unfortunately, developing the OCS resource is a difficult and time-consuming process. The lead time for developing the OCS resource from lease to production can range from 7 to 16 years on the California Outer Continental Shelf. Let me share some important figures about the time necessary to actually utilize the California Outer Continental Shelf. The Department of Interior's Minerals Management Service estimates that the average time necessary to move from lease release to the first exploratory effort is 1.3 years. From lease release to the first platform averages 7.2 years, but can extend to over 13 years. Our interest, of course, is in production and MMS projects an average lease to production time of 8.6 years with the longer efforts extending beyond 15 years.

These figures reflect optimistic projections. Experience indicates that fully 85 percent of all exploratory holes are dry. Another 12 percent are not commercially viable. In other words, Mr. President, only 3 percent of the exploratory wells that are drilled ever become commercial wells. Clearly, if we are limiting the OCS resource off California to 150 tracts, leasing immediately, and assuming the best case scenario, it is unlikely that we would see significant production from any wells until 1995 to the year 2000. Of course, those wells delayed under moratoria until after 2000 would not likely to be "on line" for over 30 years assuming they were leased. Mr. President, isn't it yet obvious to the authors of this California OCS proposal that for both security and economic reasons we must establish policies to encourage the development of the potential of the OCS, before a crisis is upon us?

Mr. President, it is apparent that to accept such a proposal would only exacerbate an already bad situation. This long-term OCS moratoria proposal would arbitrarily discard extremely valuable areas of potential energy resources from timely consideration for development, even though the current 5-year process has provided for the complete participation of all interests. Although the current OCS planning process has been controversial, it has, in fact, been an effective system for developing the energy resources of the Outer Continental Shelf.

Mr. President, the acceptance of such a proposal allowing further OCS moratoria would discard this system of careful review, and place our energy future in jeopardy. I, for one, do not intend to let that happen without a fight.●

TRIBUTE TO FLINT NURSES

● Mr. RIEGLE. Mr. President, I take this opportunity to pay tribute to the Flint Professional Black Nurses Association whose compassionate commitment toward improving health care coverage for the poor and underprivileged in Genesee County has served as a shining example for us all.

One of the gravest problems facing our Nation today is the growing number of families who find themselves alienated and disenfranchised from our health care system. According to the Government Accounting Office, the cutbacks in Federal health care programs over the past 4 years have eliminated as many as 500,000 needy families and 700,000 children from the Medicaid Program—and the problem does not end there. The escalating numbers of Americans who lack any form of health insurance whatsoever, be it private or public, have led to an increasingly severe crisis in which many needy individuals can no longer afford proper medical treatment and are consequently refused care on purely economic grounds.

Cutbacks in health care programs have hit blacks and other minority groups especially hard. Today nearly 22 percent of all black individuals lack health care coverage. More disturbing, however, are the recent reports that infant mortality rates are actually starting to increase, especially among minority groups in urban centers like Detroit and Washington, DC. The infant mortality rate for black children is already more than twice as high as that for whites, and the persent trends suggest that this gap will only continue to increase in the future.

Recognizing the severity of this growing crisis, and devoted to the idea that it is the birthright of every American, regardless of color or socio-ecomomic background, to enjoy the best in health care treatment, the Flint Professional Black Nurses Association, in affiliation with the National Black Nurses Association, has set up a national network to respond to the health care needs of blacks and other minorities. In particular, the Flint Association has worked with the elderly in the Gardenview River Village, and persistently striven to increase community awareness of important health issues. By sponsoring community services like hypertension screening, health fairs, and seminars for teenage sexual awareness, the association provides essential services which are all too often denied to those of modest means.

Equally as important, the Flint Nurses have actively participated in Black History Month seminars and annually presented workshops in cooperation with the University of Michigan and other educational organizations. This emphasis on encouraging scholarship among black children in the community has had an especially beneficial effect on Flint's black youth.

On Friday, the Flint Nurses Association will present 56 awards to exemplary role models from the national and local communities who have been chosen for their leadership and vision by Flint's high school children. In addition, the association will award the Beverly Hampton Scholarship Award for outstanding academic achievement to three accomplished high school students from the Flint area.

Once again, I commend the Flint Professional Black Nurses Association for their outstanding service to the Flint community and their compassionate concern for the poor and the needy. May their organization continue to prosper in the long fight for justice and fairness in the health care system.●

GOVERNMENT NEEDS TO LISTEN

● Mr. SIMON. Mr. President, every time Congress makes changes in Social Security benefits, we affect the lives of thousands of Americans. While our No. 1 priority has to be reducing the Federal deficit, we must be ever mindful of our commitment to citizens who receive and depend on Social Security. Recently, a constituent who will lose her Social Security survivor benefits in August told me of her plight. I shared her story in a weekly column I write for newspapers in my State. She is a good example of why Congress and the administration should not be so sensitive to the powerful lobbyists and the big campaign contributors that we forget our good, solid citizens. I submit my column for the RECORD.

The column follows:

GOVERNMENT NEEDS TO LISTEN

Mrs. Henrietta Hass Snyder is a 57-year-old widow whose problem is similar to that faced by thousands of widows.

She came to a town meeting and told me her story. I am writing with her permission. And I'm writing about her because a part of her story may appeal to someone at the White House.

Her husband taught biology at Eureka College in Illinois—President Ronald Reagan's alma mater—until he died of a heart attack in 1980 at age 52.

Mrs. Snyder receives a pension of $180.31 a month as the widow of a faculty member. She also receives $535 a month from Social Security and will lose that in August.

Mrs. Snyder is the mother of seven children. Her youngest child will turn 16 in August, and when he turns 16 that ends her

Social Security benefits until she reaches 60, three years from now.

She is ineligible for welfare because of the small pension check and because of the Social Security money she has received.

Her mortgage payments are $214 a month. Insurance on the house is $200 a year and taxes on the house are $1,229 a year.

She has typing skills but no other marketable skills, though she is obviously a person of above-average native ability. She feels that any job she will get will be at the minimum wage (if she can get that) and she is likely to lose her home.

In 1981, the law was changed so that when her youngest child turned 16 she would automatically lose her Social Security survivor benefits until she became 60. Only no one notified her of the change in the law.

Now she suddenly worries about losing her home and how she will feed her 16-year-old. She has four children in college, a son looking for work and another who is working.

She faces a real struggle.

She feels she has made a contribution to society by raising seven children who will eventually be able to contribute significantly.

But what does she do now? Where can she go?

My office will try to help her find a job, but Eureka is near Peoria where there is already high unemployment.

I mention Mrs. Snyder and her problems because as Congress and the Administration determine what the national priorities are, we should not be so sensitive to the whims of the big campaign contributors and the powerful lobbyists that we forget Mrs. Snyder and all her counterparts.

Sometimes the good, solid citizens feel overwhelmed with problems.

Government should be listening to them.

That's why I hold town meetings around the state.

That's why I'm writing about Mrs. Snyder and working for her.●

SALUTE TO NELS ELMER KEMPPAINEN

● Mr. DURENBERGER. Mr. President, just recently, I had the honor and pleasure of attending the high school commencement exercises for my youngest son, Danny. Being the father of four sons, I have spent many hours in and around educational institutions and with educators. It will be a strange feeling to have that portion of my life behind me.

As I was watching Danny receive his diploma, I was reminded of the dozens of teachers and principals and other school personnel who have had such a strong impact on his young life. We can, indeed, be thankful for the contributions made each school day by so many dedicated individuals who have chosen education as a profession.

Coincidentally, commencement exercises this year at Robbinsdale Cooper High School in suburban Minneapolis, also marked the end of the career of one of Minnesota's outstanding high school principals, Nels Elmer Kemppainen.

Nels has been principal of Cooper High School since 1973 and has been employed by the Robbinsdale School District 281 for 31 years. He is a native of Keewatin, MN, and is a graduate of Hamline University in St. Paul.

In addition to his outstanding record as an educator, Nels is known for his sense of humor. He is particularly proud of the annual display of ethic pride and humor which he displays each March 16—which, as all Finnish Americans know, is St. Urho's Day.

Because of the numerous contributions which Nels Elmer Kemppainen has made during his career to support the educational advancement of so many young Minnesotans, I ask that the following article on his retirement be printed in the RECORD.

The article follows:

KEMPPAINEN: "HIGH SCHOOL IS MORE THAN ACADEMICS . . ."

(By Sue Webber)

The man with the white hair, the hearty voice, the positive attitude and the "Finnish connection" is—to use his own words—"hanging it up" this spring.

Nels Elmer Kemppainen, principal at Robbinsdale Cooper High School since 1973, is retiring after 31 years in District 281. "It's been a real good 31 years. I've really, truly enjoyed it. I like my job," he said.

Kemppainen was born in Keewatin, Minn., attended high school in Crosby-Ironton, Minn., and college at Hamline University. His teaching career began in 1948 in Chisago City, Minn., where he taught social studies and physical education, coached basketball and assisted with football and baseball.

But 18 summers of working with his father in the iron mines had made an impression on him, and he quit teaching for two years. "I was going to go into the mining business. My dad worked over 40 years in the mines," said Kemppainen, who notes that his father is "an idol of mine. I attribute my leadership skills to him."

By then, however, Kemppainen had met his future wife, Ginny, who was in nurses training at the University of Minnesota. Kemppainen followed her to the University, enrolled in a Masters program, and returned to teaching. "I married her before she graduated, and we came to Robbinsdale then," he said.

A paper he had to write as part of his work in the Masters program led Kemppainen to District 281. "I chose to write on split sessions. I came and talked to Milo Mielke (then the principal at Robbinsdale High School) because Robbinsdale was on split sessions then. Senior high met in the morning and junior high in the afternoon. As I was leaving, I said, 'By the way, sir, you don't have any teaching openings, do you?' He said, 'Send me your paper, and call me in a month.' I did, and he hired me."

Kemppainen began teaching social studies at Robbinsdale High School in 1954. Three years later, he added audio-visual work to his schedule. Kemppainen was appointed administrative assistant to the late Lyndon Ulrich when Cooper High School opened in 1964. When Ulrich became ill in 1973, Kemppainen was appointed acting principal. Two years later, he became the school's head principal.

An unabashedly enthusiastic supporter of the school, Kemppainen wears a replica of a silver hawk in his buttonhole. Several times a year—when the ultimate in school spirit is required—he dons an orange blazer. It's important to Kamppainen, he says, that "most people—including the students—feel good about being here—I work at creating that climate or atmosphere," he said.

He characterizes himself as "truly a people-oriented person. I've enjoyed the relationships I've had through education. I can honestly say that there are few days that I'm not happy and raring to go when I leave my driveway in the morning" he said.

One of his treasured memories as Cooper principal is having had a homeroom of his own for six years. "My homeroom gave me a relationship you don't have being an administrator. My homeroom students were students at Cooper High School, but they were also my friends," said Kemppainen.

He sees little change in young people during his years as an educator, although he concedes that "more are employed now. There seems to be a little erosion in commitment to school in its entirety. Some (students) are relatively happy to be here, but when the bell rings (at the end of the day), that ends their tie or commitment. I feel for the person who leaves school when the bell rings and never knows what else there is. It's like pulling a shade.

"High school has to be more than academic. I believe that so strongly. If students can experience success in extra-curricular activities . . . it will give them satisfaction and help them to be more well-adjusted citizens. A goal of ours is to make more well-adjusted citizens," he said.

During Kemppainen's tenure, Cooper teams have gone to the state tournament in basketball, baseball and girls softball. "Those were all exciting times," he said. He also expresses pride in the school's accomplishments in drama. "Declamation has just mushroomed," he added.

Kemppainen holds a strong belief in the value of the individual classroom teacher. "I hope we never get so technically oriented that we lose sight of the classroom teacher and that relationship. I really believe in that, and I believe in academic freedom for teachers. I have a lot of good feelings about the accomplishments of my staff. I really cherish when they excel or are acclaimed for something," he said.

He emphasizes, too, that the school's noncertificated support staff "is as important as anyone else in this building. We want them to feel that we recognize the fact that they're important," said Kemppainen.

Since Kemppainen came to Cooper in 1973, the school's structure has undergone several changes. The first involved switching from seven years of modular scheduling to the current eight-period day. The second was the assimilation of 41 new staff members and 700 new students following the closing of Robbinsdale High School in 1982.

"The staff that came here (after the high school closing) has to be given a lot of credit. They melded a lot better than people thought they would. There were few incidents. We didn't have what people feared would happen between the students, either. I don't recall any outward bursts of anger. They respected each other's positions," said Kemppainen.

During the school closing controversy, Kemppainen said, "I tried to think of all the good things that could happen as a result. This school has benefited from the students and staff it's inherited."

Kemppainen has high praise for "these assistants (principals) of mine, especially Dick (Stensrud) and John (Lloyd). I've had six or seven different ones, but Dick, John and I were assistant principals when Lyn

Ulrich got sick, and we've been together except for a brief time when Dick was principal at Robbinsdale Junior High," said Kemppainen.

Cooper's PTO Groups, while small in number of members, Kemppainen said, have been "absolutely dynamite as far as helping. They've been real neat. Just a handful have accomplished so much. They're always supportive and always volunteering."

He also is quick to credit the secretaries with whom he has worked during his years as an administrator. One was Kay Cooper Johnson, daughter of former District 281 Superintendent E. J. Cooper, who was Kemppainen's secretary from September, 1967 to February, 1982. "She just appeared here one day, and we got along real well. She was so dedicated," he said. Johnson died March 26 at the age of 62, and Kemppainen was scheduled to deliver a eulogy at her memorial service today (Thurday, May 23).

E. J. Cooper—for whom the school is named—has remained a close friend of Kemppainen's during his years in District 281. "E.J. comes to as many of our activities as he can, and the kids just automatically give him a warm response," said Kemppainen.

It remains to be seen whether the March 16 St. Urho's Day celebrations Kemppainen has shared with his staff will flourish in his absence. It was a natural for him, since both of his parents were from Finland, as was his mother-in-law. Although Finnish was spoken in his home as he grew up, Kemppainen says he now speaks it "semi-fluently."

His annual public celebration of the day the grasshoppers were banished from Finland began one year when WCCO-radio's Maynard Speece gave the holiday extra notoriety. Kemppainen recalls. His then-secretary, the late Kay Johnson, found a pair of long underwear, dyed them purple and hung them on a wall in the faculty lounge. Then she decorated Kemppainen's office in purple and green.

"The next year . . . I thought the least I could do was to have coffee and cake for the staff on St. Urho's Day," he recalls. The year after that, the celebration had escalated into "a little breakfast and a program," said Kemppainen.

"We've been doing that for at least 10 years now," he said, noting that a committee composed of Cooper staff members with Finnish heritage plans the event each year. In addition to the entire Cooper faculty, many non-school Finns attend the breakfast annually, in spite of its 6:15 a.m. start.

"It's been fun. It adds a little levity and brings the staff together," said Kemppainen, who several times has been featured on WCCO-radio live from the Cooper High School kitchen on St. Urho's Day.

Family activities always have been important to Kemppainen, as well, He and his wife, Ginny—whom he credits with "being a real support to me"—are the parents of three sons: Nels Jr. ("Chipper"), 29, is a market specialist with ADC Fiber Optics; Kerry, 27, lives at Rolling Acres, a residential facility in Excelsior; and Kurt, 24, is a technical representative for Group GMW, specialists in Reebok shoes, Karhu skis and Sierra design active wear.

Kerry, who is severely retarded and never has spoken, lived at home until he was 7, then spent 7 years in a foster home and subsequently was moved to Rolling Acres when he was 14. Having been the parent of a retarded child, Kemppainen says, "gave me a better understanding of life in general. Our goal is to have Kerry at home with us every second or third weekend." Kemppainen notes that he was active for years in the Minneapolis Association for Retarded Citizens.

What are his plans for retirement? "The plans are status quo, except that I won't be working," said Kemppainen, adding that he may "relearn to fish." He ended his membership in the Toastmasters after 10 years, and he no longer bowls, but Kemppainen and his wife still play tennis and bridge, and enjoy time with their two grandchildren, he said.

"We'll maintain our house in Robbinsdale, and we'll extend our time at the lake," he said, referring to a family cabin 13 miles north of Virginia, Minn., where the family "sincerely, truly plays bocceball when we can."

His plans also include some traveling, in addition to the semi-annual trips he and Ginny have made to Florida for the last 15 years to visit Kemppainen's father, who is 90.

Kemppainen has remained an active alum of his Crosby-Ironton High School class, "Six of us have planned every one of our reunions, and we all live in the Twin Cities," he said.

The man whose life began on the Iron Range—and even included years of playing Santa Claus for kindergarteners and staff members in District 281—sums it all up this way: "I have no regrets. I've had such a good time in my profession because of the people. I enjoy life to the fullest, and I live it to the fullest. I don't waste much time."●

UNITED STATES-SOVIET RESCUE AT SEA

● Mr. SIMON. Mr. President, the escalating arms race between the United States and the Soviet Union makes it imperative that our two countries find areas of common interest—areas where we work for a common goal. And contrary to the views of some people, sometimes things happen that show the Soviets and Americans can cooperate. One such occurrence happened not long ago in waters off the coast of California. I use the example in a weekly column I write for newspapers in my State and offer a formula for a new area of cooperation between the two superpowers. I ask that the following be reprinted in the CONGRESSIONAL RECORD.

LESSONS IN A RESCUE AT SEA

Fifty-year-old Jack Hoover had problems.

Hoover was alone aboard a 39-foot boat 25 miles of San Francisco when it began taking on water. No one saw him in trouble and before the boat sank he launched a small life raft and took with him food, a few flares, a strobe light and an "emergency position indicator radio beacon" that relays a distress signal.

He used his flares to try to get the attention of two passing freighters. No luck. The waves caused the loss of his food and all other supplies with the exception of the radio emergency beam which he kept operating, hoping someone would pick up the distress signal.

The United States operates one satellite and the Soviets two to pick up these signals, relaying the information to a computer at Scott Air Force Base in Illinois. One of these three—probably a Soviet satellite—picked up the signal.

Scott Air Force Base called the Coast Guard in San Francisco, which sent out a helicopter. In less than an hour the helicopter crew spotted Hoover and picked him up after 13 hours in a tiny life raft.

The *San Francisco Chronicle*, which published the story, quoted Coast Guard Petty Officer Wayne Winner: "It's a pretty fantastic system. We're proud of it . . . We have great cooperation from the Russians on this."

What intrigues me is that the United States and the Soviet Union can cooperate to save a sailor in San Francisco Bay, but seem unable to cooperate to save humanity.

It makes so much sense to work together to save Jack Hoover.

But it makes even more sense to work together to save civilization.

And make no mistake about it—civilization is threatened by an insane arms race and needs to be saved.

My guess is that the U.S. and Soviet officials who worked out the agreement on the emergency satellites followed this kind of program:

(1) Neither side started calling each other names.

(2) Neither side said, "You have to adopt our system of government or we won't cooperate with you."

(3) Both sides sat down around a table and said, "We have a practical problem that has to be solved. Let's solve it."

(4) Both sides gave a little.

Jack Hoover's rescue worked.

That same formula can work to save civilization.

Instead, both sides have adopted this formula on the arms race:

(1) Call each other "the basis of evil in the world" and "imperialists" and other names. People at home in both countries like to hear that.

(2) Tell the other side their system of government is about to collapse. It's not true on either side, but again, it pleases the home folks on both sides.

(3) Don't sit down to talk at the highest levels. Someone might think it's an indication of weakness. Both sides want to sound tough.

(4) Don't give an inch. Make the other side give.

Sound crazy? It is.

Jack Hoover's rescue can teach us a lesson.●

TRIBUTE TO DETECTIVE CORDELL PEARSON

● Mr. HECHT. Mr. President, today I want to take an opportunity to commend a job well done by Detective Cordell Pearson of the Las Vegas Metropolitan Police Department. In the early morning hours of June 19, 1985, Detective Pearson met with an informant who indicated that a threat had been made against my life. Detective Pearson was told that a fugitive from Nevada law enforcement officials was convinced he had been treated unfairly by Nevada State gaming agents in a plea negotiation and that he was planning to visit my office here in Washington on the morning of June 19. The informant further told Detective Pear-

son the fugitive had said "If I can't get some action with my words, I'll pull my gun and let it do the talking."

Recognizing the potential seriousness of such a threat, Detective Pearson immediately called the Secret Service to report what he had learned. Even though the hour was late in Las Vegas, and even later in Washington, Detective Pearson's persistence enabled him to eventually track down and notify the proper Washington authorities. I am happy to say that because of his swift actions, the fugitive was arrested in the late afternoon of June 19 at an entrance to the Dirksen Office Building. When he was arrested, he was in possession of a 0.38 caliber pistol.

I am convinced, Mr. President, that Detective Pearson's strong commitment to duty and professionalism in carrying out his job prevented a very unfortunate situation from taking place. He is indeed a credit to his family, his community, and the Las Vegas Police Department and I commend him, and thank him, for his performance.●

MAYOR HERB DAVIS: TENNESSEE MUNICIPAL LEAGUE'S MAYOR OF THE YEAR

● Mr. SASSER. Mr. President, the fact that Herb Davis, mayor of Milan, was selected as the Tennessee Municipal League's Mayor of the Year during last month's annual TML convention should not come as a surprise to anyone who knows him.

As one who has counted on Herb Davis as both friend and counsel, I can attest to the soundness of the decision to honor Herb as the State's outstanding mayor.

His list of accomplishments and what he has done to improve the quality of life in Milan are far too numerous to catalog in any short statement.

Let us just say that if you familiarize yourself with but a few of the things Herb Davis has done for his community, you, too, will agree that he richly deserves the honor bestowed on him by the Tennessee Municipal League.

So that my colleagues and others might apprise themselves of a representative sampling of his record, I ask that an article from the TML publication, Tennessee Town and City, be printed in the RECORD.

The article follows:

[From the Tennessee Town and City, July 15, 1985]

MAYOR HERB DAVIS: TENNESSEE MUNICIPAL LEAGUE'S MAYOR OF THE YEAR

(By Gael Stahl)

The Tennessee Municipal League Mayor of the Year, Milan's Herb Davis, "is not typical and therefore may not qualify for 'Typical Mayor of the Year,'" wrote one of his nominators, adding, "instead, he is the quality of mayor any mid-size city in Tennessee would be fortunate and pleased to have as their leader."

Milan has enjoyed Davis' leadership as council member, vice-mayor and mayor for a quarter of a century. Twice he has been president of Chamber of Commerce and has served on the Milan Industrial Development Board. He has also been a strong and ready friend to other local governments. He has served three years on the Tennessee Municipal League Board of Directors and has been President, Vice-President, and Secretary for the West Tennessee Mayors' Association.

Foresight is one of Davis' long suits. Years ago, he and other city fathers wisely acquired hundreds of acres of land from the federal government and the University of Tennessee. This one example of municipal clairvoyance shows how Milan undergirded its stable growth at a stable tax rate and nurtured its expanding tax base. Some of the acreage was used for parks and recreational development, some for a new city high school, and some for locating American Chain and Cable Company (ACCO industries) and the Milan Golf and Country Club. Acres remain for further developments.

Davis has served on the Milan Industrial Development Board. During his service he helped negotiate the location of ten major companies in Milan including ITT Telecommunications, Firestone, ACCO Industries, Martin Marietta, and Dixie Packaging.

As Chamber president, Mayor Davis coordinated efforts with surrounding towns and the Federal Aviation Administration to build the Gibson County Airport. Except for Jackson, Milan has the only airport in the area that can handle industrial jet flights.

Davis took the lead in integrating Milan's high school and three grammar schools and in transferring the Milan schools from a Gibson County system to a Milan Special School District. Milan's city-owned hospital, leased by Hospital Corporation of America, is one of the finest in West Tennessee.

The city sold the old high school property, acquired a new city hall building with the funds, and provides office space in it for the Chamber of Commerce. Due to careful planning, this facility, like the new high school, cost the city no additional municipal taxation.

Milan applied for and received a federal grant to raze all dilapidated houses in north Milan, to widen the streets, and beautify the town in general. Street and intersection lighting is being improved and the Street Department has paved and widened another major portion of city streets.

In 1983 his city won the prestigious TML award for "Overall Community Improvement," and is about to be certified for the third straight year for the Governor's Three Star Award. Milan is also a pilot community for Homecoming '86.

The Milan mayor's "administrative talent is for putting good people around him and maintaining a 'can do' attitude," to borrow the description of one of the Milan presenters at the TML Conference. And Davis is extremely conservative with municipal funds. He is often kidded for using "everything but the sawdust in moving from the old municipal building to the new one." Typically, TML's untypical Mayor of the Year is reported to be trying to find ways to reuse the sawdust too.●

THE DETERIORATING SITUATION IN THE PHILIPPINES

● Mr. MURKOWSKI. Mr. President, the situation in the Republic of the Philippines continues to deteriorate. Politically, the country remains convulsed by the aftermath of the assassination of former Senator Benigno Aquino, who was gunned down at Manila Airport almost 2 years ago. The trial of those accused of the conspiracy to murder Mr. Aquino has dragged on for months. It seems possible that it will end without convictions, indeed without any conclusive verdict as to who killed Aquino. Many Filipinos are disillusioned and deeply pessimistic about prospects for restoration of democratic institutions.

Economically, the Philippines continues to suffer from the world recession and from low prices of the country's main export commodities. Commercial monopolies owned by powerful families with friends in high places continue to enjoy a stranglehold on most major industries and commercial enterprises, controlling prices and manipulating supply and demand in a way which is antagonistic to the spirit of free enterprise.

It is well known that corruption is rampant in the Philippines. What is not as well known is the extent of capital flight from the Philippines. At a hearing on the Philippines last September I asked administration witnesses to give the Foreign Relations Committee some idea of the nature and extent of fortunes taken out of the Philippines by the country's ruling elite. The administration was unable to either confirm, deny or comment substantively upon various estimates which ran into the billions of dollars. That is, in my view, a sad commentary upon our own country which over recent years has poured hundreds of millions of dollars into the Philippines in military and economic assistance.

Our aid is given in consideration of two military bases which we are permitted to use, Clark Field and Subic Naval Base. Our aid is also used to help the Philippines fight an increasingly vigorous, dangerous Communist insurgency. I find it most unfortunate that at a time when the United States is struggling with its own massive deficit problems, the leaders of country which is a major recipient of our aid are, for personal purposes, sending vast sums of money out of their country to safehaven abroad in the form of real estate investments, business ventures and just plain bank accounts.

Surely, this is no vote of confidence in the future of their own country. Surely, that money could be better used building up the Philippine economy and contributing to the welfare of the countryside now mortally threatened by insurgency.

Mr. President, the San Jose Mercury has just published a series of detailed articles on the flight of capital from the Philippines. These articles name people, places, properties and amounts. They are the result of many months of research.

I find the information in these articles revealing and disturbing. I hope they will be widely studied for what they say about the current state of affairs in a country which is one of the United States' closest allies and with which we have a deep, friendly and long relationship.

I ask that the articles from the San Jose Mercury be entered in the RECORD in their entirety.

Sunday, June 23, 1985—How Top Filipinos Hide Fortunes Overseas; 10 Top Filipinos and Some of Their U.S. Links; Offshore Holdings Not Limited to Prominent Filipino Leaders; Some Deals Sour; Monday, June 24, 1985—Wealthy Filipinos Find California Lucrative Territory for Investment; American Conduits Help Filipinos Buy Real Estate; Area Banks are Favored Investments; Some Have Had Troubles; Tuesday, June 25, 1985—Dollar Drain's Link to Unrest In Philippines; Marcos Foes Track Money but Keep Quiet for Now.

The articles follow:

[From the Mercury News, June 23, 1985]

HOW TOP FILIPINOS HIDE FORTUNES OVERSEAS

(By Pete Carey, Katherine Ellison, and Lewis M. Simons)

As the Philippines sinks deeper into a quagmire of poverty, foreign debt and political unrest, many of its most prominent citizens are systematically draining vast amounts of wealth from their nation and hiding it overseas.

These political and business leaders—who more than any other group hold sway over the Phillipines' economic destiny—have poured their personal fortunes into offshore havens such as the United States, a Mercury News investigation has found.

Of the billions of dollars that U.S. and Filipino analysts agree have left the Philippines in the past 20 years, tens of millions have come to the United States, often concealed by holding companies registered in Hong Kong or Curacao. The money has been used to buy condominiums, homes, office buildings, business and banks, some of them in Woodside, Hillsborough, San Francisco and elsewhere in the Bay Area.

"If only these people kept their money here and reinvested it in productive enterprises, our problems would be a lot more manageable," said a Filipino senior executive of a multinational oil company operating in the Philippines. "Let's face it, this country has been ruined by the greed of a few people, and what makes me sad is, we can't say enough is enough. We can't seem to bring ourselves to stop them. We're broke; where's the money? There's no accountability. It's sickening."

That the rich and powerful in the Philippines, including President Ferdinand E. Marcos and some of his closest associates, have profited form their positions of leadership or ties with the government has been widely reported in Philippine and U.S. studies.

But there is "special outrage," noted a 1984 U.S. Senate committee report, "that the country's leadership, having acquired immense personal fortunes, has reportedly removed badly needed capital permanently from the Philippines economy. People feel doubly robbed."

Several of the top Filipino business and political leaders whose U.S. links were examined in the Mercury News investigation either downplayed the importance of their investments or denied owning overseas property. Others declined to be interviewed or did not respond to written questions submitted to their offices.

The extent of the capital flight is causing increasing concern among U.S. officials. They worry that the faltering Phillippine economy could help topple the Marcos government, which plays host to key U.S. military bases.

"Everybody in the (U.S.) government is worried," said Richard Kessler, a specialist on the Philippines with the Carnegie, Endowment for International Peace in Washington, D.C. "As a crisis, the Philippines is their No. 1 concern. The people that I've talked to say that in comparison, Central America is just a sideshow."

At the forefront of overseas investment, the Mercury News has found, are Marcos and his wife, Imelda. Like many Filipinos who have invested overseas, the Marcoses use holiday corporations or business associates to handle their transactions. The complex system makes it difficult to trace ownership or relationships between businesses involved in the investments.

But a March 1984 lawsuit not previously reported in the media has for the first time shed light on millions of dollars of real estate investments in the United States by the Philippines' first family. The suit, filed by a former business partner of Mrs. Marcos, alleges that she "does business in New York State systematically and continuously" and that her activities include "extensive real estate purchasing, improving, developing and managing.

New York Investor Pablo E. Figueroa further charges in the suit that she uses agents and nominees "to keep hidden her personal . . . involvement" in the transactions.

Filed in Suffolk County, Long Island, Figueroa's suit alleges that Mrs. Marcos and several partners, using a Curacao corporation called Ancor Holdings N.V., in 1981 bought an estate on several acres of suburban Long Island property known as Lindenmere, planning to convert it into a $19 million resort.

But Mrs. Marcos abandoned those plans and converted Lindenmere to a private estate, the suit says. In the process, Figueroa claims, she failed to pay him $1 million she had promised as his share in the deal. Attorneys for both Mrs. Marcos and Figueroa refused to comment on the suit.

There also is evidence of other Marcos properties. According to real estate records, Mrs. Marcos' personal secretary in New York is the agent for a Hong Kong corporation that owns three adjoining Manhattan condominiums. And a home in Princeton, N.J., is owned by an offshore corporation that is represented by the same law firm that represents Ancor Holdings. Police officials in the New Jersey town said the home is used by Marcos family members.

The U.S. investments or economic links of eight other prominent Filipino government and business leaders were examined by the Mercury News: Defense Minister Juan Ponce Enrile; Energy Minister Geronimo Velasco; coconut and brewery magnate Eduardo Cojuangco; industrialist Rodolfo Cuenca; banker Roberto Benedicto; airline executive Roman Cruz; businessman Jose Campos, and banana baron Antonio Florendo.

In many cases, surrogates or offshore corporations were used to execute transactions, making it difficult to ascertain the originators of the investments.

Defense Minister Enrile and his wife, for example, purchased property in San Francisco through a company called Renatsac Inc., which is Enrile's wife's maiden name spelled backward. Campos, through an investment company registered in the Netherlands Antilles, bought $9 million in property in downtown Seattle. In other cases, real estate is held in the name of trusted American lawyers or agents.

"Now, if even half of that would return to the Philippines for private investment, it would make a considerable difference here," Bosworth said.

Philippine officials interviewed by the Mercury News offered varied explanations for or denials of their overseas holdings.

"It depends on the magnitude of money," said Enrile, who with his wife has owned three San Francisco properties and who acknowledged currently owning one condominium in San Francisco. "If the holdings are of such a magnitude as billions of dollars, I'd say it would be just to get it out of the Philippines and I'd agree that it was harmful. But when I acquired mine, the economy of the Philippines was not what it is today. It was stable and strong."

Energy Minister Velasco flatly denied owning any property abroad, although his nephew, Patrick de Borja, told the Mercury News that a mansion in Woodside owned by a holding company linked to Velasco is a "family house" and that Velasco stays there when he is in the area.

The Marcoses, in a statement from Manila, denied owning any property in the United States. The statement added that the government's policy on overseas investment is that "so long as the acquisitions are legal, nobody can question the owners' right to these properties."

A spokesman for the Philippine consulate in San Francisco, Prudencia Europa, complained that the Marcoses always are blamed when the issue of capital flight arises.

"I know some friends of the president who own property here," Europa said, "and then the critics say this property is owned by Marcos, and then it's owned by Cuenca, for instance."

Capital flight surged shortly after the assassination of opposition leader Benigno S. Aquino Jr. in 1983, becoming "epidemic in proportion," according to a special study last year by the Northern California Interfaith Committee on Corporate Responsibility in San Francisco. "Out of fear of political and economic turbulence, over a billion dollars left the Philippines," the study said.

Marcos apparently tried to stem the flow in the early 1970's and again in 1983 with decrees that made it illegal for Filipinos to export large sums of cash or hold foreign exchange accounts without approval from the nation's Central Bank.

But even Philippine government officials acknowledge deficiencies in the laws, which do not forbid overseas investments per se. It would be hopeless, the officials say, to try to catch each unauthorized dollar as it flows from the country.

"Somehow, some way, dollars are taken out," said Felipe Sarmlento, the commercial attache at the Philippine consulate in San Francisco. "But you can't police everybody 24 hours a day. You cannot track them."

In fact, U.S. real estate agents relate instances in which their Filipino clients have plopped shopping bags stuffed with cash on their desks, no questions asked, to be used for investment in property.

"It is illegal, and every once in awhile there'll be fines and confiscations," said the San Francisco lawyer who represents Filipinos and who insisted on anonymity "But if the Philippine government really did anything about this, they'd be indicting all their own officials. *They're* the biggest offenders."

Commercial attache Sarmlento said it would even be possible for top government officials to carry cash out of the country in their suitcases, if they wished, because they are immune from routine airport searches. Sarmlento said that Defense Minister Enrile, for example, might easily pass through airport security by virtue of his position.

"They may not only not search him," Sarmlento said, "they may salute him."

There are, of course, more subtle ways to export currency than stuffing it in suitcases. In a series of interviews, attorneys, brokers and Philippine officials detailed what all described as well-established and often used ways of circumventing the islands exchange-control laws.

Transactions occur in an air heavy with intrigue. Brokers tell of late-night phone calls from Manila, of secret instructions to send secret papers to secret destinations.

Offshore corporations help get the dollars off the islands and to make purchases abroad. Filipino investors frequently have used corporations based in the Netherlands Antilles, particularly Curacao, which have offered tax advantages for buying and selling real estate.

Other corporations have been based in New Hebrides, Panama, the Cayman Islands, the British Virgin Islands, Hong Kong and even Liberia. Most combine some sort of tax benefit with the equally precious commodity of anonymity.

The desire for secrecy is hardly unwarranted. Overseas investing is a hot political issue in the Philippines, and some opposition leaders abroad have made it their bitter vocation to track foreign investment, particularly those by Marcos and his so-called "cronies."

In the opposition's eyes, extravagant foreign purchases compound the injustice of a regime that has favored a loyal few at the expense of millions of others.

While reports of graft and corruption proliferated, the Philippines' large income distribution gap widened even further between 1971 and 1979, and 1979, according to a June 1984 study be economists at the University of the Philippines.

The poorest 60 percent of households, which had received only 25 percent of total income in 1971, saw their share drop to 22.5 percent in 1979, the study said. The richest 10 percent of the population, on the other hand, increased their share of total income to 41.7 percent from 37.1 percent in the same period.

Capital flight, many experts believe, has made matters worse. Some Philippine factories have closed or laid off workers because there were no foreign currency reserves with which to buy raw materials and spare parts, according to Verne Dickey, an economist at the State Department.

William Sullivan, a former U.S. ambassador to both the Philippines and Iran, noted that the Philippine economy is in even worse condition than the economy of Iran was in before the shah fell.

"In the case of Iran, capital flight took place against a background of enormous foreign exchange earnings from oil," Sullivan said. "But the Philippines can earn damn little. Every main commodity they have (to export) has gone flat. . . . In due course, you get down to the absence of necessities. In the Philippines, for instance, you have to import all the wheat flour."

Nonetheless, reports continue of enormous bank accounts and extravagant overseas purchases by wealthy Filipinos.

And as a senior executive with one of the largest banks in the Philippines put it, U.S. real estate investments by Marcos' inner circle are merely the "tip of the iceberg."

"You're not seeing the securities, the Swiss bank vaults," he said in an interview in Manila. "The important thing is, it's unlikely that any of this money will return to the Philippines when transition is complete and we have stability.

"When their patron saint (Marcos) goes, most of them will go overseas to stay; most of them already hold green cards. These people have not bought U.S. real estate as a financial investment; it's for their retirement when they can no longer stay in the Philippines."

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10 TOP FILIPINOS AND SOME OF THEIR U.S. LINKS

THE MARCOSES

Ferdinand & Imelda Marcos. Ages: 67, 65. Background and occupations: Marcos has been head of state since 1965. His wife, Imelda, was a Filipino beauty queen. She is active in governmental and finance.

U.S. Links

Imelda Marcos has invested heavily in New York real estate, according to a lawsuit against her by one of her former partners. One holding listed in the suit is an estate known as Lindenmere in Center Moriches, N.Y., purchased in 1980. The estate is held in the name of a Netherlands Antille corporation, Ancor Holdings N.V. The suit said Ancor is "controlled" by Mrs. Marcos. A home on 13 acres at 3850 Princeton Pike, Princeton, N.J., is used by the Marcos family, according to local police. The home is owned by Faylin Ltd., an offshore corporation represented by the New York law firm of Bernstein Carter & Deyo, which also represents Ancor Holdings. Real estate records also show that Mrs. Marcos' personal secretary in New York, Vilma H. Bautista, is the authorized agent for a Hong Kong corporation that owns three adjoining condominiums at 641 5th Ave. In New York City, Bautista, a staff member for the Philippine U.N. delegation, denied knowledge of the condominiums, although she was reached at a phone number listed on real-estate records for the units. "There are so many names, there are so many phone numbers," she said. "This could be another Vilma Bautista." The Marcoses deny they own property in the United States.

ROBERTO S. BENEDICTO

Age: 68. Background and occupation: Banking and sugar were the cornerstones of Benedicto's rapid rise after President Marcos declared martial law in 1972. A close personal friend and former fraternity brother of Marcos, Benedicto owns several banks in the Philippines and once headed the government-owned Philippines National Bank, which finances sugar operations for the Philippine government.

U.S. links

California-Overseas Bank in Los Angeles, with total assets of $133 million, is principally owned by Benedicto. The bank owns real estate worth $7 million, some of it foreclosures on bad loans and some of it bank property, according to the California Superintendent of Banks. More than $30 million in capital has been infused by the bank's owners since it opened in 1976. The bank owns two office buildings in Beverly Hills. The buildings, at 9145 Wilshire Boulevard, were purchased for $3.7 million in 1981, according to Los Angeles County real estate records. A major Philippine newsmagazine, Mr. & Ms., reported Feb. 22 that Benedicto recently bought an unidentified U.S. sugar trading company for $63 million, paid in cash, Benedicto did not respond to requests for an interview.

ANTONIO O. FLOLRENDO

Age: 70. Background and occupation: From his start as an obscure Ford dealer on the island of Mindanao, Flolrendo rose to become a major banana plantation owner. In 1977, he branched from bananas to sugar. That year he paid $11.7 million for three refineries—in Boston, Chicago and Brooklyn, NY.—that belonged to Sucrest Corp., according to U.S. Securities Exchange Commission documents. Flolrendo re-named the company that was thus formed, Revere Sugar Corp.

U.S. links

Assets of the Boston sugar refinery were listed in bankruptcy filings at $4.2 million. Assets of the Brooklyn refinery were valued at $16.1 million. Flolrendo also is director of Ancor Holdings N.V., identified in a New York law suit as a holding company for property owned by Imelda Marcos. Flolrendo also owns a $1 million Mansion in Makaki Heights, Honolulu. According to reports in the Honolulu Advertiser, Flolrendo paid $800,000 cash in 1980 and signed a note for the remaining $200,000. Flolrendo has a New York address at 641 Fifth Ave., where a company called United Motors is listed as the owner of a condominium. Philippine records show United Motors & Equipment is owned by Flolrendo. An employee of Flolrendo in the Philippines confirmed that Flolrendo owns Revere sugar as an investment. He said he does not think Flolrendo owns a condominium at 641 Fifth Ave., but that "In Honolulu, I understand a couple of years ago he bought a house there."

GERANIMA Z. VELASCO

Age: 56. Background and occupation: Minister of Energy for eight years. Velasco is the Philippines' energy czar. Trained as a mechanical engineer, Velasco has had no formal education in management. As former president of Dole Philippines, Velasco was the first Filipino to head a major multinational company in the country.

U.S. links

Velasco has been linked to a mansion at 140 Farm Road in Woodside that was purchased in 1979 for $925,000 though he denies he owns it. It technically is owned by Decision Research Management Ltd.; a Hong Kong corporation that also bought a condominium in Century Hill in Los Angeles in 1982, assessed in 1984 for $561,000. A senior executive of a multinational oil company in the Philippines said Velasco told him he bought the Woodside home under a Dole executive plan. Alfred De Borja, Velas-

co's nephew, executed a $675,000 promissory note on the property in 1979. According to a Western diplomatic source in Manila, De Borja manages all of Velasco's offshore funds. De Borja's brother, Patrick, lives in the Woodside home and said the estate is "a family home" and that Velasco stays at the home when he visits the area. "I don't know anything about Decision Research Management Ltd.," Velasco said. "Alfredo de Borja is my nephew, but I don't know anything about his supposedly managing my supposed overseas properties."

JUAN PONCE ENRILE

Age: 81. Background and occupation: Formerly one of President Marcos most intimate associates, the Harvard-educated attorney has been minister of defense for the past several years. He also has held an array of government posts, including secretary of finance, secretary of justice and acting chairman of the monetary board of the Central Bank.

U.S. links

Enrile acknowledges that he and his wife, Christina, purchased a condominium at 2190 Broadway in San Francisco in 1979. Real estate records show the family has owned two condominiums in the same building, and sold one in 1982 to Renatsao Inc., a California corporation, Enrile acknowledged that Renatsao, which is the backward spelling of his wife's maiden name, is a company "my wife used" for business purposes, in 1982. Renatsao brought a house valued at $1.8 million at 2310 Broadway in San Francisco. Enrile claimed that "it was brought by a company and has been sold. We—my wife—was acting for, someone, I won't tell you who it was, it's since been sold."

JOSE Y CAMPOS

Age: 63. Background and occupation: An ethnic Chinese said to be a close financial adviser to Philippines President Ferdinand E. Marcos, Campos is head of United Laboratories Inc., one of Asia's largest pharmaceutical firms and the largest distributor of drugs to the government's health ministry and all it's public hospitals. Canadian records indicate Campos is president of Greenfield Investment Corp., based in Vancouver British Columbia.

U.S. links

Campos is president of UNAM Investment Corp., registered in the Netherlands Antilles. In 1983, the firm purchased $9 million of buildings on a city block in downtown Seattle, according to Washington state real estate records. The buildings, which include low-income apartment houses, are bordered by Sixth and Seventh avenues and Pike and Pine Streets. Real estate records show that Campos' wife, Elizabeth, owns a house in Vancouver, British Columbia with a 1982 assessed value of $482,300. William Wright, a Vancouver attorney for UNAM Investment, declined to comment. Campos' secretary in Manila said Campos is out of the country. I don't know where he is: I don't know what country he's in. He's been out of the country since April.

EDUARDO COJUANGCO

Age: 50. Background and occupation: The Philippines' "Coconut King" is one of the nation's wealthiest men. A longtime friend of President Marcos, Cojuangco until recently enjoyed a near-monopoly in the coconut industry. Chairman of the San Miguel Corp. brewery, he owns a multimillion dollar horse farm in Australia.

U.S. links

Cojuangco is former president of United Coconut Mills Inc. (Unicom) of Manila. Unicom, however, is still owned in part by the United Coconut Planters Bank, which Cojuangco controls. In San Francisco, Unicom's subsidiary, Granex Corp. U.S.A., refines coconut oil at 1301 Army St. Another company, an import-export firm in Los Angeles, is described as belonging to Cojuangco by Rafael Fernando, a former executive for another Unicom subsidiary. The company, Coastal American Traders Inc., is partly owned by Helenita Soriano, Cojuangco's former personal secretary, who was unavailable for comment. Real estate records show Coastal American Traders owns a house in Santa Monica valued at $220,000. In Beverly Hills, a jewelry store called Jewelmer International is a branch of a Cojuangco family corporation of the same name, based in Manila, according to Dorothy Reyes, manager of the Manila store. A spokesman for Cojuangco in Manila said, "My boss will not be able to tackle the questions you posed. He was too busy and is now preparing to travel to Barcelona with his San Miguel basketball team."

ROMAN "JUN" CRUZ

Age: 47. Background and occupation: Cruz, president of Philippine Airlines, also heads the Government Service Insurance System. Harvard educated in public administration, he runs the airline and reports to Imelda Marcos, PAL chairwoman. In his early days, he was an economist for banks in Hong Kong and Manila, and he still is a banker. Cruz is chairman of Century Bank in Los Angeles, a branch of Philippine National Bank, which is owned by the Philippine government.

U.S. links

In 1979, Cruz purchased four lots in a vacation resort called Brooktrails Vacation Village, just outside Willits, in Mendocino County, according to county real estate records. Their taxable value was $66,014. Cruz, through a spokesman, denied owning property in Mendocino County.

RODOLLA CUENCA

Age: 57. Background and occupation: Cuenca's Construction and Development Corporation of the Philippines became the major public highway builder under the Marcos administration. He also founded CDCP international in Hong Kong and Galleon Shipping Co., a Philippine shipping line with a U.S. subsidiary, Trans-Asia Marine Corp.

U.S. links

Cuenca has owned several pieces of Bay Area real estate, including a condominium at 1177 California St. in San Francisco; a home at 131 Devonshire in San Francisco; and half-interest in a home at 2741 Berkshire Dr., San Bruno. He also owns a cooperative apartment at 700 Park Ave. in New York City, according to a lawsuit filed against the U.S. subsidiary of Cuenca's shipping firm. Cuenca has sold the Bay Area properties to a Delaware firm called TRA Equities Inc., whose president is Cuenca's attorney, Roger MacKenzie of the San Francisco law firm of Graham & James. Sources said TRA is a Cuenca company, but MacKenzie said he does not know if Cuenca is involved in the firm. TRA Equities bought two San Francisco office buildings, one at 625 Market St. and its annex at 25 New Montgomery St., for $10.3 million in 1983. The annex later was sold. Cuenca still is registered as the occupant of the TRA-owned condominium at 1177 California St. Cuenca's daughter, Marianne, lives at the 131 Devonshire home, according to relatives who were interviewed at the house. Cuenca did not respond to questions submitted to his office.

OFFSHORE HOLDINGS NOT LIMITED TO PROMINENT FILIPINO LEADERS

(By Katherine Ellison and Pete Carey)

Overseas investment by Filipinos is not limited to the 10 political and business leaders featured in this report. Others—including elected officials and businessmen and women—also have opted to buy American.

One of the Bay Area's most notable Filipino investors is Ricardo C. Silverio, who until a few years ago was ranked among President Ferdinand E. Marcos' closest associates. The Far Eastern Economic Review once called him "the star of crony capitalism" in the Philippines.

Silverio, who began as a small textile merchant, came into his fortune after he founded the Delta Motor Corporation in 1961 and won for it the exclusive rights to assemble and distribute Toyota cars and trucks in the Philippines. But Silverio's heyday ended in 1981, when a no-longer friendly Marcos seized the firm as partial repayment for government loans to the company.

Of late, Silverio has been working at his new headquarters in Daly City, overseeing the development of a 105-acre housing and shopping project in Lancaster in Los Angeles County.

Real estate records show Silverio bought more than half a million dollars worth of land in Lancaster in 1974. His Silcor corporation also owns a Hillsborough home purchased four years ago, with a total assessed value of nearly $850,000.

Silverio fell afoul of Marcos shortly after a reporter inquired if he had profited through his friendship with the president.

"I know President Marcos very well, and deserve his support," Silverio was quoted as responding. The developer no longer grants interviews with the press, and declined through spokesmen to respond to questions for this article.

Three San Francisco condominiums are linked to the family of Herminio Disini, 48, the cousin-in-law of First Lady Imelda Marcos and an industrialist who at one time was one of President Marcos' closest associates.

Through his giant Herdis Group, Disini then expanded into such fields as textiles, electronics and construction. In the late 1970s, however, Marcos ordered him to give up control of three companies after he was accused of earning millions of dollars in commissions to build a nuclear power plant near Manila.

Disini now spends much of his time in Europe, but real estate records show that Herminio Disini Jr. owns a $348,340 Nob Hill condominium at 1177 California St. Two other condominiums at the same building are listed on real estate records as belonging to Asia Resources International, a California corporation. The mailing address listed on the condominium is Disini's name is Asia Resources International, which business sources say was Disini Sr.'s trading company. Daniel Sullivan, the registered president of Asia Resources in Menlo Park, was unavailable for comment.

Edna Gulyab Camcam, a Filipino businesswoman who now lives in the United States, owns a Los Angeles apartment building valued at more than $1 million pur-

chased in 1980. Camcam, a former vice president of Equitable Banking Corp. in Manila, is said to be a close associate of Gen. Fabian Ver, who is on leave as army chief of staff. Real estate records show she owns a second property in Los Angeles, a four-plex building bought in 1979. In East Islip, N.Y., Camcam is the registered owner of a home purchased in 1978.

A woman reached during repeated calls to an East Islip number for Camcam said the businesswoman was out of the country. She added that she was simply renting the property, and did not know Camcam's whereabouts.

Nemesio I. Yabut, mayor of the financial district of Manila, answered the door of his $520,000 pink-stucco home in San Francisco's exclusive St. Francis Woods one recent evening in pajamas and a bathrobe. Yabut comes to the Bay Area twice a year for medical check-ups at Stanford University Medical Center.

In the course of the next hour, he confirmed real estate records indicating he has owned, over the past few years, not only the two-story home, in his wife's name, but a $900,000 apartment building, at least two condominiums and a San Francisco seafood restaurant called the Old Clam House.

"But I'm only a lowly mayor," Yabut said. "I have very little money. . . . I'm small fry."

A former policeman and cargo handler, Yabut, 59, has been mayor of Makati for the past 14 years. He also is a strong supporter of Marcos, whom he backed financially in 1965.

Yabut said he worries about publicity of his U.S. holdings, most of which have been in his own name, but insisted he has done nothing illegal. While he has taken money out of the Philippines, Yabut said, he also has brought money back. Nor, he said, has he illegally traded currency or neglected to pay U.S. taxes.

"I remember the story of Al Capone," he said. "Al Capone was never convicted of anything but tax evasion."

Some Deals Sour

Legal, Financial Troubles Plague Several Business Ventures in U.S.

(By Pete Carey and Katherine Ellison)

Although investment by Filipinos in the United States is perfectly legal, a number of Philippine businesses formed in the U.S. by associates of President Ferdinand E. Marcos nonetheless have met with legal difficulties or prompted government probes in the past several years.

Three Silicon Valley companies became the subject of numerous Philippine government investigations after they were purchased by Asian Reliability Corporation Inc., a Philippine holding company partly owned by the Philippine Ministry of Human Settlements, which is run by Imelda Marcos.

At issue in the investigations is the use of a Philippine government-guaranteed $25 million loan to buy the companies. The money was supposed to have been used for economic development inside the Philippines.

The three Silicon Valley firms, Interlek Inc. and Test International Inc. in San Jose, and Tool & Die Master in Santa Clara, were bought by ARCI for about $14 million in 1981. ARCI is run by Vincente Chuidian, 42, a Hillsborough businessman.

According to sources at the company, who asked not to be identified, the purchase had government approval and President Ferdinand E. Marcos was to have put $9.5 million of his own money into the companies in exchange for half the stock, but Marcos later changed his mind.

Publicity about government-backed loans being used for overseas investment embarrassed the Marcos administration, and it ordered the Philippine Central Bank to deny official registrations of loans for ARCI to purchase the three firms. This caused a London-based banking firm that was providing financing to call in its loan, leaving Chuidian and the Marcos administration in a dispute over who is responsible for the debt. Chuidian calls the situation a "Harvard case study" in what's wrong with the Philippine economy.

"Marcos equated political power with economic power," Chuidian said "Correspondingly, the vast machinery of his office operated under this reality. Policies were drawn, laws were enacted, organizations were created, relationships were rearranged, rights and obligations were regulated, always with this thought in mind that 'he who controls the coffers, controls the crown.' "

A Philippine sugar deal was investigated in 1977, when Sucrest Corp., a U.S. corporation, signed a contract to buy Philippine sugar and ultimately was bought out by its Philippine sugar broker, Antonio Floirendo.

The contract was investigated by the Federal Trade Commission because of an alleged agreement between the Philippine government and Sucrest to sell sugar for a fixed profit over a five-year period.

Sucrest auditors also investigated more than $1 million in brokerage fees received from Sucrest in 1977 by Marcos intimate Floirendo. Investigators said that while their access to Floirendo was "limited," no evidence was unearthed that showed that corporate funds were used for "illegal or questionable" payments.

The same year, Sucrest sold Floirendo its three U.S. refineries. He paid $11.7 million for the refineries and renamed the company Revere Sugar Corp. Floirendo could not be reached for comment.

In 1981, the U.S. Justice Department investigated alleged attempts by three Filipino-controlled firms in the Bay Area to form a cartel in coconut oil—a scheme then jokingly referred to as "Cocopec." The department's anti-trust division alleged that the companies tried to raise and fix prices for the oil.

Defendant corporations in the federal suit were Pan Pacific Commodities, Granex U.S.A. and Crown Oil, all then associated with the Philippine United Coconut Planters Bank, controlled by Marcos intimate Eduardo Cojuangco. In an out-of-court settlement, each was ordered to end the alleged conspiracy.

In another case involving an industrialist close to Marcos, Trans-Asia Marine Corp., the U.S. subsidiary of Galleon Shipping Lines, was sued for $5.5 million in New York. The suit alleges that Philippine construction czar Rodolfo Cuenca, who owns the firms, pocketed $41.8 million through a scheme in which ships purchased by Galleon with loans from the Development Bank of the Philippines were vastly overpriced. The suit was filed by a former president of Trans-Asia Marine.

Cuenca's attorney, Michael J. Silverberg, said there is no merit to the lawsuit.

Wealthy Filipinos Find California Lucrative Territory for Investment

(By Katherine Ellison and Pete Carey)

When rich and powerful Filipinos invest outside of their debt-riden homeland, a favored haven for their wealth is California—and particularly the Bay Area—where they have poured millions of dollars into property and businesses in the past 10 years.

For local lawyers and real estate agents who deal with such high-powered Filipino clients, otherwise routine transactions often become filled with intrigue and suspense.

"They come over here with shopping bags full of money—real money," said Palo Alto real estate agent Carl Horvitz, whose clientele includes Filipino investors. "Sometimes it flows through the hands of their attorney or a trusted relative. Sometimes they drop it on my desk. And if a trustworthy relationship can be established, one could expect visits from friends."

The allure of Northern California comes from a combination of close cultural ties and keen interest in the area's hot real estate market.

As a first Pacific Ocean port of entry, San Francisco historically has had familial and financial links to the Philippines. Close to 120,000 Filipinos have settled throughout the Bay Area—including more than 27,000 in Santa Clara County—according to the 1980 U.S. Census. Countless others are frequent visitors.

Residents and visitors alike have brought their investment dollars. At least 25 properties in California are or have been owned in recent years by prominent Filipino government and business leaders, according to the findings of a Mercury News investigation. These include office buildings, homes, condominiums, vacation lots and bank buildings. Several other properties have been linked to prominent Filipinos, but ownership was difficult to ascertain because of the use of surrogates or offshore corporations to handle transactions.

In virtually all cases, Bay Area brokers and lawyers say, Filipinos seeking investments in the region are extremely affluent.

"Everyone who has investments here is in the million-dollar category—they go up from there," said one San Francisco attorney who has worked with wealthy Filipinos for more than a dozen years and who insisted on anonymity.

The attorney, one of several Bay Area lawyers who specialize in representating Filipino investors, pointed to an anteroom at his office where two bookshelves were crammed with boxes of files.

"There they are—all Filipino companies" he said, cheerfully.

Filipino land purchases in the area frequently are characterized by large downpayments and small mortgages, reflective of the desire to move large amounts of money out of the troubled islands.

As an example, a San Francisco insurance agent offered the case of one of his clients, a Filipino physician, who recently bought a house for $550,000. The doctor put down $500,000 in cash, he said, and took out a $50,000 loan.

"It's just the opposite of what you and I would do," said the agent, who asked not to be identified. "It's like a depression-era psychology."

Notable exceptions to the general fondness for California are President Ferdinand E. Marcos and his wife, Imelda, who apparently prefer New York and the East Coast for both vacations and investments. Sources acquainted with the couple said they avoid the Bay Area because of its particularly high concentration of anti-Marcos activists.

But quite a few other Filipinos—including some of Marcos' closest associates—remain attracted to California and the Bay Area.

Instead of staying away, many go to great lengths to disguise their personal involvement in the investments.

"You'll never find out who the principals are," said the San Francisco attorney. "Every time I've ever dealt with these guys, I've never dealt with a document signed by a principal. Ninety-nine percent of the time they just tell me what to do, and I do it."

Indeed, many brokers and lawyers learn quickly that secrecy is prized by their Filipino clients.

"Everybody manages to take money out some way," said San Francisco real estate broker Rene Miranda, whose clients include Nemesio L. Yabut, mayor of Makati—the financial district of Manila. But Miranda said he never asks how investment dollars arrive.

"The less I know," he said, "the better for me."

Other attorneys and brokers managing the investments of Filipino clients become experts in the formation and use of offshore corporations to handle transactions, a favored technique both to disguise owners' identities and to reap tax advantages.

A substantial number of Philippine holdings in California and throughout the United States are registered in the names of Netherlands Antilles corporations—corporations sometimes purchased in Curacao, according to real estate broker Horvitz, who has written a booklet advising foreign investors how to purchase U.S. real estate.

Horvitz said one popular notary in Curacao, Dr. Jacob Schultkamp, oversees 80 employees and sells "incorporations off the shelf . . . for a couple thousand dollars, with his dummies, his people," as officers and directors. "All you have to do is send him a telex. . . . He'll be the director for you."

Horvitz added that some of his own clients have used one Hong Kong accountant to be managing director of their numerous property-purchasing companies.

"They hire somebody in this country to manage the property, and he puts the money in a trustee account," Horvitz said. Then, when the investors in the Philippines want money sent back from abroad, they simply notify their representatives.

"The attorneys over here or the accountant over there (tells the bank), 'Send me $5,000 or $100,000,'" Horvitz said.

The lure of profits in California's real estate market is such that it also has drawn major Filipino land developers, some of whom now live in the Bay Area and have become prominent in the industry.

Among them:

Morris G. Carpo, described by relatives as a former tax investigator in the Philippines who now heads a Burlingame-based development company that owns 13 parcels of California land with a combined taxable values of $29.7 million.

Carpo's firm, the Carruf Corp. N.V., is incorporated in the Netherlands Antilles but conducts substantial business in the Bay Area. Among its holdings are the Legaspi Towers buildings in Burlingame and the twin Legaspi Towers office complexes in Santa Clara.

Carpo was not available for comment.

"He can't be bothered," said a secretary, she declined to give her name.

Ricardo Siverio, a former auto parts magnate in Manila and erstwhile intimate of President Ferdinand E. Marcos. Siverio is developing a condominium and shopping project on 105 acres of land he owns in Lancaster in Los Angeles County, according to real estate records and Lancaster planning officials.

Another firm of Phillippine origin with substantial interests in California properties is Ayala International Inc., the former International arm of the Ayala Corp. in Manila. Registered in Hong Kong and based in Burlingame, the corporation controls the $33 million Campton Place Hotel in San Francisco's Union Square and the $40 million Mayflower Hotel in Los Angeles, according to company officials. It also developed the Terrace Villa condominium complex in south San Jose, company officials said.

Ayala International is controlled by millionaire banker Enrique Zobel, who retired as chairman of Ayala Corp, and bought the company's international division. Zobel was trained in agronomy at the University of California at Los Angeles.

As instability grows in the Phillippines, experts and other observers believe it will continue to push a growing number of Filipino investors to transfer their wealth overseas.

"They have money in Switzerland and money all over," said Hank Kriss, an electronic executive who has worked for Filipino-owned companies in Silicon Valley. "But the really wealthy put their money over here, always with the expectation that something could go wrong. One man told me: 'As long as I can get out of the Philippines and get to a telephone, I'm in no trouble.'"

American Conduits Help Filipinos Buy Real Estate

(By Pete Carey and Katherine Ellison)

In the forefront of many transactions involving powerful Filipinos are a handful of real estate agents and several prominent lawyers and law firms in the United States.

Some of them handle sales and manage real estate. Others actually are the owners of record for investment properties, concealing clients' identities behind their law offices, brokerage firms and the offshore corporations they form.

Such secretiveness is prized by wealthy Filipino investors, who, for the most part, seek out U.S. natives to handle their affairs.

"They don't want to go to Filipinos because they think we talk," said San Francisco broker Sylvia Lichauco, one of the few Filipinos who helps her wealthy countrymen buy real estate. "The big guys go to Americans."

Among those who handle the greatest number of Philippine accounts are:

Irwin Jay Robinson, an attorney with Rosenman, Colin, Freund, Lewis & Cohen in New York City. According to court records, Robinson represents Philippine first lady Imelda Marcos in a suit involving her U.S. real estate holdings. He also has represented Philippine banana king Antonio Florendo, and for several years was an important source of advice on the operation of Filipino-owned Redwood Bank in San Francisco, according to a former executive of the bank.

A measure of his influence is his role at the Redwood Bank. The former bank official, who worked there after the bank was purchased by three Filipinos close to the government of President Ferdinand E. Marcos, recalled that even though Marcos family intimate Rolando Gapud was made a director, Robinson was the key decision maker.

"He is attorney for them in a whole number of things they do in this country," the official said. "Robinson insisted everything go to him."

In 1983, the bank's legal fees totaled $1.8 million, of which 74 percent was paid to Robinson's law firm, according to records of the Federal Deposit Insurance Corporation.

Robinson declined to be interviewed, citing "client privilege."

Bernstein, Carter & Deyo, a New York law firm that has represented Mrs. Marcos in two documented real estate deals and according to Philippine banking and business sources has handled other purchases of office buildings and a department store in New York City for the Marcoses.

The firm's senior partner is Joseph E. Bernstein, a Hillsborough native and self-described expert on offshore real estate investment in the United States. Bernstein once practiced at Robinson's firm.

Bernstein has family ties to the Philippines and acknowledged that his law firm "from time to time might get somebody with a Philippine connection."

According to New York real estate records, a company Bernstein heads, the New York Land Co., has handled the purchase of several office buildings in New York by Netherlands Antilles corporations. One building in particular, the $51 million Crown Building in Manhattan, has been singled out by several Filipino business and banking sources as having been bought and sold for Imelda Marcos.

The Mercury News found that it was bought in 1981 by Lastura N.V., a Curacao corporation, and later was transferred to another Curacao firm, Canadian Land Co. of America N.V., which is managed by Bernstein. That firm is controlled by a third Curacao firm, Caribbean Management N.V. The offices of Lastura and Canadian Land are in the same suite as the offices of New York Land.

Bernstein denied that he represents Mrs. Marcos.

"I don't know her," he said, declining to discuss the identities of his clients "I wish I did. Everybody thinks I do. Send her my way".

I always thought the Marcos rumors were attributable to Stanley Marcus," board chairman, emeritus of Neman-Marcus, who was hired as a consultant by a Bernstein-managed development company.

Bernstein's uncle, Jack Nasser, owns Philippine-American Embroidery Corp., a major garment manufacturer in the Philippines. Nasser said he is a friend of Mrs. Marcos.

Another partner in the firm William Deyo, has represented a corporation identified in a lawsuit as a holding company for property belonging to Mrs. Marcos. According to Deyo, Robinson now is defending the company in the lawsuit.

In 1982, Deyo also represented Faylin Ltd in the purchase of a home on 13 acres in Princeton, N.J. according to Mercer County, N.J. real estate records. The home is used by members of the Marcos family, according to interviews with people familiar with the property. Deyo declined to comment.

Alexander "Sandy" Calhoun Jr., an attorney with Graham & James in San Francisco. He said he has helped put together the purchases by Filipinos of Redwood Bank in San Francisco, Oceanic Bank in San Francisco and California Overseas Bank in Los Angeles. Born in Shanghai and an honor graduate of Harvard Law School, Calhoun speaks Japanese, Chinese, and French.

Roger MacKenzie, an attorney with Graham & James in San Francisco, MacKenzie also declined to discuss his clients, who include Philippine Defense Minister Juan Ponce Enrile and construction mag-

nate Rodolfo M. Cuenca, according to real estate records.

MacKenzie defended Filipinos' investments in the United States are helping to balance the U.S. trade deficit.

"We wouldn't be able to run the trade deficit that we were running unless it were offset by capital invested in this country," he said. "I'm sure there is Filipino money invested abroad, but I think that's more of a political whipping boy than anything else. If you want to look at what happened to the economy and what is wrong with it, all you have to do is look at the big projects of Imelda Marcos, the buildings in downtown Manila and all the money they spent on international film festivals, flying Tony Martin into Manila."

Sylvia Lichauco, president of Edgewood Investments, San Francisco. The daughter of a former Philippine ambassador to England, Lichauco acknowledges handling real estate investments for numerous wealthy Filipinos, although she would not discuss her clients.

Lichauco was the broker for the recent purchase of the Philippine Airlines building at 200 Stockton St. on San Francisco's Union Square, by a California corporation called Jamestown Company Inc. Lichauco is listed on state records as the president of the company, but she declined to name its owners. According to a 1984 U.S. Commerce Department report the building was brought in 1983 by an "unidentified investor" from the Philippines.

The acquisition was handled by transferring shares in Jamestown Company from its former owner. Hong Kong jeweler Kevin S. Hsu, to the undisclosed new owners of the company, according to an attorney familiar with the transaction. The attorney also claimed that members of the Marcos family were the purchasers.

G. Alfred Roensch. A San Francisco attorney who represents clients from the Far East and son of a former San Miguel beer executive, Roensch has represented wealthy Filipinos in purchases of several pieces of Bay Area property, real estate records show. Roensch declined to comment on his activities.

AREA BANKS ARE FAVORED INVESTMENTS; SOME HAVE HAD TROUBLES

(By Pete Carey and Katherine Ellison)

California's banking system has proved to be fertile investment ground for Philippine businessmen and bankers, sometimes resulting in large amounts of capital leaving the distressed Philippine economy.

The state is home to nine banks that are owned by Filipinos. Some of them have done well. Some have not. In the past decade, deposits in institutionally owned Philippine banks and agencies of Philippine banks have risen from $15 million to $277 million, according to figures from the State Superintendent of Banks. This figure does not include another $165 million in privately owned Redwood Bank of San Francisco.

One reason banks have been a popular investment for Filipinos is a desire to get money out of the country, according to Gerry Findley, publisher of the Findley Reports on California Banking in Brea.

"They want to convert it into dollars. . . . That's a very important factor," he said. "Most of them don't have confidence in their own monies."

Findley said that while this is "a legitimate basis" for investing here, "it would be a big controversy with me if I was running the Philippines. If my economic base were going to some other country, I'd be a little unsettled. Hell, we're unsettled, too, when that happens here."

POLITICALLY STABLE

Alexander Calhoun, a San Francisco attorney who has helped Filipinos buy three California banks, said "The political situation everywhere in Asia is not quite as stable as here. So people generally like to have something outside of the country in case things change suddenly."

But increased competition caused by deregulation of the banking industry and uncertainties in the real estate loan market has lessened the attractiveness of banks as an investment, he said.

In fact, three of California's Filipino-owned banks had bad years during the 1970s and 1980s. Their owners were forced to pump millions of dollars in fresh capital into their U.S. banks.

California-Overseas, established in 1976 in Los Angeles by Roberto S. Benedicto, sugar baron and a close friend of President Ferdinand E. Marcos, posted combined operating losses of $7.4 million in 1982 and 1983, according to state banking officials. The bank's ownership has infused more than $30 million in capital into the bank since it opened in 1976. Last year, the bank posted a net profit of $475,000 with no increases in capital.

California-Overseas spokesman Saul Soteras said he had no comment on the losses in 1982 and 1983.

FILIPINO PURCHASE

Redwood Bank of San Francisco was purchased in 1980 by an offshore holding company owned by three Filipino textile magnates for about $15 million, according to a former bank officer, who asked not to be identified. The holding company's president, Dewey Dee, fled the Philippines in 1981 leaving about $90 million in upaid loans behind him.

Redwood Bank lost $26 million from 1982 to 1984, according to the state Superintendent of Banks. The owners infused a total of $22 million into the bank's reserves during that period, state records show.

"You got to work at losing money like that," said Findley, the banking expert. "I am not in a position to make a statement about why they lost the money, but you don't lose $18 million in operations. You lose it by giving it away to bum loans, or having it taken from you in some way."

Records show that the bank was investigated by the Federal Deposit Insurance Corp. for its management and loan practices after its 1980 purchase. Last year, without admitting or denying improper activities, the bank agreed to FDIC-mandated management changes.

The bank's current senior vice president, Bruce Leppla, said Redwood is now showing a profit of $400,000 so far this year.

The millions pumped into the bank show that the owners "believe in the stability and strength of America," he said. "You've got some Philippine owners who say 'We believe in the bank.' You call it flight capital. The other side of that is that . . . my owners believe the U.S. is the land of opportunity and have stood by the bank by putting in more than $21 million."

Century Bank of Los Angeles, owned by five Philippine government agencies, chalked up an operating loss of $755,000 in 1982, according to state banking officials. Merged the next year with the profitable Philippine Bank of California, it reported a net loss of $490,000 in 1984.

The purchase of Century Bank may have cost the Philippine government millions of dollars unnecessarily, said Gilberto Teodoro, chairman of the bank's holding company. He said he suspects that the Philippine government agencies paid "two-and-a-half times" what the bank was worth. The purchase, for $14.75 million "from the Financial Corporation of America, now is the focus of an inquiry by the Philippine National Assembly, Teodoro said.

"They're saying it was bankrupt, why put more money into it?" Teodoro commented. "There are so many things happening back home that are being investigated. It's open season."

MONEY DRAIN

The cash used to cover losses at the struggling banks ultimately had to come from the Philippines, Findley said.

"Whether they borrowed the money from somewhere else (or obtained it directly from the Philippines)—whatever the case might be, it has some impact on the outflow of dollar funds from the Philippines," he said.

Not all Philippine-owned banks in California have had problems. For example, Oceanic Bank of San Francisco, started in 1981 with initial capital of $10 million, has returned profits each year.

Oceanic Bank is held by Allied Banking Corp., which is owned in the Philippines by Lucio Tan, said to be one of President Marcos' closest ties to the islands' Filipino-Chinese business community.

U.S. banks also have been the recipient of capital flight dollars from the Philippines. More than a billion dollars left the Philippines in the three months after the assassination of Benigno S. Aquino Jr., according to a report on Philippine Debt to Foreign Banks by John Lind of the Northern California Interfaith Committee on Corporate Responsibility.

Lind wrote that the money went "primarily to foreign branches of U.S. banks" outside of the Philippines.

Other California banks owned or operated by Filipinos include:

Philippine Commercial & Industrial Bank has an agency in Los Angeles with $16 million in assets, according to state banking records. Chairman of PCIB in the Philippines is Cesar Zalamea, who is a founding director of the Marcos Foundation; International Bank of California, Los Angeles; the Philippine National Bank, Los Angeles; Metropolitan Bank & Trust, San Francisco and ManilaBank California, Los Angeles.

[From the San Jose Mercury News, June 25, 1985]

DOLLAR DRAIN'S LINK TO UNREST IN PHILIPPINES

(By Lewis M. Simons)

MANILA, PHILIPPINES.—The Philippine economy has been gouged so deeply and for so long that most people here have grown apathetic about the practice they call "dollar-salting."

To the man and woman on the street, reports that their impoverished nation's political and business leaders are sending billions of dollars abroad to establish nest eggs are met with acceptance.

"I guess it's one of the main advantages of being in power," Alfredo San Angelo, an unemployed electrician, said in a conversation that was typical of several held in the Metro Manila area.

"Why else be in power if you can't enrich yourself and your family?"

But there is less apathy among a number of Filipino and Western experts, who say that the flow of funds out of the country—estimated as high as $30 billion since the 1950s—has done enormous damage to the economy of the country and threatens its security.

The Philippines now is plaqued by an increasingly challenging communist insurgency. To some analysts, the connection between the drainage of dollars and the rising tide of guerrilla war is not coincidental.

"There is not the slightest doubt that the mind-boggling manipulation of the economy by less than 1 percent of the population has created fertile ground for the communists' appeal among the 99 percent who are havenots," said a Western diplomat here.

The spreading insurgency is of grave concern to the United States, which views it as a direct threat to its vital military bases in the Philippines—bases that most U.S. officers believe are irreplaceable in the Pacific.

Western diplomats in Manila and political opponents of the Marcos regime trace a direct line from peasants exploited by those with wealth and power in such traditional Philippine economic fields as sugar and logging to the spreading insurgency.

CONTRIBUTING FACTOR

"The exploitation of the vast underclass by the handful of rich with political and military connections—the very people who are investing huge fortunes overseas—must be viewed as a fundamental contributing factor to the insurgency," a Western economic analyst said.

A senior Filipino corporate executive put it this way: "The poor have lost all hope. They're ripe for anything that offers change. The insurgency is a direct reflection of the maldistribution of wealth and the salting of dollars overseas is but one example of how horribly twisted things are.

"Unfortunately, we have no one to blame but ourselves. We've slept too long lulled by a corrupt judiciary and a shackled press. I don't know if we're waking up yet. But, even if we are, it may be too late."

Defense Minister Juan Ponce Enrile dismisses such claims.

"Drainage of dollars out of the country has not been raised as an issue by opponents of the regime," Enrile said. "We cannot yet say whether or not this supposed drain contributes in any way to the rising strength of the communists."

MARCOS ALLEGEDLY AT CENTER

According to a number of political and economic analysts, the system of sending money out of the country revolves around President Ferdinand E. Marcos and his wife, Imelda, herself a powerful force in the national government.

In the 20 years of their rule, the Marcoses, these analysts allege, have surrounded themselves with a coterie of Cabinet ministers and business people who have amassed huge fortunes through privileges and favors granted them by the first couple.

In Manila, their stunning wealth is seen in vast mansions, superb art collections, huge staffs of servants, fleets of imported cars and private aircraft. Hedging against the day when this falls apart, these same people also invest their wealth in the United States and elsewhere.

In return for their gain, the privileged few have contributed to the Marcoses' own personal fortunes as well as their political war chests.

"The main characteristic distinguishing the Marcos years from other periods in our economic history has been the trend towards the concentration of power in the hands of the government, and the use of governmental functions to dispense economic privileges to some small factions in the private sector," stated a controversial report published last year by the University of the Phillippines.

COMMISSION APPOINTED

So common and widespread has capital flight become, particulary in the past few years, that President Marcos last year appointed a commission headed by Trade and Industry Minister Roberto V. Ongpin to investigate the dollar salting.

The commission has reported that an estimated $1 billion was drained out of the Philippines in 1983 and about $2 billion last year. But because Marcos and his so-called cronies are widely believed to profit most from the system, few Filipinos have confidence that the commission's net will catch any big fish.

Opposition member of parliament Eva Kalaw has taken preliminary steps toward forming a panel similar to the one that probed the August 1983 assassination of former Sen. Benigno S. Aquino Jr.

The political trauma triggered by the Aquino killing heightened the torrent of dollars and altered the character of overseas investments.

"Ever since the 1950s, dollars would ebb and flow in and out of the Philippines," said an internationally respected Manila banker. "But, after the assassination, the money has stayed overseas and there's litte or no hope that it will ever return."

MARCOS FOES TRACK MONEY BUT KEEP QUIET FOR NOW

(By Katherine Ellison and Pete Carey)

NEW YORK.—They compile files with fervor, trade rumors and hoard rare facts, swear each other to secrecy and wait for the day they know will come the day that President Ferdinand E. Marcos no longer is in power.

Among anti-Marcos activists in the United States, there is a self-appointed group of investigators dedicated to tracking foreign investments by those they call the "cronies"—the powerful political and financial allies of the Philippine president.

Most boast intimate knowledge of the well-concealed business transactions. Several show a clear desire to be thought of as the most in the know. But for now, almost all of the activists are holding their cards close to their vests, claiming that the time isn't ripe for revelations.

"We are keeping tabs on everybody," said New York tax attorney Pompeo Realuyo, 51, a Filipino who claims he has "worldwide contacts" and files full of details on bank accounts and real estate held by wealthy Filipinos. "But I don't want to let the cat out of the bag. No way I'll give it to anyone, not even Uncle Sam."

Realuyo said the purpose of his search, which he claims has lasted more than a decade, is twofold:

"One—the recovery of the stolen wealth that has driven the Philippines to penury. And, two—the punishment of those malefactors. But until we know who will be in power—and unless he is absolutely untainted—it would do no good to let it out."

Realuyo hopes for the day when a new government with no ties to Marcos comes to power. Then, he said, he will file suit on behalf of his homeland to seize the overseas assets of Marcos and his wealthy associates.

In the meantime, the investigating goes on, with a passion mixing patriotic indignation and competitive zeal.

Marcos' allies "have been drumming around," Realuyo said, "trying to find out what has Pompeo got. They know I am the only guy capable of getting hold of these things."

On the opposite side of the country, however, San Francisco anti-Marcos activist Steve Psinakis is equally sure of the value of his information.

"I have a lot of documentation," said the 54-year-old Greek-born businessman. "Verified official documentation from insiders, taped interviews, personal notes kept on microfilms in bank vaults.

"A lot of people are doing the same thing. In my case, of course, I feel I have the most valuable information."

Psinakis began his anti-Marcos activities after his marriage to Presy Lopez, whose wealthy and prominent Manila family for years has been locked in economic rivalry with the president and his first lady, Imelda.

Psinakis said his information includes not only business dealings of Marcos' allies, but details of "corruption, crimes and murders and tortures." Like Realuyo, however, Psinakis insists that release of his findings must be properly timed.

"For now, if this information got out, it would identify those who gave it, including people in the Philippines," he said. "If I had a file disappear, I'd be dead."

Also in San Francisco, 69-year-old Juan G. Frivaldo describes himself as the "boss" of a half-dozen part-time Bay Area probers into Philippine foreign investment. Governor for 18 years of the Sorsogon province in the Philippines, Frivaldo now lives in self-imposed exile, teaching humanities at San Francisco City College.

"As soon as martial law is kicked out," Frivaldo once wrote of the "cronies" in an article, "those smugglers and hoarders will have to be rounded up and explain to the people how they suddenly acquired that wealth."

Psinakis, Frivaldo and Realuyo have legions of comrades. In Los Angeles, Washington, D.C., San Antonio, Texas, and even De Funiak Springs, Fla., Philippine exiles say they are filling notebooks with bits of rumor and fact about the "crony" purchases.

"Any right-thinking Filipino would do something similar," said Buddy Gomez, a Philippine corporate executive-turned-opposition now living in De Funiak Springs. "All those people are enemies of the Philippine republic. We have to know who they are and what they've stolen. We have to hope there'll be a way someday to try to convince them at least to give some of it back."●

FORTIETH ANNIVERSARY OF FIRST ATOMIC BLAST

● Mr. KERRY. Mr. President, yesterday, five of the top scientists who built the first atomic bomb gathered here in the Halls of Congress on the 40th anniversary of the first atomic test to appeal for a nuclear policy which has the explicit objective of reducing the risk of nuclear war.

This appeal was sent to Congress and the President by Manhattan project scientists Robert Bacher, Hans

Bethe, Philip Morrison, Cyril Smith, and Victor Weisskopf.

These were among the men the Nation turned to during World War II to create the first atomic bomb. Since the war, they have devoted themselves to developing new ways of thinking to control the danger of nuclear weapons.

Yesterday, they came to Congress to offer us the benefit of 40 years of thinking about nuclear weapons and their implications—and to abandon for all time the idea of winning a nuclear war.

What they have asked us is to adopt "a policy for nuclear weapons that abandons the two grand illusions of our times: that nuclear warfare can achieve rational military or political objectives, and that a defense of populations against nuclear attack is possible."

Mr. President, I cannot imagine how any Member of this body could believe for an instant that the United States as we know it could survive an all-out Soviet nuclear attack, regardless of whether or not we were to deploy spaced-based ABM star wars systems. As the five scientists said yesterday, the only purpose of nuclear weapons can be to deter use of nuclear weapons by an adversary.

Mutually assured destruction is not merely a policy, Mr. President—it is a technological fact, which will not be changed by the strategic defense initiative, or any other initiative that seeks to win a nuclear war with superior technology.

The action-reaction phenomenon will surely cause any temporary and marginal advantage secured by one side to be met by a response by the other which eliminates it. The end result is that both sides become less secure, as each lives with the fear that in a crisis the other might finally have enough to strike first—and await the ragged response of the reeling target.

Mr. President, we need a new approach, an approach that rejects the idea that we can win a nuclear war, but which focuses on the object of preventing a holocaust greater than any the world has known.

Nobel Peace Prize winner Hans Bethe and former Secretary of Defense Robert McNamara have described an approach that would help lead us to this goal in an article they wrote for the Atlantic, and republished in a report issued by the Union of Concerned Scientists today on the 40th anniversary of the Alamogordo bomb.

The approach suggests that:

Both sides recognize that neither will permit the other to achieve a meaningful superiority and that attempts to gain advantage are dangerous and futile.

The forces pushing each side in the direction of a first-strike posture must be reversed. A stable balance at the lowest possible level should be the goal.

Our technological edge should be exploited vigorously to enhance our security, but in a manner that does not threaten the stability of deterrence.

While technological research cannot be constrained by verifiable agreement, technology itself provides increasingly powerful tools that can be used to impede development and to stop deployment. For example, only an absence of political will hinders a verifiable agreement preventing the deployment of more threatening ballistic missiles, because they require many observable flight tests.

As Jonathan Dean has suggested, the United States has the means to stengthen and to press for arms control in Geneva by proposing an agreement reducing strategic and intermediate-range nuclear warheads by 50 percent and to press for the conclusion of a comprehensive test ban treaty.

At the same time, risk of breakout from the ABM Treaty could be reduced by addressing a number of issues at the Standing Consultative Commission. These include first, seeking a clearer and more precise definition of the distinction between laboratory research and field testing; second, seeking a more explicit definition of ABM components; third, seeking more precisely defined radar restrictions; fourth, adding tactical ballistic missile defense to the coverage of the treaty; fifth, negotiating an ASAT treaty.

It is time that we focus on these approaches and others which are more likely to lead to lowered risk of nuclear war and to abandon the kind of thinking that suggests that we can gain a meaningful advantage over the Soviet Union in the nuclear arms race.

It is well also that we remember the warning of MIT President Paul Gray that SDI is now seeking to corral our best and our brightest into working on the program, and thereby co-opt them into supporting it.

As President Gray has described the Pentagon's approach, "the head of the SDI's Office of Innovative Science and Technology has asserted that the participation of university researchers in SDI-funded projects will add prestige and credibility, and will influence the Congress to be more generous in funding for the program. The impact of this manipulative effort to garner implicit institutional endorsement for SDI comes with special force because of the controversial nature and the unresolved public policy aspects of SDI."

"What I find particularly troublesome about the SDI funding," said Dr. Gray, "is the effort to short-circuit the debate and use MIT and other universities as political instruments in an attempt to obtain implicit insitutional endorsement. This university will not be so used."

I am grateful to Dr. Gray and other Massachusetts scientists and arms and arms control experts for their continuing commitment to our real national interests and real national security; people like Philip Morrison, George Rathjens, Victor Weisskopf, Jerome Wiesner, and Jack Ruina. These scientists will not trim their sails to the prevailing political winds, but continue to insist that the United States chart a course of restraint amid the treacherous water of the nuclear era. We all owe them a continuing debt.

I submit for the RECORD the articles by Jonathan Dean on "The Most Urgent Steps in East-West Arms Control," by Peter Clausen on "Preventing Breakout From the ABM Treaty," and by Richard Garwin on "An Appropriate Ballistic Missile Research Program for the U.S."

The articles follow:

A FIVE-YEAR PROGRAM FOR THE UNITED STATES: THE MOST URGENT STEPS IN EAST-WEST ARMS CONTROL

(By Jonathan Dean)

The United States should propose three arms control steps to be carried out in a five-year period. First, an agreement that would strengthen the Anti-Ballistic Missile (ABM) Treaty and thereby provide both the United States and Soviet Union with assurance that the other country's research into ballistic missile defense could not enable it to deploy comprehensive defenses rapidly in a "breakout" from the ABM Treaty. Second, the United States should propose a reduction cutting the present level of nuclear warheads on strategic and intermediate-range delivery systems by one-half to an equal level of 5500 for each country. Third, the United States should move forward to conclude a comprehensive ban on nuclear testing.

STRENGTHENING THE ABM AGREEMENT

The Soviets will not agree to stop the race in offensive weapons unless the United States provides assurance that it will refrain from field testing and deployment of Star Wars weapons beyond the single system permitted each country under the 1972 Anti-Ballistic Missile Treaty. To this end, the United States should propose to the Soviets continuation in force of the ABM Treaty and its improvement through a supplementary understanding that eliminates existing Treaty ambiguities in the distinction between laboratory research, which is permitted under the treaty, and field testing, which is not permitted; and eliminating ambiguities in definitions of the components of ABM defenses, including radar arrays. Research in defensive weapons would be permitted, but not testing and deployment, unless the superpowers agreed in their regular five-year review to amend the treaty to permit testing or deployment of specified additional defensive systems. A ban on the testing and deployment of anti-satellite weapons (ASATs) is necessary to maintain the integrity of vital U.S. communications links and intelligence sensors and to prevent the undermining of the ABM agreement through deploying weapons with related technology. Field testing and deployment of defenses against tactical ballistic missiles,

which could result in evasion of the ban against testing of ABM components, should also be prohibited.

REDUCING NUCLEAR WARHEADS

On offensive weapons, the United States should propose an agreement reducing strategic and intermediate-range nuclear warheads by 50 percent. The warhead level is a critical element in the U.S.-Soviet military confrontation. Warheads are the lethal part of nuclear weapons, and a telling measure of nuclear capability.

The U.S. proposal should reduce warheads deployed on intercontinental- and intermediate-range delivery systems by one-half over a five-year period to a single level of 5,500 for each side, moving toward elimination of first-strike capability for both countries. To simplify, the nuclear warheads of intercontinental- and intermediate-range ballistic and cruise missiles, and gravity bombs delivered by long-range bombers, should be included in a single total for each country. This total should include warheads on intermediate-range ballistic and cruise missiles deployed in Europe as well as those on intercontinental missiles because, in the nuclear sense, the defense of the United States and the defense of Western Europe are one problem, not two problems; if nuclear war starts in either area, it will almost certainly spread to the other. (The warhead totals are around 11,000 for both countries as of 1985.)

With four exceptions, the United States and the Soviet Union would be free to decide what warheads each would eliminate to reach the 5,500 ceiling.

First, both sides would be required to forgo deployment of any new MIRVed ICBMs (intercontinental ballistic missiles with multiple independently targetable warheads) and MIRVed SLBMs (submarine-launched missiles equipped with multiple independently targetable warheads). Highly accurate MIRVed intercontinental ballistic missiles, like the American MX and the Soviet SS-X-24, are the most dangerous and deadly weapons in the arsenal of either country. Increasingly accurate MIRVed submarine-launched ballistic missiles would give each side an additional potential first-strike capability from the sea. Modernization through deployment of limited-payload single warhead intercontinental- or submarine-launched ballistic missiles would be permitted under the 5,500 warhead limit; this limit would of itself strongly encourage conversion to single warhead missiles so as to increase the number of targets for the other side.

Second, because the Soviet Union's increasing emphasis on accurate intercontinental ballistic missiles with multiple heavy warheads is considered to pose a special threat to American land-based intercontinental missiles, the Soviet Union would be required to include in its reductions a large portion of its nearly 6,000 warheads deployed on a total of only 800 SS-17, -18 and -19 missiles. The Soviet Union is likely to reduce these highly MIRVed missiles and their warheads sharply under any agreement calling for cuts to a 5,500-warhead ceiling in order to avoid concentrating its land-based missiles in a relatively few easily destroyed targets. But if desired to provide extra assurance, the Soviet Union could be required to include a specified number of these heavy warheads in its reductions, while the United States could include a lesser number of warheads from its own accurate Minuteman III missiles. As a consequence, the ratio of accurate and heavy missile warheads to the silos housing intercontinental missiles—one measure of the vulnerability of land-based missiles—would be significantly reduced for both sides.

In addition to reducing its own accurate first-strike weapons, the United States would compensate this specified Soviet reduction by withdrawing its Pershing II missiles from Western Europe, which the Soviets claim could carry out a "decapitating" first strike against Soviet command and control installations. (Some American ground-launched cruise missiles deployed in Europe could remain even after reductions.) Under the prohibition on MIRVed SLBMs described above, the United States would also relinquish deployment of the Trident 2 D-5 submarine-launched missile. Moreover, in agreeing to the proposed reductions, the Soviet Union would be expected to take into account the forthcoming U.S. position on SDI.

Third, the Soviet Union would be required to reduce its intermediate-range SS-20s deployed in Europe to a total roughly matching present French and UK nuclear forces; SS-20s deployed in Asia would be capped at their present level. (In any event, the Soviet Union would probably reduce its SS-20s sharply to meet the 5,500-warhead requirement if it wished to avoid still further cuts in its intercontinental-range forces.) The United States would not compensate the Soviet Union for the present level of UK and French nuclear warheads or suggest a limit on them, but would give the Soviet Union assurances covering some adjustment in U.S. warhead levels for the event of major increases in UK or French warhead totals. (The United Kingdom would of course be forgoing Trident D-5 deployment because of the cancellation of American deployment.)

Warheads would be reduced by dismantling and removing their launchers. The remaining deployed launchers would provide the basis for verification. The maximum number of warheads delivered by each missile type in tests is known. As established in SALT II, each side would assume for purposes of verification that each missile carried this maximum number. The United States and the Soviet Union would affirm their intention not to undercut SALT I and SALT II; limitations established there would continue in effect until revised by agreement.

Fourth, sea-launched cruise missiles (SLCMs) would be banned by both sides. The rationale for deploying nuclear sea-launched cruise missiles is questionable at best. The administration says they are needed as a "strategic reserve," presumably for a "protracted" nuclear war. But large-scale deployment of these weapons by both sides—the United States has already started to do so and the Soviet Union is testing—would make impossible any agreement to make major reductions of land- and submarine-based intercontinental ballistic missile warheads. Sea-launched cruise missiles equipped with nuclear warheads would be very hard to verify, as it is impossible to distinguish between the conventional and nuclear types without first-hand inspection. Conventional cruise missiles are not needed to secure the navies of either side, which have many other weapons. Both types should be banned for both countries.

COMPLETING NEGOTIATION OF COMPREHENSIVE TEST BAN

The United States should press for conclusion of a Comprehensive Test Ban Treaty (CTBT), which would forbid all underground nuclear tests or, alternatively tests above some very low threshold in the one-to-several kiloton range. Recently, technical advisory panels to the Defense Department and the CIA have confirmed analysis [1] demonstrating that the Soviet Union is in compliance with the Threshold Test Ban Treaty, which allows underground test up to 150 kilotons. That same method of analysis [2] can, with high confidence, distinguish earthquakes from nuclear explosions of very low yield. It thereby answers doubt concerning our ability to verify a CTBT.

PREVENTING BREAKOUT FROM THE ABM TREATY

(Peter Clausen)

Under article I of the 1972 ABM Treaty, "Each Party undertakes not to deploy ABM systems for a defense of its country and not to provide a base for such a defense." The treaty and its 1974 Protocol permit each country a single ABM deployment, consisting of no more than 100 interceptors and centered either on the national capital or an ICBM silo field. The Soviet Union currently deploys a permitted ABM system—the Galosh system around Moscow—while the United States does not.

The treaty allows development and testing of fixed-site, land-based ABM systems and components at specified test ranges. It prohibits development and testing of ABM systems and components that are space-based, sea-based, or mobile land-based. An agreed statement appended to the treaty provides that ABM systems and components based on "other physical principles" than interceptor missiles and radar sensors cannot be deployed without amending the treaty. These technologies may be developed and tested under the same restrictions that apply to traditional ABM systems. Finally the treaty imposes restrictions on early warning radar, which must be located on the periphery of the national territory and oriented outward, and on non-ABM weapons (such as air defenses, ASATs, or ICBMs), which must not be given ABM capabilities or tested in an ABM mode.

These restrictions on ABM development are intended to give the treaty a margin of safety by preventing either country from laying the groundwork for a "breakout"—the rapid development of an extensive ABM system. However, as a result of technological evolution and the actions of both parties, this margin of safety is now eroding. Both the United States and the Soviet Union have reason to question the other's Commitment to the ABM Treaty. U.S. concerns include the large phased array radar under construction at Krasnoyarsk, and new Soviet air defenses that are designed to have an anti-tactical missile (ATM) capability and may have some effectiveness against strategic ballistic missiles. The Soviet Union is concerned about the Strategic Defense Initiative (SDI), which, in addition to pursuing an ultimate objective that is clearly prohibited by the treaty, includes near-term technology demonstrations that are at least questionable under the treaty's provisions.

It is essential to stem this erosion and to restore confidence in the ABM Treaty by alleviating the two parties' concerns. A self-reinforcing cycle of mutual breakout fears will lead to protective actions by both parties and ultimately undermine the treaty. Since

[1] See *Science*, 31 May, 1985, p. 1072.

[2] See L.R. Sykes and J.F. Evernden, *Scientific American*, October, 1982, pp. 47-55.

these fears are fed by "worst-case" perceptions of intentions and capabilities, professions of formal compliance with the treaty's provisions will not solve the problem. If the parties proceed to exploit the treaty's loopholes to the fullest, and/or commit themselves politically to objectives that are incompatible with the treaty, the erosion will continue even if both countries' legal advisers insist that they are technically in compliance.

Maintaining the ABM Treaty requires both a political reaffirmation of the two parties' continuing commitment to its objectives and a series of practical steps to clarify ambiguities and close loopholes in the treaty text. The increased assurance for both countries which will result from these changes will be the best safeguard against breakout. The following issues in particular need to be addressed.

1. Distinction between permitted laboratory research and prohibited field testing. This distinction is inherently imprecise but crucial, given that a total ban on ABM research is not verifiable. According to the U.S. interpretation offered during the Senate ratification hearings, "The prohibitions on development contained in the ABM Treaty would start at that part of the development process where field testing is initiated on either a prototype or breadboard model. It was understood by both sides that the prohibition on 'development' applies to activities involved after a component moves from the laboratory development and testing stage to the field testing stage, wherever performed." However, the SDI program plan includes a number of technology demonstrations or "experiments" that are, in effect, field tests. A clearer, agreed definition of the threshold between permitted and proscribed activities should be worked out among the negotiators at Geneva in the Standing Consultative Commission (SCC).

2. A more explicit definition of ABM components. The Reagan administration has attempted to reconcile the SDI technology demonstrations with the ABM Treaty provisions in part by defining the systems to be tested as "subcomponents" or "adjuncts" rather than ABM components per se. Use of the first term implies that the treaty restrictions on development and testing apply only to the largest components of ABM systems, in particular interceptors, launchers, and radar. The term "adjunct" implies that a given technology is intended to operate in conjunction with a major ABM component (e.g., an airborne optical sensor working in conjunction with a ground-based radar) rather than substituting for it. Legal specialists knowledgeable about the ABM Treaty negotiations dispute the administration view and regard some of the planned SDI tests as inconsistent with the treaty. At the very least, these tests will move the United States deep into gray areas of the treaty, and they will certainly be perceived as violations by the Soviets. It is unrealistic to expect that the United States can proceed with the full SDI program over the rest of the 1980s while simultaneously reversing the erosion of the ABM Treaty (the avowed US objective, as stated by administration leaders).

3. More precisely defined radar restrictions. The United States has questioned the legality of the large phased-array radar being built by the Soviet Union at Krasnoyarsk. Under the treaty, this radar would be prohibited whether intended for ABM battle management or for early warning of attack (the latter being the more likely purpose, according to many experts). The Soviets maintain, however, that the radar is for the permitted function of tracking space objects, and in turn charge that the new U.S. "PAVE PAWS" early warning radars violate treaty restrictions. Resolution of these issues is critical to any reestablishment of long-term confidence in the treaty. Possible solutions might include a ban on new large phased-array radars for any purpose or a tightening of treaty language on permitted radar types and charactertistics. Such an agreement might either require that radars in both countries that are the current focus of controversy be modified or that no further radars of either type be constructed.

4. Tactical ballistic missile defense. The treaty defines ABM as a system "to counter strategic ballistic missiles or their elements in flight trajectory," and thus implicitly allows the deployment of defenses against short-range ballistic missiles. This loophole was originally sought by the United States to accommodate a NATO ATM system, but it is the Soviets who have taken best advantage of it in practice. The newest Soviet air defense system, the SA-12, is assumed to have some effectiveness against tactical and theater-range ballistic missiles, and has reportedly been tested against the former. The NATO Patriot system now in development is intended to have a similar dual capability. The treaty forbids giving such systems ABM capabilities or testing them in an ABM mode, but these restrictions are in practice very imprecise, especially for defense against intermediate-range missiles whose trajectories may be quite similar to those of SLBMs. Because ATMs seem destined to erode the effectiveness of the ABM Treaty and to invite growing controversies over compliance, they should be prohibited by agreement.

5. Anti-satellite weapons. ASATs are another increasingly relevant loophole in the ABM Treaty. Given the substantial overlap between ASAT and advanced ABM technologies, the development and testing of anti-satellite weapons offers a stepping stone to missile defenses within the formal constraints of the ABM Treaty. Reagan administration officials have explicitly acknowledged that the SDI will exploit this loophole, and this if of course one reason for the current US opposition to an ASAT treaty. However, ASAT restrictions are an essential part of any serious effort to shore up the ABM Treaty. A ban on the testing of dedicated ASAT weapons would significantly strengthen the treaty (in addition to capping the development of US and Soviet ASAT capabilities before these weapons become a dangerously destabilizing addition to the arms race). A test ban could be adequately verified (in contrast to a total ban on ASAT possession) gives the characteristics of the existing U.S. and Soviet ASAT systems. While new ASAT technologies could be researched under such a treaty, these would not be reliable, operational weapons in the absence of extensive testing.

An Appropriate Ballistic Missile Research Program for the United States

(Richard Garwin)

The purpose of technology development and research is not industrial competitiveness, not eliminating a "strategic defense expenditure gap," and not "to try something new now that arms control has failed." The purpose of strategic defense R&D is to maintain and, if possible, strengthen deterrence; to reduce damage if deterrence fails; and, as much as possible, to prevent the Soviet Union from moving in directions dangerous to U.S. and Western security.

This program is based on the consensus in the technical community, both within the government and outside, that the Soviet Union cannot be prevented from delivering numbers of nuclear weapons capable of destroying U.S. society, and therefore the United States also will have to maintain strategic offensive forces capable of retaliation—in order to deter Soviet attack, blackmail, and the like.

Given that only about 20 percent of U.S. strategic retaliatory warheads are in the land-based ICBM force, which are assumed to be vulnerable to accurate, numerous, Soviet MIRVs, it would be foolhardy to increase the survival of these 20 percent from zero to perfect, if that meant freeing the Soviet Union to provide a BMD system capable even of 50 percent attrition against all U.S. strategic ballistic missiles. Assuming 60 percent of the submarines at sea, this would bring us from our present 60 percent of the strategic warheads landing on their targets to something like 40 percent—hardly a good return on a massive investment in perfect defense of the land-based retaliatory force.

This is a graphic example of the proposition that "improving the survivability of the strategic retaliatory force" is best done within the ABM Treaty, because to abandon the ABM Treaty would give up the penetration capability of our entire ballistic missile force, jettison all agreed limitations on Soviet strategic offensive warheads, and, indeed, probably all other restraints on Soviet activities.

We who live in the glass house of deterrence not only shouldn't throw stones, but we should not do the R&D to teach others to throw stones.

DEPLOYABLE SYSTEMS

To guard against accidental launch of U.S. and Soviet missiles (which seems to be a substantial fear of many who advocate the SDI), we should move to install a "command destruct" link in our operational force, providing non-survivable transmitters and a communication system capable in peacetime of disarming and destroying our own missiles after launch. We could have a formal or informal agreement with the Soviet Union that they would do the same. Evidently, the Soviet Union does not want to destroy the United States by accident, whether or not they want to destroy us on purpose. This command-destruct link is used in every U.S. missile test, so that the range safety officer can destroy an errant missile.

To counter "rogue nation launch of ICBMs," we should review and augment the peacetime capability of our infrared (IR) surveillance systems for tracking one or a few boosters, and examine the potential of use of the Minuteman-II nuclear-armed ICBM to make a point-in-space intercept. We should also review and have contingency plans for before-launch covert action against such a clear threat to U.S. security.

DEVELOPMENT OF SYSTEMS FOR POTENTIAL DEPLOYMENT

Systems that would defend numerous ICBM silos are not in themselves destabilizing. The problem has always been that such systems are not unambiguously silo defense, but, if provided with substantial growth capability, could appear to defend large areas of the nation and thereby imperil the ABM Treaty. Two such unambiguous silo-defense systems are the SWARMJET multiple-launch system of few-kg rockets, to inter-

cept incoming RVs at a distance of 500–1,000 meters from the individual silo, triggered by expendable micro-silo-based radars. The SWARMJET launchers, like the radars before they are exposed, are as hard as the ICBM silos. Radars are very cheap, so that after each explosion of an enemy RV, new radars can be brought into the fray at a cost-effective exchange ratio, and the SWARMJET launchers are never exposed except to expend their interceptor swarms.

SWARMJET has problems with handling close-spaced RVs, since the initial nuclear explosions blow later SWARMJET unguided rockets off course. Development would be useful on extremely fast-burn carrier rockets for projecting 1,000 2-kg darts to a distance of 500–1,000 meters within 2 seconds; the large carriers could be stabilized against crosswinds.

Some $50 million total would be useful to provide full-scale development and test of SWARMJET options, bringing it to a deployable status.

A second unambiguous silo-defense system, judged effective by the Army Ballistic Missile Defense Program Office (BMDPO), but not avidly desired by U.S. governments thus far, would use crude silo-based radars to trigger the explosion of a 100-kiloton nuclear explosive buried in the ground one kilometer north of each ICBM silo. The 100 kilotons of earth blown into the air by such an explosion would bar access to any number of enemy RVs over a period of many minutes, allowing retaliatory strike. The nuclear weapons laboratories should be supported in the application of Plowshare technology (explored aggressively in the 1960s for digging of canals and nuclear excavation) to provide such explosions with minimal fallout. A 100-kiloton explosion need only have about 3 kilotons of fission energy, and the neutrons from the explosive could be kept from activating the soil by a surround of borated water. Indeed, the material of the nuclear explosive could be forced to enter a well below the explosive, where it would be trapped and kept from the atmosphere. In any case, an effective defense of this type would never contribute fallout, because the silo would never be attacked if the exchange ratio were favorable to the defense.

COUNTERS TO THE SOVIET BMD

Since the United States must retain its deterrent retaliatory capability, we must be assured that the Soviet Union cannot "breakout" of the BMD Treaty with an effective defense of its territory and society. To this end, we should have an aggressive program for development and test of penetration aids, so that a Soviet "conventional BMD"—terminal nuclear-armed interceptors—would be defeated by US high-altitude decoys, ladder-down techniques, and the like. The SDI program has nothing to do with penetration of Soviet defenses—old-fashioned or new, and this must be a prime aspect of US BMD research, as it was until March 1983.

The United States should explore what the Soviets are doing and might do in "exotic BMD," including space-based lasers, and the like. But in the spirit of "not showing the Soviet Union how to throw stones," we should not bring our investigations to the point of demonstrating such capabilities, or even of high confidence that such capabilities can exist. Rather, we should concentrate on countermeasures to such capabilities—a much easier job.

Generic countermeasures include space mines, and we should do research in the laboratory and even development of such space mines—but without tests in space. Similarly, we should explore on paper the potential of nuclear-armed BMD interceptors, such as the SPRINT and SPARTAN missiles, to destroy possible Soviet BMD satellites. It is important to do this work early, with a commitment to success, in order to deter Soviet evolution in this direction.

The United States should observe a moratorium on nuclear explosions, so long as the Soviet Union does. Because a Comprehensive Test Ban Treaty would be in U.S. interest, we should therefore not count on development of the x-ray laser (which must be powered by a nuclear explosion) to help in countering Soviet attack.

ROBUST WARNING OF NUCLEAR ATTACK

Although it is beyond our means to provide cost-effective protection of our society against nuclear attack, it is important to have reliable warning and assessment. The replicated low-performance IR satellite sensors of ICBM and SLBM boost described in my 1979 International Security paper, "Launch Under Attack . . .",[1] provide a robust, affordable early warning system. The satellites should be developed, together with the communication system to support the assessment of attack and control of the forces.

Reasoning from the magnitude of the BMD research program before the president's March 23, 1983, Star Wars speech, a constant level of $1.4 billion should be adequate to support an aggressive development and assessment program.

Of course, at the same time, we should seek to strengthen adherence to the ABM Treaty, to negotiate a ban on ASAT tests and on space weapons, and to negotiate a CTBT.●

RAOUL WALLENBERG

● Mr. BOSCHWITZ. Mr. President, I rise today to honor Raoul Wallenberg, the famous Swedish diplomat who saved tens of thousands of people from the hands of the Nazis during World War II. Recently in my home State of Minnesota, State Representative Wesley Skoglund had the pleasure of introducing four members of the Raoul Wallenberg Association of Sweden to the Minnesota House of Representatives. I ask that his remarks be entered in the RECORD as a tribute to Raoul Wallenberg Association and the man it honors.

The remarks follow:

STATEMENT OF MINNESOTA STATE REPRESENTATIVE WESLEY J. SKOGLUND

Mr. Speaker, Members of the House . . .

One of the privileges of serving in the House of Representatives is having the opportunity to meet people, prominent in the making of our civilization.

This afternoon I rise to a point of personal privilege to introduce some very special guests to the body.

Wars produce many heroes and a lot more victims. All of us in this Chamber represent people in our district who fall in both categories; some Members of this House personally qualify for both distinctions.

Today, we are fortunate to have with us a group of people representing someone who has been called the "greatest 'life-saving' hero" of World War II, Mr. Raoul Wallenberg.

Raoul Wallenberg is a Swede who volunteered to serve the American Government to save Jews and other religious minorities in Hungary from being exterminated by Hitler's number one murderer—Adolph Eichmann.

As a citizen of Sweden, a neutral country, Wallenberg went to Hungary and established himself as secretary of the Swedish Legation. By a variety of daring, cunning, and heroic measures, Wallenberg implemented a number of schemes to rescue Jews who were destined for the gas chambers. Most of his tactics required his personal intervention. Daily he faced death and was even ordered to be killed by Adolph Eichmann. However, through bravado, cszupath, brains, and the grace of God, he avoided that fate.

All told, this "modern day Moses" personally saved over 20,000 Jews by intervening when the SS or its Hungarian counterpart, the Arrow Cross, attempted to arrest them. He literally pulled Hungarian Jews from trains departing for the death camps and claimed these people were Swedish citizens.

Through several other ingenious means, ranging from bribery, to blackmail of Nazis, to others, such as saying a ghetto had to be quarantined and any Nazis who entered would get typhoid fever, he saved an additional 70,000 to 80,000 people.

However, like Moses, who never reached the promised land, neither did Raoul Wallenberg. When the Russians captured Budapest, Wallenberg's "reward" was arrest and life-time imprisonment in a Gulag somewhere in the Soviet Union. In 1957, after 12 years of saying Wallenberg wasn't there, Andrei Gromyko said that Mr. Wallenberg died of a "heart attack" in his early 30's. However, since that time there have been at least 20 reports from former inmates, now released from Soviet prisons, who had direct contact with this famous Swede, one being as recent as 1975. Today, new hope arises for information about Raoul Wallenberg with the change in Soviet leadership.

Twice Wallenberg was nominated for the Nobel peace prize—the first time by Albert Einstein and the second time in 1981.

Also in 1981, the Minnesota Legislature made Wallenberg a citizen of our State—an honor never given to anyone else. Later that year, the U.S. Congress, and the President, made Raoul Wallenberg an honorary citizen of the United States—an honor that has only been given to General Lafayette and Winston Churchill.

In recognizing Raoul Wallenberg's contribution to our world, we recognize everything that is good and noble in all of us and reaffirm our stand for justice and freedom that millions had to die for.

Today, continuing that work in attempting to free Raoul Wallenberg and to fight for the principles that all of us hold dear, we have a distinguished group of people who I would like to introduce.

First, Mr. Raoul Wallenberg's sister, Ms. Nina Lagergren. Ms. Lagergren spearheads the Raoul Wallenberg movement and has been here in Minnesota to premiere a 4-hour movie to be broadcast in April, on NBC, about her brother and in his honor and to open a concert about the holocaust.

Accompanying her is Mr. Per Anger, the former Swedish Ambassador to Canada and Australia. Mr. Anger served in Budapest

[1] R.L. Garwin, "Launch Under Attack—Kill or Cure?" Paper delivered to the 31st Pugwash Conference, Banff, Canada, August 28, 1981. R.L. Garwin, "Launch Under Attack to Redress Minuteman Vulnerability?" International Security, 4 (no. 3): 117–139.

with Wallenberg and personally stood face-to-face with Nazis to save people from death in Hitler's gas chambers.

Also, we are honored to have Ms. Ingrid Garde Widemare, a former Swedish legislator and a former Swedish Supreme Court Justice. Ms. Widemara is chairman of the Raoul Wallenberg Association.

Accompanying them is Mr. Karl-Eric Andersson, who is the consul general of the Swedish Consulate in Minneapolis.

Their American escort is Ms. Candy Johnson-Rausch, from Roseville, who arranged the visit of this distinguished party.

I would like to ask this Chamber's body to give them the welcome that people who represent freedom so strongly deserve.●

THE IMPACT OF TAX REFORM ON OIL AND GAS PRODUCTION INDUSTRY

● Mr. JOHNSTON. Mr. President, today I testified before the Senate Finance Committee on the impact of tax reform on the oil and gas industry. I ask that a copy of my remarks be included in the RECORD.

The remarks follow:

STATEMENT OF SENATOR J. BENNETT JOHNSTON ON THE IMPACT OF TAX REFORM ON THE OIL AND GAS PRODUCTION INDUSTRY

Mr. Chairman, Louisiana's unemployment rate is 11.2 percent and rising. This rate is 4 percent higher than the national average; and, in sections of the state that are most directly involved with oil and gas and petrochemical production, the rate is even higher. For example, the chemical industry is the prime employer in Lake Charles where unemployment exceeds 14 percent.

Throughout the state, chemical manufacturing plants and refineries are laying off employees or completely shutting down. For example, at one time Ethyl Corporation was the largest industrial employer in the Baton Rouge area. Earlier this month it announced that it was completely shutting down its chemical manufacturing plant and thus putting 700 people out of work. In March, American Hoechst laid off 150 workers and, during the past two years Kaiser has reduced its work force from 5,000 to 1,700. The 1,700 employees who are left gave up $4.50 in salary and benefits to retain their jobs.

Mr. Chairman, 62 of Louisiana's 64 parishes are involved in oil and gas production. In January 1985, 81,000 individuals were involved in oil and gas extraction activity. By May, this number has decreased to 79,200. That represents a 2.2 percent decrease in just five months. Activity of this nature is occurring in every sector of my State's energy production industry and I do not know how much more we can take. Neighboring States are also in bad shape, but I will let them speak for themselves.

This bleak economic condition is directly caused by the recession in the oil and gas industry. For example, in the first week of June, only 1,821, or 40 percent of rotary drilling rigs were operating in the United States. The other 60 percent are idle. In Louisiana, the oil and gas industry is the backbone of the State's economy; it pays out more than $3 billion in earnings to 120,000 workers. In FY 84, severance tax collections exceeded $800 million; and bonuses, royalties, and rental payments totaled $500 million. Thus you can see that this industry directly pumps more than $1.3 billion annually into the State's treasury; and these figures do not even begin to account for income that is derived from businesses that provide support services to the oil and gas industry. Taken together, it is clear that in Louisiana idle drilling rigs translate into unemployment and State revenue loss.

Mr. Chairman, the condition of the world oil market is partially responsible for the poor condition of our domestic oil and gas industry. This market is suffering a production surplus which is causing prices to fall. On a world basis, the surplus has caused oil prices to decrease from a high of $34 per barrel in 1982 to $26 per barrel in June 1985. Just last week Mexico announced that it was further reducing the price of its oil by approximately $1.25 per barrel and experts predict that within months world oil prices could decline to $20 per barrel. While declining prices fare well for the consumer, they create havoc for the domestic energy production industry.

Declining oil prices not only affect the health of the oil and gas production industry, but also severely affect downstream activities, such as refining and marketing, as well as businesses that provide support services to the oil and gas industry. In 1984, Louisiana's operating refining capacity was below the national average and it does not appear that this trend will improve in 1985.

Despite a recent $1 billion tax increase, the state's FY86 deficit is expected to reach $200 million, and that is based on a high oil price projection. It is generally believed that each dollar decline in crude oil prices costs Louisiana $32 million yearly in direct revenues; i.e., royalties and severance taxes.

Consequently, I have a direct and parochial interest in any legislation affecting oil and gas. Any further blow to the oil and gas industry would move it from the infirmary to the morgue.

In this regard, Mr. Chairman, I was deeply upset when Treasury I proposed eliminating virtually all of the oil and gas tax provisions. Clearly gains have been made and Treasury II is a more appealing proposal; however, it is not perfect, and, I fear that its adoption will add one more nail to the coffin of an already beleagured industry. In Louisiana, it will result in less exploration and production, loss of employment and a reduction to our oil and gas reserves.

Mr. Chairman, the most onerous energy related provision of Treasury II is the proposal to repeal percentage depletion. Depletion is to natural resources what depreciation is to equipment. It is a means of recognizing consumption of a finite asset. Percentage depletion, was adopted in 1926 to further encourage the search for oil and, throughout the subsequent 60 years, it has become an integral part of the oil and gas industry. Today it is only available to independent producers and royalty owners and is used by them to entice outside capital to an inherently risky investment. With the current industry recession, it is an essential component of the industry's survival.

Mr. Chairman, the Interstate Oil Compact recently completed a study which shows that between 1986 and 1991 repeal of percentage depletion will have an enormous impact on the national and Louisiana energy production industries. I would like to share with you some of the IOCC's findings.

Average impact 1986–91	National	Louisiana
Reduction in annual drilling expenditures.	$932,000,000/year	$243,000,000/year.
Reduction in jobs	46,500/year	12,150/year.
Reduction in number of wells drilled.	2,500/year	654/year.
Reduction in drilling rigs in operation.	90/year	24/year.
Reduction in oil and gas production.	41,000 BOE per day	10,700 BOE per day.
Reduction in annual oil and gas revenues.	$294,000,000/year	$76,000,000/year.
Reduction in severance tax payments.	$24,000,000/year	$10,000,000/year.
Reduction in oil and gas reserves added [1].	465,000,000 BOE	121,000,000 BOE.

[1] Reserves are cumulative 1986–91. All other numbers are averages per year.

Mr. Chairman, as you can see, repeal of percentage depletion will result in roughly 12,000 Louisianians losing their job each year for the period 1986–1991. That represents an annual decline of 10 percent of all individuals who are employed by the State's oil and gas production industry.

Repeal of percentage depletion will also decrease the State's severance tax collections by an average of $10 million per year for the same period. That represents an annual decrease of 12.5 percent. My state's economy simply cannot sustain losses of this magnitude.

Mr. Chairman, the findings of the IOCC study also indicate that percentage depletion is an efficient and cost effective incentive to encourage energy production. This is especially evident when you compare the cost of the current SPRO program with the revenue that will be raised should percentage depletion be repealed. The IOCC study indicates that by repealing percentage depletion we can expect our reserves to be reduced by 465 million BOE during the 1986 to 1991 period. By foregoing this drilling, the Treasury expects to collect an additional $4.2 billion in tax revenues. However, the reserve's loss exceed the 451 billion BOE stored in the SPRO at a cost to the Treasury of $14.5 billion. Therefore, it appears that the Federal government could have saved $10.3 billion by doing nothing.

Mr. Chairman, as I mentioned earlier, oil and gas production is an inherently risky investment. This risk is real and is supported by statistics. 70 percent of all wells and 21 percent of all development wells are dry holes. In 1983, the direct cost of these wells amounted to $7.75 billion; or, 31 percent of total U.S. drilling and well equipment expenditures. It has been suggested that without tax incentives, the increased risk could be recouped by increased wellhead prices. However, given our world oil glut, it is unlikely that oil prices will adequately compensate investors for the risk factor of their investment.

Of equal importance, Mr. Chairman, is the fact that under current law percentage depletion is only available to independent producers. Therefore, repeal of this provision will disproportionately affect one of the most important sectors of the oil and gas production industry. The importance of independents to the industry cannot be overstated. Historically, independents have accounted for 90 percent of wildcat drilling and 85 percent of all domestic drilling, both onshore and offshore. Independents find more than 80 percent of significant new discoveries and have accounted for 56 percent of new reserves found. Without the contributions of independents, domestic production today would be about 1.1 million barrels per day below the 1979 production rate. Recent reports indicate that under Treasury II independents would see their profitability decline an equivalent of $2 to $3 barrel of oil

for onshore and offshore drilling projects. This would translate into a decline in production of about 130,000 barrels a day by 1990. It is simply too high a price to pay for tax simplification.

Finally, Mr. Chairman, I would like to remind the Committee that a viable U.S. petroleum industry is an essential component of national security. One need only recall the energy crises of the 1970's to realize the importance of maintaining a workable energy production industry. I hope that we have learned our lessons; and will not do anything to increase the risk that our nation will once again be hostage to OPEC for our energy requirements.

Mr. Chairman, I sincerely question the wisdom of repealing percentage depletion and urge the committee to reject this proposal. I will be pleased to answer any questions you may have.●

SALUTE TO LUCY HARTWELL AND GLORIA CONGDON

● Mr. DURENBERGER. Mr. President, I am proud to say that over the past 10 years, residents of my home State of Minnesota have been among the most generous and hospitable in welcoming newly arrived refugees to this country from the war-torn nations of Southeast Asia.

Although an accurate count is not available, there are now an estimated 26,000 individuals from the nations of Vietnam, Cambodia, and Laos who have made their homes in Minnesota.

The large majority of these new residents have made the transition to living in a new country with a very different climate with remarkable success. There have been many difficult challenges along the way, however, and this transition would not have been possible without the generous assistance of thousands of Minnesotans working through their churches and other organizations.

Two of these individuals are Lucy Hartwell and Gloria Congdon who were recently honored by the Minneapolis Rotary Club for their efforts in behalf of the 8,500 member Hmong community now living in Minnesota.

For the past 2½ years, Lucy and Gloria have contributed thousands of dollars and much of their time to establishment of the Hmong Folk Art Center. The center is actually a store located in south Minneapolis which sells the intricate needlework made by Hmong women. More than 600 Hmong women now sell their needlework from this store, receiving all the income from the sales except what is needed to meet the expenses of the operation. Neither Lucy Hartwell or Gloria Congdon have received compensation for their work on the project.

Because of the outstanding contributions made by these two women, and because of the spirit of generosity and good will among peoples represented by this project, I ask that the following article be printed at this point in the RECORD.

The article follows:

HMONG ART CENTER GREW OUT OF VOW TO HELP

(By Wendy S. Tai)

Lucy Hartwell remembers sitting in her kitchen and trying to explain the Holocaust to her teen-aged son 10 years ago. He had asked, "How could you just sit there and not do anything when you know what's going on?

Though she was a grade-school girl at the time of the Holocaust, she was deeply touched by her son's remark. She vowed that if she ever learned of a tragedy again, she would act. In 1982, after becoming aware of the desperate plight of the Hmong, Hartwell and a friend founded the Hmong Folk Art center, a store on Hennepin Av. that sells the intricate needlework made by Hmong women.

"You just feel you're in the right place at the right time," Hartwell said Friday after she received the Service Above Self Award from the Minneapolis Rotary Club. "So often in life you pray to be in the right place at the right time . . . I feel very privileged."

In the past 2½ years, she and cofounder Gloria Congdon have contributed thousand of dollars, long days and nights "and in-between and in our dreams" to help the Hmong, Hartwell said. She and Congdon take no money; the 615 Hmong women who sell art there set their own prices.

"It's more than a business," the Wayzata mother of four said. "We do have goals, such as to help them become sufficient, (be) a link with the Hmong community, to help them find happiness in their new home. We don't think in terms of dollars and cents."

The nonprofit center is a way for the Hmong women to earn some money from a centuries-old skill that's passed from mothers to daughters, but one that may die eventually because young girls here don't seem interested, Hartwell said.

It also provides an outlet for an art that's evolving through the Hmong's experiences, such as the "story blankets" that depict life in their homeland and other scenes.

First you'd see a stick elephant, a rat, a monkey," Hartwell said. "Six months later, we started to see people. Six months later, the people are moving. It's very informative." A tapestry of the detailed needlework can take up to a year of full-time work to finish, she said.

Hartwell, 51, wearing a pink "Lucy Dress" the Hmong designed for her, said the idea for a store came to her suddenly in 1982. "I don't know why the idea flashed in my mind," she said. "We had a lot of people who thought we were crazy, but we both felt it was the right thing to do."

But the decision to open the store was much more than happenstance. She first heard about the villagers in Laos about two years earlier in a magazine article. She said she cried.

The first meeting occurred several months later, when the magazine writer was in Minnesota to do a follow-up story. Hartwell and her husband, John, listened to the Hmong accounts of their aiding the United States in a secret war in Laos, of injuries that never heal and of surviving in the jungle.

"We were almost sick to our stomachs," she recalled.

The first store opened in October 1982, at 2411 Hennepin Av. S., with work from 20 Hmong women in Minnesota. "We laughed so much together. We made so many mistakes," Hartwell said. "We were really confused with numbers."

The stored moved to the present site at 3037 Hennepin Av. S., near Calhoun Square, in March 1984, and will be inside the square in August.

It now takes work from 615 women, most from Minnesota, she said. "Whatever (price) they want, they get," she said. Another 30 percent is then added to the price to cover the cost of running the store.

Hartwell and Congdon have employed four Hmong women at the store full time; Congdon works with dress designs and custom orders. Hartwell will take over fund raising this year. The $1,000 she received from the Rotary yesterday will go to the store.

"I'm proud of the Hmong people and what they've accomplished," she said, crediting much of the work to Congdon, the Hmong women and many volunteers, including her husband, who help at the store. "I think I've been so enriched by the many, many people who have touched my life through this, Hmong and Americans. Everyday it's very inspirational."●

TRIBUTE TO MRS. BRIGITTE GERNEY

● Mr. MOYNIHAN. Mr. President, some weeks ago in New York City, a large construction crane collapsed, trapping Mrs. Brigitte Gerney beneath it. The city and the Nation were horrified by this calamity, and inspired by the remarkable story that ensued.

Mrs. Gerney remained pinned under that 35-ton weight for 6 hours. Withal, she remained conscious, calm and composed, hopeful and prayerful, never complaining.

In the press, attention to Mrs. Gerney's case has faded following the mishap. The Senate will be heartened to know, however, that her condition has improved greatly. Doctors fully expect that Mrs. Gerney will be able to walk again, and she could be released from Bellevue Hospital within 1 month.

Mr. President, Mrs. Brigitte Gerney's courage and fortitude inspired us all, and for this we salute and thank her.●

ORDER OF BUSINESS

Mr. DOLE. Mr. President, it is my understanding that we are going to go out here very quickly. There are only a couple of items of business, unfortunately.

Let me say to my colleagues that there are a number of bills we hope to dispose of this month. I should think most of it could be done in rather short order if there is a willingness on the part of the Members to cooperate.

I also indicate to Members that for September and October, the schedule is already crowded, so it would be in their interest to bring up these bills in July under some time agreement or possibly even work it out so we could handle bills in wrap-up sessions, as we do frequently. That is a matter that

might be of interest to a number of Members on each side.

REYNOLDS NOMINATION

I also indicate that having visited with the members of the administration, it is not the intention of the majority leader to attempt to discharge the Judiciary Committee from further consideration of the nomination of Bradford Reynolds. In my view, had Mr. Reynolds' nomination come to the Senate floor, it could have been confirmed, but I am advised that the administration and members of the administration, after consultation with Mr. Meese, Mr. Reynolds, the chief of staff, Donald Regan, and others, have indicated—they did indicate to me earlier through Max Friedersdorf—that it would not be their intent to ask us to pursue that nomination further.

REMOVAL OF INJUNCTION OF SECRECY—SUPPLEMENTARY EXTRADITION TREATY WITH THE UNITED KINGDOM

Mr. DOLE. Mr. President, as in executive session,

I ask unanimous consent that the injunction of secrecy be removed from the Supplementary Extradition Treaty with the United Kingdom, with annex, signed at Washington on June 25, 1985 (Treaty Document No. 99-8), transmitted to the Senate today by the President of the United States.

I also ask that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

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

The message of the President is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Supplementary Extradition Treaty between the United States of America and the United Kingdom, with annex, signed at Washington on June 25, 1985.

I transmit also, for the information of the Senate, the report of the Department of State with respect to the Supplementary Treaty.

The Supplementary Treaty adds to and amends the Extradition Treaty between the United States and the United Kingdom, signed at London on June 8, 1972.

It represents a significant step in improving law enforcement cooperation and combatting terrorism, by excluding from the scope of the political offense exception serious offenses typically committed by terrorists, e.g., aircraft hijacking and sabotage, crimes against diplomats, hostage taking, and other heinous acts such as murder, manslaughter, malicious assault, and certain serious offenses involving firearms, explosives, and damage to property.

The Supplementary Treaty, in addition to narrowing the application of the political offense exception to extradition, will also help improve implementation of the current Extradition Treaty in several other respects. I recommend that the Senate give early and favorable consideration to the Supplementary Treaty and give its advice and consent to ratification.

RONALD REAGAN.

THE WHITE HOUSE, *July 17, 1985.*

FLEXIBLE AND COMPRESSED WORK SCHEDULES FOR FEDERAL GOVERNMENT EMPLOYEES

Mr. DOLE. Mr. President, I send a bill to the desk on behalf of the distinguished Senator from Alaska [Mr. STEVENS] and ask for its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1455) to extend the authority to establish and administer flexible and compressed work schedules for Federal Government employees.

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. STEVENS. Mr. President, the bill I am introducing today would temporarily extend the Federal Alternative Work Schedules Program until the end of the fiscal year—September 30, 1985. The current statutory authority for this important program expires on July 23, 1985.

This highly successful program was established in 1978, and was extended in 1982. It has allowed agencies to establish and administer flexible and compressed work schedules for Federal employees. Generally, flexible schedules permit employees, within limits, to vary the times they report for and depart from work. Compressed schedules permit employees to work longer than 8 hours per day and thereby complete their biweekly work schedules in less than 10 days. More than 300,000 Federal employees, in nearly every agency, are currently working under alternative work schedules.

The successes of the Federal program and numerous private sector programs are legion. According to the Office of Personnel Management [OPM], the program has proven to be generally successful, to benefit employees, and to have had positive effects on productivity and service to the public. It has also been beneficial to employees by allowing them more flexibility to meet their personal needs and commitments. For instance, parents may arrange their work hours to meet family and household responsibilities.

Unfortunately, for reasons unrelated to its merits we have been unable to pass a permanent reauthorization of the program under my unanimous consent request of July 11, 1985. Hopefully, we can extend it on a temporary basis, and subsequently take up legislation to permanently reauthorize flexitime and compressed work schedules for the Federal workforce.

Mr. TRIBLE. Mr. President, I rise in support of this measure and I commend the efforts of my distinguished colleague, Senator STEVENS, to ensure continuation of the Federal Employees Flexible and Compressed work schedules program. I am an original cosponsor of similar legislation to permanently authorize this program.

The Flexible and Compressed Work Schedule Program, or flextime, permits Federal agencies to offer employees work schedules which vary from the standard 40-hour, 5-day schedule. I believe this program contributes to the effective and efficient operation of the Federal Government and have enthusiastically supported it as a member of the House and Senate. These alternative schedules were first approved in 1978 and allowing Federal employees to stagger their work hours or compress work weeks has been an unqualified success.

Permitting employees to develop a work schedule which meets their professional and personal needs has increased productivity and morale. Moreover, the extended hours of agency operation have enabled the Federal Government to provide better service for the American public.

The benefits of this program are derived at no cost to the Federal Government. Flexitime has no budgetary impact. In fact, the program has led to reduced tardiness and absenteeism, thus reducing government costs.

The legislation under consideration would reauthorize the Flexitime Program for civil service until the end of this fiscal year. And this measure merits unanimous support the program is supported by this administration, affected employees and by Federal employee unions and associations. The Flexitime Program has met with success since its establishment and should continue to be successful.

I am pleased to support this measure and I urge my colleagues to join me in voting for this legislation.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no 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. 1455

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Federal Employees Flexible and Compressed Work Schedules Act of 1982 (96 Stat. 234; 5 U.S.C. 6101 note) is amended by striking out "three years after the date of the enactment of this Act" and inserting in lieu thereof "September 30, 1985".

Mr. DOLE. Mr. President, 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.

Mr. DOLE. 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. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nomination of John William Bode to be an Assistant Secretary of Agriculture.

Mr. BYRD. Mr. President, I have no objection to the Senate going into executive session to consider the nomination of Mr. John William Bode.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. The nomination will be stated.

DEPARTMENT OF AGRICULTURE

The assistant legislative clerk read the nomination of John William Bode, of Oklahoma, to be an Assistant Secretary of Agriculture.

Mr. BOREN. Mr. President, I have known John Bode for many years. He served as a student intern and later became a member of my staff when I was Governor. In both positions, he did an outstanding job. In 1979, he became a professional staff member of the Senate Agriculture Committee and superbly handled his responsibilities there.

I am pleased the President has nominated a young man with the ability and integrity of John Bode. As an Oklahoman, I am extremely proud of the record which he has made.

I urge my colleagues to confirm his nomination to be Assistant Secretary of Agriculture for Food and Consumer Services.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. BYRD. 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 the President be immediately notified that the Senate has given its consent to this nomination.

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

LEGISLATIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate resume the consideration of legislative business.

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

ORDERS FOR THURSDAY

ORDER FOR RECESS UNTIL 11 A.M. TOMORROW

Mr. DOLE. Mr. President, I ask unanimous consent that, once the Senate completes its business today, it stand in recess until the hour of 11 a.m. on Thursday, July 18, 1985.

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

ORDER FOR RECOGNITION OF SEVERAL SENATORS TOMORROW

Mr. DOLE. I ask unanimous consent that following recognition of the two leaders under the standing order, there be a special order in favor of the following Senators for not to exceed 15 minutes each: Senators PROXMIRE, SASSER, EVANS, and MATTINGLY.

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

ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. DOLE. Following the special orders just identified, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond the hour of 12 noon, with statements therein limited to 5 minutes each.

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

LIVE QUORUM AND CLOTURE VOTE TOMORROW

Mr. DOLE. At 12 noon, a live quorum will begin under the provisions of rule XXII, to be followed by a rollcall vote on the cloture motion on the motion to proceed to consideration of S. 43, the line-item veto bill.

What may happen later on in reference to the legislation will depend on what happens in that vote. I assume rollcall votes can be expected throughout Thursday's session.

I think it is fair to indicate that we hope we will have enough to keep us busy for a good part of the time on Friday.

RECESS UNTIL 11 A.M., THURSDAY, JULY 18, 1985

Mr. DOLE. Mr. President, there being no further business to come before the Senate, I move that the Senate stand in recess until Thursday, July 18, 11 a.m.

The motion was agreed to, and at 6:23 p.m. the Senate recessed until tomorrow, Thursday, July 18, 1985, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate July 17, 1985:

DEPARTMENT OF JUSTICE

Douglas H. Ginsburg, of Massachusetts, to be an assistant attorney general, vice J. Paul McGrath, resigned.

Richard Kennon Willard, of Virginia, to be an assistant attorney general, vice William F. Baxter, resigned.

DEPARTMENT OF AGRICULTURE

Raymond D. Lett, of Virginia, to be an Assistant Secretary of Agriculture, vice C.W. McMillan, resigned.

Vance L. Clark, of California, to be Administrator of the Farmers Home Administration, vice Charles Wilson Shuman, resigned.

The following-named persons to be members of the board of directors of the Commodity Credit Corporation:

John William Bode, of Oklahoma, vice Mary Claiborne Jarratt.

Raymond D. Lett, of Virginia, vice C.W. McMillan.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Joyce A. Doyle, of New York, to be a member of the Federal Mine Safety and Health Review Commission for the remainder of the term expiring August 30, 1986, vice Rosemary M. Collyer, resigned.

NATIONAL SCIENCE FOUNDATION

Richard S. Nicholson, of Virginia, to be an assistant director of the National Science Foundation, vice Edward A. Knapp.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Anthony J. Calio, of Maryland, to be Administrator of the National Oceanic and Atmospheric Administration, vice John V. Byrne, resigned.

CONFIRMATION

Executive nomination confirmed by the Senate July 17, 1985:

DEPARTMENT OF AGRICULTURE

John William Bode, of Oklahoma, to be an Assistant Secretary of Agriculture.

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.